

STATE OF NEVADA  
**BIENNIAL REPORT**  
OF THE  
**ATTORNEY-GENERAL**

---

**1929=1930**

---

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



**CARSON CITY, NEVADA**  
STATE PRINTING OFFICE - - JOE FARNSWORTH, SUPERINTENDENT  
1931

STATE OF NEVADA

BIENNIAL REPORT

OF THE

ATTORNEY-GENERAL



BY J. J. BERRY, Attorney-General



CARSON CITY, NEVADA

STATE PRINTING OFFICE

1923

ATTORNEY-GENERAL OF NEVADA

**LETTER OF TRANSMITTAL**

STATE OF NEVADA,  
OFFICE OF THE ATTORNEY-GENERAL,  
CARSON CITY, December 31, 1930.

*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 1929 and 1930.

Very respectfully,

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

## ATTORNEYS-GENERAL OF NEVADA

---

G. A. NOURSE.....	1865-1866
R. M. CLARKE.....	1867-1870
L. A. BUCKNER.....	1871-1874
JOHN R. KITTRELL.....	1875-1878
M. A. MURPHY.....	1879-1882
W. H. DAVENPORT.....	1883-1886
J. F. ALEXANDER.....	1887-1890
J. D. TORREYSON.....	1891-1894
R. M. BEATTY <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.....	1923-1930

<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 OF ATTORNEY-GENERAL**

Section 4132, Revised Laws, requires the Attorney-General to make such suggestions concerning existing laws or the necessity for new legislation as his experience may suggest. In accordance with this provision, therefore, I tender the following suggestions:

### **ATTORNEY-GENERAL'S OFFICE**

The Attorney-General, being the legal advisor of the State, should not be required to act in an administrative capacity. It is impossible for him to function as a member of the several boards and commissions, as now required by law, and give his personal attention to the State's legal matters. The important duties of his office require that he be relieved from acting as a member of the boards and commissions, excepting the Board of Examiners and the Parole and Pardon Board.

### **STATE COURTS SHOULD FIRST CONSIDER LEGISLATIVE ACTS**

Where a State statute or administrative State order is alleged to be unconstitutional as violative of some right granted by the Constitution of the United States or as depriving a person of due process or equal protection of the law, or a State statute or an administrative order violates the commerce clause of the Federal Constitution, under section 266 of the Judicial Code an interlocutory injunction may issue from the Federal court restraining the State officer or board from operating under such statute.

During the past several years, in public utility cases, tax cases, and cases involving the constitutionality of the Water Law, and other matters involving orders of boards and commissions, litigants have had recourse to the Federal court in an effort to prevent the enforcement of such orders or to challenge the constitutionality of such statutes.

At the present time any Act of the Nevada Legislature may be challenged as unconstitutional in the Federal court, and, when such suit is instituted, the State courts are deprived of the right to first pass upon the validity of such legislation.

Under section 266 of the Federal Judicial Code the States are invited to enact legislation which will enable the State courts to pass upon these several matters in the first instance. I suggest the necessity of taking advantage of this section by enacting a law which would authorize the Attorney-General or any defendant in a suit instituted under section 266 of the Federal Judicial Code to institute an action in the State courts, and such legislation should confer upon the State courts power to grant a stay of proceedings in the Federal court pending the determination of such action in the State court. The State court would then be given the opportunity of construing its own laws in the first instance, and the questions presented could be determined more expeditiously.

**HUMBOLDT RIVER ADJUDICATION**

The final decision determining the rights of claimants to the use of water of the Humboldt River stream system will shortly be made. This matter is now pending before Honorable George A. Bartlett, acting judge of the Sixth Judicial District. Judge Bartlett's retirement from the bench requires legislative action so that findings of fact may be settled and signed after his term of office has expired.

The findings of fact in this case will consist of several hundred pages and must be served upon all claimants and thereafter approved and signed by the judge. It will require at least three months' time to prepare and serve the findings.

In order that Judge Bartlett may properly function after his retirement, I suggest that section 35 of the Water Code be amended, and the time limit for signing findings of fact be enlarged so that a judge may sign the findings of fact and conclusions of law within twelve months after the expiration of his term.

**NEVADA INDUSTRIAL COMMISSION**

The State of Nevada will be obliged to meet its responsibility incident to the construction of the Boulder Dam. Contractors and sub-contractors engaged in construction work will no doubt desire to have the Nevada Industrial Commission relieve them from injury hazard and compensation claims accruing therefrom.

In order that the commission may properly function and the rights of all be safeguarded, the following suggestions are tendered:

1. Amend the Industrial Insurance Act to include within its terms sub-contractors;
2. Amend section 2 (b) and other sections of the Act so that a reserve fund may be accumulated.

**CRIMINAL CASES**

During the past eight years a great number of criminal cases have been appealed to the Supreme Court. In these cases the defendants were convicted of various crimes ranging from larceny to murder in the first degree where the death penalty was inflicted. During this time but one appeal has been reversed by the Supreme Court.

This record in criminal cases has been due primarily to the careful manner in which the District Judges of this State are trying criminal cases with the assistance of able District Attorneys, and, also, to the further fact that the members of the Supreme Court have refused to reverse cases on technical grounds. It is only where a substantial right of the party has been violated that a reversal has been permitted.

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 Deputy, has been in daily consultation with one or more of the officers of whom he is the legal advisor on matters of great public importance.

## OPINIONS OF THE ATTORNEY-GENERAL

## SYLLABUS

## 325. Taxation—Schools—General School Tax.

(1) Section 2, subdivision 2, School Code (chapter 175, Statutes 1925) governs, being subsequent to conflicting section 129 School Code.

(2) Section 140 School Code provides for a levy of 25 cents in addition to that under section 152, subdivision 2.

(3) The legislative method for raising school taxes is exhausted after resort to the foregoing sections.

## INQUIRY

CARSON CITY, March 11, 1929.

(1) In determining the county general school tax rate, does section 139 or section 152(2) control?

(2) If section 139 controls, what is the effect of section 152(2)?

(3) Assuming the answer to No. 1 is to the effect that section 139 controls, is it necessary that the county school tax as provided for in section 139 have reached the fifty-cent limit before a special tax can be added under section 140?

(4) Assuming No. 1 is answered to the effect that section 152(2) controls, then how does section 140 apply?

(5) Assuming that No. 3 is answered to the effect that it is not necessary to reach a levy of fifty cents under section 139 before the special tax can be added under section 140, and that the general county tax is 24.4 and the special tax has reached its limit, is there any way a district can get more money without increasing the general county school tax, which would be an increase over the entire county as well as in the particular district needing the additional money?

## OPINION

(1) In determining the county general school tax, section 152, subdivision 2, of the School Code is applicable. Section 139 is contrary to the provisions of the latter section and the latter section, having been enacted, Stats. 1925, chapter 175, is the latest expression of the Legislature on the subject.

(2) The answer to the above question makes an answer to this question unnecessary.

(3) The same answer as stated to question 2.

(4) If the amount of tax raised by reason of section 152, subdivision 2, is not sufficient, then an additional tax under section 140, not exceeding 25 cents, may be levied.

(5) If the amount raised by reason of the additional tax authorized by section 140, together with section 152, subdivision 2, is not sufficient, the legislative method for raising tax has been exhausted.

Respectfully submitted,

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

HON. JOHN R. ROSS, *District Attorney, Yerington, Nevada.*

## SYLLABUS

326. **State Officers—Term Limit—Limit When Created by Legislature.**

(1) Constitutional offices, excepting that of Justice of the Supreme Court, extend not exceeding four years.

(2) The Legislature, in creating an office, may not provide a term exceeding four years.

(3) If the Constitution creates an office and fixes no term, the Legislature may provide a term thereof of more than four years.

(4) If the Legislature disregards the rule (syllabus 2), an election to such office would be valid but the provision for that part of the term in excess of four years would be void.

