

STATE OF NEVADA

**BIENNIAL REPORT**

OF THE

**ATTORNEY-GENERAL**

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**1927=1928**

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



CARSON CITY, NEVADA

STATE PRINTING OFFICE : : JOE FARNSWORTH, SUPERINTENDENT

1928

STATE OF NEVADA  
BIENNIAL REPORT  
OF THE  
ATTORNEY-GENERAL



M. A. BIRBY, Attorney-General



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ATTORNEY-GENERAL OF NEVADA

LETTER OF TRANSMITTAL

STATE OF NEVADA,  
OFFICE OF THE ATTORNEY-GENERAL,  
CARSON CITY, December 31, 1928.

*To His Excellency, F. B. BALZAR, 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 1927 and 1928.

Very respectfully,

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

## ATTORNEYS-GENERAL OF NEVADA

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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 <sup>1</sup> .....	1895-1896
J. R. JUDGE <sup>2</sup> .....	1896-1898
W. D. JONES <sup>3</sup> .....	1899-1901
WILLIAM WOODBURN.....	1901-1902
J. G. SWEENEY.....	1903-1906
R. C. STODDARD.....	1907-1910
CLEVELAND H. BAKER <sup>4</sup> .....	1911-1912
GEO. B. THATCHER <sup>5</sup> .....	1912-1914
GEO. B. THATCHER.....	1915-1918
L. B. FOWLER.....	1919-1922
M. A. DISKIN.....	1923-

<sup>1</sup>Died December 10, 1896.

<sup>2</sup>J. R. Judge appointed to fill unexpired term, December 24, 1896.

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

<sup>4</sup>Died December 5, 1912.

<sup>5</sup>Geo. B. Thatcher appointed to fill unexpired term, December 6, 1912.

## OFFICE FORCE

M. A. DISKIN.....	Attorney-General
WILLIAM J. FORMAN.....	Deputy Attorney-General
MILDRED BRAY.....	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

#### 251. Schools—Legality of Spending School Moneys for Evening School Education.

(1) Under the provisions of sec. 5 of Stats, 1917, p. 354, as amended by Stats, 1925, p. 138, a Board of School Trustees is authorized to execute orders directed to the County Auditor for the payment of claims for equipment and maintenance.

(2) Additional salaries for teachers are limited in the several amounts to the sum apportioned to the districts or the teachers from the State Distributive School Fund.

#### INQUIRY

CARSON CITY, January 8, 1927.

A question has arisen as to the legality of spending school moneys for evening school education. I shall appreciate having your opinion on the following question regarding this subject, to wit: Is it illegal to use county funds when the State Board of Education approves courses offered through the cooperation of a local school district and the State Board for Vocational Education? (Ref. page 158 School Code. Page 13 Session School Laws, 1925.)

#### OPINION

Section 5 of an Act entitled, "An Act to provide for the establishment of evening schools," Statutes 1917, page 354, was amended by Statutes 1925, page 138. The amendment provided in part as follows:

On written orders of a Board of School Trustees having established an evening school, the County Auditor shall issue warrants upon the County Treasurer for the payment of just

claims for equipment and maintenance, and for additional salaries of teachers in amounts not to exceed those amounts apportioned to the districts on the teachers from the State Distributive School Fund, all of which claims are hereby made just and legal charges against the General Fund of the county, and the County Treasurer is hereby authorized and directed to pay the same.

Under the provisions of this section, if a Board of School Trustees has established an evening school, the members of said board are authorized to execute orders directed to the County Auditor for payment of claims for equipment and maintenance. The expenses thus incurred are paid out of the General Fund of the county.

In making payments for additional salaries for teachers, however, the Board of School Trustees is restricted in the several amounts to the sum apportioned to the districts on the teachers from the State Distributive School Fund. This is a limitation on the amounts to be paid teachers, and, if any excess for this purpose is contributed from other agencies, the School Trustees may execute orders upon the County Auditor within the limitation defined in the statute for additional salaries of teachers.

Respectfully submitted,

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

WALTER W. ANDERSON, *Superintendent of Public Instruction, Carson City, Nevada.*

#### SYLLABUS

##### 252. Corporations—Annual Filing of Officers and Directors—Fee Therefor.

A corporation filing its articles of incorporation and paying its fees in March would be required under sec. 1, p. 180, Stats. 1925, likewise to make a filing and pay the fee on or before the 1st day of July, next succeeding.

#### INQUIRY

CARSON CITY, January 11, 1927.

A corporation filed its articles of incorporation and paid the required fees in March, 1926. Said corporation filed the list of its officers and designation of resident agent in May, 1926, paying a fee for same of \$5. Would such a corporation be required to pay an annual fee of \$5 by July 1, 1926, as mentioned in section 1, page 180, Statutes of 1925?

What would be the result if a corporation filed its articles between the dates of July 1 and December 31, 1926?

#### OPINION

The inquiry herein made requires the construction of sections 1, 2, and 3 of chapter 180, Statutes of 1925. Section 1 requires that, annually, each corporation organized or doing business in this State shall file a list of officers and pay a fee of \$5 on or before July 1.

Section 2 requires that when this annual fee is paid, the Secretary of State shall issue to each corporation a certificate authorizing it to

transact business within this State until July 1 of the following year. Section 3 provides as follows:

Every corporation hereafter organized under the laws of this State, and every foreign corporation hereafter coming into this State, shall, within sixty days after the filing of its articles of incorporation with the Secretary of State, file a list of its officers and directors and a designation of its resident agent and pay to the Secretary of State a fee therefor of five (\$5) dollars, and shall make like filing and pay the fee set forth in section 1 of this Act, annually thereafter.

By section 3, quoted above, it was the evident intent of the Legislature to allow a corporation sixty days' grace within which to make the filing and pay the fee therein provided. The section also provides that such a corporation shall, annually thereafter, make the filing and pay the annual fee provided for in section 1. From the use of the language quoted it is evident the Legislature intended to require this annual filing and fee after the expiration of the sixty-day period, and on or before the following first day of July; thus, if the sixty-day period expires on or after July 1, the corporation could not be in default until after the next succeeding July 1. If the sixty-day period expired on June 20, for example, the corporation must, in addition to the sixty-day filing and fee, make the filing and pay the required annual fee on or before July 1. See Opinion No. 170, Opinions of Attorney-General of 1925-1926.

In both of the cases given in the inquiry, therefore, a corporation would be compelled to make the sixty-day filing and pay the fee, and likewise make a filing and pay the fee required by section 1 on or before the first day of July next succeeding.

Respectfully submitted for the Attorney-General,

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

By WM. J. FORMAN, *Deputy Attorney-General*.

IVEN JEFFRIES, *State Auditor, Carson City, Nevada*.

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#### SYLLABUS

#### 253. Constitution of Nevada—Authority of State to Buy and Sell Electric Energy—Boulder Canyon Project Act.

The Constitution of Nevada contains no express inhibition that would deprive the State of the right to buy and sell electric energy.

#### INQUIRY

CARSON CITY, January 20, 1927.

By direction of the Governor, the annexed letter and bill received from Senator Key Pittman is respectfully referred to your office with the request that you advise what authority the State may have to buy and sell electric energy.

## OPINION

In connection with your inquiry there is submitted a letter from United States Senator Key Pittman and a copy of S. 3331, an Act pending in the Congress of the United States known as the Boulder Canyon Project Act.

It is in reference to this proposed Act that your question is submitted and, for a complete understanding of the facts, the following quotation is made from Senator Pittman's letter:

The State of Nevada has a great opportunity to supply its industries with cheap hydro-electric power and at the same time make a profit for the State if it can acquire 100,000 electric horsepower from Boulder Dam. According to the report of the Secretary of the Interior the cost of electric energy at the switchboard will not exceed three mills per kilowatt hour. The State, if it acquired the energy provided in my amendment, could not only supply its own industries with cheap electric power as needed, but at the same time could make a profit of several hundred thousand dollars a year out of the undertaking. It could sell the power in California under a contract that the amount be diminished as the requirements of the industries in the State increased.

If the State of Nevada is to obtain any permanent benefit out of the construction of the Boulder Dam, immediate action should be taken by the State in addition to action that must be taken by the representatives of the State in Congress.

The concluding paragraph of the letter reads:

Permit me to suggest in addition that you ascertain if, under the Constitution and laws of the State of Nevada, the State has authority to buy and sell electric energy. If it has not such constitutional authority, it may be well to consider the creation of some corporation or other agency to represent the interests of the State in the matter of contracting for the acquisition of such electric energy. In the event that the State should fail in obtaining a compact with California, and that we should fail in the passage of my amendment, the State might still be in a position through proper legislation to apply for a contract for a portion of the electric energy to be generated at the Boulder Dam.

In considering the subject matter of your inquiry, it is necessary to carefully examine the surrounding facts and determine therefrom if the contemplated venture may be termed a public or private enterprise and consider the right of the State to develop its resources through its own activities.

The underlying theories of state government and state finances make taxation the principal source of revenue. Taxation must be for public as distinguished from private enterprise. The constituted authority in levying a tax is restricted to purposes within the sphere of governmental functions. The State cannot enter upon a commercial enterprise, however alluring the prospect, and tax the people for its promotion. The State is a political unit and not a business corporation,

except incidentally to further its political purposes. With these general principles in mind we approach a discussion of the question submitted.

In an effort to take advantage of a natural resource which the State owns by reason of state sovereignty and to develop the same for the benefit of all the people of the State, it is desirable that the State utilize, by a purchase or sale, the electric energy developed by the waters of the Colorado River. The question of using public funds derived by taxation for this purpose apparently is not involved. The State is to receive electric energy at a fixed price and sell the same at a profit for the benefit of the inhabitants of the State and, as a result, cheaper power will thus be afforded to the agricultural, mining and other interests of the State of Nevada. The development of this policy will naturally lead to the enhancement of the material wealth of the State by increasing the population, developing the mining resources, and increasing the cultivated areas within the State. If it were necessary to employ money raised by taxation for the purpose of promoting such an enterprise, it could be successfully urged that the endeavors of the State, under the facts stated, are confined to a public as distinguished from a private enterprise.

The Supreme Court of Nevada, in the case of *State v. Churchill County*, 43 Nev. 290, held that a law authorizing the issuing of bonds by the county to establish a fund so that money could be loaned to private landowners for the purpose of reclaiming arid lands was invalid because the method provided was ineffective and would result in taxation for private purposes. The Court, by Justice Sanders, stated:

Under the plan adopted, a dozen or as many hundreds of acres of land may be placed under cultivation and the remainder left to go unreclaimed. One owner may be moved to take advantage of the proffered assistance, and others would not be so inclined. One owner or entryman might undertake, through the plan adopted, to reclaim all of his land, while others would be disposed to reclaim but a fraction of their holdings, or look to other sources for assistance than the public fund. It is clear that the operation of the law might result in the taxing of a citizen for the use of a private enterprise conducted by other citizens. Such result is an unauthorized invasion of a private right and contrary to the fundamental principle that no tax is a valid tax except it be laid for a public purpose.

We concede that the only restriction on the powers of this State to tax property within its jurisdiction and to direct the purposes for which taxes shall be raised is that the assessment shall be uniform and equal and the purpose a public one. So long as the Legislature acts within these conceded powers, the courts may not interfere. *Gibson v. Mason*, supra; *Gold Hill v. Caledonia S. & M. Co.*, supra.

By Statutes 1921, chapter 45, the Legislature authorized the county of Mineral to acquire by purchase, and operate as a public utility, electric power and telephone lines known as the Pacific Division of Nevada-California System. The constitutionality of this legislation

was questioned in the case of *Buck v. Boerlin*, 45 Nev. 131, and the Supreme Court ruled that it was valid legislation. The power of the county to engage in a business apparently was not questioned.

If the Legislature could delegate to a county the right to engage in the business of buying and selling power, no valid objection could be urged against the State exercising such right under the circumstances stated.

The Constitution contains no express inhibition that would deprive the State of the right to buy or sell electric energy.

I conclude, therefore, that the State has authority, under the facts stated in the Pittman letter, to buy, sell, develop, and dispose of electric energy in connection with the development of the Colorado River. In exercising this right it may be advisable for the Legislature to delegate the details to a commission or board for the sake of efficiency.

Authorities examined in the preparation of this opinion: *Laughlin v. Portland*, 90 Atl. 318; *Jones v. Portland*, 93 Atl. 41, confirmed 245 U. S. 217; *Cryderman v. Wienrich*, 170 Pac. 942; *Lyman v. Stewart*, 190 Pac. 129.

Respectfully submitted,

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

HON. FRED B. BALZAR, *Governor of the State of Nevada, Carson City, Nevada*.

#### SYLLABUS

#### 254. Officers—Compensation—Necessity for Appropriation to Pay Traveling Expenses.

(1) The compensation for the Lieutenant-Governor employed as the presiding officer of the Senate is not predicated upon the necessity of the presentation or allowance of such claim by the State Board of Examiners.

(2) A claim for the Lieutenant-Governor's services as acting Governor must be presented to the Board of Examiners and the State Controller's warrant for the amount of such claim issued when allowed by the Board.

(3) No claim for traveling expenses can be allowed or paid until an appropriation is made by the Legislature setting aside a specific sum of money to cover the charge.

#### INQUIRY

CARSON CITY, January 27, 1927.

Statutes 1925, chapter 70, authorizes payment to the Lieutenant-Governor of the sum of fifteen dollars per day for such time as he may be actually employed as presiding officer of the Senate, and, also, when in the absence of the Governor he may act as Governor. In addition to this compensation he is allowed actual traveling expenses made necessary by his acting as President of the Senate or as Governor.

An opinion is requested concerning the procedure for allowing compensation to the Lieutenant-Governor and, also, his actual traveling expenses.

#### OPINION

The Legislature has specifically stated the amount of compensation

to be received by the Lieutenant-Governor for acting as presiding officer of the Senate and the law fixes the duration of the term of service. This places the Lieutenant-Governor in the same position as other State officers and compensation for this service, therefore, is not predicated upon the necessity of the presentation or allowance of such claim by the State Board of Examiners.

Concerning the amount to be allowed for services as acting Governor, the period of time, of course, is not specific and, therefore, a claim for such compensation should be presented to the Board of Examiners and your warrant for the amount of such claim issued when allowed by the Board.

No claim for traveling expenses can be allowed or paid until an appropriation is made by the Legislature setting aside a specific sum of money to cover this charge. When such an appropriation is made, the Lieutenant-Governor, upon presentation of an itemized statement of such expenses as may be incurred, will be entitled to receive the same, not exceeding the sum of five dollars a day and, in addition thereto, the amount of money expended for railroad fare. When it is necessary for the Lieutenant-Governor to travel on official business outside of the State of Nevada, an amount not to exceed ten dollars a day is authorized (Stats. 1923, p. 253).

Respectfully submitted,

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

HON. ED. PETERSON, *State Controller, Carson City, Nevada*.

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#### SYLLABUS

##### 255. Officers.

The Sheriff of Storey County, under the Statutes of 1923, p. 139, is permitted to appoint a Deputy Sheriff though such appointment is left solely to the Sheriff's discretion.

#### INQUIRY

CARSON CITY, January 27, 1927.

Whether or not the Sheriff of Storey County is authorized to appoint a deputy if it is possible for such Sheriff to perform all the duties of the Sheriff's office.

#### OPINION

Statutes 1923, p. 139, provides that the Sheriff of Storey County "may appoint a Deputy Sheriff who shall be jailer. The Deputy Sheriff, for services as jailer, shall receive twenty-one hundred dollars a year."

The words "may appoint," as used in the statute quoted, mean "is permitted to appoint" or "has liberty to appoint." (Bouvier Law Dictionary, p. 2169.)

Ordinarily, the word "may" is employed in a statute to express the idea that a discretion may be exercised, and that the performance of the act is not imperative.

It is the opinion of this office, therefore, that the Legislature by the statute of 1923, above quoted, gave to the Sheriff of Storey County the

power to appoint a deputy, and whether or not such power is exercised is left solely to the Sheriff's discretion.

Respectfully submitted for the Attorney-General,

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

By WM. J. FORMAN, *Deputy Attorney-General*.

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

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SYLLABUS

256. **Officers—Compensation.**

The estate of deceased state officer who died on the 11th day of a given month is only entitled to compensation for 11 days, not for a full month's period.

INQUIRY

CARSON CITY, February 1, 1927.

Where an appointive state officer dies and his death occurs on the 11th day of a given month would his estate be entitled to compensation for a full month period or for eleven days?

OPINION

The Legislature has adopted a budget system for the payment of compensation to all employees of the State, and an amount sufficient to pay such compensation has been set apart and appropriated.

In view of this fact and the further fact that the right of a public officer to compensation for the performance of duties imposed upon him by law does not rest upon contract, either express or implied, I am of the opinion that the estate of such officer would not be entitled to receive compensation for a full month period, but for the period only of eleven days.

Respectfully submitted,

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

HON. ED. PETERSON, *State Controller, Carson City, Nevada*.

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SYLLABUS

257. **Statutes—Assembly Substitute for Assembly Bill No. 163.**

(1) The bill designates the Governor, the Attorney-General, and the State Controller as Directors of the Highway Department.

(2) The words "State Engineer" as used in the Act refer to "State Highway Engineer" thereinbefore designated.

(3) Any change in the department would require the succeeding Highway Engineer to confirm all appointments of his predecessor or to make new appointments.

INQUIRY

CARSON CITY, March 25, 1927.

I submit herewith Assembly Substitute for Assembly Bill No. 163 and would like to have an opinion upon this Act. I note that this Act

takes effect on April 1, 1927, and I particularly would like to know how sweeping the effect of this Act will be upon the employees of the Highway Department.

Also, in section 3, line 10, you will note that "State Engineer" is referred to and not "State Highway Engineer." If it is intended that the State Engineer shall have part of the activities of the Highway Department it will be desirable to know this at as early a date as possible.

#### OPINION

The legislative bill referred to makes a change in the Directors of the Highway Department and names and designates the Governor, Attorney-General, and State Controller to be the Directors of the Highway Department. This change is made by amending section 1, section 2, and section 3, Statutes 1917, p. 309.

Under the provisions of section 3, Statutes 1917, it was provided that the State Highway Engineer was entitled to sixty days' notice before removal. This provision of the law was in effect at the time your contract was entered into and, therefore, fair dealing requires that if any change is contemplated in the office of State Highway Engineer that sixty days' notice be given to you before the termination of your official duties.

Section 4 of the Act authorizes the State Highway Engineer to employ all clerks and other assistants. Any change in your department would, therefore, require your successor to confirm the appointments made by you or make new appointments.

In reference to your second inquiry, the reading of section 3 shows that when the words "said State Engineer" are used reference is made to the State Highway Engineer thereinbefore designated in said section.

Respectfully submitted,

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

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

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#### SYLLABUS

#### 258. Corporations—Conditions Requisite to do Business—Insurance Companies.

(1) No statutory authority exists requiring the depositing with the State Treasurer of notes, mortgages, or any other securities by a land value insurance company before being allowed to transact business in the State of Nevada.

(2) If such securities have been deposited in the absence of any written agreement constituting the State Treasurer as trustee, the deposits may be withdrawn.

#### INQUIRY

CARSON CITY, March 25, 1927.

Is a land value insurance company required to deposit with the State Treasurer notes, mortgages, and other securities before being allowed to transact business in Nevada?

If such a company has deposited such securities, can the same be withdrawn?

## OPINION

No statutory authority exists requiring the depositing with the State Treasurer of notes, mortgages, or any other securities by a land value insurance company before being allowed to transact business in Nevada.

If such securities have been deposited, in the absence of any written agreement constituting the State Treasurer as trustee, the deposits may be withdrawn.

Respectfully submitted,

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

HON. ED. C. PETERSON, *State Controller, Carson City, Nevada*.

## SYLLABUS

259. **Officers—State Controller—Duty to Carefully Scrutinize Claims Against State—Doubtful Claims to Refuse to Pay.**

The State Controller is required by law to pass upon the correctness of all claims against State and to resolve all doubts in favor of State.

## INQUIRY

CARSON CITY, April 27, 1927.

You advise that the following bill has reached your office:

March 31, 1927. To salary for extra services as typist in the Surveyor-General's office for March, 1927, with the following note:

This claim is to be charged against the salary for typist in the office of Surveyor-General, as fixed in chapter 80, page 128, Statutes of 1919.

You inquire: "Does that statute allow this office to honor and pay the above bill?"

## OPINION

The duties of the State Controller, applicable in regard to the allowance of this class of claims against the State, are set out in section 4158, Revised Laws, 1912, which reads in part as follows:

And of claims examined and passed upon by the Board of Examiners (he shall allow) such an amount as he shall decree just and legal, not exceeding the amount allowed by said Board.

Under this section, the Supreme Court of this State has held in the case of *State v. Doran*, 5 Nev. 399, that the duty and responsibility of the final auditing and settlement of all claims, such as the one here presented, have been placed solely upon the State Controller. To aid him in passing upon such claims, the law has provided certain fixed rules of law. The most important among them are as follows:

Section 4158, Revised Laws, 1912: And no claim for services rendered or advances made to the State or any officer thereof, shall be audited or allowed unless such services or

advancements shall have been specially authorized by law, and an appropriation made for its payment. For the purpose of satisfying himself of the justness and legality of any claim, he shall be allowed to examine witnesses under oath and to receive and consider documentary evidence in addition to that furnished him by the Board of Examiners.

Revised Laws, p. 3096, section 1: The sums appropriated for the various branches of expenditures in the public service of the State shall be applied solely to the objects for which they are respectively made, and for no others.

An appropriation, in the sense used in the above-quoted statutes, is defined in the case of *State v. LaGrave*, 23 Nev., p. 26, as follows: "The word 'appropriate' means to allot, assign, set apart, or apply to a particular use or purpose."

In the event of presentation of a claim which the Controller considers doubtful as to legality or justness, such a doubt should be resolved in favor of the State and the claimant left to his legal remedy, for the reason that the office of State Controller was created and his duties in passing upon claims were fixed so as to add an additional protection for the State's moneys. (See *State v. Doran*, 5 Nev., p. 399.)

With these rules for his guidance, it is the duty and the power of the State Controller to pass upon both the legality and justness of such claims, and it is not the aim of this office to usurp any of such functions of the State Controller's office.

Respectfully submitted for the Attorney-General,

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

By WM. J. FORMAN, *Deputy Attorney-General*.

HON. ED. C. PETERSON, *State Controller, Carson City, Nevada*.

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SYLLABUS

260. County Commissioners—Budget Law—Transfer from General Fund—Emergency.

County Commissioners have no authority to transfer money from General Fund to purchase land or erect buildings for county indigents. The budget law governs. Remedy is by emergency loan.

INQUIRY

CARSON CITY, April 27, 1927.

Can the County Commissioners of Pershing County take money accumulated and available in the General Fund for the purchase of land and erection of a building to care for the county indigents out of said General Fund?

OPINION

The Act of the Legislature approved March 26, 1917, as amended by the several Acts to date, regulating the fiscal management of counties.

cities, towns, school districts, and other governmental agencies, commonly known as the "Budget Act," provides in section 4:

It shall be unlawful for any Commissioner, or any Board of County Commissioners, or any officer of the county to authorize, allow, or contract for any expenditure unless the money for the payment thereof is in the treasury and specially set aside for such payment. (As amended, March 23, 1927.)

As it appears from your inquiry that the funds for the purchase of lands and the erection of a building contemplated by the Pershing County Commissioners have not been specially set aside for such payment, the County Commissioners of your county would not be authorized to use the funds from the General Fund for the purposes mentioned.

However, in the event of great necessity or emergency for such an expenditure, proceedings may be taken under section 5 of the Budget Law, as amended, Statutes 1925, p. 338, and an emergency loan for the purpose of meeting such necessity or emergency made. This section of the law also provides that if sufficient funds are available, then a temporary loan can be made from the General Fund for the purpose of furnishing the necessary funds until the emergency tax money is received. The purpose of this latter provision is to prevent the county from paying interest on such a loan when it has the money available to meet the expenditure.

Respectfully submitted for the Attorney-General,

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

By WM. J. FORMAN, *Deputy Attorney-General.*

HON. JOHN A. JURGENSON, *District Attorney, Pershing County, Lovelock, Nevada.*

#### SYLLABUS

#### 261. Health—Chiropractors.

Chiropractors having been recognized by this State as practitioners of medicine and surgery, the Statutes of 1923, p. 38, forbid discrimination against them in their practice in county hospitals.

#### INQUIRY

CARSON CITY, April 30, 1927.

Whether or not a chiropractor is authorized to practice his profession in the county hospitals of this State.

#### OPINION

The Statutes of 1923, page 308, in fixing regulations governing county hospitals, provide:

In the management of such public hospital no discrimination shall be made against practitioners of any regular school of medicine and surgery recognized by the laws of Nevada, and all such regular practitioners shall have equal privileges in treating patients in said hospital.

Chiropractors have been recognized and licensed by the State of Nevada for the purpose of healing by the particular means used by them.

The cases generally hold that a chiropractor comes within the definition of a practitioner of medicine and surgery. See *State v. Morrison*, 127 S. E. 75; *Commonwealth v. Jewelle*, 85 N. E. 858; *Territory v. Newman*, 79 Pac. 706.

Prior to the passage of the Act of 1923 authorizing the licensing of chiropractors under a separate board (Stats. 1923, p. 21), they came within the provisions of the Medical Practice Act. See sec. 2370, Revised Laws, 1912.

Therefore, having been recognized by this State as practitioners of medicine and surgery, Statutes of 1923, p. 308, forbid discrimination against them in their practice in county hospitals.

Respectfully submitted for the Attorney-General,

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

By WM. J. FORMAN, *Deputy Attorney-General*.

HON. GUY E. BAKER, *District Attorney, Ely, Nevada*.

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SYLLABUS

262. **State Property—Title of State to Real Property Cannot Be Divested Except by Legislative Sanction.**

Where State has acquired real property at Lehman Caves, title thereto cannot be conveyed to an individual except by legislative authority.

INQUIRY

CARSON CITY, May 6, 1927.

You submit a letter from an individual who is desirous of purchasing certain property at Lehman Caves, White Pine County, Nevada, and, in addition to the property held under private ownership, the party addressing you is anxious to obtain a deed from the State of Nevada for certain property located at Lehman Caves and heretofore conveyed to the State of Nevada. The prospective purchaser requests that the title heretofore conveyed to the State of Nevada be now conveyed to him.

OPINION

In view of the facts stated above, it will be observed that the State of Nevada by conveyance has acquired title to certain property situate at Lehman Caves.

It is elementary that the State can only divest itself of title to real estate by an Act of the Legislature. State officials are not authorized, nor have they any authority, to in any manner dispose of either the title to or the possession of property of this character without first being authorized so to do by legislative sanction.

The Legislature of the State of Nevada, in the year 1925, in the annual appropriation measure, appropriated the sum of twenty thousand dollars for the support of recreation grounds and game refuges, and a considerable portion of this amount was expended in and about Lehman Caves.

Respectfully submitted,

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

HON. FRED B. BALZAR, *Governor of the State of Nevada, Carson City, Nevada*.

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## SYLLABUS

**263. Schools—State Nepotism Act—Employment of Teachers.**

Chapter 22, Stats. 1925, exempts from its provisions widows as employees of any State or county officers. It also exempts from its provisions any teacher in a school district when such teacher is not related to more than one of the Trustees, and has received the unanimous vote of all members of the Board of Trustees or the County Board of Education.

## INQUIRY

CARSON CITY, JUNE 1, 1927.

1. Does chapter 22, Statutes 1927, governing the employment of persons within the third degree of consanguinity or affinity mean that only widows can teach school in case of relation to one member of the school board?

2. Does it allow a wife, whose husband is a member of the school board, to teach school with the approval of all three members of the board?

## OPINION

Chapter 22, Statutes 1927, in regard to the employment of teachers has in no manner changed the law as enacted by the Legislature of 1925, as chapter 22, Statutes 1927, simply adds to the former law:

*provided*, that nothing in this Act shall prevent any officer in this State, employed under a flat salary, from employing any suitable person to assist in any such employment; *provided*, that the payment for any such service shall be met out of the personal funds of such officer.

The statute specifically exempts from its provisions widows as employees of any State or county officer. It also exempts from its provisions any teacher in a school district when such teacher is not related to more than one of the Trustees and has received the unanimous vote of all members of the Board of Trustees or County Board of Education.

Therefore, the first inquiry should be answered in the negative and the second in the affirmative.

Respectfully submitted for the Attorney-General,

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

By WM. J. FORMAN, *Deputy Attorney-General*.

E. E. FRANKLIN, *Deputy Superintendent of Public Instruction, Elko, Nevada*.

## SYLLABUS

**264. Mothers' Pension Act, as Amended by Act of 1921.**

(1) Since amendment by the Act of 1921 application for pensions should be renewed.

(2) Discretion for granting pensions is fixed in the Board of County Commissioners and District Attorney under the conditions outlined in section 3 of the Act of 1921.

## INQUIRY

CARSON CITY, June 2, 1927.

(a) In 1919 a widowed mother applied to the Board of County Commissioners for, and was granted, a mother's pension, under the terms of the Act of March 15, 1915 (Laws of 1915, p. 153), as amended by the Act of February 10, 1917 (Laws of 1917, p. 13), all of which Acts were specifically repealed by the Act of March 16, 1921 (Laws of 1921, p. 179 at 181), since which time there has been no renewal or new application made by pensioner.

Has the present Board of County Commissioners any authority to continue the granting of the pension as originally allowed?

(b) Where the Board of County Commissioners has official knowledge of the fact that a widowed mother is the owner of convertible assets of the value of three thousand dollars—the records of the county showing that county securities of that amount of value at present standing in the name of the mother, and upon which interest is being paid to her regularly, in her own name—has the Board any authority for granting such widowed mother a pension under the Act above referred to?

## OPINION

(a) Inasmuch as the Statutes of 1921, p. 181, repealed the Act of 1915, as amended, the party mentioned in your inquiry should renew her application for the pension. The Act of 1921 being in some respects different and making some additional requirements, therefore, the decision of the Board of County Commissioners under the prior Act would not be in force without a new vote being taken after the passage of the 1921 Act.

(b) The Board would have authority to grant a pension to such a widowed mother under the 1921 Act, as the discretion is fixed in the Board and District Attorney under conditions outlined in section 3 of the Act. If those conditions exist, they would be authorized to make such allowance.

Respectfully submitted for the Attorney-General,

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

By WM. J. FORMAN, *Deputy Attorney-General*.

HON. C. C. WARD, *District Attorney, Mineral County, Hawthorne, Nevada.*

## SYLLABUS

265. **Officers—State Nepotism Act.**

The employment of a brother of one of the Directors of the State Orphans' Home by that institution violates the State Nepotism Act.

## INQUIRY

CARSON CITY, June 8, 1927.

Whether or not a brother of one of the Directors of the State Orphans' Home may be employed by that institution.

## OPINION

Section 4090, Rev. Laws, 1912, provides for the employment of all employees at the State Orphans' Home by the Board of Directors of that institution.

The State "Nepotism Act," as amended, Stats. 1927, p. 43, prohibits the employment within the third degree of consanguinity or affinity of any employee by any School Trustee, State, township, municipal, or county official. A similar statute has been construed by a former Attorney-General to prohibit employment by any board of an employee within the prohibited degree of consanguinity or affinity when such employee is related to any member of such board. (See Opinions of the Attorney-General, 1921-1922, Nos. 120, 124, and 125.)

Under this ruling, therefore, the employment mentioned in your inquiry would be unlawful.

Respectfully submitted for the Attorney-General,

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

By WM. J. FORMAN, *Deputy Attorney-General*.

JOSEPH B. KENDALL, *Superintendent State Orphans' Home, Carson City, Nevada*.

## SYLLABUS

## 266. Health—Physicians—Conditions Requisite to Practice.

A person may be granted a license to practice medicine in this State without examination only when the facts of his particular case bring the applicant within the provisions of section 6 of the Medical Practice Act.

## INQUIRY

CARSON CITY, June 9, 1927.

Under what conditions may a person be given a license to practice medicine in this State without taking the prescribed examination?

## OPINION

A person may be granted a license to practice medicine in this State without examination only when the facts of his particular case bring the applicant within the provisions of section 6 of the Medical Practice Act.

The pertinent part of that section reads as follows:

Said Board may, in its discretion, accept and register, upon payment of the registration fee, and without examination of the applicant, any certificate which shall have been issued to him by the Medical Examining Board of the District of Columbia, or of any State or Territory of the United States: *provided, however*, that the legal requirements of such Medical Examining Board shall have been, at the time of issuing such certificate, in no degree or particular less than those of Nevada at the time when such certificate shall be presented for registration to the Board created by this Act: *and provided further*, that the provisions in this paragraph contained shall be held to apply only to such of said Medical Examining Boards

as accept and register the certificates granted by this Board without examination by them of the ones holding such certificates.

Respectfully submitted for the Attorney-General,

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

By WM. J. FORMAN, *Deputy Attorney-General.*

DR. EDWARD E. HAMER, *Secretary of the Board of Public Health, Carson City, Nevada.*

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SYLLABUS

267. Appropriations.

(1) Where a contingency appropriation has been authorized by legislative Act the failure of Legislature to include amount in general appropriation bill does not prevent expenditure.

(2) State money may only be expended during period Federal Government cooperates under Sheppard-Towner Act.

INQUIRY

CARSON CITY, June 15, 1927.

(1) Section 5 of chapter 48 of 1923 Statutes, page 60, appropriates \$5,522 annually for the administration of the Sheppard-Towner Act. Is this section still in force?

(2) Does the failure of the Legislature to appropriate funds to carry on the provisions of this Act prohibit the issuance of warrants in payment of claims for salary and expenses for same?

OPINION

(1) Subsequent legislative session has not repealed Statutes 1923, chapter 48. Inasmuch as the Legislature, by enacting Statutes of 1923, authorized the State to cooperate with the Federal Government in the administration of said Sheppard-Towner Bill and made the appropriation for that purpose, if, for any reason, the United States Government no longer functions under the Sheppard-Towner Act, the right of the State to expend money would not exist and, even if an appropriation has been made for this purpose, moneys could not be expended if the Government was not cooperating with the State under the provisions of this Act.

(2) The failure of the Legislature to include in the general appropriation bill the specific sum set forth in the statutes referred to by you would in no way prevent the expenditure of the several sums, because the special Act is an appropriation in itself and made annually, and the failure to include the amount in the general appropriation budget made by the Legislature would in no way affect the issuance of warrants, providing, however, the United States Government continues to cooperate with the State.

Respectfully submitted,

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

HON. ED. C. PETERSON, *State Controller, Carson City, Nevada.*

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## SYLLABUS

268. **Fish and Game Laws.**

Reenactment of sec. 8, Stats. of 1925, by the Legislature in 1927 in no way affected sec. 8a, Stats. of 1925, and it would be unlawful for any person to take any wild duck, goose, or brant within the State at any times other than those mentioned in sec. 8a.

## INQUIRY

CARSON CITY, June 20, 1927.

Attention is directed to Statutes 1927, chapter 7, page 6, and an opinion is requested as to the effect of this amendment to the game laws of this State, and particularly as to whether the provisions of this amendment apply to section 8a, Statutes 1925, page 202, or affect it in any way.

## OPINION

By legislative Act, Statutes 1925, page 253, section 8 was enacted, making it "unlawful for any person to take any wild duck, sandhill crane, plover, curlew, snipe, woodcock, goose, or brant within this State, except between the sixteenth day of September and the thirty-first day of December of each year, both dates included \* \* \*." The Legislature at the same time enacted section 8a, making it "unlawful for any person to take any wild duck, goose, or brant within this State except upon a Wednesday, Saturday or Sunday between the sixteenth day of September and the thirty-first day of December of each year, both dates included \* \* \*." Provision was also made for excepting certain holidays.

The Legislature in 1927 reenacted section 8 of Statutes 1925, supra, but, in making the amendment, no new provisions were added to said section. If it were the intent of the Legislature to destroy the provisions of section 8a, Statutes 1927 would have amended section 8a. By reenacting the provisions of section 8, the same would no way affect the provisions of section 8a.

I am of the opinion, therefore, that the provisions of section 8a must prevail, and that it would be unlawful for any person to take any wild duck, goose, or brant within the State at any times other than those mentioned in section 8a.

Respectfully submitted,

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

R. J. VANNOY, *Game Warden, Fallon, Nevada.*

## SYLLABUS

269. **Taxation—Commission Allowed on Collection of Personal Property Taxes—Special Levies.**

(1) Special levies for apiary, live stock, or sheep are not taxes on personal property; hence, no commission may be deducted for the collection of these items.

(2) No authority exists for deducting a percentage on licenses collected and paid to the State by the county officers.

## INQUIRY

CARSON CITY, June 23, 1927.

Do the commissions allowed by statute upon personal property taxes, to be paid by the Assessors into the county treasuries, include special levies for apiary, live stock, or sheep inspection purposes or farm bureau purposes, all of which are to be classed as trust funds administered by the State?

Are commissions allowed on the collection of the State's portion of licenses collected by the counties and apportioned to the State and county by statute?

## OPINION

Section 1581, Revised Laws of Nevada, 1912, provides as follows:

On all moneys collected from personal property tax, poll tax, and the tax on the proceeds of mines, by the several County Assessors in this State, there shall be reserved and paid into the county treasury, for the benefit of the General Fund of their respective counties, by said County Assessor, the following percentage commissions: First, on the gross amount of collections from personal property tax, six per cent; second, on the gross amount of collections from poll tax, ten per cent; third, on the gross amount of collections from the tax on the proceeds of mines, three per cent.

The Supreme Court of this State in the case of *State v. Donnelly*, 20 Nev. 214, held that the State was obligated to pay to the county the percentages enumerated in section 1581 and for the purposes therein stated.

Under your inquiry, however, special levies for apiary, live stock, or sheep inspection purposes, or farm bureau purposes could not be designated, under the law, as a tax on personal property and, therefore, no authority exists for deducting commissions for the collection of these several items.

In view of the fact that the section, *supra*, does not authorize the payment of commissions on licenses collected, no authority exists for deducting a percentage on licenses collected and paid to the State by the county officers.

Respectfully submitted,

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

HON. ED. C. PETERSON, *State Controller, Carson City, Nevada*.

## SYLLABUS

270. **Water Law—Live Stock—Vested Rights—Statement in Application Determining Amount of Water.**

(1) Facts to establish vested rights for live stock similar to facts under water code.

(2) State Engineer cannot impair vested right.

(3) Quantity of water for live stock governed by number and kind of animals to be watered.

## INQUIRY

CARSON CITY, June 28, 1927.

Will you please, at your earliest convenience, give this office your opinion, in writing, on the following questions:

1. What constitutes a vested right for watering range live stock to springs and watering holes on the public range?

2. What constitutes a vested right for watering range live stock on a flowing stream system?

3. In issuing permits under any application for stockwatering purposes, is the State Engineer empowered to regulate or specify on said permit the number and kinds of animals which may be watered, or to issue a certificate of water right thereunder which shall limit the number and kind of animals to be watered?

## OPINION

The facts necessary to establish a vested right must be the same whether such vested right is asserted under Statute of 1925, chapter 201, being "An Act relating to the use of water for watering live stock," or whether such right is asserted for the appropriation and diversion of waters of a stream system.

A vested right has been defined by the Supreme Court of Nevada in the case of *Esser v. Spaulding*, 17 Nev. at p. 306, as follows:

It is only when rights have vested under laws that the citizen can claim a protection to them as property. Rights do not vest until all the conditions of the law have been fulfilled with exactitude during its continuance, or a direct engagement has been made limiting legislative power over and producing an obligation. \* \* \* A plain distinction exists between the statutes which create hopes, expectations, faculties, conditions, and those which form contracts.

In his Const. Lim. 445, Judge Cooley says: "It would seem that a right cannot be considered a vested right, unless it is something more than such a mere expectation as may be based upon an anticipated continuance of the present general laws; it must have become a title, legal or equitable, to the present or future enforcement of a demand, or a legal exemption from a demand made by another."

In so far as the duties of the State Engineer are concerned in respect to vested rights under Statutes 1925, chapter 201, the Supreme Court of this State in a number of cases has decided that the State Engineer has no authority, under the law, to impair or affect a vested right, but the compelling of an owner of a vested right to submit his proof to the State Engineer establishing such right and the regulation of such right thereafter by the State Engineer are authorized by law.

Concerning your third inquiry, the same is answered by the provisions of section 1, chapter 201, Statutes 1925. This section of the law provides:

\* \* \* That on application to the State Engineer for any such right it shall not be necessary for the applicant to state or prove or for the State Engineer to determine in cubic feet per second of time the quantity of water the use of which

is applied for or granted, but in all such applications, and in all proceedings connected therewith and, also, in all proceedings either before the State Engineer or the courts relating to the proof or establishment of a vested right to use water for watering live stock, it shall be a sufficient measure of the quantity of the water to specify the number and kind of animals to be watered or which have been watered, as the case may be.

Respectfully submitted,

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

HON. GEO. W. MALONE, *State Engineer, Carson City, Nevada*.

#### SYLLABUS

#### 271. Schools—Employment of Aliens in Improvement Work.

Section 1 of Stats. of 1919, chapter 168, provides that aliens who have not forfeited their right to citizenship may be employed as common laborers in the construction of public roads when it can be shown that citizens or wards of the United States are not available for such employment.

#### INQUIRY

CARSON CITY, July 29, 1927.

The Board of School Trustees of Mina, Nevada, engaged one Anton Mandy to render services in connection with making improvements in School District No. 17. It appears that Mandy is not a citizen of the United States and a protest has been filed with the County Recorder of Mineral County, and an opinion is requested concerning the legality of this claim, in view of the fact that the party employed is not a citizen of the United States.

#### OPINION

Section 1, Stats. 1919, chap. 168, provides:

Only citizens or wards of the United States or persons who have been honorably discharged from the military service of the United States shall be employed by any officer of the State of Nevada, or by any contractor within the State of Nevada, or any political subdivision of the State, or by any person acting under or for such officer or contractor, in the construction of public works or in any office or department of the State of Nevada or political subdivision of the State \* \* \* *provided* \* \* \* nor to prevent the working of aliens, who have not forfeited their right to citizenship by claiming exemption from military service, as common laborers in the construction of public roads when it can be shown that citizens or wards of the United States \* \* \* are not available for such employment.

If, under the circumstances, the party doing this work is an alien and has not forfeited his right to citizenship by claiming exemption from military service, and the work performed by him is the construction of public roads, and the further showing is made that citizens

were not available for such employment, then, and in that event, he would come within the exception. However, if the work performed was on the construction of public works, or if citizens of the State were available to perform the work performed by the party in question, the claim is not a lawful claim and cannot be allowed or paid.

Section 3 of this Act provides:

No money shall be paid out of the State Treasury, or out of the treasury of any political subdivision of the State, to any person employed on any of the work mentioned in section 1 unless such person shall be a citizen or ward or naturalized citizen of the United States, subject to the exception contained in section 1 of this Act.

Respectfully submitted,

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

HON. WALTER W. ANDERSON, *Superintendent of Public Instruction, Carson City, Nevada.*

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#### SYLLABUS

#### 272. Taxation—State Gasoline Tax—Applicability to Gas Bought for and Used by the County.

Gasoline tax is not levied against the municipalities of the State, but against the seller or dealer prior to the purchase of gasoline made by the city.

#### INQUIRY

CARSON CITY, August 1, 1927.

Is the State gasoline tax of four cents applicable to gas bought for and used by the county in operating motor vehicles in proper county service?

#### OPINION

This office, in an opinion numbered 41, held that the dealer, and not the purchaser of gas, must pay the tax on all sales of gasoline. This construction of the statute has been sustained by courts of the several States in passing upon statutes containing similar provisions as that of Nevada.

The direct question here presented has been passed upon by the Supreme Court of Oregon in the case of *City of Portland v. Kozier*, 217 Pac. 833. The statutes of Nevada and the statutes of Oregon are very similar, and I feel that the Oregon decision correctly answers the question presented by you. In the Oregon case the court held that, if it were the intent of the Legislature to exempt counties and municipalities from the tax in question, the law would have so declared, and the absence of such exemption requires the payment of the tax by the municipalities. The court further, in construing the Oregon statute, said:

To grant the prayer of the plaintiff city, and relieve several municipalities of the State would leave the statutes in question like mere skeletons for all practical purposes, a condition

that the lawmakers never intended \* \* \*. We conclude that the statutes in question do not provide for levying the tax upon the municipalities of the State, but against the seller or dealer prior to the purchase of gasoline made by the city, and plaintiff is not entitled to the relief prayed for.

Respectfully submitted,

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

HON. C. C. WARD, *District Attorney, Hawthorne, Nevada*.

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SYLLABUS

**273. Officers—Annual Vacations.**

Section 4109, Rev. Laws of 1912, providing for leave of absence of 15 days with full pay means 15 working days.

INQUIRY

CARSON CITY, August 1, 1927.

Recently many questions have arisen relative to the State law in regard to annual vacations. Does this law mean fifteen calendar days or fifteen working days irrespective of Sundays and holidays?

OPINION

Section 4109, Rev. Laws 1912, provides as follows:

Each and every State employee who has been in the service of the State for six months or more, in whatever capacity, shall be allowed in each calendar year a leave of absence of fifteen days with full pay, providing the head of each department shall fix the date of such leave of absence.

I am of the opinion that fifteen days means fifteen working days. It could hardly be said that including Sundays and holidays within the vacation period would carry out the intent of the Legislature in authorizing a leave of absence of fifteen days with full pay.

Respectfully submitted,

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

HON. S. C. DURKEE, *State Highway Engineer, Carson City, Nevada*.

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SYLLABUS

**274. Taxation—Widows' Exemptions.**

(1) A party whose invalid marriage was annulled would not lose any right which she had to a widow's exemption prior to the invalid marriage.

(2) A widow who contracts a valid marriage loses her legal status as such, and this status is not regained by a subsequent divorce in the absence of a statute to the contrary.

## INQUIRY

CARSON CITY, August 5, 1927.

As to the status of certain widows being entitled to widow's exemption from taxes:

(a) Facts of one case are: A widow who had been entitled to widow's exemption later married, the man she married having a living wife. This marriage was annulled, the case being filed as Mary Smith, the name after her first marriage, versus John Brown, the name of her second husband. Now she is claiming exemption under her former status. Will she be entitled to widow's exemption again?

(b) Another state of facts are: A widow, who was exercising her right to widow's exemption on taxes, married again and was then divorced. In granting the divorce, the court permitted her to resume her former married name, under which name she is claiming widow's exemption. Will she now be entitled to widow's exemption again?

## OPINION

(a) The effect of an annulment of a marriage is to secure a judicial declaration of the invalidity of the marriage and restore the parties to all their legal rights existing prior thereto. Thus, the party named in your first inquiry would not lose any right which she had to a widow's exemption prior to the invalid marriage.

(b) The effect of the marriage and subsequent divorce of the person mentioned in your second inquiry depends upon the construction of the word "widow," as used in section 3621, Revised Laws of 1912, as amended, Statutes of 1923, page 359.

The word "widow" as used in this sense means "a woman who has lost her husband by death and who has not remarried." *Commonwealth v. Powell*, 51 Penn. S. Rep. 438.

A widow who contracts a valid marriage loses her legal status as such, and this status is not regained by a subsequent divorce in the absence of a statute to the contrary. See *Commonwealth v. Powell*, supra.

Therefore, the person named in your second inquiry is not at the present time a "widow" within the meaning of section 3621, Rev. Laws of 1912, and is not entitled to the exemption therein provided.

Respectfully submitted for the Attorney-General,

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

By WM. J. FORMAN, *Deputy Attorney-General*.

HON. CHAS. L. SLAVIN, *County Clerk, Tonopah, Nevada*.

## SYLLABUS

## 275. Statutes.

Statutes 1923, chapter 173, defines "pharmacy," and the definition excludes time engaged in cities in the State outside of the city where application is made.

## INQUIRY

CARSON CITY, August 27, 1927.

A has been engaged in operating a drug store in a certain locality of the State of Nevada for a period of over two years. He gives up his

location and moves to another city in the State of Nevada. May your department issue to A in the new locality a license to fill prescriptions for intoxicating liquors under Statutes 1923, chapter 173?

## OPINION

Section 1 of the Act referred to makes it unlawful for any pharmacist to fill any prescription at any place other than a duly licensed pharmacy. Section 2 of the Act defines a pharmacy as "a going concern which has been regularly and continuously in operation in the same city, town, or locality for at least one year."

The fact that A operates a pharmacy in another city or town would not qualify him to obtain a license in any other town, and, before a license can be issued to A in a new locality, he must come within the definition of a pharmacy as defined in section 2, and operate a business in the new locality for a period of one year.

Respectfully submitted,

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

S. C. DINSMORE, *State Inspector of Pharmacies*.

## SYLLABUS

276. **State Money—Legality Cashier Checks—Depositing State Money in Banks Prohibited.**

(1) Cashier checks given by bank to State must be considered as valid paper.

(2) State money must be kept by State Treasurer in private vault and not deposited in bank except as authorized by Statutes 1913, p. 127.

## INQUIRY

CARSON CITY, September 13, 1927.

First—Since entering upon my duties as Treasurer of the State of Nevada I have been carrying upon my records as cash three purported cashier's checks of the Carson Valley Bank of Carson City, Nevada, the amounts of which aggregate \$516,322.16. At your direction these cashier's checks were presented for payment on June 29, when they were pronounced fictitious by the cashier of the bank and payment was refused. How should these cashier's checks now be treated in the records of my office?

Second—The records of my office show that heretofore it has been the practice of the State Treasurer to deposit in banks of the State money belonging in the Revolving Fund, and to accept therefor cashiers' checks and treat same as cash. Would it be lawful for me as Treasurer to continue this practice, providing it meets with the approval of the Board of Finance, and with the further provision that the banks furnish approved and adequate surety bonds to protect the State against possible loss?

## OPINION

The cashier's checks to which reference is made in your query and like cashier's checks, having for a great number of years been considered and counted as cash, you are advised that, under the existing

conditions, these items should be considered as cash items. The State has no notice of the existence of any state of facts that would or could render such checks invalid.

Your second question is answered by section 4372, Revised Laws, 1912. This section provides:

The State Treasurer shall securely keep in the safe and vault provided for him for that purpose, in his office at the seat of government, all the public moneys, bonds, and securities of the State appertaining to his office, and shall not deposit any part or portion of the same with any individual, copartnership, or corporation; nor shall he use said money, or any part thereof or allow any one else to do so, except in the payment of bonds, or coupons, or warrants properly drawn upon him by the State Controller.

The Legislature, by Statutes 1913, p. 127, declares an exception to the provisions of this section, and authorizes the depositing of State funds in certain banks under well defined and stated conditions. Such deposits can only be made when the State is secured, and the money so deposited must bear a certain rate of interest.

Except as authorized by Statutes 1913, *supra*, it is your plain duty, under the law, to be the sole custodian of State funds and to keep in the vaults of your office, in actual cash, the money of the State.

I am not unmindful of a custom existing in the State Treasurer's office for many years to carry, and the Board of Examiners to count as cash, cashiers' checks on divers banks. This practice was resorted to, no doubt, because of the fact that a strict adherence to the law would practically make it impossible for the State to function and would greatly endanger State moneys by theft and the like. It was due, no doubt, also to a further consideration of the injury to business in this State by the requiring of large sums of actual cash to remain idle in the vaults of the State Treasurer's office.

It will be noted that the special provisions of law as they apply to the State Treasurer and the custody of State funds were enacted in the year 1866. The necessity, if the State is to properly function, for a change in the several provisions is strongly emphasized by the custom referred to of accepting and counting cashiers' checks.

While I am fully cognizant of the great hardship confronting the State Treasurer's office when the law is strictly adhered to and the handicap in carrying on the business of the State under the existing laws, yet I feel that these are all matters to be considered by the Legislature, and it is our plain duty to construe the law as it exists and for the Legislature to change the law if it is archaic.

Respectfully submitted,

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

HON. GEORGE B. RUSSELL, *State Treasurer, Carson City, Nevada*.

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SYLLABUS

277. **Fish and Game Laws—Trapping of Fur-Bearing Animals by Aliens.**

Under Stats. of 1887, p. 38, a license is not required for the killing of certain noxious animals, hence any person, whether a citizen of the United States or not, may kill coyotes and wildcats without a license.

## INQUIRY

CARSON CITY, September 13, 1927.

Are aliens prohibited by the provisions of the Nevada Fish and Game Law from trapping coyotes, wildcats, and other fur-bearing animals?

Your attention is called to the fish and game laws and the provisions therein contained that no person may hunt or kill wild birds or animals without first having a license therefor, and that a license may not issue to noncitizens of the United States.

## OPINION

The Legislature of the State of Nevada has, by law, protected certain wild game and birds. Section 1, Statutes 1923, p. 349, as amended, Statutes 1925, p. 253, enumerates wild game and birds and provides under what circumstances and in what manner they may be killed. Section 1, Statutes 1923, p. 347, defines fur-bearing animals. Under the law, a license may not be obtained by a person who is not a citizen of the United States to hunt, kill, or trap any of the wild birds or animals so defined by the Legislature.

By enacting Statutes of 1887, p. 38, Revised Laws, 1912, volume 1, sections 718 to 722, inclusive, the Legislature has provided a bounty for the killing of certain noxious animals, including coyotes and wildcats. Under the provisions of this section the Boards of County Commissioners are authorized to pay certain bounties for the production of the scalps of coyotes and wildcats.

In view of this fact that the Legislature has declared coyotes and wildcats to be noxious animals and has not included these animals in the animals to be protected, and for which a license to hunt is necessary, it follows that any person, whether a citizen of the United States or not, may kill coyotes and wildcats without a license.

Respectfully submitted,

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

JOHN S. CASE, *Justice of the Peace, Paradise Valley, Nevada*.

## SYLLABUS

278. **Officers—State Controller—Duty on Claims Against State—Legislative Determination on Questions of Economy Conclusive.**

(1) State Controller has independent duty in passing on claims against State, and action by Board of Examiners does not control.

(2) Where Legislature has enacted a law, the question of a different method proving more economical than the legislative proposal cannot be considered.

## INQUIRY

CARSON CITY, September 29, 1927.

Your opinion is desired on the following questions:

(1) Where it can be proven that a State employee can render a better and more economical service to the State and at a saving of much time in the service so rendered, would it be permissible for such State employee to use his or her personal automobile and be reimbursed by the State at a rate of not to exceed fifteen cents a mile?

(2) If it is necessary for a State employee in the course of his or her official duties to travel to a point in the State over a route not served by a public conveyance and return over a route served by public conveyance, or vice versa, having business on both routes, would it be permissible for a State employee to use his or her personal automobile and be reimbursed at a rate of not to exceed fifteen cents a mile for the entire distance?