## INQUIRY

CARSON CITY, March 15, 1929.

(1) Does the Constitution of the State of Nevada provide for any elective official holding an office for a term greater than four years, excepting the judges of our Supreme Court?

(2) Does the Constitution of this State provide or permit the State Legislature to pass any law providing for an election of any official for a term longer than four years, except as to our Supreme Court judges?

(3) If the Legislature has passed such a statute, would the election of such person be legal, and for what length of time can he hold such office, or would the office be declared vacant?

## OPINION

(1) The Constitution of the State of Nevada contains no provisions fixing the terms of an elective officer in excess of four years, excepting the offices of Justices of the Supreme Court.

(2) Section 11, article 15, of the Constitution provides:

The tenure of any office not herein provided for, may be declared by law, or when not so declared, such office shall be held during the pleasure of the authority making the appointment; but the legislature shall not create any office the tenure of which shall be longer than four years, except as herein otherwise provided in this constitution.

Under this section, where an office is created by the Legislature, the term of such office may not exceed four years. Where the office is created by the Constitution and no term is fixed, the Legislature may fix such term in excess of four years.

(3) If the Legislature has created an office and fixed the term thereof in excess of four years, the election of a person to fill such office would be valid, but the term in excess of four years would be void.

Respectfully submitted,

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

HON. W. E. ORGAN, *Member of the Assembly, Carson City, Nevada.*

## SYLLABUS

## 327. Justices' Courts — Attachment Under \$100 — Alternative Statutory Provisions Applicable—Jurisdiction—Fees on Execution.

(1) Chapter 174, Statutes 1927, is special and supplementary respecting amounts under \$100, and does not prevent attachment in such amounts in suits brought under the general provisions of law governing Justices' Courts.

(2) Under section 874a Civil Practice Act, inserted by amendment, chapter 174, Statutes 1927 (to follow Rev. Laws 5816), the Justice of the Peace of Tonopah would have no jurisdiction over a named defendant resident of another town or city outside of Tonopah.

(3) Fees may be collected by the Justice and Constable on execution.

## INQUIRY

CARSON CITY, March 27, 1929.

(1) Referring to section 874a, p. 297 of the 1926-1927 Statutes of Nevada, that section begins with the words "In *all* cases," etc. At page 299, section 874h, it reads, "No attachment or garnishment shall issue, etc." With these two sections in mind, did the Legislature intend that a Justice of the Peace shall not issue an attachment or garnishment where the amount claimed does not exceed \$100? Has a Justice of the Peace the authority, even though an affidavit and undertaking has been filed, to issue an attachment where the claim does not exceed \$100? To be more clear: Are there two methods or procedures open to a claimant where the claim does not exceed \$100, one wherein a writ of attachment or garnishment may be issued by a Justice and one wherein a writ of attachment or garnishment cannot be issued by a Justice?

(2) Under the same section (874a) mentioned above, has the Justice of the Peace of Tonopah Township, Nye County, Nevada, any jurisdiction over a party named as a defendant when said defendant is a resident of Tybo, Nye County, Nevada (the demand not exceeding \$100 and the action to be maintained in Tonopah, there being no Justice of the Peace at Tybo)?

(3) Referring to page 299, section 874h, that section states as follows: "But execution may issue in the manner now prescribed by law, as in other cases arising in the Justice's Court." Are the Justice and Constable correct in collecting the fees prescribed by law for the issue and service of the execution, as in other cases?

## OPINION

(1) The Justice of the Peace has jurisdiction and authority to issue an attachment for an amount under one hundred dollars where claimant is not proceeding under Statutes 1927, p. 297. The provisions contained in these latter amendments apply only to cases where claimant proceeds thereunder, and they in no way affect or curtail the right of a party to request the issuance of an attachment under the general provisions of law applicable to Justice of the Peace Courts.

(2) The Justice of the Peace of Tonopah Township would have no jurisdiction over a party named defendant where said defendant is a resident of another town or city outside of Tonopah.

(3) Fees may be collected by the Justice of the Peace and Constable for issuing and serving an execution.

Respectfully submitted,

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

HON. WALTER BOWLER, *Tonopah, Nevada*.

---

SYLLABUS

328. **Statutes—Title—So Much of Subject Matter Not Embraced in Expressed Title Is Void.**

- (1) Constitution, article IV, section 17, interpreted.
- (2) Words "Salaries of deputies in the several State offices," describing subject matter embraced in an Act, do not extend to salary of Official Reporter of the Supreme Court.
- (3) The Legislature is presumed to act advisedly and in this case was advised.

INQUIRY

CARSON CITY, March 30, 1929.

There appears to be a difference of opinion regarding that part of Senate Bill No. 175 providing for the payment of \$2,700 to the Official Court Reporter, it being stated that there is a conflict between the title and this particular provision.

Will you kindly examine Senate Bill No. 175 (it being Chapter 116, of the 1929 laws) and inform me if, under this law as approved by the Governor on the 25th instant, I can issue a warrant in payment of the salary of this officer in accordance with the provisions of said Act.

OPINION

From the recitals contained in the title of this Act, it will be noted that the salary of the deputies in the several State offices is the subject matter for legislation. The title of the Act does not give the slightest intimation that the matter of the salary of the Official Reporter of the Supreme Court is to be considered. It is elementary, of course, that the Official Court Reporter is not a deputy State officer.

To sustain the Act of the Legislature in determining the compensation of the court reporter by reason of this statute, would be, in effect, by construction to eliminate from the Constitution of the State one of its most important provisions. Article 4, section 17, of the Constitution provides:

Each law enacted by the legislature shall embrace but one subject, and matter properly connected therewith, which subject shall be briefly expressed in the title; and no law shall be revised or amended by reference to its title only; but, in such case, the act as revised, or section as amended, shall be reenacted and published at length.

The Supreme Court of Nevada, in the case of Humboldt County v.

The County Commissioners of Churchill County, 6 Nev. 31, in construing this provision of the Constitution, stated:

The design of this provision is to prevent improper combinations to secure passage of laws containing subjects having no necessary or proper relation and which, as independent measures, could not be carried; also, to prevent the Legislature and the public from being misled by the title.

In the case of *State v. Hallock*, 19 Nev. 384, the Court stated:

The courts cannot enlarge the scope of the title. They are vested with no dispensing power. The constitution has made the title the conclusive index to the legislative intent as to what shall have operation. It is no answer to say that the title might have been made more comprehensive, if in fact the legislature have not seen fit to make it so.

See, also, *State v. Gibson*, 30 Nev. 353.

Having in mind, therefore, this provision of the Constitution, as construed by the Supreme Court of Nevada, it must follow that, because the title of this Act is not sufficiently broad to give notice that the salary of the Official Court Reporter was to be acted upon by the Legislature, the provisions contained in the Act concerning the salary of the Supreme Court Reporter are not effective for any purpose.

The fact that the title of this Act was not sufficiently broad to include this legislation was specifically called to the attention of the members of the several committees before whom this matter was pending, and a request was made that the title of the Act be amended so that it might include the Supreme Court Reporter. The failure, therefore, on the part of the Legislature to enact a title to this bill sufficiently broad to include the Supreme Court Reporter may not be assigned to ignorance of the law or ignorance of the fact.

Respectfully submitted,

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

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

---

#### SYLLABUS

#### 329. Statutes—Salaries of State Employees—Appropriations.

(1) Statutes 1929, chapter 208, interpreted to exclude clerk employed by a board or doing work under a special Act, such not being employed "in the offices of elected officers" and doing work of the nature designated.

(2) In computing salary schedules under Act, aggregate time of employment governs irrespective of continuity.

(3) Salaries may be paid from the General Fund if no special fund be designated, provided the intent to make an appropriation be clear and certain.

#### INQUIRY

CARSON CITY, April 25, 1929.