(3) In case a State employee is called or must travel into a section or sections of the State not served by public conveyance but must, while leaving his official base or residence or while on the trip as a whole, parallel or touch and parallel a route served by public conveyance, can said State employee use his or her personal automobile and be reimbursed by the State at a rate of not to exceed fifteen cents a mile for the entire distance of such a trip?

(4) In traveling to and from a point served by public conveyance, can State employee using his or her personal automobile be reimbursed at the rate of a one-way fare on such public conveyance, or must the round trip rate be used?

#### OPINION

In reference to these several questions, you advise that the Board of Examiners has allowed claims against the State for the several items covered by your inquiry.

Allowance of claims by the Board of Examiners does not relieve you of the duty imposed by law to audit and ascertain the correctness of all claims or demands filed against the State of Nevada.

The Supreme Court of this State has held that the State Controller is the auditor in chief of all claims filed against the State, and that the Board of Examiners simply assists the State Controller in arriving at a proper determination.

Section 4158, Revised Laws, gives the State Controller power to examine under oath witnesses who may be necessary, and to receive and consider documentary evidence in addition to that furnished by the Board of Examiners. In Opinion No. 259, rendered on April 27, 1927, your attention was called to these several matters and we advised you that, in the final analysis, the law placed upon your office the responsibility of passing upon the correctness of the claims presented to you.

The questions submitted by you involve the construction of Statutes 1927, page 219, chapter 137. The provisions of this law are not ambiguous or uncertain. The law, in part, provides:

\* \* \* but the amount allowed for traveling by private conveyance shall in no instance exceed the amount charged for traveling by public conveyance.

The Legislature, by enacting this statute, has vouched for the fact that it will be economical in its operation, and it is not within the power of any individual to refuse to obey the provisions of this law because, in the judgment of such person, the system or theory advanced in opposition may be more economical in its operation; nor may such law be violated because extravagance may result from obedience to the law. All these questions have been decided by the Legislature, and its judgment is binding and conclusive.

(2-3) No necessity exists for the rendition of an opinion in reference to inquiries 2 and 3. The provisions of the section applicable are entirely free from ambiguity, and it is your duty, under the law, to apply the law as stated to the bills presented and act accordingly.

(4) To insist that a State employee in traveling between points covered by a public conveyance is limited to a charge for the use of his car in an amount not to exceed the round trip rate by a public conveyance between said points would require a highly technical and strained interpretation of the law. While the provisions of this law must be obeyed, there is no occasion to render it an absurdity by a supertechnical construction.

Respectfully submitted,

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

ED. C. PETERSON, *State Controller, Carson City, Nevada.*

#### SYLLABUS

#### 279. State Money—Accepting Checks in Payment State Demands—Exchange Charges—Insuring of State Money from Theft.

(1) No authority exists for accepting checks drawn on banks in payment of State demands; such practice would be depositing State money out of custody of State Treasurer.

(2) Exchange charge on remittances by State Treasurer cannot be paid by State.

(3) State money may be insured from loss if appropriation therefor has been made by legislative Act.

#### INQUIRY

CARSON CITY, September 29, 1927.

(1) In the course of daily business, we receive U. S. warrants for State and National highway, State University and Sheppard-Towner Act purposes; also, county warrants and checks from numerous sources, as revenue. Please advise if any of these may be accepted lawfully and placed for collection according to common practice, or if all such paper shall be refused, and demands made for remittances in actual cash with transmission charges prepaid.

(2) When State warrants, which have been issued to counties in the discharge of obligations, are returned to the State Treasurer with direction that the money be forwarded, who shall pay the charges of transmission of the money?

(3) In view of the fact that now, more than ever before, precaution should be exercised to insure the treasury against loss by hold-up or otherwise, can the State lawfully arrange for insurance on its money, both in carriage and in its vaults?

#### OPINION

(1) By opinion numbered 276 this office has advised you that, under the law, public moneys must be kept in the vaults of your office except in those instances where other disposition may be made of such moneys in compliance with Statutes 1913, p. 137.

By enacting these several sections, the Legislature has clearly indicated a desire to keep the money of the State in its own strong-boxes instead of depositing the same in banks. A review of the statutes of the several States and of the Acts of Congress of the United States shows similar provisions. The State of Kansas, at an early period, had a law very similar to the Nevada law. Recently Kansas authorized deposits of State moneys in banks, under certain restrictions, and it further specifically authorized the State Treasurer to deposit with banks, for collection, drafts and checks payable to the State when security was deposited to insure safety of collections to the State.

The provisions of section 4372 constitute a prohibition of the custody of public moneys with any corporation, institution, or person other than the State Treasurer. Such prohibition would include the depositing of checks and drafts with banks for collection, for this act would require an agency other than the State Treasurer to handle public funds.

(2) Opinion numbered 117 rendered by Attorney-General Thatcher under date of November 10, 1917, holds that the State is not authorized to pay transmission charges on remittances to the counties.

(3) Section 277 of the Constitution provides that

No moneys shall be drawn from the treasury but in consequence of appropriations made by law.

To authorize the payment of insurance premiums would require legislative sanction. It may be, however, that the appropriation made to the Capitol Commissioners for the protection of State property, if the balance on hand, in the judgment of the commission, is sufficient, would constitute authority for the payment of such premiums.

Respectfully submitted,

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

HON. GEORGE B. RUSSELL, *State Treasurer, Carson City, Nevada.*

#### SYLLABUS

##### 280. Corporations—Number of Directors.

(1) A statement in the articles of incorporation that the board of directors shall not be less than three, nor more than seven, is a compliance with par. 6 of sec. 4, chap. 177, Stats. 1925.

(2) A corporation has no authority to delegate to the board of directors the right to increase the number of directors to a greater number than is authorized in the articles of incorporation.

#### INQUIRY

CARSON CITY, September 29, 1927.

Will you please render this department an opinion on the following questions:

(1) Under paragraph 6, section 4, chapter 177, Statutes 1925, to wit:

Whether the members of the governing board shall be styled directors or trustees of the corporation and the number of such directors or trustees which shall not be less than three. The names and post-office addresses of the first board of directors or trustees—

is it permissible to state in the articles of incorporation that the number of directors shall not be less than three nor more than seven, etc.?

(2) Can a corporation through its by-laws delegate authority to a board of directors to increase the number of directors to a greater number than that named in its articles of incorporation?

#### OPINION

(1) A statement in the articles of incorporation that the board of directors shall not be less than three nor more than seven, in my opinion, is a compliance with paragraph 6 of section 4, chapter 177, Statutes 1925.

(2) A corporation has no authority to delegate to the board of directors the right to increase the number of directors to a greater number than is authorized or stated in the articles of incorporation. Such action would require an amendment to the articles of incorporation.

Respectfully submitted,

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

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

#### SYLLABUS

##### 281. Taxation—Redemption—Delinquency.

(1) A deed to lots after delinquency date would invest the grantee with the right to redeem them.

(2) The grantee could redeem lots 11 to 16 and refuse to redeem or pay taxes on other lots in another distinct subdivision because the two tracts are separate subdivisions and assessed separately with different valuations.

(3) If five lots are in one subdivision or block, and the taxes thereon are delinquent, the total taxes must be paid if one lot in the illustration is to be redeemed.

#### INQUIRY

CARSON CITY, September 29, 1927.

I am submitting herewith a duplicate tax statement of White Pine County for the year of 1926, and would respectfully ask that you render an opinion of the following questions:

(1) After this property was sold to White Pine County on July 18, 1927, R. M. Connor conveyed lots 11 to 16, block C, by deed to W. C. Goodman. Did the grantor invest the grantee with his right of redemption?

(2) Can the grantee redeem from the sale lots 11 to 16, block C, and leave the Ellis Addition property stand in the name of White Pine County?

(3) Has a taxpayer the right at any time to come in and pay on any part of his property, either before or after sale, and allow the balance to go delinquent?

#### OPINION

The duplicate tax statement shows an assessment of a number of lots in distinct blocks or subdivisions.

(1) Assuming that lots 11 to 16, block C, comprise all the lots assessed

at a valuation of \$1,125, a deed to these lots after delinquency date would invest the grantee with the right to redeem them.

(2) The grantee (*supra*) could redeem lots 11 to 16 and refuse to redeem or pay taxes on the lots or parcels of ground embraced in another distinct subdivision, because the two tracts are separate subdivisions and assessed separately with different valuations.

This precise question was passed on by the Supreme Court of Nevada in the case of *State of Nevada v. C. P. R. R. Co.*, 21 Nev. 94. The court, in a concurring opinion, stated:

The answer alleges, that prior to the time the taxes became delinquent, the defendant unconditionally tendered to the tax receiver of Lander County all the taxes due upon a number of these subdivisions, or parcels of property, amounting, in all, to fifteen thousand six hundred and forty-five dollars and sixty-six cents: that he refused to receive it, but subsequently to the commencement of this action, it was demanded by the District Attorney, and paid to the county. The court held the plea of tender insufficient, and gave judgment for the full amount of tax and penalties, less the sum paid. The question is: Can a taxpayer pay the taxes upon some subdivisions of his property, and not on all? It may be admitted that, except under statutory authority, he cannot. Several apparently conflicting provisions of our statutes can be cited, which seem to indicate that the Legislature did not understand it had authorized it. And yet, the language of Gen. Stat. sec. 1096, "but no tax receiver shall receive any taxes for any portion less than the least subdivision entered upon the assessment roll," seems to clearly answer the question in the affirmative. If he is not to receive the tax on anything less than the least subdivision, then certainly the manifest implication is, that he can receive it on anything more than that. Words of a statute are never to be construed as unmeaning, if it is possible to avoid it; but if the tax receiver must not receive the tax on anything less than the whole property, then certainly it is meaningless to forbid him receiving it on less than a subdivision. As the defendant tendered the taxes on what was certainly a subdivision of its property, it is unnecessary to consider whether anything less would also have been a subdivision—for instance, whether it could pay on each forty acres of its lands, and demand a receipt therefor.

(3) A taxpayer may redeem, before or after sale, but, if five lots are in one subdivision or block and the taxes thereon are delinquent, the total taxes must be paid if one lot in the illustration is to be redeemed. If, however, two separate subdivisions are assessed separately with different valuations, it is not necessary that the tax upon all subdivisions assessed to one individual be paid in order to authorize redemption of a lot in one subdivision.

Respectfully submitted,

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

HON. GUY E. BAKER, *District Attorney, White Pine County, Ely, Nevada.*

## SYLLABUS

**282. Schools—Power of County Commissioners to Make Ad Interim Appointments of School Trustees.**

(1) Section 2805 of Rev. Laws of Nevada limits the powers of County Commissioners in temporarily filling vacancies to "county officers." A School Trustee is not a "county officer."

(2) Such vacancies must be filled by election or, in event of failure to elect, then by appointment by the Deputy Superintendent of Public Instruction of the district.

## INQUIRY

CARSON CITY, September 30, 1927.

1. Does section 2805, Revised Laws of Nevada, 1912, confer upon the Boards of County Commissioners of the respective counties of this State the power to make temporary appointments of School Trustees in the interim after the occurrence of a vacancy in the office of School Trustee and before the election or appointment by the district Deputy Superintendent of Public Instruction to fill such vacancy, as provided by sections 3301-3302, Revised Laws of Nevada, 1912?

2. Do sections 3301-3302, above cited, supersede said section 2805 and limit the power of appointment of School Trustees to the district Deputy Superintendent of Public Instruction?

## OPINION

1. Section 2805, Rev. Laws of Nevada, limits the power of the County Commissioners in temporarily filling vacancies to "county and precinct" officers.

This office has heretofore ruled that a School Trustee is not a "county officer" within the strict meaning of that term as used in the statutes. (Opinion No. 5, Opinions of Attorney-General, 1915-1916.)

A precinct cannot be construed to mean school district in the ordinary sense in which the word precinct is used in the statutes. (See *Louisville R. Co. v. Johnson*, 115 S. W. 666.)

It is the opinion of this office, therefore, that section 2805, Rev. Laws, 1912, does not authorize the County Commissioners to temporarily fill vacancies in the office of School Trustee.

2. In view of the opinion of this office that section 2805 Rev. Laws does not apply to vacancies in the office of School Trustee, the filling of such vacancies must, therefore, be made in accordance with sections 3301-3302, Rev. Laws, 1912, by election or, in the event of a failure to elect, then by appointment by the Deputy Superintendent of Public Instruction of the district.

Respectfully submitted for the Attorney-General,

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

By WM. J. FORMAN, *Deputy Attorney-General*.

HON. JAMES T. DUNN, *District Attorney, Humboldt County, Winnemucca, Nevada.*

## SYLLABUS

**283. Schools—Construction Costs—Necessity for Approval of the Deputy Superintendent.**

The Deputy Superintendent must approve all orders for the payment of construction costs in school districts having fewer than five trustees, even though the authorization for such construction has been made by a vote of the people.

## INQUIRY

CARSON CITY, September 30, 1927.

Whether or not it is the duty of the Deputy Superintendent of Public Instruction to approve all school board orders over five hundred dollars which are drawn in payment for construction bills in districts where the qualified voters have authorized bond issues and contracts have been let covering the construction of a school building.

## OPINION

Section 3307, Revised Laws of 1912, provides:

In school districts having fewer than five trustees no warrant for the payment of money for a new school building or for repairs or furniture in excess of five hundred dollars shall be issued unless the order shall be approved by the Deputy Superintendent of Public Instruction.

This section makes no exception in cases where the authorization for the construction of the building has been made by a vote of the people; therefore, the Deputy Superintendent should approve all orders for the payment of money within section 3307, Rev. Laws, 1912, irrespective of whether the authorization for such construction was by a vote of the people or simply by the vote of the Board of Trustees.

Respectfully submitted for the Attorney-General,

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

By WM. J. FORMAN, *Deputy Attorney-General.*

HON. WALTER W. ANDERSON, *Superintendent of Public Instruction, Carson City, Nevada.*

## SYLLABUS

**284. Statutes—State Lands—Irrigation District Law Applicable to State Lands Not Under Contract—Certificate State Engineer on Beneficial Use.**

(1) Section 45, irrigation district law, Statutes 1919, chapter 64, as amended, presupposes determination at time of formation of district by State Engineer as to whether or not State land will be benefited by inclusion therein.

(2) Rule announced on method of procedure to include State lands not under contract.

## INQUIRY

CARSON CITY, October 8, 1927.

The inquiry states the following facts:

A legal applicant made application for forty acres of State land not

under contract of purchase lying within the Walker River Irrigation District. The Surveyor-General's office requested the State Engineer to furnish them with a certificate under section 45 of the Nevada Irrigation District Act. The State Engineer refuses to supply such certificate on the ground that he has no jurisdiction. The questions under this state of facts are:

1. Whether or not section 45 of the Nevada Irrigation District Act, Stats. 1919, chap. 64, p. 84, as amended, Stats. 1921, chap. 79, p. 133, is applicable to State lands not under contract to purchase, lying within the boundaries of a duly organized irrigation district.

2. If the State Engineer fails to file the certificate to the effect that such lands will be benefited by being included within such district, must the Surveyor-General reject all applications for such State lands?

#### OPINION

1. Section 45, above cited, reads in part as follows:

State lands, not under contract to purchase, shall not become a part of an irrigation district except by the consent of the State Land Register, who is hereby authorized and required to consent thereto on behalf of the State upon there being filed in his office a certificate signed by the State Engineer to the effect that such lands will be benefited by inclusion therein. District assessments, charges, and tolls against the lands, and any sale or contract to sell any such lands thereafter shall be conditioned upon the payment, by the purchaser or contractor, of all such accrued charges in addition to the purchase price of the land.

This statute presupposes a determination at the time of the formation of the irrigation district by the State Engineer as to whether or not State lands not under contract to purchase would be benefited by inclusion therein. Under the statute, State land not under contract to purchase cannot become a part of an irrigation district, except by the filing of the required certificate in the office of the Surveyor-General by the State Engineer and the consent by the Surveyor-General.

It is evident, therefore, that the land mentioned in the inquiry never became a part of the Walker River Irrigation District.

2. That statute quoted does not require the Surveyor-General to reject applications for such lands. Inasmuch as the lands in question did not become a part of the irrigation district, they would, therefore, be treated the same as any other State lands not a part of an irrigation district.

Respectfully submitted for the Attorney-General,

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

By WM. J. FORMAN, *Deputy Attorney-General*.

HON. GEORGE WATT, *Surveyor-General, Carson City, Nevada*.

## SYLLABUS

**285. Water Law—Final Order of Determination—Distributing Stock Water where Exception Filed to Allowance in Final Order—Duty State Engineer on Distribution Under Final Order when Same Before Court.**

(1) Where claimant excepts to amount allowed for stock watering in Final Order of Determination the law authorizes depositing of a bond by claimant to insure distribution according to exception filed. If no bond filed water to be distributed according to Order of Determination.

(2) State Engineer has no discretion in distributing water, but governed by allotments set forth in Final Order of Determination.

(3) Where controversy arose between State Engineer and claimant after Final Order is filed in court, application can be made for relief to court by either party.

## INQUIRY

CARSON CITY, November 9, 1927.

(1) Do the provisions contained in the Final Order of Determination of Humboldt River, which reads as follows: "In addition to water used during the irrigation season, each user should be entitled, in his proper proportion and priority, to the use of water in such reasonable amounts as necessary for fall and spring irrigation and for stock-water purposes during the nonirrigating season," constitute sufficient authority for the office of the State Engineer to regulate and distribute the waters of the Humboldt River with respect to storage and stock water during the nonirrigating season? If so, how?

(2) In the administration of the Final Order of Determination pending the issuance of the final decree, is it the duty of the court of jurisdiction to issue instructions in question of controversy regarding interpretation of administration of the said Order of Determination, or is it within the province of the State Engineer, at his discretion, to make such interpretation?

## OPINION

In reply to interrogatory No. 1, you are referred to the Final Order of Determination which establishes the respective rights of all claimants to the waters of the Humboldt River. It will be noted that in the Final Order of Determination no definite amount of water is allocated to any claimant for stock-watering purposes during nonirrigating seasons. It will be further ascertained from the exceptions filed by the several claimants that complaint was made in respect to said Order of Determination to the effect that the order was not specific concerning the amount of water to be allowed for stock-watering.

In view of the fact that the Order of Determination does not specifically award to the several claimants any definite amount of water for stock-watering purposes, and the exception raising this question is now before the court for determination, under the statute the several claimants are authorized, upon the filing of a bond, to have the water distributed in accordance with their exceptions. No bond having been executed or filed, the provisions of the Final Order of Determination are, therefore, controlling.

In respect to storage, I assume that you mean the right of an individual to store water in a reservoir. The dates of priority and the amount allowed to the several claimants would have to govern, and the

residue, after supplying earlier priorities, may be used for storage purposes, provided, of course, that such use in no way conflicts with priorities earlier in point of time.

Answering question No. 2, the State Engineer has no discretion in administering the waters of the Humboldt River under the Final Order of Determination, except in those instances only where that discretion is reserved to the State Engineer.

It is not the duty of the court to issue instructions in respect to matters coming within the jurisdiction of the State Engineer, but it is the duty of the State Engineer to carry out the provisions of the Final Order of Determination and, in the event that a controversy arises between the State Engineer and a water claimant respecting rights arising under the Final Order of Determination, either party has the right to make an application to the court so that the matter may be finally determined. The court, however, is not to be interviewed for the purpose of having his personal views expressed to the State Engineer as to how the State Engineer should perform his duties under the Final Order of Determination. The court simply acts when a matter is formally presented to him in the course of litigation.

Respectfully submitted,

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

HON. GEORGE W. MALONE, *State Engineer, Carson City, Nevada.*

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#### SYLLABUS

#### 286. Schools—Investment of State Permanent School Fund.

The Statutes of Nevada, 1917, p. 339, authorizes investments of money of the State Permanent School Fund in bonds of other States where the full faith and credit of such State is pledged for the payment thereof.

#### INQUIRY

CARSON CITY, November 12, 1927.

You submit for official opinion the validity of a proposed act of the State Board of Finance in investing \$90,000 of money of State Permanent School Fund in bonds of State Highway of State of Louisiana.

You request to be advised, if money of the State Permanent School Fund, under the law, may be lawfully used for this purpose, and if the bonds tendered are within the purview of legislative authorization as investment of this fund.

#### OPINION

The Constitution of the State of Louisiana by amendment of 1924 authorized the Board of Liquidation of State Debt of the State of Louisiana to fund into bonds, notes, etc., not to exceed two million dollars, the avails of automobile license tax under the provisions of Act No. 18 of the Special Session of 1918 in excess of the amount required to retire bonds issued under said Act. By the Constitutional Amendment, *supra*, the Board was authorized to dedicate and set apart to the payment of principal and interest of said issue, from license tax collected from automobiles, an amount sufficient for this purpose.

It will be noted that the annual tax collected by way of automobile licenses is the fund, and the only method provided for paying interest and redeeming the bonds issued thereunder. The full faith and credit of the taxable property of the State is in no way pledged for payment of said bonds, and serious doubts exist in my mind if this license fund would prove inadequate to pay interest or retire bonds when due, whether bondholders would not be confined exclusively for payment to the fund indicated. We are not advised if the Constitution of the State of Louisiana restricts or limits the amount of State indebtedness, or if the amount of the proposed bond issue is within such limitation.

Statutes of Nevada, 1917, page 399, authorize investments of money of State Permanent School Fund "in the bonds of this State or of other States."

In construing this provision, I am of the opinion that it authorizes investments of these funds in bonds of other States where the full faith and credit of such State is pledged for the payment thereof, and that money for such payment shall be raised by taxation on real and personal property within such State. A dedication of the amount of automobile license taxes collected for retiring said bonds, without pledging the real or personal property of the State for payment, and authorizing a tax to be levied thereon, would, to a certain extent, make payment too uncertain and render extremely doubtful if bonds so issued are State bonds in the sense used under our law.

Respectfully submitted,

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

HON. GEO. B. RUSSELL, *State Treasurer, Carson City, Nevada.*

#### SYLLABUS

#### 287. Water Law—Stock Watering Act—Vested Rights—Protests.

Where a valid right for stock watering accrued and became vested prior to enactment of Statutes 1925, chapter 201, the provisions of sec. 2 of this Act would not apply; otherwise it would govern.

#### INQUIRY

CARSON CITY, November 15, 1927.

A legal applicant made application to the State Engineer on November 23, 1924, for permission to appropriate the waters of a spring located in T. 18 N., R. 62 E., for stock-watering purposes. The application was protested on the grounds that the granting of a permit on same would conflict with existing rights. No action by this office has been taken on the application since its receipt and the protestant now contends that, since the approval of this application was not made prior to the enactment of the stock-watering Act, the provisions of section 2 of said Act must be taken into consideration by the State Engineer before approving the application.

Is the State Engineer bound by the provisions of section 2 of the stock-watering Act in acting upon the application at the present time?

## OPINION

Section 2, Statutes 1925, chapter 201, reads as follows:

Whenever one or more persons shall have a subsisting right to water range live stock at a particular place, and in sufficient numbers to utilize substantially all that portion of the public range readily available to livestock watering at that place, no appropriation of water from either the same or a different source shall subsequently be made by another for the purpose of watering range live stock in such numbers and in such proximity to the watering place first mentioned, as to enable the proposed appropriator to deprive the owner or owners of the existing water right of the grazing use of said portion of the public range, or to substantially interfere with or impair the value of such grazing use and of such water right.

Section 5 of the same Act provides:

Nothing in this Act shall be construed to affect the validity of rights to the use of water for watering live stock acquired under the previously existing laws of this State or to impair any existing vested right to the use of water for that purpose.

Under the facts stated by you, if a valid water right to the springs in question accrued and existed under the provisions of law prior to the enactment of Statutes 1925, supra, the provisions of section 2 would not apply. If no such right existed and merely an application to appropriate had been filed prior to the 1925 Act, and no action taken thereunder, the provisions of section 2 would prevail.

Respectfully submitted,

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

HON. GEORGE W. MALONE, *State Engineer, Carson City, Nevada*.

## SYLLABUS

288. **Foreign Corporations—Insurance Companies—Filing of Articles of Incorporation.**

The articles of incorporation of foreign insurance corporations are not required to be filed in the office of the Secretary of State excepting those companies qualifying in this State after the enactment of the Rev. Laws of 1912, secs. 695-701.

## INQUIRY

CARSON CITY, December 15, 1927.

Whether or not an insurance company organized under the laws of another State should file its articles of incorporation in the office of the Secretary of State in accordance with the provisions of section 1348, Revised Laws of 1912, relating to filings to be made by foreign corporations generally.

## OPINION

Section 1348, Revised Laws of 1912, provides, in substance, that every corporation organized under the laws of another State, which

shall hereafter enter this State for the purpose of doing business herein, shall file its articles of incorporation in the office of the Secretary of State.

This statute was enacted in 1907.

The statutes of this State relating to insurance companies provide that such companies shall qualify to do business in this State by making certain filings and paying certain fees to the State Controller, and, included in these requirements, is a filing of the articles of incorporation of such company in the office of the State Controller, if demanded by him; also, a designation of a person upon whom process might be served.

The Legislature of this State has always treated insurance legislation as a distinct title and has not seen fit to combine matters governing insurance with those of corporations generally. This continued practice of the Legislature in so far as foreign insurance corporations are concerned strongly indicates an intention of the Legislature that the general laws governing foreign corporations are inapplicable to insurance companies generally.

This construction of the legislative intention is further strengthened by the fact that in 1909 the Legislature enacted sections 695-701, Revised Laws of 1912, requiring surety companies to file their articles of incorporation in the office of the Secretary of State. This would have been a useless act if section 1348, Revised Laws of 1912, applied to insurance companies.

A similar situation was passed upon by the Supreme Court of Montana in the case of *State v. Aachen & M. Fire Ins. Co.*, 41 Pac. 1004, where it was held that the general laws governing foreign corporations did not apply to insurance companies.

The question has also been passed upon in the following cases, with the same result: *St. Louis Ry. Co. v. Commercial Union Ins. Co.*, 139 U. S. 223; *Memphis Ins. Co. v. St. Louis Ry. Co.*, 41 Fed. 643.

It is therefor the opinion of this office that articles of incorporation of foreign insurance corporations are not required to be filed in the office of the Secretary of State, excepting those companies as to which the Legislature has indicated a contrary intention, such as surety companies qualifying in this State after the enactment of Revised Laws, 1912, sections 695-701.

Respectfully submitted for the Attorney-General,

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

By WM. J. FORMAN, *Deputy Attorney-General.*

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

#### SYLLABUS

#### 289. Foreign Corporations—Filing of List of Officers and Designation of Resident Agent.

Any foreign surety company which qualified to do business in this State after March 26, 1909, must comply with the provisions of chap. 180, Stats. of 1925.

## INQUIRY

CARSON CITY, December 15, 1927.

Whether or not a foreign surety company must file in the office of the Secretary of State a list of officers and designation of resident agent in accordance with the provisions of chap. 180, Stats. 1925.

## OPINION

This office has this day rendered an opinion that insurance companies generally are not subject to the foreign corporation laws of this State, excepting, however, those companies which the Legislature has indicated should comply with these laws.

This ruling is in accordance with the holding in the following cases: *State v. Aachen Ins. Co.*, 41 Pac. 1004; *St. Louis Ry. Co. v. Commercial Union Ins. Co.*, 139 U. S. 223; *Memphis Ins. Co. v. St. Louis Ry. Co.*, 41 Fed. 643.

The Legislature by sections 695-701, Revised Laws of 1912, indicated its intention to require surety companies not theretofore qualified to comply with the general laws governing foreign corporations. Therefore, any foreign surety company which qualified to do business in this State after March 26, 1909, must comply with the provisions of chap. 180, Stats. 1925.

Respectfully submitted for the Attorney-General,

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

By WM. J. FORMAN, *Deputy Attorney-General.*

HON. ED. C. PETERSON, *State Controller, Carson City, Nevada.*

## SYLLABUS

## 290. Foreign Corporations—Reinstatement—Recording of Articles.

(1) Where a default has been entered against foreign corporations that have entered the State prior to 1907, for failure to comply with the provisions of chap. 80, Stats. of 1925, the Governor may reinstate such corporations and the Secretary of State would have authority to issue a certificate of such reinstatement.

(2) The Secretary of State can accept an amendment to the articles of such company when the company's articles are not of record in the office of the Secretary of State.

## INQUIRY

CARSON CITY, December 16, 1927.

Prior to the 1907 law, approved March 20, 1907, all foreign companies filed their articles of incorporation with the County Recorder under section 1346, page 390, Vol. 1, Revised Laws, 1912, and the company filing its articles with the Recorder was not required to file certified copy of articles with the Secretary of State, but was only required to file a certificate of appointment of their resident agent in the Secretary of State's office, in accordance with section 5024, Vol. 2, Revised Laws, 1912. In 1907 a law was enacted requiring all foreign companies to file articles in this office. In 1923 a law was enacted levying a \$10 tax on domestic and foreign companies. In 1925 this law

was repealed and an Act passed requiring domestic and foreign companies to annually file a list of their officers with the Secretary of State. If said list is not filed in accordance with the said law a penalty of \$2.50 is added. When any company fails to meet the demand of the law its charter is temporarily suspended. Should the company at any time during the delinquency pay up all indebtedness, a certificate of reinstatement is issued by the Secretary of State stating that the company has paid all taxes and has complied with the law and is hereby authorized to legally transact business.

My request is for an opinion on the following questions:

(1) Can the Secretary of State legally issue a certificate of reinstatement to a foreign company qualified to do business in this State prior to 1907, and the company's articles not be of record in the office of the Secretary of State?

(2) Can the Secretary of State accept an amendment to articles of a company qualified as above stated when the company's articles are not of record in the office of the Secretary of State?

#### OPINION

Replying to interrogatory No. 1, assuming that the Secretary of State is authorized under the law, under the circumstances stated in the inquiry, to declare in default foreign corporations that have entered the State prior to 1907, then it must necessarily follow that where a default has been entered for failure to comply with the provisions of chapter 180, Statutes 1925, the Governor would be authorized to reinstate such corporation and the Secretary of State would have the authority to issue a certificate of reinstatement.

Your second question is answered in the affirmative.

Respectfully submitted,

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

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

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#### SYLLABUS

##### 291. Officers—State Nepotism Act.

The appointment of a son of the Secretary of the Fish and Game Commission violates the State Nepotism Act, even though no salary or emolument is attached to the office.

#### INQUIRY

CARSON CITY, January 5, 1928.

Whether or not the son of the Secretary of the State Fish and Game Commission may be legally employed by that Commission for the position of Superintendent of the State Game Farm.

There is no salary paid to any member of the State Fish and Game Commission, although a salary is to be paid to the Superintendent of the State Game Farm.

#### OPINION

The State Nepotism Act, as amended, Statutes 1927, p. 43, prohibits the employment within the third degree of consanguinity or affinity

of any school trustee, state, township, municipal, or county official. This and similar statutes have been passed upon by this office in several instances, and it has been ruled that where the appointment is to be made by a board no person within the prohibited degree of consanguinity or affinity to any member of the board can be employed. (See Opinions of Attorney-General 1927, Opinion No. 265; Opinions of the Attorney-General 1921-1922, Opinions Nos. 120, 124, and 125.)

The fact that there is no salary or emolument affixed to the office does not make it any the less a State office. 36 Cyc. 854.

In view of the foregoing, therefore, it is the opinion of this office that the employment of the son of one of the members of the State Fish and Game Commission to act as such Superintendent would be unlawful.

Respectfully submitted for the Attorney-General,

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

By WM. J. FORMAN, *Deputy Attorney-General*.

HON. JAMES W. GEROW, *Secretary, State Fish and Game Commission, Reno, Nevada.*

#### SYLLABUS

##### 292. Appropriation Act.

In case of conflict between a special statutory appropriation and items in the General Appropriation Act, the provisions of the latter control.

#### INQUIRY

CARSON CITY, January 13, 1928.

When the General Appropriation Act appropriates an amount which does not conform to the specific statutory appropriation, which statute takes precedence?

#### OPINION

The Supreme Court of Nevada, in the case of McCracken v. State, 41 Nev. 49, answers the question here submitted.

In the McCracken case the court decided that where a conflict existed between a special statutory appropriation and items in the General Appropriation Bill the provisions of the latter control, and the special statute providing for a different appropriation was superseded or suspended by the General Appropriation Act.

Respectfully submitted,

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

HON. ED. C. PETERSON, *State Controller, Carson City, Nevada.*

## SYLLABUS

293. **Taxation—Automobiles—Dealers' Licenses.**

(1) Dealers' licenses may not be lawfully used on dealers' tow or service cars.

(2) Section 20, Stats. 1925, prohibits the use of dealer plates upon motor vehicles other than those held for sale or trade and those used pursuant thereto.

## INQUIRY

CARSON CITY, January 17, 1928.

1. Are dealers' licenses, as defined under section 20 of the Motor Vehicle Act, to be used on dealers' tow or service cars.
2. Are dealers' licenses to be used only on cars, new or second-hand, that are for sale.

## OPINION

Section 1, Statutes of 1925, page 175, provides:

"Manufacturer" or "dealer" shall signify a person, firm, association, or corporation regularly in the business of having in his, its, or their possession motor vehicles for sale or trade and for use and operation pursuant thereto.

A "used-car dealer" shall, for the purpose of this Act, include a person, firm, association, or corporation, regularly engaged in the business of having in his, its, or their possession, second-hand or used motor vehicles for sale or trade and operation pursuant thereto.

Section 20 of the same Act provides for issuance of dealers' plates to "dealers" and "used-car dealers" and further provides:

Nothing in this section shall be construed to apply to a motor vehicle operated by a manufacturer, dealer, or used-car dealer for private use or for hire, which said motor vehicle shall be individually registered as provided in this Act, it being expressly understood that motor vehicles owned by a manufacturer, dealer or used-car dealer, when such motor vehicles are equipped with "dealer" plates, as herein provided, may be operated only directly and not inferentially in the conduct of the business of such manufacturer, dealer, or used-car dealer; *provided further*, that no "dealer" plates shall be used upon motor vehicles for any purpose other than the transaction of business incident to the automotive industry of such licensed manufacturer, dealer, or used-car dealer, nor upon the sales cars of a manufacturer of or wholesale dealer in accessories, and it shall be unlawful to use "dealer" plates on any used motor vehicle, unless there is also displayed conspicuously thereon the plates issued to and for said motor vehicle for the current or any prior year.

By section 20 of the Act above quoted it is manifest that the intent of the Legislature was to prohibit the use of dealer plates upon motor vehicles other than those held for sale or trade and those used pursuant thereto. No other construction can be placed upon the words "may be operated only directly and not inferentially in the business of such manufacturer, dealer, or used-car dealer."

A somewhat similar statute was construed by the Supreme Court of Maine in the case of *Cobb v. Cumberland County Power Company*, 104 Atl. 844, where the court said, in regard to a dealers' license:

It was not a general and unlimited license for all purposes and uses, but for the restricted uses named,

the court holding that where the car was being operated on that particular occasion for pleasure alone it was the same as if the car had not been registered at all.

"Tow cars" and "service cars," as these terms are generally understood, are cars used to furnish mechanical service to owners of other motor vehicles. The use of such cars is an incident to the garage or automobile repair business, but it would require an unreasonable interpretation of the Act in question to rule that such cars, so used, were being operated "pursuant to the business of *selling or trading* in motor vehicles." See *People v. Hanna*, 136 N. Y. S. 162.

It is therefore the opinion of this office that such cars as those described above are not entitled to operate with dealer license plates.

The second inquiry is practically answered by the statute itself, by its provision that a dealer is one who has in his possession motor vehicles for sale or trade and for use and operation pursuant thereto. Therefore, a dealer would be entitled to operate on dealer plates, in addition to the cars held for sale or trade, those necessarily used in *such* business, such as cars used solely for demonstration purposes.

Respectfully submitted for the Attorney-General,

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

By WM. J. FORMAN, *Deputy Attorney-General*.

HON. D. B. RENEAR, *Inspector of State Police, Carson City, Nevada*.

#### SYLLABUS

294. **Constitution of Nevada—Legislative Exercise of Judicial Functions—  
Legislative Compromise of a Suit at Law—Senate Bill No. 11.**

- (1) The Legislature may not constitutionally sit as a court of law or equity.
- (2) There is no delegation of judicial power by the Legislature to the Compromise Board under Senate Bill No. 11.
- (3) Senate Bill No. 11 is a general law as distinguished from a special Act.
- (4) Senate Bill No. 11 is not unconstitutional as an *ex post facto* law.

#### INQUIRY

CARSON CITY, January 30, 1928.

1. In view of the provisions of article VI, section 1, of the Constitution of the State of Nevada, in the opinion of the Attorney-General of Nevada, is there any authority "expressly directed or permitted" by the Constitution, by which the Legislature may constitutionally exercise the functions of the Judicial Department of the State, in this, namely:

- (a) To sit as a court of law, as a court of equity, or as a court of law and equity, or "in all other civil cases not included in the general subdivision of law and equity?"
2. In assuming or presuming to compromise in the matter of the suit at law, entitled "The State of Nevada against the Carson Valley Bank," already in the courts, in the opinion of the Attorney-General:
- (a) Would such an assumption or presumption to so sit as such a court come within the inhibitions of article VI, section 1?
- (b) Would such an assumption or presumption to so sit as such a court be properly considered as discourteous to the Judicial Department of the State of Nevada?

3. In view of the provisions of article VI, sections 4 and 6, wherein such sections provide that the District Courts of the several Judicial Districts of the State shall have original jurisdiction and the Supreme Court shall have appellate jurisdiction "in all cases of equity; also in all cases of law \* \* \* exceeds three hundred dollars," in the opinion of the Attorney-General, is or is not the Legislature of Nevada attempting to exceed its constitutional authority in seeking to act as a court of equity or a court of law in the above-mentioned suit at law?

4. In view of article VI, section 14, wherein the Constitution of the State of Nevada provides, "There shall be but one form of civil action, and law and equity may be administered in one action," in the opinion of the Attorney-General, does Senate Bill No. 11 satisfy the requirements of said section 14?

5. Would not the operation of Senate Bill No. 11 be contrary to the provisions of article IV, section 20?

6. In view of article VIII, section 9, of the Constitution, is it the opinion of the Attorney-General that by the passage of Senate Bill No. 11, and the operation of the Adjustment Commission therein provided, acting under authority of the Legislature, would it be or would it not be an act contrary to said section 9, article VIII, should a less amount than the demand of the State be accepted by a compromise?

7. In view of article IX, section 4, of the Constitution, would or would not the Legislature act contrary to the Constitution in carrying to passage and causing to become effective Senate Bill No. 11, thus assuming a portion of a debt of a corporation?

8. Should the Legislature pass Senate Bill No. 11, is it your opinion that the Act would be unconstitutional in that it would be an *ex post facto* law?

#### OPINION

We assume from the query presented that you desire an official opinion upon the several questions presented and that you limit your inquiry accordingly.

Directing attention, therefore, to the interrogatories propounded, we desire to advise you as follows:

Question No. 1 and subdivision (a) is answered in the negative.

The interrogatories embraced in question numbered 2 and subdivisions (a) and (b) thereof, question numbered 3, and question numbered 4 involve the same principles of law. These several queries are

based upon the false assumption that judicial power is attempted to be delegated to the Compromise Board under Senate Bill No. 11. It is our opinion that no such delegation of power is attempted, and the same is not involved under the provisions of this contemplated Act.

In answer to question numbered 5, you are advised that Senate Bill No. 11 provides in general terms for the compromise and adjustment of all claims that may be due to the State of Nevada. The Act is general in its terms, applies to all persons similarly situated, and, in our opinion, is a general law as distinguished from a special Act.

Questions numbered 6, 7, and 8 are answered in the negative.

Respectfully submitted,

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

HON. DOUG. H. TANDY, *Speaker of the Assembly, Carson City, Nevada.*

#### SYLLABUS

#### 295. Constitution of Nevada—Statutes—Special Legislative Sessions—Senate Bill No. 11.

(1) A special session of the Legislature is restricted to the subjects which the Governor in his message "may deem it necessary to legislate upon," under article 5, section 9, of the Constitution of Nevada.

(2) There is no executive authority which would warrant the Legislature in enacting Senate Bill No. 11 for compromising and adjusting claims in favor of the State of Nevada.

#### INQUIRY

CARSON CITY, January 31, 1928.

You submit Senate Bill No. 11 and request an official opinion as to its constitutionality.

#### OPINION

Senate Bill No. 11 is a proposed Act which provides for the compromise, adjustment, or release of indebtedness, liability, or obligation of any corporation, association, or person to the State of Nevada. Section 1 of the Act creates a Board of Compromise and Adjustments. The Act authorizes corporations, associations, or persons indebted to or under liability or obligation to the State of Nevada or against whom the State claims or asserts or is about to claim or assert any indebtedness, liability, or obligation to petition the Board of Compromise and Adjustments for a release and compromise of such claim. A method of procedure is then outlined in detail, and the Board is authorized to compromise any claim for a sum not less than thirty per cent of the amount involved; or, if a settlement for an amount less than thirty per cent is made, such settlement is not final until approved by a subsequent legislative session.

We have carefully examined the several sections of this proposed Act, and the time allotted for a response to your inquiry is limited. We have endeavored, however, to carefully scrutinize these several provisions in connection with the Constitution of the State of Nevada, and you are advised that, in so far as we are able to investigate at this time, in our opinion the provisions of this proposed Act do not violate

any sections or section of the Constitution of the State of Nevada, with the following exception.

Your attention is directed to article V, section 9, of the Constitution which provides as follows:

The Governor may, on extraordinary occasions, convene the Legislature by proclamation, and shall state to both houses when organized, the purpose for which they have been convened, and the Legislature shall transact no legislative business except that for which they were especially convened, or such other legislative business as the Governor may call to the attention of the Legislature while in session.

The Supreme Court of the State of Nevada, in the case of *Jones v. Theall*, 3 Nev. 211, in construing this section of the Constitution, ruled that when organized, the purpose for which they have been convened, and the Legislature shall transact no legislative business except that for which they were especially convened, or such other legislative business as the Governor may call to the attention of the Legislature while in session.

Having this provision of the Constitution and the decision of the Supreme Court in mind, it is manifest that this special legislative body is authorized to enact into laws only those matters which are particularly referred to it by the Governor.

Senate Bill No. 11 has for its purpose the compromising and adjusting of all claims of every kind and character that may exist in favor of the State of Nevada and owed by all persons, firms, associations, or corporations. To determine legislative authority to enact such a law, reference must be made to the document or documents which give rise to such power and authority. We are unable to discover any executive authority which would warrant the Legislature or that might constitute authority on the part of the Legislature to enact the proposed bill submitted. The Executive Proclamation deals with and submits for consideration to the Legislature a proposed compromise of certain litigation by the State of Nevada against the Carson Valley Bank and a claim the State may have against bondsmen of the former State Treasurer. Senate Bill No. 11 authorizes settlements of all or any claims due to the State and, by its provisions, embraces matters not within the Executive Proclamation. We conclude, therefore, that in this respect the proposed measure is in conflict with article V, section 9, of the Constitution.

Respectfully submitted,

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

HON. MARSHALL HAMLIN, *Member of the Assembly, Carson City, Nevada.*

#### SYLLABUS

#### 296. Taxation—County License Tax on Billiard Halls—When Collectible— Overruling Opinion No. 249.

County licenses authorized by the Statutes of 1915 are collectible within incorporated cities and towns. The Acts of 1921 and 1923 merely suspend the operation of the Act of 1915 outside of incorporated cities and towns.

## INQUIRY

CARSON CITY, February 7, 1928.

You call our attention to our Opinion Number 249 which ruled that a county license tax on billiard halls, bowling alleys, etc., was not collectible within incorporated cities and towns, and ask that we reconsider that opinion.

## OPINION

By Statutes 1915, page 236, the Sheriffs of the several counties were required to collect a county license from those operating billiard halls, bowling alleys, etc. This Act was operative as regarding these particular licenses over the entire county, both within and without incorporated cities and towns.

By chapter 120, Statutes of 1921, page 194, and Statutes of 1923, chapter 50, page 62, those persons who conduct billiard halls, bowling alleys, etc., outside of incorporated cities and towns are required to secure a license from the County License Board.

In Opinion No. 249, this office ruled that the Acts of 1921 and 1923 superseded the Act of 1915 and that, therefore, the licenses enumerated in the Act of 1915 were not collectible even in incorporated cities and towns. In so ruling we believe we were in error, for the reason that the Acts of 1921 and 1923 do not operate over the entire county but only outside of incorporated cities and towns. Therefore, the later Acts are not entirely repugnant to the Act of 1915, but simply suspend its operation outside of incorporated cities and towns. *Tilden v. Esmeralda County*, 32 Nev. 321.

The statute of 1915 would then remain in effect in the territory not covered by the later Acts. Thus, county licenses enumerated therein would be collectible within incorporated cities and towns.

Respectfully submitted for the Attorney-General,

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

By WM. J. FORMAN, *Deputy Attorney-General*.

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

## SYLLABUS

297. **Schools—Establishment of Superintendent's Revolving Fund.**

No authority in law exists for establishing such a fund. All claims against the Nevada School of Industry must be audited and allowed by the Board of Examiners.

## INQUIRY

CARSON CITY, March 2, 1928.

A report is submitted wherein it is stated that the Superintendent of the Nevada School of Industry, acting under instructions of the Board of Governors, has established a "Superintendent's Revolving Fund." This fund is established in the Henderson Bank and, when articles are sold, the money received from the sale of same is placed to the credit of the institution in the Henderson Bank and checks are thereafter drawn on such fund in said bank to pay current expenses.

An opinion is requested as to the lawfulness of this transaction.

## OPINION

No authority in law exists for establishing or creating the fund designated. The result of the operations set forth permits claims against the Nevada School of Industry to be passed upon and the same paid in violation of the provision of law which requires the Board of Examiners to audit and allow all claims against the State.

Stats. 1913, chapter 187, specifically provides that the products of any State institution may be sold, and that the proceeds of such sale shall be deposited in the fund or appropriation for the support of such institution and not in the General Fund.

It is my opinion, therefore, that the Superintendent of the Nevada School of Industry has no authority under the law to deposit money in the Henderson Bank or to pay claims against the State School of Industry by checks on the said deposit, but that all moneys derived from the sale of material should be transmitted to the State Treasurer, and that under no circumstances should the Superintendent or any other officer pay claims owing by the institution except by presenting the same to the Board of Examiners for their allowance and approval.

Respectfully submitted,

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

HON. FRED B. BALZAR, *Governor of Nevada, Carson City, Nevada.*

## SYLLABUS

298. **Corporations—Insurance Companies—Distinction Between Mutual Insurance Companies and Insurance Companies Not Operated on Assessment Plan.**

Mutual insurance companies under the Revised Laws, sec. 1817, as defined in sec. 1310, may not issue a contract of insurance upon the life of any person under 15 years of age, or after he has passed his sixty-first birthday. Every contract of mutual insurance must be accompanied by a report of a physician.

## INQUIRY

CARSON CITY, March 2, 1928.

In the past few weeks several life insurance companies have protested my ruling on section 8, page 22, of our insurance law pamphlet, being section 1317 of the Revised Laws of Nevada of 1912.

My ruling has been that no insurance can be issued to any person in Nevada unless he shall be between the ages of fifteen and sixty-one years, and that the report of a reputable physician stating that the applicant is in good health must accompany the application.

These companies have been writing nonmedical insurance on persons between the ages of fifteen and sixty-one years, and have required a medical examination for persons under fifteen years and over sixty-one years.

Your opinion as to the real meaning of this law is respectfully requested.

## OPINION

I concur in your ruling, with the exception that you must differentiate between mutual insurance companies and insurance companies not operated on the assessment plan.

Revised Laws, sec. 1310, defines a mutual insurance company as follows:

Every contract whereby a benefit may accrue to a party or parties therein named upon the death or physical disability of a person insured thereunder, or for the payment of any sums of money dependent, in any degree, upon the collection of assessments or dues from persons or owners holding similar contracts, shall be deemed a contract of mutual insurance upon the assessment plan. Such contracts must show that the liabilities of the insured thereunder are not limited to fixed premiums.

That part of section 8 of this Act which is important in considering the question presented reads as follows:

No corporation doing business under this Act (except accidental [accident] or casualty corporations) shall issue a contract of insurance upon the life of any person under fifteen years of age, or after he or she has passed his or her sixty-first birthday. Every such contract of insurance shall be founded upon written application therefor, and (except when the application is for one hundred dollars life insurance or less) such applications shall be accompanied by a report of a reputable physician, containing a detailed statement of his examination of the applicant and showing the applicant to be in good health, and recommending the issuance of a contract of insurance; *provided*, that no medical examination shall be required on any application for accident or casualty insurance only.

It is plain, therefore, that a mutual insurance company, as defined, *supra*, may not issue a contract of insurance upon the life of any person under fifteen years of age or after he has passed his sixty-first birthday. It is also clear that every contract for mutual insurance must be accompanied by a report of a physician in reference to the insurability of the applicant.

Other insurance companies, however, operating under the provisions of sections 1267 to 1284, Revised Laws, inasmuch as they are not mutual insurance companies, would not be governed by these several sections.

Respectfully submitted,

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

HON. ED. C. PETERSON, *State Controller and ex officio Insurance Commissioner, Carson City, Nevada.*

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#### SYLLABUS

#### 299. Officers—Fees of Clerk of Supreme Court.

The Clerk of Supreme Court is authorized to collect a fee of twenty-five dollars which is in payment for all services in connection with cases filed in Supreme Court.

#### INQUIRY

CARSON CITY, March 2, 1928.

Whether or not the Clerk of the Supreme Court should exact fees in addition to those required by sec. 2006, Revised Laws, 1912, as

amended, 1921, p. 111, for giving certificates and for the preparation of transcripts for filing in the Supreme Court of the United States.

#### OPINION

Section 2006, Revised Laws, 1912, as amended, provides a flat fee of twenty-five dollars in all cases filed in the Supreme Court. This section, as amended, gives the entire fee to be charged by the Clerk of the Supreme Court for all services.

Section 2006 is part of an Act which further provides, section 2119:

No other fees shall be charged than those specially set forth herein, nor shall fees be charged for any other services than those mentioned in this Act.

Respectfully submitted for the Attorney-General,

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

By WM. J. FORMAN, *Deputy Attorney-General*.

MRS. EVA HATTON, *Clerk of the Supreme Court, Carson City, Nevada*.

#### SYLLABUS

#### 300. Statutes—Act to Authorize Deposit of State Moneys in Banks of this State.

Under sec. 4179, of the Rev. Laws of Nevada of 1912, the Deputy State Controller is prohibited from executing State warrants and bonds. The Deputy State Treasurer is permitted under sec. 7, however, to sign such warrants for withdrawal of funds.

#### INQUIRY

CARSON CITY, March 5, 1928.

Please refer to the Act recently passed by the Special Session of the Legislature entitled "An Act to authorize the deposit of State moneys in banks in this State, and to repeal all Acts or parts of Acts in conflict with this Act."

Section 7 provides that withdrawals may be made upon the signatures of the State Treasurer and State Controller.

Are we to construe this to mean that the Deputy State Treasurer and the Deputy Controller are not permitted to sign such warrants?

#### OPINION

Unless prohibited by express provisions of law, a deputy in the office of State Controller or State Treasurer may perform any duty imposed upon the principal by reason of any statutory requirements.

Section 4179, Revised Laws of Nevada, 1912, provides:

The Controller of State is hereby authorized to appoint a deputy, who shall have power, in the absence of the Controller, to do all acts devolving upon, and now necessary to be performed by the Controller, except the signing of State warrants and bonds.

Under the provisions of this section, the Deputy State Controller is prohibited from executing State warrants and bonds. The Deputy

State Controller, therefore, is without power to execute warrants upon the State Treasurer for the payment of money. Such Deputy State Controller would, therefore, be prohibited from performing any acts required to be performed under the Act referred to by you.

In view of the fact that the law does not prohibit the Deputy State Treasurer from performing any act required by law to be performed by the State Treasurer, such deputy would be permitted to function under the provisions of section 7 of the Act referred to.

Respectfully submitted,

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

P. L. NELSON, *Assistant Cashier, Reno National Bank, Reno, Nevada.*

#### SYLLABUS

##### 301. Officers—State Nepotism Act.

The appointment of a cousin of a member of the appointing board as official court reporter does not contravene the State Nepotism Act.

#### INQUIRY

CARSON CITY, March 12, 1928.

Whether or not the appointment of a cousin of the wife of one of the Justices of the Supreme Court as Official Court Reporter by that court would contravene the provisions of the State Nepotism Act.

#### OPINION

The State Nepotism Act prohibits the employment within the third degree of consanguinity or affinity of any member of the appointing board. A cousin is of the fourth degree.

The appointment, therefore, of a cousin related to any member of the appointing board does not come within the prohibition of the Act.

Respectfully submitted for the Attorney-General,

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

By WM. J. FORMAN, *Deputy Attorney-General*.

HON. BENJAMIN W. COLEMAN, *Justice of the Supreme Court of the State of Nevada, Carson City, Nevada.*

#### SYLLABUS

##### 302. Highways—County—State Highway Fund—Money, How Expended.

The money in County-State Highway Fund can be withdrawn only on certificate of State Highway Engineer, and County Commissioners without authority to expend same.

#### INQUIRY

CARSON CITY, April 2, 1928.

On a few occasions the authority of the Department of Highways has been questioned by the County Commissioners regarding its right

to use the county-state highway funds for the construction and maintenance of the Federal Aid roads. One instance in particular where the State was obligated not only to the Government but to the general public to complete a section of road, County Commissioners of the county in which the road was to be constructed absolutely refused to turn over to the State the county's share.

Another county also refused to contribute money from its County-State Highway Fund to aid the State in the maintenance of the Federal Aid constructed highways within that county.

I will appreciate obtaining a decision from your office showing me just what rights and authority the Department of Highways has in regard to the handling of county-state highway funds of all the counties.

#### OPINION

Under section 10, State highway law (Statutes 1917, as amended), it is the duty of the State Highway Engineer to submit to the Board of County Commissioners of each county a budget setting forth the amount, character, and nature of construction work to be performed on the highways within the respective county for the ensuing year.

Section 11 of the Act makes it the mandatory duty of the County Commissioners to levy a tax for the purpose of creating and maintaining the County-State Highway Fund.

This fund can be expended only under the direction of the State Highway Engineer, and the several Boards of County Commissioners are without authority to spend any part of the money.