The following inquiries concerning chapter 208, Statutes of 1929, are submitted:

(1) Whether or not a clerk for the retirement division of the Department of Public Instruction and employed under authority of the Retirement Salary Board is entitled to the benefit of chapter 208, Statutes 1929.

(2) Whether a clerk engaged in research by authority of a special Act of the Legislature is within the provisions of the law.

(3) Where a former State employee is reemployed, who has been out of the service a week, month or a year, can such employee claim and be paid a salary in excess of the minimum by reason of and in accordance with the length of such prior service as specified in section 1 of said Act?

(4) As this Act does not specify from which fund these salaries are to be paid and no provision is made in the General Appropriation Act for the various salary raises, how can the various raises be paid, and from what fund?

#### OPINION

(1) Section 1 of the Act provides it shall apply to "each stenographer, typist or clerk \* \* \* employed in any of the various offices of elective officers of the State of Nevada."

A clerk employed by the Retirement Salary Board would not be employed by an elective officer and, therefore, would not come within the provisions of the Act.

(2) A person employed to do research work under the special Act of the Legislature authorizing such work could not be considered a clerk, typist, or stenographer employed in an elective office within the meaning of the Act, as such employment is of a different nature from that covered by the Act.

(3) Where a former State employee is reemployed by the State, such employee is entitled to credit for his or her former employment, for the reason that the benefits conferred by the Act are dependent solely upon length of time an employee is employed by the State and not upon continuous employment.

(4) The failure to specify from what fund a salary is to be paid does not invalidate an appropriation, if the intent appears to make such appropriation, but, such appropriation will be deemed to have been made from the General Fund. *State v. Westerfield*, 23 Nev. 468.

Respectfully submitted for the Attorney-General,

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

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

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

## SYLLABUS

## 330. Corporations. Domestic—Filing Fees—Changing Capitalization.

(1) An amendment not increasing the number of shares or the par value of shares of stock requires a filing fee of \$20 only in all cases where the original articles designated a number of shares without par value and no stock having par value.

(2) The fee for filing amended articles should, with the original fee, equal the amount payable if the amended were the original articles in cases where detriment would otherwise occur to the State from the whole transaction. This situation arises by reason of a downward-sliding scale of fees above \$1,000,000 aggregate capital, respecting par-value stock only.

## INQUIRY

CARSON CITY, April 26, 1929.

(1) A domestic corporation has a capitalization of 1,000,000 shares of no par value. The filing fee paid was \$100. This company has amended its articles by changing the value of the shares from no par value to the value of \$1 per share, making a total capitalization of \$1,000,000.

What is the fee for filing this amendment?

(2) A company has a capitalization of 2,500,000 shares of the par value of \$1—total capitalization, \$2,500,000. This company amends its articles by changing the 2,500,000 shares of a par value of \$1 per share to 2,500,000 shares of no par value, making a total capitalization of 2,500,000 shares.

What is the fee for filing this amendment?

## OPINION

(1) Under the facts stated, if the corporation had originally been organized for 1,000,000 shares of the par value of \$1, the charge under the law would have been \$100. Stats. 1929, chapter 195. The amendment proposed seeks to authorize the issuance of 1,000,000 shares of the par value of \$1 a share and, if the original articles contained such authorization, the fee, under the law, would have been \$100.

Statutes 1929, chapter 195, fixes the fees to be collected by the Secretary of State. As to the fees to be charged by the Secretary of State for filing amendments to articles of incorporation the law provides:

and whenever there shall be filed with the secretary of state a certificate amending articles or certificate of incorporation by increasing the authorized number of shares or the par value of shares, the secretary of state shall demand and receive for the use of the state ten cents on each one thousand dollars par value of such increase, or, in the case of shares without nominal or par value, ten cents for each additional one thousand shares so authorized.

The statute further provides as follows:

amended articles or certificates of incorporation or organization (other than those authorizing increase of capital stock), decrease of capital stock, the increase or decrease of par value of, or the number of shares, twenty dollars.

The amendment contemplated here cannot be said to be an amendment that contemplates the increase of the par value of the stock, because such contention implies that there must have been an initial issue to be increased. See *People v. Public Service Commission*, 122 N. Y. Sup. 641.

Inasmuch, therefore, as the amendment does not increase the par value of the stock or increase the number of shares, the charge to be made for filing such amendment would be \$20.

(2) If the amended articles were originally tendered for filing by the corporation mentioned, the charge would be \$250. Under the law, the charge that was legally made for the corporation as incorporated would be \$175.

It is my opinion that amendments may not be filed under terms more favorable than the original filing, and, also, that, by amendments to the original articles, the State cannot be deprived of the right to charge a filing fee that would have been charged for filing the original papers.

It is my opinion, therefore, that, under the second inquiry, the fee to be charged for filing the proposed amendment is the sum of \$75.

Respectfully submitted,

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

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

#### SYLLABUS

#### 331. Public Service Commission—Conditions Annexed to Certificates of Public Convenience.

Section 36½ Public Service Commission Act interpreted as permitting the imposition of terms and conditions different from those indicated in the application.

#### INQUIRY

CARSON CITY, April 30, 1929.

Whether or not the Public Service Commission of Nevada may, in granting an application for a certificate of public convenience, prescribe terms under which the certificate shall be granted different from those which the applicant proposes in his application.

#### OPINION

Section 36½ of the Public Service Commission Law provides in part: "The commission shall have the power, after hearing, to issue or refuse such certificate of public convenience, or to issue it for the construction of a portion only of the contemplated line, plant, or system, or extension thereof, and may attach thereto such terms and conditions as in its judgment the public convenience and necessity may require."

This section of the law apparently answers the question, and a similar law has been construed in the case of *Hunter v. Board of Public Utility Commissioners*, 141 Atl. p. 90.

We are, therefore, of the opinion that the Commission may prescribe terms under which a certificate shall be granted different from those which the applicant proposes in his application.

Respectfully submitted for the Attorney-General,

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

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

J. F. SLAGHNESSY, *Chairman of the Nevada Public Service Commission, Carson City, Nevada*.

---

SYLLABUS

332. **State Highway Law—Taxation—County—State Highway Fund and County Tax Levy Thereunder Is Eliminated.**

State Highway Act, Statutes 1917, chapter 169, as amended by Statutes 1929, chapter 138, interpreted.

INQUIRY

CARSON CITY, May 7, 1929.

Reference is made to the amendments to the State Highway Law passed by the last State Legislature and particularly to amended section 11. Section 11, as amended, reads as follows:

All money remaining in the county-state highway fund, and not obligated by July 1, 1929, is to be expended on the state highway system within the counties, such expenditure to be under the control and direct supervision of the state highway engineer.

The County Commissioners of several of the counties have asked if the amendment to section 11 abolishes the County-State Highway Fund, and if it will be permissible to levy and collect a tax, the proceeds of which will be placed in the County-State Highway Fund.

OPINION

Under Statutes 1917, chapter 169, by virtue of sections 10 and 11 of this law, the County-State Highway Fund was created. Statutes 1929, chapter 138, amends sections 10 and 11 of the General Highway Law by striking out from these sections the provisions concerning the creation of the County-State Highway Fund.

Authority for the County Commissioners to levy a tax under these sections has also been eliminated by reason of the amendment.

It is our opinion, therefore, that, by reason of the amendment, the County-State Highway Fund has been eliminated, and no authority exists under the provisions of this law for the several County Commissioners to levy a tax thereunder.

Respectfully submitted,

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

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

---

## SYLLABUS

333. **Fish and Game—Licenses—Statutory Penalties—Misdemeanor.**

(1) Possession by nonresident of fishing license not differing in form from resident license, deemed probably good defense against prosecution under section 55, chapter 178, Statutes 1929.

(2) Section 55, supra, denouncing fishing without a license and specifically providing for that offense as a "misdemeanor," held to make the penalty provisions in section 94 inapplicable, so that under section 55 a fine of less than \$50 lawfully may be imposed.

## INQUIRY

CARSON CITY, May 8, 1929.

I am herewith writing to ask you for an opinion as to whether or not, as a matter of law, a prosecution can be correctly maintained under the following situation:

I first call your attention to sections 53, 54, 55, 56, 57 and 60 of chapter 178, Session Laws of 1929.

(1) A nonresident of the State of Nevada secured a license, corresponding in substance to the provisions of section 53, and paid for the same the sum of \$1.50. A prosecution is instituted against him for fishing while in the possession of said license, upon the theory that he is a nonresident and not entitled to a \$1.50 license.

Mr. Summerfield and myself have some doubt as to whether or not such a prosecution can be successfully maintained, by reason of the fact that a license, and the only type of license provided by law, had been issued to him. The mere fact that section 54 gives the price schedule does not necessarily call for the issuance of any other type of license. In other words, it would seem that only one type of license may be issued and, as a matter of fact, the defendant in the instant case had such a license in his possession.

(2) In addition, I should like to ask for a ruling upon a slightly different question. Observe that section 55 provides that one "who fishes without having first procured a license therefor, as provided in this act, shall be guilty of a misdemeanor." Observe, also, the provisions of the last paragraph of section 94. In your opinion, if the action herein described is maintainable at all, are the provisions of section 94 controlling, and, in case of a conviction, may the Justice of Peace impose a fine of less than \$50?

## OPINION

(1) Statutes 1929, chapter 178, provides a general law in reference to hunting and fishing and other matters properly relating thereto. Section 53 of this law provides for a particular form of fishing and hunting license. This form, under the law, is to be issued irrespective of whether the party receiving the same is a citizen of the State of Nevada or a nonresident.

If, therefore, in the instant case, the party arrested had in his possession the form of license required by law, he would not be liable to a charge of fishing without a license. He possessed the proper license which the law required. If he were a nonresident, it was the duty of the party who issued the license to determine this fact at the time the

license was issued and make a charge accordingly, but, the license having been issued, we have no authority to go back of it and determine whether the party paid a sufficient amount under the law.

Under the facts stated, therefore, possession of the license, in my opinion, would be a complete defense.

(2) Section 55 of the statute makes it a misdemeanor for any person over the age of fourteen to hunt or fish without a license. As a penalty for such conduct, this section specifically provides that anyone who violates it is guilty of a misdemeanor.

Section 94 of the Act makes provision for the punishment of all sections of the Act and, upon conviction, a fine of not less than fifty dollars, etc., shall be imposed.

I concur in your construction of this law and am of the opinion that the punishment provision, as provided in section 94, has no application to section 55, and that a fine of less than fifty dollars may be imposed for section 55.

Respectfully submitted,

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

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

---

#### SYLLABUS

#### 334. Taxation — Personal Property — Automobiles Temporarily in State Not Taxable.

Statutes 1925, chapter 122, section 4, construed to exempt automobile of foreign corporation possessed by agent supervising installation of machinery.

#### INQUIRY

CARSON CITY, May 16, 1929.

Whether or not an agent of a California corporation who comes into this State for the purpose of installing machinery for a mining corporation is required to pay a personal property tax on an automobile in his possession belonging to his employer.

#### OPINION

Section 4, chapter 122, Statutes of 1925, provides, in part: "The owner shall then be required to pay to the county assessor the personal property tax on said vehicle *if same be subject to taxation in this State.*"

Whether the Assessor acted in accordance with law in taxing the vehicle mentioned in the inquiry depends upon whether or not such vehicle was taxable in this State. The test of what is taxable personal property is given in the case of *Robinson v. Longley*, 18 Nev. 71, wherein the Court states that, if the property was within this State only temporarily, in the ordinary course of business, or if it was really only passing through the State, it was not taxable.

If the facts in the case of the vehicle mentioned in the inquiry show that the owner had such vehicle within this State only temporarily and

for a short period, so that it could be said that the vehicle was actually only passing through the State, then it was not taxable; otherwise, it would be subject to taxation here.

Respectfully submitted for the Attorney-General,

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

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

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

---

SYLLABUS

335. **State Property—Statutes—Provision for Sale Strictly Construed—Nevada Historical Society.**

Statutes 1925, chapter 155, section 1, interpreted as limiting authority of Capitol Commissioners to sell State property to period ending January 1, 1927, other conditions being satisfied.

CARSON CITY, May 22, 1929.

I have your request for an opinion as to the authority of the Board of Capitol Commissioners to sell the Nevada Historical Society property under the provisions of Statutes 1925, p. 237.

OPINION

Section 1, Statutes 1925, chapter 155, in part provides:

The board of capitol commissioners of the State of Nevada are hereby authorized and directed as soon as the relics, library, manuscripts, museum, and collection of the Nevada historical society shall be provided with suitable quarters in the said Nevada building erected in Reno and, in any event, not later than January 1, 1927, to sell all lots, lands, and buildings heretofore acquired and purchased \* \* \*.

While this section fixes the time limitation when the sale shall be made as not later than January 1, 1927, it also appears from the Act that, before the sale was to be made, suitable quarters were to be had for the collection in the Nevada State Building. Both of these conditions, therefore, were to be considered in determining the date when the power of the Capitol Commissioners under the Act ceases. If the Nevada State Building was completed prior to January 1, 1927, and the collection described was moved prior to this date, under the provisions of the Act the sale of the property should have been made prior to January 1, 1927.

If the facts establish that, long prior to the present date, the collection has been housed in the Nevada State Building, I am of the opinion that the board would not now have authority to sell the property described in the Act. The Legislature apparently has directed that the sale shall be made prior to January 1, 1927; the limitation on this date, however, is fixed by the existence of facts which would warrant the right to remove the collection into the Nevada State Building.

After the 1st day of January, 1927, therefore, or after the time the

collection was moved into the Nevada State Building, the Capitol Commissioners would have no authority to order the sale because the provisions of the Act must be construed as fixing a date after which the board would have no authority to dispose of the premises.

See *Burkley v. The City of Omaha*, 167 N. W. 72; *Walsler v. Moran*, 42 Nev. 111.

It was with this situation in mind that, in my opinion under date of January 10, 1928, I suggested that the Legislature be requested to pass an Act giving the board this power.

Respectfully submitted,

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

HON. J. H. WHITE, *Secretary, Board of Capitol Commissioners, Carson City, Nevada.*

---

SYLLABUS

336. **State Board of Investments (State Board of Finance Successor), Powers of —State Permanent School Fund.**

Statutes 1917, section 4, page 399, interpreted to effect that bonds purchased as an investment of funds may be sold for cash in the open market to the highest bidder; the board being empowered to invest, convert and reinvest State Permanent School Funds.

INQUIRY

CARSON CITY, May 22, 1929.

The State Board of Finance at a meeting on May 8, 1929, passed the following resolution:

*Resolved*, That the Secretary be instructed to obtain from the Attorney-General an opinion as to the legal authority of this board to dispose of bonds held by the State Permanent School Fund with particular reference to the Commonwealth of Massachusetts Metropolitan Water Loan Bonds which this board may desire to sell at less than the purchase price in order to reinvest the funds at a higher yield.

Will you kindly furnish me with the required opinion?

OPINION

Your attention is called to section 4, Statutes 1917, p. 399. Under this section the Legislature has authorized the State Board of Investments to convert any bonds or securities in which any part of the State Permanent School Fund is now or at any time hereafter may be invested into cash by selling the same in the open market to the highest bidder.

Respectfully submitted,

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

HON. E. J. SEABORN, *Secretary, State Board of Finance, Carson City, Nevada.*

---

## SYLLABUS

**337. Constitutional Law — Statutes — County Government — Public Utilities — Hawthorne Waterworks Plant Statute Declared Constitutional.**

Statutes 1929, chapter 141, authorizing County Commissioners to grant a water utility franchise; also authorizing construction and operation of a municipal plant; authorizing a bond issue, taxation of district affected, etc., declared ambiguous but not repugnant to the State Constitution.