Your attention is called to the following specific language of section 11:

The said fund shall be hereafter called in this Act "The County-State Highway Fund," and shall be expended only under the direction of said State Highway Engineer, and the moneys shall be paid, etc.

The money in this fund thus created cannot lawfully be withdrawn or used except upon certificate of yourself. If any county refuse to comply with the provisions of this Act, the court, by writ of mandamus, will compel the County Commissioners to perform the duty therein commanded.

Respectfully submitted,

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

S. C. DURKEE, *State Highway Engineer, Carson City, Nevada.*

#### SYLLABUS

#### 303. Officers—Court Reporter—Payment of Compensation where County Commissioners Fail to Budget Expenses.

The law authorizes compensation payments to court stenographers either on a fee basis or monthly salary approved by County Commissioners, but, if facts warrant, District Judge has power aside from County Commissioners' action to appoint and compensate at public expense court reporter.

## INQUIRY

CARSON CITY, April 11, 1928.

Should the County Auditor honor an order of the Judge of the District Court for salary of a court reporter of his court where the County Commissioners have purposely omitted the item of the reporter's salary from the current budget, and where the County Commissioners have failed to approve the reporter's salary fixed by the District Judge?

## OPINION

By sections 4908-4913, inclusive, of the Revised Laws of Nevada, 1912, as amended, Statutes 1921, pages 96 and 288, provision is made for the appointment of an official court reporter by the District Judge and for the fixing of the compensation therefor. It was the evident purpose of the Legislature, in enacting section 4913, as amended, that the compensation of the official reporter should be fixed by one of two methods:

1. On a fee basis, the schedule of fees being set out in the section; or
2. By a monthly salary fixed by the District Judge and approved by the Board of County Commissioners.

It does not necessarily follow, however, that a Board of County Commissioners could prevent the employment of an official court reporter by failing to provide for any or sufficient compensation for such reporter in the budget.

The Supreme Court of this State has held, in the case of *State v. Davis*, 26 Nev. 373, that the Supreme Court possesses the inherent power to procure at the expense of the State suitable furniture for its courtroom. This ruling, as is pointed out in the opinion of the Court, is based upon the fact that the judiciary is a separate and independent branch of the government, and that courts of general jurisdiction within the State possess all the powers necessary for the free and untrammelled exercise of their functions independent of the executive and legislative branches of the State Government.

The above-mentioned case would seem to warrant a ruling that courts of general jurisdiction in this State have the inherent power to contract for, at public expense, such accommodations and assistants as are necessarily required for the court to carry out its judicial functions. If the situation is such, therefore, in any county, that a competent court reporter cannot be secured at the compensation offered by the fees listed in section 4913, as amended, and the failure to secure such reporter would prevent the District Court from carrying on its proper functions, then, it is the opinion of this office that the District Judge has the authority to contract for the services of such reporter at a reasonable compensation, at the public expense, independent of the approval of any executive board.

Respectfully submitted for the Attorney-General,

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

By WM. J. FORMAN, *Deputy Attorney-General*.

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

## SYLLABUS

304. **Water Law—Acts Necessary to Constitute Appropriation of Waters of a Spring.**

The manner of making diversion, whether by artificial means or otherwise, is not controlling. It is essential to establish the intent to appropriate by some act subjecting the water claimed to control of appropriation.

## INQUIRY

CARSON CITY, April 13, 1928.

No. 1. Without the actual diversion of water at a particular place or places by means of artificial works of diversion, can a right to appropriate water for stockwatering purposes be lawfully acquired in the State of Nevada?

No. 2. Are the fundamental requisites for acquiring or establishing a right to appropriate water the same for all classes of beneficial use?

## OPINION

The Supreme Court of Nevada in the case of *Walsh v. Wallace*, 26 Nev. 299, held that to constitute an appropriation of water of a stream system there must be an actual diversion and an application to beneficial use.

The manner of making the diversion, whether by artificial means or otherwise, is not the controlling factor. It is essential, however, that the party asserting the right establish the intent to appropriate by some open, physical demonstration, subjecting the water claimed to his control and use to the exclusion of others.

The law applicable to this question and one that must govern in determining the sufficiency of acts relied upon to sustain the appropriation is stated thusly by the Federal Court of this district in the case of *Silver Peak Mines v. Valcelda*:

In appropriating the waters of a spring upon the public lands, only such acts are necessary, and such indications and evidences of appropriation required, as the nature of the case and the face of the country will admit of, and are, under the conditions and circumstances at the time, practicable to accomplish the purpose of the appropriator thereof in making a beneficial use of the water.

Answering your second inquiry, difference in beneficial use in no manner affects the essentials necessary to constitute an appropriation.

Respectfully submitted,

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

HON. GEORGE W. MALONE, *State Engineer, Carson City, Nevada*.

## SYLLABUS

305. **Water Law—Application of General Adjudication Statute to Appropriation for Waters of a Spring.**

If waters of spring are formed from percolating water, the general adjudication statute does not apply; if formed from a natural water-course it is applicable.

## INQUIRY

CARSON CITY, April 13, 1928.

Can the determination of the relative rights to the use of water from isolated springs or water holes, not tributary to any stream or stream system, be legally determined by the adjudication procedure set forth in the present Water Law of Nevada?

## OPINION

If the springs in question are formed from percolating water, the general water code respecting adjudications does not apply; if, however, it appears that the waters of the spring come from a natural watercourse, subterranean in character, the general adjudication law applies.

The distinction is clearly set forth in the case of *Strait v. Brown*, 16 Nev. 317, where the Court stated:

It has been conclusively established by a long line of decisions that percolating water existing in the earth is not governed by the same laws that have been established for running streams. No distinction exists in the law between waters running under the surface in defined channels and those running in distinct channels upon the surface. The distinction is made between all waters running in distinct channels, whether upon the surface or subterranean, and those oozing or percolating through the soil in varying quantities and uncertain directions. The grounds for the distinctions are clearly pointed out in the authorities.

Respectfully submitted,

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

HON. GEORGE W. MALONE, *State Engineer, Carson City, Nevada*.

## SYLLABUS

306. **Elections—Schools—Recall Petitions.**

Procedure on recall elections concerning duty of Clerk to furnish certified list of electors. Registration of voters. Polling places. Disqualification of Trustees.

## INQUIRY

CARSON CITY, May 7, 1928.

At the request of the District Attorney, the following opinion is being given to you.

In a recall election in a union school district:

1. Registration. Should the County Clerk furnish to the trustees the certified list of electors in the district on May 8, as provided in section 49 of the School Code?

May the Clerk of the Board register qualified electors whose names do not appear on the great register, on May 10, 11, and 13, and will such persons so registered be eligible to vote at such election?

2. Who are authorized to appoint officers of election at such election? Has the County Clerk such power?

3. How many polling places may be designated, it being understood that the district is one of the second-class—that is, having less than 10 regular grade teachers, as defined in section 76 of the School Code?

4. Will the fact that all five of the Trustees are in process of recall disqualify them in any way to appoint officers at the school election?

5. Is there anything in the Union School District Act of March 18, 1925, or elsewhere, which would require a district of the second-class to conduct an election at each and every schoolhouse located within the territory from which the Trustees or any of them may be elected?

6. Is there anything in the special Lyon County High School District Act of March 23, 1917, and particularly section 9 providing for the election of three District High School Board members, affecting the Smith Valley High School District here referred to, being Lyon County High School District No. 3, which would make the election a general one in the county and conflict with the election of two high school members for the Union District under the general law? Would this give the County Clerk powers not contemplated in the union district sections?

#### OPINION

The general school laws relating to elections apply to elections in union school districts in so far as applicable.

1. The answer to your first inquiry is "Yes" in both instances. (See sections 49 and 47 of the School Code.)

2. The Board of School Trustees is authorized to appoint officers of election at such election. (See section 45, School Code.)

3. The school law, section 45, would indicate that only one polling place should be designated. In the case before us, the County Clerk calls the election and therefore should designate the polling place, which should be a place most convenient for the voters.

4. The fact that five of the Trustees are in process of recall does not disqualify them to appoint officers of the school election.

5. There is nothing in the Union School District Act of March 18, 1925, or elsewhere, which would require a district of the second-class to conduct an election at each and every schoolhouse located within the district.

6. There is nothing in the special Lyon County District Act of March 23, 1917, which would make an election a general one in the county, for the reason that the Trustees of the Lyon School District No. 2 would cease to hold office upon the unionization of the district.

Respectfully submitted for the Attorney-General,

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

By WM. J. FORMAN, *Deputy Attorney-General*.

MISS PHYLLIS HAY, *Clerk, Board of School Trustees, Smith Valley Union District, Wellington, Nevada.*

## SYLLABUS

**307. Taxation—Sale Personal Property Without Suit—Redemption.**

Personal property over three hundred dollars in value may be sold for delinquent taxes without suit, subject to redemption.

## INQUIRY

CARSON CITY, August 2, 1928.

(1) May a County Treasurer and ex officio Tax Receiver sell for delinquent taxes, without suit, personal property, which is in no way associated with real property, of an assessed value greater than three hundred dollars?

(2) If your conclusion as to the above be in the affirmative, is property so sold subject to redemption?

(3) If subject to redemption, within what period after sale may the property so sold be redeemed?

## OPINION

Under the Revenue Act of this State, as amended by Statutes 1927, p. 263, this office is of the opinion that a County Treasurer and ex officio Tax Receiver may sell personal property of an assessed valuation of more than three hundred dollars for delinquent taxes without suit. Such sale, however, is subject to redemption within one year from the date of sale by the payment of taxes, penalties, costs, and interest.

Respectfully submitted for the Attorney-General.

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

By WM. J. FORMAN, *Deputy Attorney-General.*

HON. C. C. WARD, *District Attorney, Mineral County, Hawthorne, Nevada.*

## SYLLABUS

**308. Officers—Act Providing for Election of County Road Supervisors Has Not Been Repealed—Act Applied Only in Those Counties Adopting Its Provisions by an Election.**

(1) Statutes 1913, page 390, providing for election of County Road Supervisor has not been repealed.

(2) County Road Supervisors are elected in only those counties adopting the provisions of Statutes 1913, page 390, by an election.

## INQUIRY

CARSON CITY, August 4, 1928.

(a) Your opinion will be appreciated advising whether Statutes 1913, page 390, have ever been repealed.

(b) If not, is it mandatory, under article 3, section 1, to elect road supervisors or road commissioners in the several counties of this State?

## OPINION

(a) Statutes 1913, page 390, have not been repealed.

(b) This office has heretofore passed upon this statute and, by Opinion No. 79, held that in those counties where the matter of calling a special election to authorize the issuing of bonds under this Act has

not been held the provisions of this Act did not apply in such counties.

It was further held by this opinion that the Act was in the nature of "a local option Act," requiring for its adoption by the particular county the issuing of bonds at an election to be held as provided in such Act.

It would necessarily follow from this construction that in those counties where no such election was had that no authority would exist for appointing road supervisors or road commissioners, and no such officers would be elected. In those counties where the provisions of the Act apply and where, by special election, a majority of the voters of the county have authorized the issuing of bonds under this Act, it is not mandatory to elect road supervisors or road commissioners, as, under the terms of the Act, it is discretionary with the Board of County Commissioners in appointing road supervisors or road commissioners. The Board of County Commissioners, in their discretion, may appoint a road supervisor for the county, or they may appoint road commissioners for each district, in those counties where the provisions of the Act apply. If road commissioners are appointed, they are elected in the same manner as other township officers.

It is our opinion, therefore, that, under the provisions of this Act, where road commissioners are appointed and the provisions of the Act apply, it is mandatory that road commissioners be elected as provided in the Act.

Respectfully submitted,

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

HON. FRED B. BALZAR, *Governor of Nevada, Carson City, Nevada.*

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SYLLABUS

309. **State Free Employment Service Fund.**

Statute appropriating money for State Free Employment Service limits expenditures to be made from appropriation and does not include expenditures for attending conferences of State and Government employment officials.

INQUIRY

CARSON CITY, August 13, 1928.

In your opinion, can any money appropriated for the support of the State Free Employment Service be used to defray the expenses of attending a conference with Government officials and other State employment officials, in discussing employment conditions of interest to the service, where a conference is held in some other State?

OPINION

The State Free Employment Service was established and authorized by Statutes 1923, chapter 121.

Under the provisions of this statute, a certain amount of money is appropriated to carry out the provisions of the Act. The Act specifically recites and limits the expenditures to be made under the appropriation. The expenditures designated by you, to wit, the expenses incurred in attending a conference with Government and other State

employment officials not being designated in the Act as an item for which the money may be used, the expenditures above referred to may not be incurred.

Respectfully submitted,

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

HON. WILLIAM ROYLE, *Labor Commissioner, Carson City, Nevada.*

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SYLLABUS

310. **Eight Hour Law—Time Consumed in Eating Lunch in Underground Mines Applies on Eight Hours.**

Where men employed in underground mines are required to remain underground to eat lunch, the time so occupied applies on the eight hours underground, as defined by Rev. Laws, 1912, sec. 6554, as amended.

INQUIRY

CARSON CITY, August 13, 1928.

Where men are employed in underground workings and are required to remain underground to eat lunch, would that time apply on the eight hours underground, as prescribed in the Revised Laws of 1912, section 6554, as amended, chapter 105, Statutes 1927?

OPINION

Section 289 of an Act concerning crimes and punishments was amended by Statutes 1927, chapter 105.

The Act, as amended, provides:

The period of employment for all persons who are employed, occupied, or engaged in work or labor of any kind or nature in underground mines or underground workings \* \* \* shall not exceed eight hours within any twenty-four hours, and the said eight hours shall include the time employed, occupied, or consumed from the time of reaching the point of employment or place of work in any underground mine, and in returning to the surface from said point or place of work, and that it is the intent and purpose of this Act that the period of time between arriving at the point or place of work, in any underground working, and returning to the surface from such point of work shall not exceed eight hours within any twenty-four hours \* \* \*.

I am of the opinion, therefore, that, under your inquiry, if men employed in underground mines are required to remain underground to eat lunch, the time so occupied would apply on the eight hours underground as defined by the above and foregoing section.

Respectfully submitted,

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

HON. WILLIAM ROYLE, *Labor Commissioner, Carson City, Nevada.*

## SYLLABUS

**311. Nevada National Guard—Certain Sections of Statutes 1864, Chapter Regarding National Guard, Repealed—Revised Laws 1912, Section 4038, Not Directly Repealed—State of Nevada Adopted National Defense Act by Statute.**

(1) Sections 50, 51, 52, Statutes of 1864, page 203, were repealed by Statutes 1899, page 37.

(2) Section 4038, R. L. 1912, has not been directly repealed.

(3) By Statutes 1913, page 37, State of Nevada accepted the provisions of the National Defense Act of 1916.

## INQUIRY

CARSON CITY, August 13, 1928.

Your opinion is respectfully requested on the following queries:

(1) Have sections 50, 51, and 52, Statutes 1864, chapter 67, page 203, ever been repealed, or, if not, have they been in any manner superseded or become obsolete?

(2) Has section 4038, R. L. Nev. 1912, volume 1, been repealed?

(3) Does the Act of 1913, page 37, bind the State of Nevada to acceptance of the provisions of the National Defense Act of 1916 and amendments thereto, or does the national Act have the effect of superseding all Acts passed by the Legislature of Nevada relating to the national guard, in so far as the provisions thereof conflict therewith?

## OPINION

(1) Section 50, Statutes 1864, page 203, chapter 67, was repealed by Statutes 1899, p. 37.

Sections 51 and 52 of the above statute, inasmuch as they are so connected with section 50, are also repealed by the provisions of the 1899 Act.

(2) Section 4038, Revised Laws, 1912, volume 1, has not been directly repealed and, if the same is not in conflict with any provision of the regulations adopted by the United States, would be in force and effect.

(3) The Act of 1913, page 37, constitutes an adoption by the State of Nevada, through the Legislature, and acceptance of the provisions of the National Defense Act of 1916, and has the effect of superseding all Acts passed by the Nevada Legislature relating to the national guard, in so far as the provisions thereof conflict therewith.

Respectfully submitted,

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

HON. J. H. WHITE, *Adjutant General, Carson City, Nevada.*

## SYLLABUS

**312. Schools—Law Requires Segregation of Accounts of Several Deputy Superintendents of Public Instruction—Deputy Superintendent's Expenses Limited—Office Deputy's Traveling Expenses Include Travel, Subsistence, and Office Expense.**

(1) The law requires a segregation of the accounts of the several Deputy Superintendents of Public Instruction.

(2) No Deputy Superintendent may expend more than fourteen hundred dollars per annum, and the Office Deputy is limited to five hundred dollars.

(3) Office Deputy's traveling expenses include travel, subsistence, and office expenses.

## INQUIRY

CARSON CITY, August 20, 1928.

(1) Is there anything in the law which requires the State Controller or the Superintendent of Public Instruction to keep segregated accounts with each of the Deputy Superintendents, including the Office Deputy?

(2) If there is a requirement for such segregation, to what extent must it be carried?

(3) May the Office Deputy's expense account include the same classes of items as the expense accounts of other Deputy Superintendents, to wit, travel, subsistence, and office expense?

## OPINION

(1) While Statutes 1927, chapter 97, section 41, appropriates a lump sum of fifteen thousand dollars for traveling and office expenses of Deputy Superintendents, section 13, Statutes 1911, as amended 1920, chapter 156, limits the amount to be spent by each Deputy to the sum of nine hundred dollars, and the Office Deputy to five hundred dollars per annum. Compliance with this section requires a segregation of the sum of fifteen thousand dollars among the several Deputies so that each field Deputy will receive not to exceed fourteen hundred dollars per annum and the Office Deputy five hundred dollars per annum.

(2) No deputy may expend more than fourteen hundred dollars per annum, and the Office Deputy is limited to five hundred dollars per annum.

(3) Traveling expenses for Office Deputy, as defined by the Act as amended, Statutes 1920, chapter 156, section 13, includes: "cost of transportation, cost of living \* \* \*, together with necessary office expenses."

Respectfully submitted,

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

HON. WALTER W. ANDERSON, *Superintendent of Public Instruction, Carson City, Nevada.*

## SYLLABUS

**313. Vocational Education Fund—Combined State and County Expenditures May Exceed that of Federal Government.**

Law does not limit the expenditure by State and local communities for vocational education to a sum equal to that expended by Federal Government.

## INQUIRY

CARSON CITY, August 21, 1928.

Reference is made to section 9, Statutes 1919, chapter 86, with a request for an opinion on the following state of facts:

If the total of funds expended by local communities and by the State for vocational education is in excess of the amount expended by the Federal Government within the State of Nevada for this purpose, is the State expenditure legal, according to the provisions of section 9, chapter 86, Statutes 1917?

## OPINION

Statutes 1919, section 9, chapter 86, authorizes an appropriation as a vocational education fund in the sum of thirty-five thousand dollars. In the same section making the appropriation, it is provided, "together with the amounts required of local communities \* \* \*, being equal to the amount of money to be received by the State of Nevada from the Federal Government."

This latter expression cannot be considered as limiting the amount of the appropriation in the sum of thirty-five thousand dollars to be expended, but it is rather a declaration by the Legislature that in making the appropriation the amount designated is sufficient to comply with the Act of Congress.

The General Appropriation Act, Statutes 1926-1927, fixes the sum of thirty-five thousand dollars as the appropriation for the year 1927-1928 as a vocational education fund. This amount may be legally expended. The fact that this amount plus sums spent by local communities exceeds the amount expended by the Federal Government, would not make such expenditure unlawful. The existence of such facts, however, might cause the Legislature to reduce the appropriation for this item, if called to their attention at the next session.

Respectfully submitted,

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

HON. TRUE VENCILL, *State Auditor, Carson City, Nevada*.

## SYLLABUS

314. Corporations—Amended Articles of Incorporation Become Original Articles When Filed—Date of Original Articles Controls in Issuing Certificate.

(1) When amended articles of incorporation are filed, they take the place of the original.

(2) Certificates issued by Secretary of State should treat amended articles of incorporation as original.

(3) Where original name of corporation is amended, certificate should give new name and original date.

## INQUIRY

CARSON CITY, August 21, 1928.

Assuming that an amended certificate to articles of incorporation is tendered for filing, changing the name of a corporation, and facts are alleged in the amended certificate complying with section 6, Statutes

1925, chapter 177, please advise in what manner this office should handle said amendment in the following particulars:

- (1) The proper caption for the paper substituted for the original article;
- (2) The proper certificate for certified copy of same;
- (3) The proper wording of charter, if any should be issued.

OPINION

Section 6, Statutes 1925, chapter 177, provides:

It shall be lawful for the incorporators of any corporation, before the payment of any part of its capital, to file with the clerk of the county in which copy of certificate of incorporation was filed, and file with the secretary of state, an amended certificate duly signed by the incorporators named in the original certificate of incorporation, and duly acknowledged, or proved as required for certificates of incorporation under this act, modifying, changing, or altering its original certificate of incorporation, in whole or in part, which amended certificate shall take the place of the original certificate of incorporation, and shall be deemed to have been filed on the date of filing of the original certificate; *provided, however*, that nothing herein shall permit the insertion of any matter not in conformity with this act; *and provided, however*, that this act shall not in any manner affect any proceedings pending in any court, and for filing said amended certificate of incorporation, the secretary of state shall charge such fee as shall be allowed by law.

With these provisions in mind, we submit to you the following answers:

(1) While the certificate of amendment tendered is designated an amendment to original articles, when such amendment is filed it becomes the original article. Concerning said amendment and the effect thereof, the statute provides, " \* \* \* which amended certificate shall take the place of the original certificate."

(2) When a certified copy is issued by you of such corporation, you must consider and treat the amendment not as an amendment but as the original article.

(3) Where an amendment is made as aforesaid, changing the name of the corporation, a new certificate should be issued by your office under section 5. Such certificate should bear the date of the issuance of the first certificate or the date of the filing of the original articles under section 5, and designate therein the new name of the corporation.

Authority for this procedure is found in the language of section 6, which provides, "which amended certificate shall take the place of the original certificate of incorporation, and shall be deemed to have been filed on the date of filing of the original certificate."

Respectfully submitted,

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

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

## SYLLABUS

315. Revenue—Federal Agencies Can Claim Exemption from Gasoline Tax—  
Statute Must Be Followed to Secure Refunds.

(1) The Supreme Court of the United States has held federal agencies to be exempt from payment of gasoline tax.

(2) Legislature has provided means for those entitled to exemption to secure refunds. This statute must be followed.

## INQUIRY

CARSON CITY, August 21, 1928.

Referring to a decision of the Supreme Court of the United States, dated May 14, 1928, in the case of Panhandle Oil Company v. State of Mississippi, in which it was held that the States could not demand payment of tax on sale of gasoline made to the various branches of the United States Government, we are asking for a decision of the following:

(1) Does this apply in Nevada to motor-driven vehicles owned by the Federal Government and having attached thereto the United States license plate?

(2) Does this also apply in Nevada to motor-driven vehicles privately owned by officials and employees of the Federal Government having a State license plate attached thereto and presumably used in performing their duties for the Federal Government?

(3) Referring to section 4 of the gasoline tax law of Nevada granting refund of this tax and how the same may be procured, can the enforcement department, having to do with the collection of this tax, issue a certificate of exemption, to be signed by government officers or employees who purchase gasoline from time to time and pay cash, enabling them to get such gasoline exempt from the State tax at the time of purchase, and such coupons to be returned to the State by the dealer?

## OPINION

(1, 2) As stated by you, the Supreme Court of the United States in the case of Panhandle Oil Company versus the State of Mississippi ruled that, under a statute similar to the Nevada Act, sales of gasoline made to Government agencies were exempt from tax payments. It was further decided that, while the Act in terms provided that the dealer or seller under the statute was required to pay the tax, a sale or purchase constituted a transaction by which the tax is measured and on which the burden rests, and that the operation of the Act directly retarded, impeded, and burdened the United States of its constitutional powers.

It must be concluded, therefore, that the Nevada Gasoline Tax Act does not apply to sales made to Government agencies.

(3) The Legislature of this State, under the provisions of section 4 of the Gasoline Tax Act, has provided a method by virtue of which those who are entitled to exemptions on gasoline sales may have the money so paid refunded. The Legislature has designated the Nevada Tax Commission as the agent before whom the proper affidavits must be filed, reciting the facts necessary to warrant the exemption.

To issue certificates of exemption indiscriminately to Government

officers or employees would be violating the provisions of our law and setting up a method contrary to law in the matter of granting exemptions.

It will be necessary, therefore, for those engaged in Government service and who are acting as agents for the United States to pay the tax in the first instance and submit to the Nevada Tax Commission, in support of their exemption claim, an affidavit reciting facts establishing that the gasoline so purchased was used by them for and on behalf of the United States.

Respectfully submitted,

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

NEVADA TAX COMMISSION, *Carson City, Nevada*.

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SYLLABUS

316. **Elections—Election Precinct May Be on Indian Reservation—Government Employees Cannot Be Election Officers—Government Employees Right to Vote Depends upon Residence—Illiterate Voters Cannot Be Assisted in Voting.**

- (1) An election precinct may be established on an Indian Reservation.
- (2) Persons holding lucrative offices with the Government cannot act as State election officers.
- (3) Whether Government employees of an Indian Reservation can vote thereon depends upon matter of residence.
- (4) Illiterate voters may not be assisted in marking their ballots.

INQUIRY

CARSON CITY, September 1, 1928.

- (1) Is it legal to hold the polls of a given precinct within the established boundaries of a Government Reservation?
- (2) Can Government employees or officials act as election officers?
- (3) Can such Government employees legally register and vote at State and county elections?
- (4) In view of the provisions of section 45, Statutes of Nevada 1917, page 358, can illiterate voters receive assistance in marking their ballots by claiming to be physically disabled?

OPINION

Within the State of Nevada there have been established by Executive Order several Indian Reservations. In considering the first question, I assume that election precincts have been established upon Indian Reservations by the several Boards of County Commissioners in accordance with the provisions of section 2 of the General Election Laws, and that your question is directed to the legality of such action because it authorizes polling places within the boundaries of Indian Reservations.

By Opinion No. 247, we ruled that an Indian residing upon the Pyramid Lake Indian Reservation for the required period of time,

with the intent to make such place his permanent domicile, was entitled to vote. This opinion was grounded upon the theory that the land within the confines of this reservation was Nevada territory and that residence thereon for the required time was a residence within the State of Nevada.

A correct answer to your first question requires, therefore, a determination of the legal status of Indian Reservations in this State and whether the State of Nevada has the power to include them within the political subdivisions of this State for governmental purposes.

The Legislature of the State of Nevada, in authorizing the establishment of election precincts within the State of Nevada, excludes no part or portion of the territory embraced within the boundaries of the State as established by the Constitution. Section 2 of the General Election Law authorizes the Board of County Commissioners of the several counties to establish precincts and define the boundaries thereof. The several Indian Reservations located in this State are situated in the several counties of the State.

By an Act of Congress organizing the Territory of Nevada, all land between certain boundaries was included within the Territory of Nevada, "excepting such land as may be embraced within treaties existing between the Government and the several Indian tribes," and such land was excluded. That no treaties existed with any Indian tribes that would work an exclusion of any of the territory within the boundaries of Nevada is disclosed by the fact that neither the Enabling Act nor the Constitution of Nevada contained any provision excluding from the operation of the State government any area within the boundaries as defined. When the State was, therefore, admitted to the Union, Congress did not, by any declaration, reserve Indian lands to its exclusive jurisdiction.