CARSON CITY, May 27, 1929.

An opinion is requested concerning the legality of chapter 141, Statutes 1929, p. 179.

## OPINION

I have carefully read the several sections of this law, and, while some of the provisions are ambiguous, I am of the opinion that the Act is constitutional.

Respectfully submitted,

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

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

## SYLLABUS

**338. State Officers—State Funds—Appropriations—Constitutional Law—Courts —Judicial Power—Automobiles, Right to Operate, Determination and Registration of Title.**

(1) Section 6, chapter 122, Statutes 1925, requires the Motor Vehicle Department to purchase certain containers. Section 8, chapter 217, Statutes 1929, requires the holder of a certificate of motor vehicle registration to carry it in a certain container. Section 2 of the same chapter requires the department to assess the cost of such a container against the purchaser of each certificate.

Chapter 213, Statutes 1929, forbids, inter alia, any State officer or the head of any department to bind the State or any fund "in excess of the specific amount provided by law." Held under the above facts, and in absence of specific appropriation, no such containers can be officially purchased, notwithstanding the expectation of reimbursement from the proceeds to come in through the sale thereof.

(2) Chapter 186, Statutes 1929, purports to authorize the Motor Vehicle Department to determine the ownership and title of certain motor vehicles and prohibits their registration or operation without a certificate of title from the department. Section 8, chapter 217, Statutes 1929, requires an appeal or court action as relief from adverse action by the department. Held, the foregoing provisions to be unconstitutional attempts to confer entire judicial power on an administrative officer and to provide for appeals.

## INQUIRY

CARSON CITY, May 27, 1929.

Your attention is directed to Statutes 1929, chapter 217, and to section 6, Statutes 1925, chapter 122.

If the provisions in reference to the purchasing of containers, as directed under Statutes 1929, are mandatory, you are advised that

no appropriation was made by the Legislature for this expenditure, and that this department has not money sufficient to pay for such supplies at the present time, and the money will not be available until during the year 1930:

An opinion is requested, therefor:

- (1) As to what action this department should pursue under the aforesaid legislative Act concerning the purchasing of containers; and
- (2) Is section 8, chapter 217, Statutes 1929, constitutional?

#### OPINION

Section 6, chapter 122, Statutes 1925, provides that "The department shall purchase all number plates, containers, and other supplies required by this Act."

Statutes 1929, chapter 217, is an amendment of the Uniform Motor Vehicle Anti-Theft Act which was passed by the 1929 session of the Legislature of the State of Nevada. Under section 8 of this amendment it is provided that "Every certificate of registration issued under the provisions of this Act shall be carried in a container that will protect the same, and in which the certificate may be removed only by mutilating the certificate."

Section 2 of the amendatory Act provides: "The vehicle department shall assess the cost of said container against the purchaser."

Under section 6 of the Motor Vehicle Act the duty is placed upon the Secretary of State to obtain containers for certificates in the first instance, and, while under section 2 of the amendatory Act the cost of such container must be assessed against the purchaser, such provision does not render available to your department sufficient money to pay for such containers until after sales of the containers are made to the purchasers.

It is noted in your request for an opinion that you state that at this time you have not sufficient money on hand to pay for such containers.

Under these facts, you are advised that under Statutes 1929, chapter 213, it is made unlawful for any State officer, commissioner, or head of any department in this State "to bind, or attempt to bind, the State of Nevada or any fund or department thereof, in any amount in excess of the specific amount provided by law."

Under this provision, therefore, it would be unlawful for your department to enter into any contract for the purchase of containers unless at the time such contract was entered into you had an amount of money on hand sufficient to comply with the provisions of the contract.

(2) Concerning the constitutionality of section 8, chapter 217, Statutes 1929, it will be noted that this section is an amendment to Statutes 1929, chapter 186. This Act designates your department as the tribunal which must pass upon the ownership and title of every motor vehicle that is to be operated in this State. No motor vehicles, under the terms of this Act, may register or operate without a certificate of title from your department. Section 8, *supra*, provides, in substance, that if, from the facts presented in respect to ownership, the department refuses to issue a certificate "unless the department reverses its decision or its decision is reversed by a court of competent jurisdiction, the applicant shall have no further right to apply for a certificate of

title." Further provision is made that "the department may, for a like reason, after notice and hearing, revoke registration already acquired \* \* \*. An appeal may be taken from any decision of the department as from the decision of a justice of the peace."

The Legislature, by enacting these several provisions, has placed with the department judicial power to determine the ownership and title of motor vehicles; it has further denominated conclusions reached by your department in reference to ownership as a decision from which the party aggrieved may appeal to courts in the same manner as appeals are taken from a decision of a Justice of the Peace.

The method of procedure thus provided for is unconstitutional and void for the reason that it attempts to confer judicial power upon an administrative officer. The Supreme Court of Nevada in the case of *Pitt v. Scrugham*, 44 Nev. 418, held certain sections of the Water Code of this State unconstitutional because the provisions of these sections gave judicial power to the State Engineer to hear and determine contests.

It is apparent from reading the sections quoted from the law, *supra*, that the motor vehicle department has been given a power to determine questions involving a property right, and the only recourse afforded to the property owner in case of an adverse decision is to appeal from such decision to the courts of this State.

It is my opinion, therefore, that these provisions are unconstitutional.

Respectfully submitted,

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

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

---

#### SYLLABUS

#### 339. Automobiles in Trade or Business — Registration and License — Foreign Origin.

(1) Section 2 Motor Vehicle Act interpreted in respect of facts as stated.

(2) Foreign cars brought into Nevada for purpose of engaging in business must procure Nevada license within five days after first entrance.

#### INQUIRY

CARSON CITY, May 29, 1929.

A car was driven into Nevada on a business mission, remaining here but one night. On May 16 the same car and same driver came into the State again on business.

Under section 2 of the Motor Vehicle Act does such motor vehicle become subject to the payment of the Nevada license?

#### OPINION

Section 2 of the Nevada Motor Vehicle Act provides, in part, as follows:

In case of motor vehicles brought into this State for the purpose of engaging in trade or business of any kind, and

motor vehicles or stage or bus lines, having defined interstate routes with one terminal in this state, or passing through this state with terminals outside the state, registration shall be made within five days after entering the State.

Under the provisions of this section, therefore, a motor vehicle which enters the State, under the conditions named, must, within five days after its first entrance into the State, procure a Nevada license.

Respectfully submitted for the Attorney-General,

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

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

HON. J. F. MILES, *County Assessor, Ely, Nevada*.

#### SYLLABUS

#### 340. Intoxicating Liquors—Licenses—Statutes—Repeals—Conflict of Laws.

Revised Laws, 6839, 6840 and 6841 relating to "mushroom" saloons near construction camps, held not repealed by Legislature, and in full force and effect.

#### INQUIRY

CARSON CITY, July 10, 1929.

Have sections 6839, 6840, and 6841, Revised Laws of Nevada, 1912, been repealed by State and national legislation, or are they now in full force and effect?

#### OPINION

The sections referred to have not been repealed by the Legislature of the State of Nevada and are, therefore, in full force and effect.

Respectfully submitted,

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

HON. F. B. BALZAR, *Governor, Carson City, Nevada*.

#### SYLLABUS

#### 341. Taxation—Personal Property—Sale Without Suit.

(1) In view of chapter 178, Statutes 1927, County Treasurer may not sell for delinquent taxes, without suit, personal property of an assessed value exceeding three hundred dollars.

(2) Opinion 307 (1927-1928) to the contrary was confined to a requested interpretation of chapter 162, Statutes 1927, and is now held categorically right but practically wrong.

#### INQUIRY

CARSON CITY, July 24, 1929.

Whether or not Opinion No. 307, Opinions of the Attorney-General, 1927-1928, is erroneous in ruling that a County Treasurer may sell for delinquent taxes, without suit, personal property which is assessed at a value greater than three hundred dollars.

## OPINION

The ruling above quoted was made under a construction of chapter 162, Statutes 1927. The inquiry in the opinion asked the question whether, under chapter 162, such action was authorized.

In view of chapter 178, Statutes 1927, undoubtedly this ruling is erroneous. Chapter 178 amends the same section and provides that a County Treasurer may sell personal property which has an assessed valuation not exceeding three hundred dollars.

Respectfully submitted for the Attorney-General,

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

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

HON. J. A. HOULAHAN, *District Attorney, Goldfield, Nevada*.

## SYLLABUS

342. **Automobiles—Common Carriers—Licenses.**

Section 3, chapter 326, Statutes 1927, interpreted to require license for each passenger car used in common carrier's business, notwithstanding some cars are "held" for use in case of emergency.

## INQUIRY

CARSON CITY, July 24, 1929.

A stage company, operating across the State of Nevada, uses eight stages in its business. Only six of these cars, however, will be used daily, but two are held for use in case of emergency. Should such company be required to secure licenses for the eight cars or for six cars?

## OPINION

Under the plain provisions of section 3 of chapter 326, Statutes 1927, a common carrier, operating such line within this State, is required to secure a license for each passenger car used in its business.

Respectfully submitted for the Attorney-General,

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

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

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

## SYLLABUS

343. **State Property—Nevada State Building—State Boards and Commissions—Conflict of Laws.**

(1) Chapter 40, Statutes 1925, and chapter 142, Statutes 1927, providing for the construction and supervision of the State Building in Reno, are not in conflict with chapter 215, Statutes 1929, providing for the lease of said building.

(2) The two first-named statutes did not authorize the boards thus designated to permanently allot space in said building for county exhibits nor restrict the lease under the last-named statute.

## INQUIRY

CARSON CITY, July 26, 1929.

By the provisions of chapter 40, Statutes of 1925, the Nevada Building Commission was created to construct and take charge of the State Building in the city of Reno. By chapter 142, Statutes of 1927, the Nevada State Building Board was created, consisting of the Governor, Secretary of State, and Inspector of Mines, and specifically charged with the control and supervision of the Nevada Building constructed by virtue of chapter 40, Statutes of 1925, and for which a bond issue was created to provide for the payment thereof.

The Nevada State Building Board, which is charged as custodian of said building, desires your opinion as to whether or not there is anything in the 1929 Statutes which relieves the board of the duties created by the laws hereinabove referred to, and also your opinion is desired upon the point as whether or not the board may legally transfer the possession of said building to the city of Reno or the county of Washoe by virtue of any of the provisions of the Statutes of 1929 or any lease between the city of Reno, county of Washoe, or State of Nevada, or between all or either of each bodies.

Your opinion is also requested as to whether or not, in view of certain contracts made with the various counties of the State of Nevada regarding the allotment of space in the building, and the statutes providing for the housing of county exhibits, perpetually prevents the State Building Board from surrendering possession and the custody of the building, and, in the event of such surrender, what liability, if any, devolves upon the State Building Board.

Your opinion also is requested as to whether or not chapter 40, Statutes of 1925, and chapter 142, Statutes of 1927, are repealed by any provision of the 1929 statutes so as to relieve the State Building Board of its duties, and, if so, what, if any, duties remain for the State Building Board.

## OPINION

As stated in the inquiry, Statutes of 1925 created a Nevada Building Commission, the duties of said commission being to construct a Nevada State Building at Reno and, after such construction, to take charge of the same.

By Statutes of 1927, chapter 142, the personnel of the Nevada Building Board was changed by legislative Act, and the Governor, Secretary of State, and Inspector of Mines were designated as a board to supervise the construction of said building under Statutes of 1925.

Statutes of 1929, chapter 215, designated the members of the State Capitol Commission as the agents of the State for the purpose of executing a lease of said building to the city of Reno for a period of ninety-nine years. The enactment of this latter statute would not repeal Statutes of 1927 nor would it in any way interfere with the duties of the board created under the 1927 Act. The Nevada Building Commission would still function.

Under the terms of the Statutes of 1929, the Board of Capitol Commissioners may legally transfer the possession of the Nevada State Building to the city of Reno, and, under this legislative mandate, no one has the authority to interfere with such transfer, and, after the lease has been executed, it becomes the duty of the State Capitol

Commissioners to perform each and every act necessary to carry out the terms of the legislative Act of 1929 and execute the lease and transfer the possession of the Nevada State Building to the city of Reno.

I am aware of no provision in either the Statutes of 1925 or 1927 which would authorize the Nevada Building Commission to enter into contracts with the various counties concerning the allotment of space for county exhibits. It is to be presumed, of course, that every person dealing with the State knows the law and, if such contracts were entered into, the existence of the contracts would in no way affect the right of the State to lease the building. The Legislature of this State has determined, by reason of the enactment of the 1929 law, that the Nevada State Building should be leased. Whether in making this determination the Legislature adopted a good or bad policy is not a question for decision.

Statutes of 1925, *supra*, and the Statutes of 1927, *supra*, are not repealed by the provisions of Statutes of 1929, and, under these prior statutes, the State Building Board may function in so far as said building is concerned. This board represents the State in matters connected with the State Building apart from the leasing of the same.

Respectfully submitted,

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

THE NEVADA STATE BUILDING BOARD, *Carson City, Nevada*.

---

#### SYLLABUS

#### 344. Waters—Irrigation Districts—Grand Juries, Inquisitorial Power—Public Corporations.

Irrigation districts, being public corporations under legislative authority, are subject to investigation as to their fiscal and financial affairs by the grand jury.

#### INQUIRY

CARSON CITY, August 6, 1929.

First, is it the right and privilege of a grand jury to investigate the fiscal and financial affairs of an irrigation district incorporated under the laws of the State of Nevada, in the same manner and of the same effect as they may examine into and make inquiry concerning the fiscal and financial affairs of the county in which they are impaneled; or of any legal subdivision such as a school district, city or other municipality?

Second, is an irrigation district incorporated under the laws of the State of Nevada amenable to and subject to the inquisitorial powers of the regularly impaneled grand jury of the county?

#### OPINION

I am of the opinion that a grand jury would have the right to investigate the fiscal and financial affairs of an irrigation district in the same manner as they may examine into the affairs of a school district or city. This conclusion is based upon the fact that the courts of the several States have held that an irrigation district is a public corporation and that its officers are public officials charged with the

duty of carrying out the provisions of the law. While some authorities seem to question the correctness of the statement that an irrigation district is a public corporation, for the purpose of your query I am of the opinion that a grand jury would have the power to investigate the affairs of such corporation. Organizations of this kind are brought into being by legislative authority for the purpose of promoting the general welfare.

The Supreme Court of the United States in the case of Fallbrook Irrigation District v. Bradley, 164 U. S. 112, held that the formation of a district amounted to the creation of a public corporation and that the officers were public officers.

See, also, Turlock Irrigation District v. Williams, 18 P. 379.

Respectfully submitted,

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

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

---

SYLLABUS

345. **Schools—Industrial Insurance—Liability for Injury to Student.**

(1) State school districts and school boards in their official capacity are not liable for a tort, and have no authority to insure against any such fancied liability.

(2) A student in a public school shop is not subject to insurance, not being an employee within the meaning of the Industrial Insurance Act.

INQUIRY

CARSON CITY, September 9, 1929.

- (1) Who is liable in case of an accident to a student in a school shop?
- (2) In case the liability extends to the school board, or school district, or the teacher, to what extent does the liability exist?
- (3) Can school boards take out insurance to protect students in case of such accidents?

OPINION

(1) Answering your first inquiry, it is impossible for us to state who might be liable under the circumstances without a complete statement of the facts.

(2) Under the laws of this State school districts are considered agencies of the State and would not be liable for a tort. As to whether or not the individuals constituting the school board or the teachers would be liable depends upon whether or not they were guilty of negligence.