The Supreme Court of the United States, passing upon the status of Indian Reservations and the right of the State to exercise jurisdiction, said:

Whenever, upon the admission of a State into the Union, Congress has intended to except out of it an Indian Reservation or the sole and exclusive jurisdiction over that reservation, it has done so by express words.

In Opinion No. 208, Opinions of the Attorney-General, 1925-1926, we held that:

The criminal jurisdiction of the State and all criminal laws or laws applicable to crime extend over both Indians and white persons, whether within or without an Indian Reservation with one exception, that is, for an offense committed on an Indian Reservation by one Indian against the person or property of another Indian,

citing sec. 6270, Revised Laws, 1912; *State v. Johnny*, 29 Nev. 203; *State v. Buckaroo Jack*, 30 Nev. 326; *State v. Crosby*, 38 Nev. 389.

It must logically follow, therefore, that the territory upon which Indian Reservations are located constitutes a part of the State of Nevada, and the State has the right to extend to its citizens, lawfully

upon such Indian lands, all the privileges and immunities arising by reason of the laws of this State where the same in no manner conflict with the reserved jurisdiction of the United States.

The Supreme Court of Nebraska passed upon the right of the State to establish polling places on Indian Reservations and, in the case of *State v. Norris*, 55 N. W. p. 1087, said:

Are the votes cast by these Indians to be rejected because the polling places at which they were cast were located on their reservations? Relator insists that neither the State of Nebraska nor the county of Thurston had any jurisdiction over these reservations; that the establishing of election precincts, and holding elections thereon, were illegal, and the votes cast thereat should be thrown out. In *Painter v. Ives*, 4 Neb. 128, it was said by Chief Justice Lake: "It would seem clear that, at the date of the State's admission into the Union, every portion of the territory within the prescribed boundaries thereof, the Indian Reservations inclusive, became subject to its laws." We think this is correct. The county of Thurston, in which these reservations lie, is one of the duly organized political subdivisions of the State. The county authorities were invested by law with the duty of establishing voting places therein, and of holding elections. The fact that one or more of the places of voting happened to be on an Indian Reservation in the county should not disfranchise the voters. That the title to these reservations is in the United States, and the lands are occupied by the Indians, sometimes denominated "wards of the Nation," does not give the United States exclusive jurisdiction of the territory. The jurisdiction of the Nation over the Indian, in his tribal relation, is supreme and exclusive; but when an Indian becomes a citizen of the United States, within the provisions of the Acts of Congress, he becomes subject to the laws of the State of which he is a resident, and entitled to the benefits of the laws of such State. The State also has jurisdiction over all the territory within its boundaries, for the government and protection of its citizens and their property, and the enforcement of its laws.

If therefore, by reason of existing facts, the establishment of an election precinct under section 2, General Election Law, is warranted, the further fact that the designated location of such precinct is on an Indian Reservation presents no legal or lawful objection.

(2) Section 9 of article IV of the Constitution of the State of Nevada declares, in substance, that no person holding any lucrative office under the Government of the United States shall be eligible to any civil office or board in this State.

If the Government employees or officers mentioned in your inquiry hold lucrative offices with the Government of the United States, I am inclined to the view that they cannot legally act as election officers.

(3) By the words "such Government employees" used in question No. 3, I apprehend that you refer to Government employees residing

upon Indian Reservations and that their residence upon the reservation for the statutory period is relied upon to qualify them for registration and voting purposes.

That a residence, as defined in the Constitution, may be established upon an Indian Reservation is implied by the answer to question 1. It is only necessary, therefore, to determine if there exists any legal objection to the acquisition of a residence on a reservation by Government officers.

If Government officers, prior to employment, were residents of this State and registered voters in a precinct and county, the induction into office and residing at places of employment, under section 9, article IV of the Constitution, by the fact alone of such residence would not work a forfeiture of the right to vote at the former domicile. Where Government officials or employees assert the right to register and vote, based upon residence acquired by residing upon Government Reservations, a different question is presented.

The Constitution of the State of Nevada, section 2 of article II, provides:

For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, nor while engaged in the navigation of the waters of the United States or of the high seas; nor while a student of any seminary of learning; nor while kept at any almshouse or other asylum, at public expense; nor while confined at any public prison.

The same provision is contained in the Constitution of the several States of the Union. The courts of last resort of these States are not uniform in their decisions in construing the meaning and effect of this section. The Supreme Courts of Idaho, Michigan, Kansas, and New York have ruled that, under this section, persons in almshouses or other asylums are, by reason of this section of the Constitution, prohibited from establishing a residence at the places where the asylums are located and could only vote at their places of residence before becoming such inmates. The Supreme Court of Kansas at a later date reversed its former ruling, and the courts of Kansas, Oregon, and California hold that, under this section of the Constitution, inmates of asylums may acquire a residence at the asylum where that is their intention.

The Idaho case made no distinction in the several classifications referred to in the Constitution but held that:

When it declares that no one, by reason of presence or absence in certain service, or at certain institutions, shall be regarded or deemed to have gained or lost a residence for the "purpose of voting," it is only meant that whoever enters such service or such institution, if he votes while in such service or institution, must do so at the place where he was entitled to vote at the time he entered such service or institution. Any other interpretation of the language of the Constitution would do violence to the words used, and would palpably defeat the meaning and intent of the provision under consideration.

The decisions to the contrary are based upon the theory that, under the Constitution, those in the employment of the United States or a State or in institutions of learning or asylums are not thereby prevented from becoming voters in the places where their work requires them or in places where the schools or asylums are situated. They further hold that the right to vote is not gained by a mere presence at such places, but, if it exists, it must be established by acts distinct from such residence.

The Supreme Court of the State of Nevada has not construed this section of the Constitution. I feel, however, that the decisions of the courts of California, Oregon, and Kansas present the better view, and that this section of the Constitution is not to be construed as a prohibition depriving the parties indicated of establishing a residence at their new place of endeavor.

In reference to Government employees and officers on Indian Reservations and their right to establish a residence thereon, it is important to determine if any facts exist by reason of their employment or the particular place of employment that may be inconsistent with the establishment of a residence as defined by our law.

The Supreme Court of Colorado has ruled in a recent case that a Government employee cannot successfully establish a residence at a United States Government Hospital for voting purposes, because the residence of such person therein cannot be permanent in character for the reason that the employment period and, hence, the residence period is at the will and whim of the employer.

If the Colorado decision is accepted as declaring the correct rule in the matter of establishing residence for Government employees, it would follow that they cannot establish a residence upon Indian Reservations, for, no matter what the intent may be to claim permanency of residence thereon, the uncertainty of their tenure of office makes such intent impossible of fulfillment.

I am of opinion that the mere fact of residence upon a reservation for the statutory period is not, in itself, to be considered as sufficient to constitute a residence to authorize registration and voting, but that such residence must concur with and be manifested by the resultant acts which are dependent of the presence on the reservation.

Where an individual, whether an officer in Government service or a student in a seminary or an inmate of an asylum, by acts and declarations makes manifest his intention of claiming a residence at a particular place and, to that end, complies fully with the requirements of law, the theory which is advanced to deprive the right of such an individual to vote, because of intervening eventualities over which he has no control, seems to me to be too finely spun. If this theory were forced to its logical conclusion, then permanency of residence as affecting all individuals is impossible of attainment, because of the uncertainty of conditions surrounding ones domicile as evidenced by the happening of conditions causing change in domicile over which the individual has no control, and, finally, by the uncertainty of life itself.

I conclude, therefore, that there exists no legal reason which would prohibit an officer or employee of the Government from establishing a residence upon a Government Reservation.

(4) The provisions of the statute, Stats. 1927, chapter 61, specifically provide that inability to read or write shall not be considered as physical disability. The words of the statute, therefore, answer the question.

Respectfully submitted,

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

HON. FRED B. BALZAR, *Governor of Nevada, Carson City, Nevada.*

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SYLLABUS

317. **Corporations, Foreign.**

It is not necessary for a foreign corporation to maintain a principal office in this State.

INQUIRY

CARSON CITY, September 17, 1928.

Is it necessary for a foreign corporation to maintain a principal office in this State?

OPINION

After a careful examination of the Statutes of this State respecting foreign corporations, I am of the opinion that no requirement exists making it mandatory for a foreign corporation to maintain a principal office in this State.

It is necessary, however, for such corporation to appoint a resident agent.

Respectfully submitted,

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

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

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SYLLABUS

318. **Fish and Game—County Commissioners May Limit Duck Shooting to Three Days a Week.**

The Board of County Commissioners of any county may, by special ordinance, limit duck shooting to three days a week during open season.

INQUIRY

CARSON CITY, September 22, 1928.

Whether an ordinance of Churchill County made by the County Commissioners limiting the hunting season for ducks to three days a week during the open season is valid, where the State law makes no restriction of the number of days during the week that ducks and other wild fowl may be hunted.

OPINION

Chapter 195, Statutes 1923, page 349, section 20, provides:

Should it be deemed advisable by the Board of County Commissioners for any county in this State to lengthen the time of the closed season, or fix the dates of the open season within limits hereinbefore prescribed, for any species of game mentioned in this Act, the said Board of County Commissioners, acting for its respective county, may, upon petition of not

less than fifty resident electors of said county, lengthen the time of said closed season by special ordinance spread upon its minutes and published at least two times in some newspaper of general circulation in said county.

Under the provisions of the section above quoted, it is the opinion of this office that an ordinance limiting the shooting of ducks to three days a week during the open season complies with this section; provided such ordinance was enacted in the manner prescribed by said section. The fixing of the open season at three days a week instead of seven is lengthening the time of the closed season and fixing the dates of the open season within the limits prescribed in accordance with said section 20, above quoted. Therefore, said ordinance is valid if it was enacted according to the provisions of said section 20.

Respectfully submitted,

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

By WM. J. FORMAN, *Deputy Attorney-General*.

R. J. VANNOY, *Churchill County Game Warden, Fallon, Nevada*.

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#### SYLLABUS

##### 319. Health, Public.

(1) Statute distinguishes osteopathic physician and surgeon and osteopathic physician.

(2) Health board should not issue license to practice as osteopathic physician and surgeon upon a certificate of foreign State authorizing holder to practice as osteopathic physician.

#### INQUIRY

CARSON CITY, October 4, 1928.

Under Statutes 1925, chapter 118, may the Board of Osteopathy of this State issue a license to practice osteopathy as a physician and surgeon to a practitioner who presents a California license authorizing such person to practice osteopathy as a physician in the State of California.

#### OPINION

Statutes 1925, supra, defines osteopathy and regulates the practice thereof. This law makes it unlawful: (a) To practice medicine as an osteopathic physician or (b) to practice medicine as an osteopathic physician and surgeon, without obtaining a license.

Section 12 of the Act differentiates in respect to the rights and privileges of osteopathic physicians and osteopathic physicians and surgeons. It provides:

Osteopathic physicians and surgeons licensed hereunder shall have the same rights as physicians and surgeons of other schools of medicine. Osteopathic physicians licensed hereunder shall have the same rights as physicians and surgeons of other schools of medicine, with respect to the treatment of cases or the holding of offices in public institutions.

It will be noted, therefore, that osteopathic physicians are not treated in the same manner, under the provisions of this Act, and a distinction is definitely made as between osteopathic physicians and osteopathic physicians and surgeons.

Section 7 provides the qualifications necessary to practice as an osteopathic physician and surgeon. The Act is silent, however, as to the qualifications necessary to practice medicine as an osteopathic physician.

Section 10 gives the board discretionary power to recognize and issue a license without examination to the practitioner who has been licensed in another State, where the requirements of such State are deemed equivalent to the requirements of this State at the date of such license.

In the instant case, the board could not issue a license, under the circumstances, as an osteopathic physician and surgeon because the California license authorizes the applicant to practice as an osteopathic physician. The board could, however, issue a license to practice as an osteopathic physician if, in its discretion, the requirements of the State of California at the time the license was issued are equivalent to those of the State of Nevada.

Respectfully submitted,

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

DR. EMORY M. LORD, *State Board of Osteopathy, Reno, Nevada*.

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SYLLABUS

320. **Corporation—Fee for Issuing Reincorporation Charter.**

Where corporation is reincorporated under sec. 82 of Statutes 1925, Corporation Law, a fee of five dollars must be charged for issuing charter.

INQUIRY

CARSON CITY, October 8, 1928.

A company organized under the Corporation Act of 1903 desires to come under the 1925 Act as provided in section 82, chapter 177, Statutes 1925, and a new charter is issued. Shall any fee be charged for the new charter?

OPINION

The new charter mentioned in the inquiry is in the form of a certificate.

Section 77, chapter 177, Statutes 1925, providing for the fees to be charged under said Act, provides in part as follows:

For all certificates not hereby provided for, five dollars.

It is the opinion of this office, therefore, that, although a new charter is not specifically mentioned in section 77, a fee of five dollars must be charged therefor.

Respectfully submitted,

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

By WM. J. FORMAN, *Deputy Attorney-General*.

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

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## SYLLABUS

## 321. University of Nevada—Resident of State—Tuition Charge.

If at the time a person matriculates at the University he is not a resident of Nevada, a residence thereafter established would not entitle such student to free tuition unless the family of such student is a bona fide resident of the State.

## INQUIRY

CARSON CITY, October 23, 1928.

A matriculated at the University of Nevada at a time when he was not a resident of the State. Thereafter A resided within the State of Nevada a sufficient length of time to establish a residence, but, during all of the time, his family did not reside within the State.

Is A entitled to receive free tuition at the University of Nevada under section 4648, Revised Laws of Nevada, as amended?

## OPINION

Section 4648 provides:

The Board of Regents of the University of Nevada shall have the power to fix a tuition charge for students at that University; *provided, however*, that tuition shall be free (a) to all students whose families are bona fide residents of the State of Nevada, and (b) to all students whose families reside outside of the State of Nevada, providing such students have themselves been bona fide residents of the State of Nevada for at least six months prior to their matriculation at the University.

Under this section, free tuition may be obtained at the University by those who, by reason of the facts existing, are entitled to be classified under the exemptions of subdivision (a) or subdivision (b).

In the question submitted, A, the student, was not a resident of this State for a period of six months prior to the time of his entrance in the University of Nevada. The statute plainly indicates the intention, in cases where parents of the student reside outside of the State, to charge a tuition fee unless, at the time of matriculation, the student is a bona fide resident of the State of Nevada and has resided therein for a period of six months. Under the law, this qualification must exist at the time of matriculating to warrant an exemption from tuition fees under subdivision (b). The fact that A, after he entered the University, became a bona fide resident and citizen of this State, would not exempt him from the payment of tuition fees unless the facts are such as would entitle A to be classified under subdivision (a) of the statute.

The query submitted calls for a construction of the law, and the opinion is limited to the scope of the inquiry.

Respectfully submitted,

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

DR. WALTER E. CLARK, *President, University of Nevada, Reno, Nevada.*

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## SYLLABUS

322. **Revenue—Assessment—Time for Certification of Assessment Book Directory.**

The failure to deliver assessment book certified to County Auditor within statutory time would not invalidate assessment.

## INQUIRY

CARSON CITY, November 21, 1928.

Will an assessment levied by an irrigation district be rendered invalid by reason of the failure of the Secretary of the Board of Directors of such district to certify the assessment book to the County Auditor, prior to October 15, as required by section 29 of the Irrigation District Act, as amended, Statutes 1927, chapter 182, page 18.

## OPINION

The statute in question provides:

An assessment book shall be made up for the lands in each county in which the district is situated, and the Secretary of the Board of Directors shall forthwith certify the same not later than October 15 of each year to the County Auditor or County Auditors, as the case may be, who shall enter such assessments in the tax rolls of such county or counties.

In considering a similar question in the case of *State v. Northern Belle M. Co.*, 15 Nev. 385, the Supreme Court of this State held:

The provision as to time for completing the assessment roll is merely directory, and any irregularity in this respect is a defense in an action for the taxes, only to the extent that the taxpayer has been injured thereby,

and in the case of *State v. Western Union Tel. Co.*, 4 Nev. 338 held:

The time prescribed by the revenue law within which the assessor is to complete his assessment roll is only for the convenience of other officers; his dilatoriness furnishes no matter of which a taxpayer can complain, or on account of which he can defeat the tax.

In view of these decisions it is the opinion of this office that the fact that the assessment book mentioned in the inquiry was not certified to the County Auditor until after October 15 would not invalidate the assessment.

Respectfully submitted,

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

By WM. J. FORMAN, *Deputy Attorney-General.*

HON. J. A. JURGENSON, *District Attorney, Lovelock, Nevada.*

## SYLLABUS

## 323. Public Service Commission—No Authority to Review Assessment Made by Irrigation Districts.

## INQUIRY

CARSON CITY, December 10, 1928.

Has the Public Service Commission of Nevada jurisdiction to review assessments and charges made for water by the Walker River Irrigation District?

## OPINION

Section 7 of the Public Service Commission Act defines public utilities and grants to the Public Service Commission the power to supervise, regulate, and control such utilities.

The Walker River Irrigation District was organized under Statutes 1919, chapter 64 (In Re. Walker River Irrigation District, 44 Nev. 321).

This statute authorizes the formation of a district upon petition of a majority of holders of title of the land situated within the proposed district. A complete and comprehensive plan of procedure is outlined in the Act, including the authority lodged in the Board of Directors to fix the rate and levy an assessment upon lands in the district sufficient to raise the annual interest on outstanding bonds or any contractual obligation. The law further defines the several funds that may be created, and includes in the general fund the cost of operation, maintenance, and management.

Briefly stated, the purpose of the Act is to permit landowners with water rights to pool their interests and pledge their property for raising funds, so that greater benefits may accrue to all. The agency authorized by the legislature may be defined as a mutual, cooperative corporation, organized not for profit, engaged in distributing water to its members for use upon lands within this district. It is also defined as a special State organization for State purposes, with limited power to perform certain work which the policy of the State requires.

The Supreme Court of California, in the case of *McFadden v. The Board of Supervisors of Los Angeles County*, 16 Pac. 397, ruled that the provisions of law authorizing the Board of Supervisors to fix rates on water to be sold did not apply to a corporation distributing water not for profit and where the distribution was made to stockholders of such corporation only. The Court stated:

In this case it is clearly apparent that the waters under the control of the corporation were acquired to be held and employed for the use of the stockholders only. An individual can certainly acquire water to be used on his own land. With such use a Board of Supervisors would have nothing to do. We know of no reason why individuals cannot associate themselves, take on a corporate form, and acquire water to be used on their own lands. When this is done, we are of opinion that a Board of Supervisors can have no more power over the rates to be paid by the stockholders than in the case of individuals.

So long, therefore, as an irrigation district confines its efforts to supplying water to those within the district, it is not functioning as a

public utility within the provisions of section 7 of the Public Service Commission Act, and the latter would have no authority to supervise or control charges and assessments.

Authorities examined in rendering opinion:

*Nampa v. Meridian Irrigation District*, 147 Pac. 75;

*Central Oregon Irrigation District v. Public Service Commission*, 196 Pac. 832;

*Allen v. Railroad Commission*, 176 Pac. 466.

Respectfully submitted,

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

HON. JOHN F. SHAUGHNESSY, *Chairman, Nevada Public Service Commission, Carson City, Nevada.*

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SYLLABUS

**324. Corporations—Foreign and Domestic—Charges to be made by Secretary of State.**

(1) Where a foreign corporation changes its resident agent in this State and files certificate reciting the change, it is not necessary for resident agent appointed to file an acceptance with the Secretary of State.

(2) No fee is collectible by the Secretary of State for filing such paper for either a domestic or foreign corporation.

INQUIRY

CARSON CITY, December 15, 1928.

When a foreign corporation changes its resident agent in this State and files a certificate reciting the change in compliance with section 5024, Revised Laws, 1912, is it necessary for the new agent to file an acceptance of appointment in the office of the Secretary of State, and copy of such acceptance, certified by the Secretary of State, in the office of the County Clerk of the county in which the foreign corporation has its principal place of business?

When appointment is made in accordance with the above-named section by foreign corporation, is there any fee for filing same?

Also, is there any fee for filing appointment of resident agent by domestic corporations other than filing list of officers designating resident agent?

OPINION

You are advised that, after an examination of the law, your several questions are answered in the negative.

Respectfully submitted,

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

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

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## CASES PENDING JANUARY 1, 1927

## 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 Lohiday v. Serugham, as State Engineer, et al. Complaint filed April 19, 1919. Action against State Engineer in reference to water right No. 14315.

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.

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.  
 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.  
 Estate of John J. Hill. 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. Pedrolli. 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 Cleverly. 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. Exceptions as to facts filed.  
 George Heard. Exceptions as to facts filed.  
 Lovelock Water Users Association. Exceptions as to facts filed.  
 Willow Vista Livestock Co. Exceptions as to facts filed.  
 W. S. Yates. Exceptions as to facts filed.  
 Hunter & Lytton v. Myers. Submitted to Court.  
 Chas. Dressi. Exceptions as to facts filed.  
 Henry Anderson. Exceptions as to facts filed.  
 Frank Fernald. Exceptions as to facts filed.

Robert W. Anderson. Exceptions as to facts filed.  
 Q. D. Boyd. Exceptions as to facts filed.  
 O'Neil Bros. L. & S. Co. Exceptions as to facts filed.  
 Aurelio Papa. Exceptions as to facts filed.  
 Paul Giudici. Exceptions as to facts filed.  
 Mrs. T. D. Griffin. Exceptions as to facts filed.  
 Mrs. Hattie A. Downey. Exceptions as to facts filed.  
 J. N. Phillips. Exceptions as to facts filed.  
 Mrs. Isabella Dewar. Exceptions as to facts filed.  
 James Russell Estate. Exceptions as to facts filed.  
 H. H. Coryell. Exceptions as to facts filed.  
 Batisse Tamara. Exceptions as to facts filed.  
 Griswold-Henderson Livestock Co. Exceptions as to facts filed.  
 J. J. Wright. Exceptions as to facts filed.  
 M. Aguirre. Exceptions as to facts filed.  
 Chas. Clubine. Exceptions as to facts filed.  
 Sarah E. Thacker. Exceptions as to facts filed.  
 Union Canal Ditch Co. v. Rogers Estate. Exceptions as to facts filed.

In the United States Supreme Court—Humboldt Land and Cattle Co. v. Robert A. Allen, etc., et al. On appeal from decree of U. S. District Court.

#### Public Service Commission

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 Second Judicial District Court, Washoe County—Guy C. Dewey v. Public Service Commission, et al. Action brought to secure an order declaring chapter 162, Statutes 1925, unconstitutional. Complaint issued September 14, 1926.

#### Highway Department

In the Second Judicial District Court, Washoe County—State v. Hunken Estate. Complaint filed July 23, 1924. Condemnation proceedings.

In the Second Judicial District Court, Washoe County—Geo. S. Green v. Highway Department, etc. Damage suit. Complaint filed June 15, 1926.

In the Second Judicial District Court, Washoe County—J. N. Evans Estate Company v. Department of Highways, et al. To secure judgment for lands belonging to company used by Highway Department.

#### Suits Instituted by and on Behalf of State

In the First Judicial District Court, Ormsby County—State v. State Bank & Trust Co. Receivership matter.

In the First Judicial District Court, Ormsby County—State v. Nye and Ormsby County Bank. Receivership matter.

In the Supreme Court of the United States—State of Nevada v. Crown-Willamette Paper Company. Permission to file complaint granted March 11, 1918. Action brought to restrain pollution of waters of the Truckee River.

#### Original Matters

In the Supreme Court of Nevada—In the Matter of the Application of Nicolas Calvo for Writ of Prohibition. Stockwatering case. Petition for Writ of Prohibition filed June 21, 1926.

#### General Matters

In the Superior Court, County of Santa Cruz, State of California—In the Matter of the Estate of Henry Wood, Deceased. Action to revoke probate of will leaving property to Nevada State Orphans brought by Louise Slausson Forrest. Petition praying for revocation of probate of the will filed July 13, 1926.

In the Superior Court, County of Santa Cruz, State of California—In the Matter of the Estate of Henry Wood, Deceased. Action to declare the rights of the heirs. Petition praying for declaration of rights under the will served September 23, 1926.

In the Tenth Judicial District Court, Clark County—Frank E. Matzdorff, et ux, v. National Land Value Guaranty Co., et al. Action brought to have receiver appointed and compel State Treasurer to turn over to plaintiffs certain securities.

#### 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 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 First Judicial District Court, Storey County—In Re Estate of Della Fitzpatrick, Deceased. Petition filed June 16, 1923, to escheat estate to State of Nevada.

In the Third Judicial District Court, Lander County—Golconda Cattle Co. v. Tax Commission. Action brought to recover taxes.

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, White Pine County—State of Nevada v. Nevada Consolidated Copper Co. Action to recover bullion tax.

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 First Judicial District Court, Douglas County—A. J. Pedrolì 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. Pedrolì 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 Second Judicial District Court, Washoe County—In Re Estate of James Gordon, Deceased. Action instituted to escheat estate of deceased to State of Nevada. Letters of Administration issued January 12, 1925.

In the Second Judicial District Court, Washoe County—In Re Estate of Elizabeth Manning, Deceased. Inheritance tax matter. Notice of filing of report, etc., January 16, 1925.

In the Ninth Judicial District Court, White Pine County—State of Nevada v. Nevada Consolidated Copper Company, et al. Bullion tax matter. Complaint filed April 1, 1925.

In the Tenth Judicial District Court, Clark County—In Re Estate of John Leonard, Deceased. Action instituted to escheat estate of deceased to State of Nevada. Order for citation prepared June 9, 1925.

In the Tenth Judicial District Court, Clark County—In Re Estate of James McKnight, Deceased. Action instituted to escheat estate of deceased to State of Nevada. Information received November 21, 1925.

In the First Judicial District Court, Ormsby County—State of Nevada v. Standard Oil Company. Action to recover excise tax on gasoline sales. Complaint filed November 9, 1925.

In the First Judicial District Court, Ormsby County—Comstock Milling Corporation v. Nevada Tax Commission, et al. Protest as to valuation fixed by Board of Equalization. Complaint filed March 6, 1926.

In the Tenth Judicial District Court, Clark County—In the Matter of the Estate of I. C. Hill, Deceased. Action instituted to escheat estate of deceased to State of Nevada. Information filed March 30, 1926.

In the First Judicial District Court, Ormsby County—Comstock Milling Company v. Nevada Tax Commission. Action to compel Board of Equalization to reduce assessed valuation of company's property. Complaint filed September 2, 1926.

In the Second Judicial District Court, Washoe County—In the Matter of the Estate of John Quinn, Deceased. Action brought to have court enter judgment escheating estate of deceased to State of Nevada. Petition filed December 24, 1926.

In the Third Judicial District Court, Eureka County—In the Matter of the Estate of Pierre Auxo, Deceased. Notice of appraisal filed April 24, 1924. Action instituted to escheat estate to State of Nevada.

In the Supreme Court of Nevada—State of Nevada v. Tonopah Extension Mining Company, a Corporation. Petition for rehearing cases on appeal from Fifth Judicial District Court filed December 22, 1926.

#### Criminal Cases

In the United States District Court, District of Nevada—State v. Thomas W. Goodwin. Murder case. Petition for removal and for writ of certiorari filed February 26, 1926.

In the Supreme Court of Nevada—State v. W. I. Williams. On appeal from judgment of conviction of murder.

In the Supreme Court of Nevada—State v. Peter Diamond, or Diamondouros. On appeal from White Pine County.