(3) It is our opinion that school boards could not take out insurance, for the reason that the relation of employer and employee does not exist. In any event, the school boards in their official capacity would not be liable for a tort and, therefore, would not be authorized to take out insurance.

Respectfully submitted,

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

HON. WALTER W. ANDERSON, *State Director of Vocational Education,  
Carson City, Nevada.*

---

## SYLLABUS

**346. Fees—Clerk of Supreme Court.**

The exemption from payment of fees provided in chapter 71, Statutes 1921, is only for the officer, commission, etc., in official capacity, who is a party, and not for any private individual party in action.

## INQUIRY

CARSON CITY, September 10, 1929.

Whether, under Statutes of Nevada, 1921, chapter 71, a fee of twenty-five dollars should be charged in a proceeding entitled as follows: "A petition for Writ of Prohibition. R. E. Norton v. The Third Judicial District Court of the State of Nevada, in and for the County of Lander, and Honorable W. R. Reynolds, Judge of said Court."

## OPINION

Chapter 71, Statutes of 1921, provides in part as follows:

No such payment shall be required from, and no fees shall be charged by, said clerk in any action brought in or to said court wherein the state, or any county, city or town thereof, or any officer or commission thereof is a party in his or its official capacity, against said officer or commission.

This exemption is the only one granted to the payment of the twenty-five dollar fee.

We are of the opinion that the exemption only extends to the officer or commission in his or its official capacity, and not to a private individual bringing a suit or any proceeding against such officer or commission. This would seem to be the true intent of this section, as evidenced by the qualifying words "against said officer or commission."

Respectfully submitted for the Attorney-General,

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

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

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

## SYLLABUS

**347. Contracts—Validity of—Nepotism Act.**

The Nepotism Act, chapter 19, Statutes 1925 (amended, chapter 22, Statutes 1927), does not affect contracts of employment of school teachers which were valid when made.

## INQUIRY

CARSON CITY, October 3, 1929.

A school teacher, subsequent to entering into a contract with the school board, marries a daughter of one of the school trustees.

Does the Nepotism Act prohibit the school trustee to whom he is thus related from issuing a warrant for his salary?

## OPINION

The contract in question was valid at the time made, as the teacher in question was at that time related to no member of the school board. There is nothing in the State Nepotism Act that would require the school trustees to refuse to comply with the terms of this contract which was valid when made. The contract itself is not invalidated by the later relationship of one of the trustees to the teacher.

Therefore, it is not unlawful for such school trustee to issue a warrant for the salary of the teacher, although related to him by marriage.

Respectfully submitted for the Attorney-General,

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

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

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

## SYLLABUS

348. **State Employees—Vacations Act Not Applicable to County Employee.**

Revised Laws, 4109, and other laws respecting vacations for State employees, do not extend to county employees working on roads or otherwise.

## INQUIRY

CARSON CITY, October 16, 1929.

An individual has been employed by Lander County, working on the roads and county equipment, for more than one year last past. He has requested a two weeks' vacation from the Board of County Commissioners with pay. Is the Board of County Commissioners authorized to grant this request under the provisions of section 4109, or any other statutory provisions?

## OPINION

Section 4109, Revised Laws of the State of Nevada, 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 unable to find any law which would authorize the Board of County Commissioners to give a vacation period to any county employee, with pay.

Respectfully submitted,

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

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

## SYLLABUS

349. **Taxation—When Not Double—Public School Teachers' Funds.**

(1) Chapter 198, Statutes 1915, amended chapter 165, Statutes 1927, and State tax levy Acts (chapter 151, Statutes 1920, and succeeding years) examined, and held to negative theory of double taxation.

(2) State and county tax levy Acts and provisions for two distinct funds respecting public school teachers, held to be supplementary and not in conflict.

(3) Two levies of taxes in same year for the same purpose, or for similar (although not identical) purposes, if extending to all property, do not amount to double taxation.

## INQUIRY

CARSON CITY, October 16, 1929.

You refer us to Statutes 1915, chapter 198, as amended.

Subdivision 3 of section 1, as amended, makes it the duty of the County Commissioners to levy a tax of three cents on each one hundred dollars of all property in this State for the benefit of the public school teachers' permanent fund.

The State tax levy for 1929-1930 includes within the tax rate an item calling for a tax levy of five-tenths of one cent for teachers' retirement salary.

Section 2, Statutes 1915, chapter 198, provides that:

The public school teachers' retirement salary fund shall be made up of such moneys as shall be transferred from time to time under authority of this act from the public school teachers' permanent fund.

(1) With these several provisions of law in mind, is the Board of County Commissioners required to make the levy as required under subdivision 3 of section 1, Statutes 1915, as amended, or does the fact that the revenue here provided for is included in the State tax rate relieve the County Commissioners of designating this tax?

(2) Would the levy by the Board of County Commissioners of the amount of tax indicated constitute double or duplicate taxation?

(3) If so, should the proceeds from this levy be refunded to the counties?

## OPINION

Statutes 1915, chapter 198, establishes two funds in the State Treasury to be known as the Public School Teachers' Retirement Salary Fund and the Public School Teachers' Permanent Fund.

The Public School Teachers' Permanent Fund is made up of (a) contributions made by the teachers; (b) interest derived from the investment of moneys contained in such fund; (c) an ad valorem tax of three mills on the hundred dollars of all taxable property in this State, to be levied and collected by the several counties; (d) donations, gifts, and legacies.

Section 2 of the Act provides that the Public School Teachers' Retirement Salary Fund shall be made up of transfers from the Public School Teachers' Permanent Fund.

After the enactment of this law and down to the year 1919, to sustain the Public School Teachers' Retirement Salary Fund, transfers from the Permanent Fund were the only source of revenue. By

legislative Act, Statutes 1920, chapter 151, there was included in the State tax levy an item providing for a tax of five-tenths of one cent for the Public School Teachers' Retirement Salary Fund. From the year 1921 to the present time the Legislature has included this item in the State tax rate.

The Act of 1915 was amended by Statutes 1927, chapter 165. By this amendment the ad valorem tax to be levied by the County Commissioners was increased from three mills to five mills. At the same session of the Legislature the State tax rate included an item of five-tenths of one cent for Teachers' Retirement Salary Fund.

From this legislative history, it is made manifest that the Legislature determined that transfers from the School Teachers' Permanent Fund were not sufficient in amount to provide for the revenue necessary for the School Teachers' Retirement Fund and that, in order to replenish the retirement fund, revenue from sources other than transfers was imperative.

I am of the opinion that the levy and collection of a tax for the School Teachers' Permanent Fund, under Statutes 1915, as amended, and the levy of a tax for School Teachers' Retirement Fund as enacted in the State levies for the several years, could not be denounced as double or duplicate taxation.

Hon. John Chartz, District Attorney of Ormsby County, in 1928 conferred with me relative to this question and, while it is true that in this conference I concurred in the view that a collection of the tax by the county and State would constitute duplicate or double taxation, I have concluded from a careful review of the authorities that, in arriving at this opinion, due consideration was not given to the history of the legislative acts and the general principles of law applicable to such a state of facts.

It will be noted from the provisions of the Statutes of 1915 that two separate funds are designated and set apart in the office of the State Treasurer. While it is true that the Public School Teachers' Retirement Salary Fund is made up of transfers from the School Teachers' Permanent Fund, this legislation would in no way prohibit the levying of an additional tax for the support of the latter fund if the transfers were not sufficient, nor would the levying of such a tax constitute double taxation.

Double taxation is defined as "taxing twice, for the same purpose, in the same year, some of the property in the territory in which the tax is levied, without taxing all of it. If all the property in the territory in which the tax is imposed is taxed twice and for the same purpose and in the same year, without discrimination or exemption, this is not double taxation in the sense that such taxation is objectionable, because, within constitutional limits, if the tax is uniform, the amount of it is in the discretion of the taxing authorities, and it may be levied at one time, or it may be the subject of several levies." 26 R. C. L., sec. 231, p. 263. See, also, Cooley On Taxation, vol. I, p. 394.