### CASES COMMENCED 1927-1928

#### Tax Commission

(Including Escheats and Inheritance Tax Cases)

In the Second Judicial District Court, Washoe County—In the Matter of the Estate of James Sherley. Escheat case, Washoe County. Information of Attorney-General filed February 18, 1927.

In the First Judicial District Court, Storey County—Comstock Milling Corporation, a Corporation, v. Nevada Tax Commission, Frank Kline, et als., as Members of the Board of County Commissioners of Storey County, Agnes Hamilton as County Treasurer, William S. Boyle as District Attorney of Storey County, Fred B. Balzar, et als., as Members of the Board of Equalization of the State of Nevada, M. A. Diskin as Attorney-General, and Ed. Peterson as State Controller. To recover judgment for plaintiff for \$14,620, taxes paid under alleged excessive assessment. Complaint filed May 16, 1927.

In the First Judicial District Court, Storey County—State of Nevada v. United Comstock Mines Company, et al. Action to recover delinquent bullion taxes for second and third quarters of 1924. Complaint filed October 11, 1927.

In the Fifth Judicial District Court, Nye County—In the Matter of the Estate of William A. Clark, Deceased. Action brought to settle claim of the State for inheritance tax. Settlement affected October 8, 1927.

In the First Judicial District Court, Ormsby County—In the Matter of the Estate of Owen Leonard, Deceased. Action brought to have State pay to petitioner the sum of \$1,516 previously escheated to await the appearance of Owen Leonard, brother of John Leonard, deceased. Petition served on Attorney-General November 7, 1927.

In the United States District Court, District of Nevada—Nevada-California Power Company, a Corporation, v. Charles L. Slavin, in his capacity of Treasurer and ex officio Tax Receiver of the County of Nye, et al. Action brought to

fix valuation of plaintiff's property in Nevada for 1927 at \$925,000, and to grant plaintiff writs enjoining defendants from enforcing exorbitant valuations. Complaint in equity filed December 29, 1927.

In the United States District Court, District of Nevada—Nevada-California Power Company, v. Haywood Clifton Roberson, in his capacity as Treasurer and ex officio Tax Receiver of the County of Esmeralda, et al. Action brought to fix valuation of plaintiff's property in Nevada for 1927 at \$925,000, and to grant plaintiff writs enjoining defendants from enforcing exorbitant valuations. Complaint in equity filed December 30, 1927.

In the Second Judicial District Court, Washoe County—In the Matter of the Estate of William Lawlor, Deceased. Escheat matter, Washoe County. Letters of administration issued August 19, 1927.

In the Tenth Judicial District, Clark County—State of Nevada v. James T. Hawkins. Action to recover \$539.50 for taxes due for sale of motor vehicle fuel. Complaint prepared April 1, 1928. Case compromised by State Auditor Vencill on payment of \$335.

In the Ninth Judicial District Court, White Pine County—State of Nevada v. Henry Larsen. Action brought to obtain an accounting of gross proceeds of the business and to collect common-carrier motor vehicle license tax for period between January 1, 1925, and December 31, 1926. Complaint prepared April 24, 1928. Compromise accepted by State Auditor Vencill.

In the Ninth Judicial District Court, White Pine County—In the Matter of the Estate of Thomas Mahan, Deceased. Action brought to have estate escheated to State. Petition for letters of administration filed February 15, 1923.

In the Sixth Judicial District Court, Humboldt County—F. W. Holbert v. State of Nevada, County of Humboldt, and Nevada Tax Commission. Action instituted to recover \$766.82, alleged excess taxes paid for 1927. Summons and complaint served September 6, 1928.

In the First Judicial District Court, Ormsby County—In the Matter of the Petition of Martin Bidondo for the residue of the Estate of Pete Bidondo, also known as Pierre Bidondo, heretofore escheated to the State of Nevada. Action brought to reclaim residue of estate of son, which escheated to State on October 25, 1927. Petition filed June 22, 1928.

In the First Judicial District Court, Ormsby County—In the Matter of the Petition of A. S. Baker, as Administrator of the Estate of A. W. Baker, Deceased, for the residue of the Estate of A. W. Baker, heretofore escheated to the State of Nevada. Action brought to recover \$102.80 formerly escheated to the State in Nye County. Petition for return of estate to legal heirs filed November 20, 1928.

In the Supreme Court of Nevada—State of Nevada ex rel. Adams-McGill Company v. John O. McKernan. Action brought to compel County Auditor McKernan to comply with orders of State Tax Commission and make certain changes in assessment roll of White Pine County. Petition for writ of mandamus filed November 22, 1928.

#### Criminal Cases

In the Supreme Court of Nevada—George Lewis and William Benjamin Lewis v. State of Nevada. On appeal from Washoe County from judgment of conviction of robbery. Record on appeal filed January 28, 1927.

In the Supreme Court of Nevada—John Cytty v. State of Nevada. On appeal from Nye County from judgment of conviction of assault with intent to kill. Transcript on appeal filed February 2, 1927.

In the Justice's Court of Carson Township, Ormsby County—State of Nevada v. Ed Malley, H. C. Clapp, and George A. Cole. Embezzlement charge on complaint of Governor. Complaint filed May 7, 1927.

In the First Judicial District Court, Ormsby County—State of Nevada v. Ed Malley, et al. Indictment No. 1, Misappropriation by Treasurer, as defined by section 6660, Rev. Laws, 1912. Call for grand jury issued May 17, 1927. Defendants arraigned May 21, 1927.

In the First Judicial District Court, Ormsby County—State of Nevada v. Ed Malley, et al. Indictment No. II, Using a Bank to Injure, Deceive, and Defraud (Sec. 648, Rev. Laws, 1912). Call for grand jury issued May 17, 1927. Defendants arraigned May 21, 1927.

In the First Judicial District Court, Ormsby County—State of Nevada v. Ed Malley, et al. Indictment No. III, Using a Bank to Injure, Deceive, and Defraud, as defined by section 648, Rev. Laws, 1912. Call for grand jury issued May 17, 1927. Defendants arraigned May 21, 1927.

In the First Judicial District Court, Ormsby County—State of Nevada v. Ed Malley, et al. Indictment No. IV, Using a Bank to Injure, Deceive, and Defraud, as defined by section 648, Rev. Laws, 1912. Call for grand jury issued May 17, 1927. Defendants arraigned May 21, 1927.

In the First Judicial District Court, Ormsby County—State of Nevada v. Ed Malley, et al. Indictment No. V, charging defendants with embezzlement from bank as defined by section 648, Rev. Laws, 1912. Call for grand jury issued May 17, 1927. Defendants arraigned May 21, 1927.

In the First Judicial District Court, Ormsby County—State of Nevada v. Ed Malley, et al. Indictment No. VI, charging defendants with forgery, as defined by section 6664, Rev. Laws, 1912. Call for grand jury issued May 17, 1927. Defendants arraigned May 21, 1927.

In the First Judicial District Court, Ormsby County—State of Nevada v. Ed Malley, et al. Indictment No. VII, charging defendants with receiving a Controller's warrant to the Controller's own use and benefit, as defined by section 2824, Rev. Laws, 1912. Defendants arraigned May 21, 1927.

In the Supreme Court of Nevada—In the matter of the Application of Ed Malley for a Writ of Habeas Corpus. Application for writ directing reduction of bail bond filed May 26, 1927.

In the Supreme Court of Nevada—State of Nevada v. Thomas Ramage. Transcript on appeal filed February 18, 1928. On appeal from Washoe County from judgment of conviction for passing a fraudulent check.

In the Supreme Court of Nevada—Ed Malley, et al. v. State of Nevada. On appeal from judgment of Ormsby County court. Transcript of testimony and proceedings, judgment roll, record on appeal, and bill of exceptions filed June 22, 1928.

In the Supreme Court of Nevada—William Muldoon v. State of Nevada. Action brought on appeal from Lyon County judgment wherein Muldoon was found guilty of possession of narcotics. Bill of exceptions filed June 18, 1928.

In the Supreme Court of Nevada—A. S. Phipps, Frank Boarth, George Kalember, and Alex Wise v. The State of Nevada. Action brought on appeal from judgment of Lyon County District Court. Record on appeal filed July 5, 1928.

#### Highway Department

In the First Judicial District Court, Douglas County—The State of Nevada, Acting By and Through the Department of Highways of the State of Nevada in the Name of and on Behalf of the State of Nevada, v. Carson and Tahoe Lumber and Fluming Corporation, a Corporation. Action brought to condemn certain lands as a right of way. Complaint filed January 16, 1928.

#### State Engineer

In the Sixth Judicial District Court, Humboldt County—In the Matter of the Determination of the Relative Rights of Claimants and Appropriators of the Waters of the Humboldt River Stream System and its Tributaries. Action brought to stay operation of Order of Determination as it affects reservoir storage right of Lovelock Land and Development Company. Order to show cause why operation should not be stayed filed November 28, 1928.

In the Sixth Judicial District Court, Humboldt County—In the Matter of the Determination of the Relative Rights of Claimants and Appropriators of the Waters of the Humboldt River Stream System and its Tributaries. The State of Nevada v. Glen Hibbs and Camille Hibbs. Complaint for criminal contempt and order to show cause filed and issued June 5, 1928. Action brought on complaint of State Engineer charging criminal contempt, defendants having

interfered with water commissioner in performance of his duties on Humboldt River.

In the Sixth Judicial District Court, Humboldt County—In the Matter of the Determination of the Relative Rights in and to the Waters of Tony Creek and its Tributaries in Humboldt County, State of Nevada. Action brought to adjudicate waters of Tony Creek. Final order of determination filed June 23, 1928.

#### Public Service Commission

In the First Judicial District Court, Ormsby County—Fallon Ely Stage Company, a Corporation, v. Public Service Commission of Nevada, J. F. Shaughnessy, W. H. Simmons, and George W. Malone, as Members of the Nevada Public Service Commission, and the Nevada Central Railroad Company, a Corporation, Defendants. Action brought to have order of Public Service Commission of March 28, 1927, granting the Nevada Central Railroad Company a certificate of public convenience between Reno and Ely vacated. Summons and complaint served June 24, 1927.

In the First Judicial District Court, Douglas County—The State of Nevada v. L. N. Anderson and H. C. Anderson, Doing Business Under the Firm Name and Style of Anderson Brothers, et al. Action brought to restrain defendants from engaging in the motor vehicle business for hire until they have procured licenses as required by chapter 185, Stats, 1927. Complaint filed July 13, 1927.

In the Supreme Court of Nevada—State of Nevada v. L. N. Anderson, et al. On appeal from decision of Judge of First Judicial District Court refusing injunction. Notice of appeal and bill of exceptions filed October 13, 1927.

In the First Judicial District Court, Douglas County—Guy C. Dewey v. The Public Service Commission of Nevada, and J. F. Shaughnessy, W. H. Simmons, and George W. Malone, as Commissioners of the Public Service Commission of Nevada, and Virginia & Truckee Railway, a Corporation. Action to have certificate of public convenience granted Virginia & Truckee Railway for additional motor stage service between Reno, Carson, and Minden, set aside. Complaint filed January 30, 1928.

In the Ninth Judicial District Court, White Pine County—State of Nevada v. Henry Larsen. Action brought to obtain an accounting of gross proceeds of the business and to collect common-carrier motor vehicle license tax for period between January 1, 1925, and December 31, 1926. Complaint mailed to District Attorney for filing April 24, 1928.

In the First Judicial District Court, Douglas County—State of Nevada v. A. W. Walters. Action brought to obtain an accounting of gross proceeds of the business and to collect common-carrier motor vehicle license tax for period between January 1, 1926, and December 31, 1926. Complaint mailed to District Attorney for filing April 24, 1928.

In the First Judicial District Court, Douglas County—State of Nevada v. L. N. Anderson and H. G. Anderson, Doing Business Under the Firm Name and Style of Anderson Brothers. Action brought to obtain an accounting of gross proceeds of the business and to collect common-carrier motor vehicle license tax for period between January 1, 1925, and December 31, 1926. Complaint mailed to District Attorney for filing April 24, 1928.

In the First Judicial District Court, Douglas County—State of Nevada v. Guy C. Dewey. Action brought to obtain an accounting of gross proceeds of the business and to collect common-carrier motor vehicle license tax for period between January 1, 1925, and December 31, 1926. Complaint mailed to District Attorney for filing April 24, 1928.

In the First Judicial District Court, Douglas County—State of Nevada v. F. & F. Transportation Company. Action brought to obtain an accounting of gross proceeds of the business and to collect common-carrier motor vehicle license tax for period between January 1, 1925, and December 31, 1926. Complaint mailed to District Attorney for filing April 24, 1928.

In the First Judicial District Court, Douglas County—State of Nevada v. Merritt Olds. Action brought to obtain an accounting of the gross proceeds of the business and to collect common-carrier motor vehicle license tax for the period between January 1, 1925, and December 31, 1926. Complaint mailed to District Attorney for filing April 24, 1928.

In the Second Judicial District Court, Washoe County—State of Nevada v. Roy Haslett. Action brought to obtain an accounting of the gross proceeds of the business and to collect the common-carrier motor vehicle license tax for the period between January 1, 1925, and December 31, 1926. Complaint mailed to District Attorney for filing April 24, 1928.

In the Second Judicial District Court, Washoe County—State of Nevada v. L. S. and J. S. Ginnocchio, Doing Business Under the Firm Name and Style of Gardnerville Motor Truck Freight Line and Nevada-California Transportation Company. Action brought to obtain an accounting of the gross proceeds of the businesses and to collect the common-carrier motor vehicle license tax for the period between January 1, 1925, and December 31, 1926. Complaint mailed to District Attorney for filing April 24, 1928.

In the Second Judicial District Court, Washoe County—State of Nevada v. Frank Word. Action brought to obtain an accounting of the gross proceeds of the business and to collect common-carrier motor vehicle license tax for the period between January 1, 1925, and December 31, 1926. Complaint mailed to District Attorney for filing April 24, 1928.

In the Second Judicial District Court, Washoe County—State of Nevada v. Frank J. Sullivan. Action brought to obtain an accounting of the gross proceeds of the business and to collect the common-carrier motor vehicle license tax for the period between January 1, 1925, and December 31, 1926. Complaint mailed to District Attorney for filing April 24, 1928.

In the Second Judicial District Court, Washoe County—State of Nevada v. R. H. Crump. Action brought to obtain an accounting of the gross proceeds of the business and to collect the common-carrier motor vehicle license tax for the period between January 1, 1925, and December 31, 1926. Complaint mailed to District Attorney for filing April 24, 1928.

In the Eighth Judicial District Court, Churchill County—State of Nevada v. Roy A. Hamlin. Action brought to obtain an accounting of the gross proceeds of the business and to collect the common-carrier motor vehicle license tax for the period between January 1, 1926, and December 31, 1926. Complaint mailed to District Attorney for filing April 27, 1928.

In the Sixth Judicial District Court, Humboldt County—State of Nevada v. Joe Jaca. Action brought to obtain an accounting of the gross proceeds of the business and to collect the common-carrier motor vehicle license tax for the period between January 1, 1925, and December 31, 1926. Complaint mailed to District Attorney for filing April 27, 1928.

In the Sixth Judicial District Court, Humboldt County—State of Nevada v. Constantino Olavarria. Action brought to obtain an accounting of the gross proceeds of the business and to collect the common-carrier motor vehicle license tax for the period between January 1, 1926, and December 31, 1926. Complaint mailed to District Attorney for filing April 27, 1928.

In the Sixth Judicial District Court, Humboldt County—State of Nevada v. Wm. DeLong. Action brought to obtain an accounting of the gross proceeds of the business and to collect the common-carrier motor vehicle license tax for the period between January 1, 1926, and December 31, 1926. Complaint mailed to District Attorney for filing April 27, 1928.

In the Sixth Judicial District Court, Humboldt County—State of Nevada v. J. H. Crawford. Action brought to obtain an accounting of the gross proceeds of the business and to collect the common-carrier motor vehicle license tax for the period between January 1, 1926, and December 31, 1926. Complaint mailed to District Attorney for filing April 27, 1928.

In the Sixth Judicial District Court, Humboldt County—State of Nevada v. C. A. True. Action brought to obtain an accounting of the gross proceeds of the business and to collect the common-carrier motor vehicle license tax for the period between January 1, 1925, and December 31, 1926. Complaint mailed to District Attorney for filing April 27, 1928.

In the Sixth Judicial District Court, Humboldt County—State of Nevada v. B. F. Stanley. Action brought to obtain an accounting of the gross proceeds of the business and to collect the common-carrier motor vehicle license tax for the period between January 1, 1925, and December 31, 1926. Complaint mailed to District Attorney for filing April 27, 1928.

In the Sixth Judicial District Court, Humboldt County—State of Nevada v. Andres Plaza. Action brought to obtain an accounting of the gross proceeds of the business and to collect the common-carrier motor vehicle license tax for the period between January 1, 1925, and December 31, 1926. Complaint mailed to District Attorney for filing April 27, 1928.

In the Sixth Judicial District Court, Humboldt County—State of Nevada v. Joe Elordi. Action brought to obtain an accounting of the gross proceeds of the business and to collect the common-carrier motor vehicle license tax for the period between January 1, 1925, and December 31, 1926. Complaint mailed to District Attorney for filing April 27, 1928.

In the Supreme Court of Nevada—Guy C. Dewey v. Public Service Commission of Nevada, et als., and Virginia & Truckee Railway, a Corporation. On appeal from judgment of Douglas County District Court dated March 7, 1928, in favor of State of Nevada, and from order denying plaintiff's motion for new trial. Undertaking on appeal approved July 10, 1928.

#### Original

In the Supreme Court of Nevada—State of Nevada, ex rel. Thomas Williamson, v. H. A. Morton. Application presented to Attorney-General requesting that action be brought in the name of the State on behalf of relator, January 14, 1927. Action quo warranto to determine title to office of Assessor of Churchill County.

In the First Judicial District Court, Ormsby County—State of Nevada v. Carson Valley Bank, a Corporation. Action brought to recover \$516,322.16 on cashier's checks issued on December 31, 1926, by Carson Valley Bank to Ed Malley, State Treasurer. Complaint filed June 29, 1927.

#### General

In the Tenth Judicial District Court, Clark County—James Passno, et al. v. National Land Value Guaranty Company, a Corporation, Ed Malley, as State Treasurer of the State of Nevada, et als. Action brought to cancel certain securities held by State Treasurer. Complaint served January 17, 1927.

In the Tenth Judicial District Court, Clark County—O. C. Boggs et als. v. National Land Value Guaranty Company, a Corporation, Ed Malley, as State Treasurer of the State of Nevada, et als. Action brought to cancel certain securities held by State Treasurer. Complaint served January 17, 1927.

In the Tenth Judicial District Court, Clark County—S. R. Whitehead, et als. v. National Land Value Guaranty Company, a Corporation, Ed Malley, as State Treasurer of the State of Nevada, et als. Action brought to cancel certain securities held by State Treasurer. Complaint served January 17, 1927.

In the Tenth Judicial District Court, Clark County—Alexina Moffat, etc., et als. v. National Land Value Guaranty Company, a Corporation, Ed Malley, as State Treasurer of the State of Nevada, et als. Action brought to cancel certain securities held by State Treasurer. Complaint served January 17, 1927.

In the Tenth Judicial District Court, Clark County—Mary E. Hodgens, et als. v. National Land Value Guaranty Company, a Corporation, Ed Malley, as State Treasurer of the State of Nevada, et als. Action brought to cancel certain securities held by State Treasurer. Complaint served January 17, 1927.

In the Tenth Judicial District Court, Clark County—George H. Cook v. National Land Value Guaranty Company, a Corporation, Ed Malley, as State Treasurer of the State of Nevada, et als. Action brought to cancel certain securities held by State Treasurer. Complaint served January 17, 1927.

In the Tenth Judicial District Court, Clark County—Floy A. Gibson, et als. v. National Land Value Guaranty Company, a Corporation, Ed Malley, as State Treasurer of the State of Nevada, et als. Action brought to cancel certain securities held by State Treasurer. Complaint served January 17, 1927.

In the Tenth Judicial District Court, Clark County—Perry M. Housman, et als. v. National Land Value Guaranty Company, a Corporation, Ed Malley, as State Treasurer of the State of Nevada, et als. Action brought to cancel certain securities held by State Treasurer. Complaint served January 17, 1927.

In the Tenth Judicial District Court, Clark County—Antone Matteucci v. National Land Value Guaranty Company, a Corporation, Ed Malley, as State Treasurer of the State of Nevada, et als. Action brought to cancel certain securities held by State Treasurer. Complaint served January 17, 1927.

In the Tenth Judicial District Court, Clark County—Mary J. Russell v. National Land Value Guaranty Company, a Corporation, Ed Malley, as State Treasurer of the State of Nevada, et als. Action brought to cancel certain securities held by State Treasurer. Complaint served January 17, 1927.

In the Tenth Judicial District Court, Clark County—W. H. Elwell, et als. v. National Land Value Guaranty Company, a Corporation, Ed Malley, as State Treasurer of the State of Nevada, et als. Action brought to cancel certain securities held by State Treasurer. Complaint served January 17, 1927.

In the Tenth Judicial District Court, Clark County—J. C. Laravey, et als. v. National Land Value Guaranty Company, a Corporation, Ed Malley, as State Treasurer of the State of Nevada, et als. Action brought to cancel certain securities held by State Treasurer. Complaint served January 17, 1927.

In the Tenth Judicial District Court, Clark County—Cora C. Bray Jeshke, et als. v. National Land Value Guaranty Company, a Corporation, Ed Malley, as State Treasurer of the State of Nevada, et als. Action brought to cancel certain securities held by State Treasurer. Complaint served January 17, 1927.

In the Tenth Judicial District Court, Clark County—Maranda Craner, et als. v. National Land Value Guaranty Company, a Corporation, Ed Malley, as State Treasurer of the State of Nevada, et als. Action brought to cancel certain securities held by State Treasurer. Complaint served January 17, 1927.

In the Tenth Judicial District Court, Clark County—E. E. Smith v. National Land Value Guaranty Company, a Corporation, Ed Malley, as State Treasurer of the State of Nevada, et als. Action brought to cancel certain securities held by State Treasurer. Complaint served January 17, 1927.

In the Tenth Judicial District Court, Clark County—S. W. Deverall, et als. v. National Land Value Guaranty Company, a Corporation, Ed Malley, as State Treasurer of the State of Nevada, et als. Action brought to cancel certain securities held by State Treasurer. Complaint served January 17, 1927.

In the Tenth Judicial District Court, Clark County—Earl Walter Nungesser, et als. v. National Land Value Guaranty Company, a Corporation, Ed Malley, as State Treasurer of the State of Nevada, et als. Action brought to cancel certain securities held by State Treasurer. Complaint served January 17, 1927.

In the Tenth Judicial District Court, Clark County—Charles C. Romow, et als. v. National Land Value Guaranty Company, a Corporation, Ed Malley, as State Treasurer of the State of Nevada, et als. Action brought to cancel certain securities held by State Treasurer. Complaint served January 17, 1927.

In the Tenth Judicial District Court, Clark County—Leroy E. Dutton, et als. v. National Land Value Guaranty Company, a Corporation, Ed Malley, as State Treasurer of the State of Nevada, et als. Action brought to cancel certain securities held by State Treasurer. Complaint served January 17, 1927.

In the Tenth Judicial District Court, Clark County—Cora J. Noblitt v. National Land Value Guaranty Company, a Corporation, Ed Malley, as State Treasurer of the State of Nevada, et als. Action brought to cancel certain securities held by State Treasurer. Complaint served January 17, 1927.

In the Tenth Judicial District Court, Clark County—H. Blanding, W. S. Rhoads, J. S. Smith, and J. L. Filbey v. City of Las Vegas, Clark County, Nevada, County Commissioners, and Attorney-General. Action brought to enjoin defendants from obstructing a certain street in Las Vegas. Complaint filed March 2, 1927.

In the United States District Court, District of Nevada—Charles R. Detrick, as Insurance Commissioner of the State of California, and Gertrude F. Wilson and Emma K. Walker v. Ed Malley, as State Treasurer of the State of Nevada, National Land Insurance Company, a Corporation, Title & Trust Company of Nevada, a Corporation, et als. Action brought to restrain defendant Ed Malley from surrendering any of the securities involved to any of his codefendants. Subpena in equity and complaint served upon Ed Malley on April 19, 1927.

In the Tenth Judicial District Court, Clark County—John W. Seiders, v. National Land Value Guaranty Company, a Corporation, George B. Russell, as State Treasurer of the State of Nevada, et als. Action brought to cancel certain securities held by State Treasurer. Complaint served June 13, 1928.

In the Supreme Court of Nevada—Leonarda Tesoriere, Petitioner, v. Second Judicial District Court of the State of Nevada, in and for the County of Washoe, and George A. Bartlett, District Judge thereof. Petition for writ of prohibition filed to test the constitutionality of Statutes 1927, chapter 96. Petition filed July 15, 1927.

In the United States Circuit Court of Appeals for the Ninth Circuit—George B. Russell, as State Treasurer of the State of Nevada, substituted for Ed Malley, as State Treasurer of the State of Nevada, et als. Appellants, v. Charles R. Detrick, as Insurance Commissioner of the State of California, and Gertrude F. Wilson and Emma K. Walker, Appellees. Action brought upon appeal from the United States District Court, District of Nevada, June 7, 1927.

In the Tenth Judicial District Court, Clark County—Auburn D. Taylor and Nennie Taylor, his Wife, v. National Land Value Guaranty Company, a Corporation, George B. Russell, as State Treasurer, et als. Action brought to cancel certain securities held by State Treasurer. Complaint filed October 28, 1927.

In the Tenth Judicial District Court, Clark County—J. J. Tuckfield v. National Land Value Guaranty Company, a Corporation, George B. Russell, as State Treasurer, et als. Action brought to recover judgment against National Land Value Guaranty Company, et als., and to enjoin Russell from delivering plaintiff's securities to defendant companies. Complaint filed January 9, 1928.

In the Tenth Judicial District Court, Clark County—Robert H. Schaeffer and Julia Schaeffer, his Wife, v. National Land Value Guaranty Company, George B. Russell, as State Treasurer, et als. Action brought to recover judgment against National Land Value Guaranty Company and to enjoin Russell from delivering plaintiff's securities to defendant companies. Complaint filed January 9, 1928.

In the Tenth Judicial District Court, Clark County—E. R. Bailey and Mary D. Bailey, his Wife, v. National Land Value Guaranty Company, a Corporation, George B. Russell, as State Treasurer, et als. Action brought to recover judgment against National Land Value Guaranty Company and to enjoin Russell from delivering plaintiffs' securities to defendant companies. Complaint filed January 9, 1928.

In the Supreme Court of Nevada—In the Matter of the Application of N. Guisti for a Writ of Habeas Corpus. Action to secure writ of habeas corpus directed to Superintendent of Nevada School of Industry to bring Julio Guisti before the court. Petition for writ filed April 23, 1928.

#### CASES CLOSED SINCE JANUARY 1, 1927

In the First Judicial District Court, Ormsby County—The State of Nevada v. Standard Oil Company, a Corporation. Complaint filed November 9, 1925. Judgment in favor of plaintiff filed January 28, 1927.

In the Second Judicial District Court, Washoe County—In the Matter of the Estate of William Lawlor, Deceased. Letters of administration issued August 19, 1927. Order approving account of administrator filed February 9, 1928.

In the Second Judicial District Court, Washoe County—Guy C. Dewey v. Public Service Commission of Nevada, et al. Complaint filed September 14, 1926. Demurrer to complaint sustained, restraining order dissolved, and petition for injunction denied February 10, 1927.

In the Second Judicial District Court, Washoe County—J. N. Evans Estate Company, a Corporation, v. Department of Highways, et al. Complaint served October 3, 1926. Plaintiff awarded damages in the sum of \$547.50 February 10, 1927.

In the Superior Court, County of Santa Cruz, State of California—In the Matter of the Estate of Henry Wood, Deceased. Petition praying for revocation of probate of the will filed July 13, 1926. Action dismissed for lack of prosecution by petitioner February 14, 1927.

In the Supreme Court of Nevada—In the Matter of the Application of Nicolas Calvo for a Writ of Prohibition. Petition for writ of prohibition filed and alternative writ issued June 21, 1926. February 21, 1927, opinion in favor of State's contention filed, ordering the proceedings dismissed and the alternative writ discharged.

In the Supreme Court of Nevada—State, ex rel. Thomas Williamson, v. H. A. Morton. Application presented to Attorney-General requesting that action be brought in the name of the State on behalf of relator January 14, 1927. Decision rendered in favor of plaintiff March 17, 1927. Judgment in quo warranto filed March 19, 1927.

In the Second Judicial District Court, Washoe County—In the Matter of the Estate of James Sherley, Deceased. Inventory and appraisal filed October 5, 1926. Order for distribution filed March 7, 1927. Decree of final discharge of administrator filed March 28, 1927.

In the United States Supreme Court—Humboldt Land and Cattle Company v. Robert A. Allen, etc., et al. Petition for appeal and order granting appeal filed August 27, 1926. Decision confirming action of lower court filed April 18, 1927.

In the Supreme Court of Nevada—George Lewis and William Benjamin Lewis v. State of Nevada. Bill of exceptions and record on appeal filed January 1, 1927. Judgment of lower court affirmed May 4, 1927.

In the Supreme Court of Nevada—State of Nevada v. Tonopah Extension Mining Company, a Corporation. Petition for rehearing case on appeal from Fifth Judicial District Court filed December 22, 1926. Petition for rehearing denied May 4, 1927.

In the Second Judicial District Court, Washoe County—In the Matter of the Estate of John Quinn, Deceased. Notice of motion to set aside decree filed December 24, 1926. Motion denied May 6, 1927.

In the Justice's Court of Carson Township, Ormsby County—State of Nevada v. Ed. Malley, et al. Complaint filed May 7, 1927. Action referred to county grand jury and dismissed in Justice's Court on May 28, 1927.

In the Tenth Judicial District Court, Clark County—In Re Estate of John Leonard, Deceased. Order for citation, etc., prepared on June 9, 1925. Decision filed escheating one-half of estate to State of Nevada and the other half to Katherine Leonard Hauser May 19, 1927.

In the Supreme Court of Nevada—In the Matter of the Application of Ed. Malley for a Writ of Habeas Corpus. Petition filed May 26, 1927. Writ denied June 2, 1927.

In the Supreme Court of Nevada—State of Nevada v. John Cnty. Transcript on appeal filed February 2, 1927. Opinion filed reversing judgment of lower court and ordering new trial June 14, 1927.

In the Supreme Court of Nevada—State of Nevada v. W. F. Williams. Record on appeal and transcript filed August 31, 1926. Opinion of Supreme Court filed July 6, 1927, affirming judgment of lower court.

In the Supreme Court of Nevada—Leonarda Tesoriere v. Second Judicial District Court of the State of Nevada, in and for the County of Washoe, and George A. Bartlett, District Judge thereof. Petition for writ of prohibition filed July 15, 1927. Opinion sustaining the constitutionality of Nevada's 1927 divorce law filed August 4, 1927.

In the First Judicial District Court, Douglas County—State of Nevada v. L. N. Anderson and H. C. Anderson, Doing Business Under the Firm Name and Style of Anderson Brothers, et al. Action to restrain defendants from engaging in motor-vehicle business for hire until they have procured licenses as required by chap. 185, Stats. 1927. Complaint filed July 13, 1927. Application for temporary injunction denied August 11, 1927.

In the First Judicial District Court, Ormsby County—State of Nevada v. Ed. Malley, et al. Call for grand jury issued May 17, 1927. June 8, 1927, defendant Clapp entered plea of guilty and was sentenced to from five to fifteen years in Nevada State Penitentiary. September 3, 1927, other two defendants found guilty by jury. September 17, defendants sentenced to serve from five to fifteen years in penitentiary.

In the Fifth Judicial District Court, Nye County—In the Matter of the Estate of William A. Clark, Deceased. Settlement effected with attorney for estate on October 8, 1927. Order of confirmation signed by District Judge November 4, 1927.

In the Tenth Judicial District Court, Clark County—In the Matter of the Estate of I. C. Hill, Deceased. Attorney-General informed of matter March 30, 1926. Judgment escheating estate to State filed on November 14, 1927.

In the United States Circuit Court of Appeals, Ninth Circuit—George B. Russell, as State Treasurer of the State of Nevada, substituted for Ed. Malley as State Treasurer of the State of Nevada, et al. Appellants, v. Charles R. Detrick, as Insurance Commissioner of the State of California, and Gertrude F. Wilson and Emma K. Walker, Appellees. Appeal from U. S. District Court for the District of Nevada filed July 7, 1928. Order granting injunction by Federal District Court reversed December 28, 1927.

In the Supreme Court of Nevada—State of Nevada v. L. M. Anderson, et al. On appeal from decision of First Judicial District Court refusing injunction. Notice of appeal and bill of exceptions filed October 13, 1927. Case dismissed as all parties defendant had complied with law requiring motor-vehicle common carriers to pay semiannual license fee (the *res* of the original suit).

In the Sixth Judicial District Court, Humboldt County—In the Matter of the Determination of the Relative Rights of Claimants and Appropriators of the Waters of the Humboldt River Stream System and its Tributaries. Action to stay operation or Order of Determination as it affects reservoir storage rights of Lovelock Land & Development Company. Order to show cause in connection with restraining order filed November 28, 1927. Motions of Lovelock Lands, Inc., denied; motions of Humboldt Lovelock Irrigation Light & Power Company granted January 10, 1928.

In the First Judicial District Court, Ormsby County—State of Nevada v. Carson Valley Bank, a Corporation. Complaint filed June 29, 1927. Action to recover \$516,322.16 on cashier's checks issued on December 31, 1926, by Carson Valley Bank to Ed. Malley, State Treasurer. Board of Compromise and Adjustments created by Special Session of Legislature under Senate Bill No. 11 accepted \$154,896.65 in full settlement of this litigation and all State claims against Mr. Wingfield and other bondsmen on the official bonds of Ed. Malley, former State Treasurer, February 3, 1928. Special Session of Legislature, 1928, directed Attorney-General to dismiss action. Dismissal of action filed February 16, 1928.

In the First Judicial District Court, Douglas County—Guy C. Dewey v. Public Service Commission of Nevada, and J. F. Shaughnessy, W. H. Simmons, and George W. Malone, as Commissioners of the Public Service Commission of Nevada, and Virginia & Truckee Railway, a Corporation. Action brought to have certificate of public convenience theretofore granted railway company for additional stage service between Reno, Carson, and Minden set aside. Complaint filed January 30, 1928. Decision in favor of defendants filed February 25, 1928.

In the First Judicial District Court, Ormsby County—Fallon-Ely Stage Company, a Corporation, v. The Public Service Commission of Nevada, J. F. Shaughnessy, W. H. Simmons, and George W. Malone, as members of the Public Service Commission of Nevada, and the Nevada Central Railroad Company, a Corporation. Service of summons and complaint accepted June 24, 1927. Case dismissed February 16, 1928.

In the U. S. District Court, District of Nevada—The Nevada-California Power Company, a Corporation, v. Charles L. Slavin, in his capacity as Treasurer and ex officio Tax Receiver of the County of Nye, in the State of Nevada; Joseph T. Murphy, in his capacity as District Attorney of said County of Nye; and Lida Gilbert, in her capacity as Auditor of the said County of Nye. Complaint filed December 30, 1927. Final decree *pro confesso* entered by Court March 1, 1928.

In the U. S. District Court, District of Nevada—The Nevada-California Power Company, a Corporation, v. Haywood Clifton Roberson, in his capacity as Treasurer and ex officio Tax Receiver of the County of Esmeralda in the State of Nevada; John A. Houlahan, in his capacity as District Attorney of the

said County of Esmeralda; and Rose Gaffney Malone, in her capacity as Auditor of the said County of Esmeralda. Complaint filed December 29, 1927. Final decree *pro confesso* filed March 1, 1928.

In the First Judicial District Court, Storey County—In Re Estate of Delia FitzPatrick, Deceased. Petition filed June 16, 1923, to escheat estate to State of Nevada. Order escheating estate filed March 3, 1928.

In the Supreme Court of Nevada—State v. Peter Diamond, or Diamondouros. On appeal from White Pine County. Bill of exceptions filed December 30, 1926. Judgment of lower court affirmed March 6, 1928.

In the Ninth Judicial District Court, White Pine County—State of Nevada v. Henry Larsen. Complaint prepared April 24, 1928. Compromise accepted by State Auditor Vencill on April 28, 1928, in full settlement of suit.

In the Second Judicial District Court, Washoe County—State of Nevada v. R. H. Crump. Complaint mailed to District Attorney for filing April 24, 1928. Compromise of 30% accepted by District Attorney in full settlement of suit May 4, 1928.

In the United States District Court, District of Nevada—Charles R. Detrick, as Insurance Commissioner of the State of California, and Gertrude F. Wilson and Emma K. Walker v. Ed. Malley, as State Treasurer of the State of Nevada, Ed. Malley, National Land Insurance Company, a Corporation, Title & Trust Company of Nevada, a Corporation, et al. Bill of complaint served April 19, 1927. Order filed dismissing action June 22, 1928.

In the Ninth Judicial District Court, White Pine County—In the Matter of the Estate of Thomas Mahan, Deceased. Petition for letters of administration filed February 15, 1923. Court order issued escheating residue of estate to State of Nevada, June 5, 1928.

In the Sixth Judicial District Court, Humboldt County—In the Matter of the Determination of the Relative Rights of Claimants and Appropriators of the Waters of the Humboldt River Stream System and its Tributaries. The State of Nevada v. Glen Hibbs and Camille Hibbs. Complaint for criminal contempt filed June 5, 1928. June 16, 1928, case dismissed on motion of Attorney-General.

In the Superior Court of Santa Cruz County, State of California—In the Matter of the Estate of Henry Wood, Deceased. Petition praying for declaration of rights under the will served September 23, 1926. Memorandum opinion filed by Court, June 28, 1928, upholding creation of trust fund as provided by will.

In the First Judicial District Court, Ormsby County—In the Matter of the Petition of Martin Bidondo for the Residue of the Estate of Pete Bidondo, also known as Pierre Bidondo, Heretofore Escheated to the State of Nevada. Petition filed June 22, 1928. Court order filed granting petition July 12, 1928.

In the Tenth Judicial District Court, Clark County—James Passno and Alice Passno, His Wife, v. National Land Value Guaranty Company, a Corporation; National Land Insurance Company, a Corporation; Ed. Malley, as State Treasurer of the State of Nevada, et al. Summons issued January 11, 1927. Stipulation that judgment of cancellation may be entered mailed to County Clerk for filing July 16, 1928.

In the Tenth Judicial District Court, Clark County—S. R. Whitehead and Gertrude E. Whitehead, His Wife, v. National Value Guaranty Company, a Corporation; National Land Insurance Company, a Corporation; Ed. Malley, as State Treasurer of the State of Nevada, et al. Summons issued January 11, 1927. Stipulation that judgment of cancellation may be entered mailed to County Clerk for filing July 16, 1928.

In the Tenth Judicial District Court, Clark County—Alexina Moffat, et al., et al. v. National Land Value Guaranty Company, a Corporation; National Land Insurance Company, a Corporation; Ed. Malley, as State Treasurer of the State of Nevada, et al. Summons issued January 11, 1927. Stipulation that judgment of cancellation may be entered mailed to County Clerk for filing July 16, 1928.

In the Tenth Judicial District Court, Clark County—O. C. Boggs, et al. v. National Land Value Guaranty Company, a Corporation; National Land Insurance Company, a Corporation; Ed. Malley, as State Treasurer of the State of

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In the Tenth Judicial District Court, Clark County—Mary E. Hodgens, et al. v. National Land Value Guaranty Company, a Corporation; National Land Insurance Company, a Corporation; Ed. Malley, as State Treasurer of the State of Nevada, et al. Summons issued January 11, 1927. Stipulation that judgment of cancellation may be entered mailed to County Clerk for filing July 16, 1928.

In the Tenth Judicial District Court, Clark County—Antone Matteucci v. National Land Value Guaranty Company, a Corporation; National Land Insurance Company, a Corporation; Ed. Malley, as State Treasurer of the State of Nevada, et al. Summons issued January 11, 1927. Stipulation that judgment of cancellation may be entered mailed to County Clerk for filing July 16, 1928.

In the Tenth Judicial District Court, Clark County—E. E. Smith v. National Land Value Guaranty Company, a Corporation; National Land Insurance Company, a Corporation; Ed. Malley, as State Treasurer of the State of Nevada, et al. Summons issued January 11, 1927. Stipulation that judgment of cancellation may be entered mailed to County Clerk for filing July 16, 1928.

In the Tenth Judicial District Court, Clark County—Cora J. Noblitt v. National Land Value Guaranty Company, a Corporation; National Land Insurance Company, a Corporation; Ed. Malley, as State Treasurer of the State of Nevada, et al. Summons issued January 11, 1927. Stipulation that judgment of cancellation may be entered mailed to County Clerk for filing July 16, 1928.

In the Tenth Judicial District Court, Clark County—George H. Cook v. National Land Value Guaranty Company, a Corporation; National Land Insurance Company, a Corporation; Ed. Malley, as State Treasurer of the State of Nevada, et al. Summons issued January 11, 1927. Stipulation that judgment of cancellation may be entered mailed to County Clerk for filing July 16, 1928.

In the Tenth Judicial District Court, Clark County—Perry Housman, et al. v. National Land Value Guaranty Company, a Corporation; National Land Insurance Company, a Corporation; and Ed. Malley, as State Treasurer of the State of Nevada, et al. Summons issued January 11, 1927. Stipulation that judgment of cancellation may be entered mailed to County Clerk for filing July 16, 1928.

In the Tenth Judicial District Court, Clark County—E. R. Bailey, et al. v. National Land Value Guaranty Company, a Corporation; National Land Insurance Company, a Corporation; and George B. Russell, as State Treasurer of the State of Nevada, et al. Summons issued January 11, 1927. Stipulation that judgment of cancellation may be entered mailed to County Clerk for filing July 16, 1928.

In the Tenth Judicial District Court, Clark County—Cora C. Bray Jeshke v. National Land Value Guaranty Company, a Corporation; National Land Insurance Company, a Corporation; and Ed. Malley, as State Treasurer of the State of Nevada, et al. Summons issued January 11, 1927. Stipulation that judgment of cancellation may be entered mailed to County Clerk for filing July 16, 1928.

In the Tenth Judicial District Court, Clark County—Mary J. Russell v. National Land Value Guaranty Company, a Corporation; National Land Insurance Company, a Corporation; and Ed. Malley, as State Treasurer of the State of Nevada, et al. Summons issued January 11, 1927. Stipulation that judgment of cancellation may be entered mailed to County Clerk for filing July 16, 1928.

In the Tenth Judicial District Court, Clark County—J. J. Tuckfield v. National Land Value Guaranty Company, a Corporation; National Land Insurance Company, a Corporation; and George B. Russell, as State Treasurer of the State of Nevada, et al. Summons issued January 9, 1928. Stipulation that judgment of cancellation may be entered mailed to County Clerk for filing July 16, 1928.

In the Tenth Judicial District Court, Clark County—Robert H. Schaeffer, et al. v. National Land Value Guaranty Company, a Corporation; National Land Insurance Company, a Corporation; and George B. Russell, as State Treasurer of the State of Nevada, et al. Summons issued January 9, 1928. Stipulation that judgment of cancellation may be entered mailed to County Clerk for filing July 16, 1928.

In the Tenth Judicial District Court, Clark County—Auburn D. Taylor, et al. v. National Land Value Guaranty Company, a Corporation; National Land Insurance Company, a Corporation; George B. Russell, as State Treasurer of the State of Nevada, et al. Complaint filed and summons issued October 28, 1927. Stipulation that judgment of cancellation may be entered mailed to county clerk for filing July 16, 1928.

In the Tenth Judicial District Court, Clark County—S. W. Deverall, et al. v. National Land Value Guaranty Company, a Corporation; National Land Insurance Company, a Corporation; Ed. Malley, as State Treasurer of the State of Nevada, et al. Complaint filed and summons issued January 11, 1927. Stipulation that judgment of cancellation may be entered mailed to County Clerk for filing July 16, 1928.

In the First Judicial District Court, Douglas County—The State of Nevada, Acting by and Through the Department of Highways of the State of Nevada in the Name of and on Behalf of the State of Nevada, v. Carson and Tahoe Lumber and Fluming Company, a Corporation. Complaint filed January 16, 1928. Settlement agreement entered into July 18, 1928.

In the Tenth Judicial District Court, Clark County—Frank E. Matzdorf, et al. v. National Land Value Guaranty Company, a Corporation; National Land Insurance Company, a Corporation; Ed. Malley, as State Treasurer of the State of Nevada, et al. Complaint filed November 4, 1926. Stipulation that judgment of cancellation may be entered mailed to County Clerk for filing July 23, 1928.

In the Tenth Judicial District Court, Clark County—Floy A. Gibson, et al. v. National Land Value Guaranty Company, a Corporation, National Land Insurance Company, a Corporation; Ed. Malley, as State Treasurer of the State of Nevada, et al. Summons issued January 11, 1927. Stipulation that judgment of cancellation may be entered mailed to County Clerk for filing July 23, 1928.

In the Tenth Judicial District Court, Clark County—W. H. Elwell, et al. v. National Land Value Guaranty Company, a Corporation; National Land Insurance Company, a Corporation; Ed. Malley, as State Treasurer of the State of Nevada, et al. Summons issued January 11, 1927. Stipulation that judgment of cancellation may be entered mailed to County Clerk for filing July 23, 1928.

In the Tenth Judicial District Court, Clark County—J. C. Laravey, et al. v. National Land Value Guaranty Company, a Corporation; National Land Insurance Company, a Corporation; Ed. Malley, as State Treasurer of the State of Nevada, et al. Summons issued January 11, 1927. Stipulation that judgment of cancellation may be entered mailed to County Clerk for filing July 24, 1928.

In the Tenth Judicial District Court, Clark County—Maranda Craner, et al. v. National Land Value Guaranty Company, a Corporation; National Land Insurance Company, a Corporation; Ed. Malley, as State Treasurer of the State of Nevada, et al. Summons issued January 11, 1927. Stipulation that judgment of cancellation may be entered mailed to County Clerk for filing July 24, 1928.

In the Tenth Judicial District Court, Clark County—Earl Walter Nungesser, et al. v. National Land Value Guaranty Company, a Corporation; National Land Insurance Company, a Corporation; Ed. Malley, as State Treasurer of the State of Nevada, et al. Summons issued January 11, 1927. Stipulation that judgment of cancellation may be entered mailed to County Clerk for filing July 24, 1928.

In the Tenth Judicial District Court, Clark County—Charles C. Ronnow, et al. v. National Land Value Guaranty Company, a Corporation; National Land Insurance Company, a Corporation; Ed. Malley, as State Treasurer of the State of Nevada, et al. Summons issued January 11, 1927. Stipulation that judgment of cancellation may be entered mailed to County Clerk for filing July 24, 1928.

In the Tenth Judicial District Court, Clark County—Leroy E. Dutton, et al. v. National Land Value Guaranty Company, a Corporation; National Land Insurance Company, a Corporation; Ed. Malley, as State Treasurer of the State of Nevada, et al. Summons issued January 11, 1927. Stipulation that judgment of cancellation may be entered mailed to County Clerk for filing July 24, 1928.

In the Tenth Judicial District Court, Clark County—John W. Seiders v.

National Land Value Guaranty Company, a Corporation; National Land Insurance Company, a Corporation; George B. Russell, as State Treasurer of the State of Nevada, et al. Complaint filed April 30, 1928. Stipulation that judgment of cancellation may be entered mailed to County Clerk for filing July 24, 1928.

In the First Judicial District Court, Douglas County—State of Nevada v. F. & E. Transportation Company. Complaint mailed to District Attorney for filing April 24, 1928. Compromise settlement accepted by District Attorney August 1, 1928.

In the First Judicial District Court, Douglas County—State of Nevada v. Merritt Olds. Complaint mailed to District Attorney for filing April 24, 1928. Compromise settlement accepted by District Attorney August 1, 1928.

In the Supreme Court of Nevada—State of Nevada v. Thomas Ramage. Transcript on appeal filed February 18, 1928. Judgment of lower court affirmed August 6, 1928.

In the Supreme Court of Nevada—In the Matter of the Application of N. Guisti for a Writ of Habeas Corpus. Petition for writ filed April 23, 1928. Opinion filed August 8, 1928, ordering Guilio Guisti discharged from custody of Nevada Industrial School, but requiring him to report as provided by section 736, Rev. Laws.

In the Second Judicial District Court, Washoe County—State of Nevada v. Frank J. Sullivan. Complaint mailed to District Attorney for filing April 24, 1928. Compromise of 30% accepted by District Attorney in full settlement of suit August 16, 1928.

In the Second Judicial District Court, Washoe County—State of Nevada v. Frank Word. Complaint mailed to District Attorney for filing April 24, 1928. Compromise of 30% accepted by District Attorney in full settlement of suit August 16, 1928.

In the Second Judicial District Court, Washoe County—State of Nevada v. L. S. and J. S. Ginochio, Doing Business Under the Firm Name and Style of Gardnerville Motor Truck Freight Line and Nevada-California Transportation Company. Complaint mailed to District Attorney for filing April 24, 1928. Compromise of 30% accepted by District Attorney in full settlement of suit August 16, 1928.

In the First Judicial District Court, Douglas County—State of Nevada v. Guy C. Dewey. Complaint mailed to District Attorney for filing April 24, 1928. Compromise accepted by District Attorney in full settlement of suit September 1, 1928.

In the Second Judicial District Court, Washoe County—State of Nevada v. Roy Haslett. Complaint mailed to District Attorney for filing April 24, 1928. Compromise of 30% accepted by District Attorney in full settlement of suit September 7, 1928.

In the Sixth Judicial District Court, Humboldt County—State of Nevada v. Constantino Olavarria. Complaint mailed to District Attorney for filing April 27, 1928. Compromise accepted by District Attorney in full settlement of suit September 10, 1928.

In the Sixth Judicial District Court, Humboldt County—State of Nevada v. Wm. DeLong. Complaint mailed to District Attorney for filing April 27, 1928. Compromise accepted by District Attorney in full settlement of suit September 10, 1928.

In the Sixth Judicial District Court, Humboldt County—State of Nevada v. J. H. Crawford. Complaint mailed to District Attorney for filing April 27, 1928. Compromise accepted by District Attorney in full settlement of suit September 10, 1928.

In the Sixth Judicial District Court, Humboldt County—State of Nevada v. C. A. True. Complaint mailed to District Attorney for filing April 27, 1928. Compromise accepted by District Attorney in full settlement of suit September 10, 1928.

In the Sixth Judicial District Court, Humboldt County—State of Nevada v. Andres Plaza. Complaint mailed to District Attorney for filing April 27, 1928. September 10, 1928, compromise accepted by District Attorney in full settlement of suit.

In the Supreme Court of Nevada—State of Nevada v. Ed. Malley, et al. On appeal from judgment of Ormsby County court. Transcript of testimony and proceedings, judgment roll, record on appeal, and bill of exceptions filed June 22, 1928. Appeal dismissed on motion of appellants October 1, 1928.

In the First Judicial District Court, Ormsby County—State of Nevada v. Ed. Malley, et al. Indictment No. II, Using a Bank to Injure, Deceive, and Defraud. Defendants arraigned May 21, 1927. Case dismissed on motion of Attorney-General, October 1, 1928, the subject matter being covered by Indictment No. I under which the defendants were convicted.

In the First Judicial District Court, Ormsby County—State of Nevada v. Ed. Malley, et al. Indictment No. III, Using a Bank to Injure, Deceive, and Defraud. Defendants arraigned May 21, 1927. Case dismissed on motion of Attorney-General, October 1, 1928, the subject matter being covered by Indictment No. I under which the defendants were convicted.

In the First Judicial District Court, Ormsby County—State of Nevada v. Ed. Malley, et al. Indictment No. IV, Using a Bank to Injure, Deceive, and Defraud. Defendants arraigned May 21, 1927. Case dismissed on motion of Attorney-General, October 1, 1928, the subject matter being covered by Indictment No. I under which the defendants were convicted.

In the First Judicial District Court, Ormsby County—State of Nevada v. Ed. Malley, et al. Indictment No. V, charging defendants with embezzlement from bank. Defendants arraigned May 21, 1927. Case dismissed on motion of Attorney-General, October 1, 1928, the subject matter being covered by Indictment No. I under which the defendants were convicted.

In the First Judicial District Court, Ormsby County—State of Nevada v. Ed. Malley, et al. Indictment No. VI, charging defendants with forgery. Defendants arraigned May 21, 1927. Case dismissed on motion of Attorney-General, October 1, 1928, the subject matter being covered by Indictment No. I under which the defendants were convicted.

In the First Judicial District Court, Ormsby County—State of Nevada v. Ed. Malley, et al. Indictment No. VII, charging defendants with receiving a Controller's Warrant to the Controller's own use and benefit. Defendants arraigned May 21, 1927. Case dismissed on motion of Attorney-General, October 1, 1928, the subject matter being covered by Indictment No. I under which the defendants were convicted.

In the First Judicial District Court, Douglas County—State of Nevada v. A. W. Walters. Complaint mailed to District Attorney for filing April 24, 1928. Compromise accepted by District Attorney in full settlement of suit November 20, 1928.

In the First Judicial District Court, Douglas County—State of Nevada v. L. N. Anderson and H. G. Anderson, Doing Business Under the Firm Name and Style of Anderson Brothers. Complaint mailed to District Attorney for filing April 24, 1928. November 20, 1928, compromise accepted by District Attorney in full settlement of suit.

In the Supreme Court of Nevada—State of Nevada, ex rel. Adams-McGill Company, v. John O. McKernan. Petition for writ of mandamus filed November 22, 1928. Peremptory writ of mandamus issued November 30, 1928.

In the Sixth Judicial District Court, Humboldt County—State of Nevada v. Joe Jaca. Complaint mailed to District Attorney for filing April 27, 1928. Compromise accepted by District Attorney in full settlement of suit December 10, 1928.

In the Sixth Judicial District Court, Humboldt County—State of Nevada v. Joe Elordi. Complaint mailed to District Attorney for filing April 27, 1928. Compromise accepted by District Attorney in full settlement of suit December 10, 1928.

In the First Judicial District Court, Ormsby County—In the Matter of the Petition of A. S. Baker, as Administrator of the Estate of A. W. Baker, Deceased, for the Residue of the Estate of A. W. Baker, Heretofore Escheated to the State of Nevada. Petition for return of estate to legal heirs filed November 20, 1928. Petition granted December 13, 1928.

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