We conclude, therefore, that the tax should be levied and collected by the Board of County Commissioners, the revenue derived therefrom to be placed in the Public School Teachers' Permanent Fund, and that said tax should be collected and placed in the Public School

Teachers' Retirement Fund, and that the collection of the taxes indicated is not double taxation.

The answer to this question makes it unnecessary to reply to your other interrogatories.

Respectfully submitted,

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

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

#### SYLLABUS

#### 350. Motor Vehicle Common Carriers—Free Transportation—General Antipass Legislation.

Section 21, Public Service Commission Act, amended by chapter 14, Statutes 1928, construed and held to provide same exception to motor vehicle common carriers as is granted to railroads, although railroads only are mentioned in the excepting clause.

#### INQUIRY

CARSON CITY, October 28, 1929.

This commission is in receipt of a request from motor vehicle carriers operating in this State for information concerning persons to whom free transportation may be issued by them, good between points in the State of Nevada.

This appears to be covered by section 21 of the Public Service Commission Act as amended in 1929. You will note that common carriers as a whole are prohibited from giving free or reduced rate transportation to any state, district, county or municipal officer. It is then provided that railroads may issue free or reduced rate transportation to certain specified classes of persons.

This statute is not clear upon what may be issued in the way of free transportation by a motor vehicle common carrier in this State. We would appreciate your construction of this section with regard to motor vehicle common carriers.

#### OPINION

Section 21, as amended, Statutes 1928, p. 21, makes it

unlawful for any person, firm, or corporation engaged in business as a common carrier to give or furnish any state, district, county or municipal officer of this state, or to any other person, *other than those named herein*, any pass, frank, free or reduced transportation, or for any state, district, county or municipal officer to accept any frank, pass, free or reduced transportation.

It further provides:

This act shall not be construed as preventing railroads from giving free transportation or reduced rates to ministers of the gospel, regularly employed secretaries of the Y. M. C. A. or Y. W. C. A., state officers of each recognized military ex-service organization, including ladies' auxiliaries thereof, not exceeding three from each such organization, constables, college professors, school teachers, students of institutions of learning,

disabled or homeless persons, railroad officers, attorneys, directors or employees, or the members of their families, or pensioned or disabled ex-employees, their minor children or dependents, or bona fide ex-employees in search of employment, or to prevent the exchange of passes with officers, attorneys, or employees of other railroads, telegraph or express companies, and members of their families.

It will be noted from the wording of this section that all persons engaged in business as a common carrier are prohibited from issuing passes, etc., to any person "*other than those named herein.*" While it is true, when the exception is stated, under the terms of the Act it designates railroad companies only, I am of the opinion that, in view of the specific language of section 21, which creates the exception to all persons engaged as a common carrier and specifically declares that a certain classification of persons exists to whom passes may be issued, motor vehicle common carriers would have the same authority to issue passes to the exceptions designated as would railroad companies.

Respectfully submitted,

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

PUBLIC SERVICE COMMISSION OF NEVADA, *Carson City, Nevada.*

---

#### SYLLABUS

##### 351. Fish and Game—Open Season for Muskrats.

Chapter 178, Statutes 1929, being general in nature and subsequent to chapter 129, Statutes 1929, governs as to the (longer) open season on fur-bearing animals, including muskrats.

#### INQUIRY

CARSON CITY, November 6, 1929.

Your opinion is respectfully requested upon the interpretation of the following statutes:

Chapter 129 of the Laws of 1929, under section 4, gives the open season on muskrats between December 31 and the following March 1. This law was approved March 26, 1929.

Under Chapter 178 of the Laws of 1929, under section 1, classes muskrats under the head of fur-bearing animals and, under section 77 of said chapter, it gives the open season between November 15 and March 15 following.

Will you kindly give me your opinion as to what is the open season for trapping muskrats in the State of Nevada?

#### OPINION

Statutes 1929, chapter 178, is a general law, creating the Fish and Game Commission and providing a comprehensive method for regulating fish and game. It is apparent from an examination of the statute that, by its provisions, the Legislature intended to embrace within its terms all essential regulations covering the general scope of fish and game.

By section 77 of this law, it is made unlawful to hunt or trap fur-bearing animals except between the 15th day of November and the 15th day of March. Section 1 of the Act includes muskrat within the definition of fur-bearing animals. Section 78 makes it unlawful to molest or destroy any muskrat nests.

Statutes 1929, chapter 129, was approved three days prior to the general law referred to. Under section 4 of chapter 129, it is made unlawful to capture or trap or kill muskrats between March 1 and December 31.

It is apparent, therefore, that the provisions of section 4, chapter 129, and the provisions of section 77, chapter 178, are in conflict.

I am of the opinion that the provisions of the general Act must control, and that, the general Act being inconsistent with the provisions of chapter 129, this Act is repealed.

Respectfully submitted,

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

HON. E. E. WINTERS, *District Attorney of Churchill County, Fallon, Nevada.*

---

SYLLABUS

352. **Medical Practice Act—License.**

Section 17, Medical Practice Act of 1905, does not extend to person residing but not practicing in Nevada prior to 1905. Such person must submit to examination and receive license before practicing medicine in Nevada.

INQUIRY

CARSON CITY, November 26, 1929.

Would a person holding a diploma and certificate from another State and residing in this State prior to 1905 be entitled to register his diploma under the Medical Practice Act of 1905? This person never actively practiced medicine in this State.

OPINION

Section 17 of the Medical Practice Act provides:

Every person practicing medicine, surgery, or obstetrics in the State of Nevada on the first Monday of May, 1905, shall submit to the said board his or her diploma for registration.

It will be noted that the requirement of this section is to the effect that one must have practiced medicine prior to May, 1905, in this State, to be eligible to register his or her diploma.

The alternative to registering under section 17 is to submit to an examination before the Board of Medical Examiners.

The party named in the inquiry does not come within the terms of section 17 and would, therefore, be compelled to submit to an examination before being granted a license to practice medicine.

Respectfully submitted for the Attorney-General,

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

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

DR. E. E. HAMER, *Secretary, State Board of Medical Examiners, Carson City, Nevada.*

---

## SYLLABUS

353. **Official Bonds—Nevada National Guard.**

Chapter 153, Statutes 1929, sections 23 and 78, held not to provide appropriate fund for payment of premiums on bonds of officials of Nevada National Guard.

## INQUIRY

CARSON CITY, December 18, 1929.

Calling attention to the provisions of section 78, chapter 153, Statutes 1929, which governs the giving of bonds by officials of the Nevada National Guard, your opinion is requested:

First—Are the premiums on these bonds legally payable from the fund in the State Treasury set aside for the payment of premiums of official bonds of State officials?

Second—If not, are the premiums of these bonds such an expense as can be legally paid under the provisions of section 23 of such Act, under the heading of "Incidental Expenses?"

## OPINION

Section 78, Statutes 1929, chapter 153, requires that both questions submitted be answered in the negative.

Section 78, after providing that officers of the National Guard must give bonds, contains the further following provision:

Where a bonding company is required or given as surety, the cost of bonds may be paid from the state allowance to commanding officers; provided, that the premium on the bond required to be furnished by any officer of the national guard of Nevada detailed or appointed to disburse United States funds may be paid to such officer upon proper claim from such military fund as the adjutant general may direct.

Under this section, therefore, two methods are provided: The premium on certain bonds to be paid from the State allowance to commanding officers; the premium on bonds under the second classification may be paid from such military fund as the Adjutant General may direct.

I am of the opinion, however, that section 23 of this statute could not be construed as a military fund from which such premiums might be paid, for the reason that this particular fund is an allowance made by the Board of County Commissioners for providing a suitable and safe armory with light, water, and heat, and the payment of incidental expenses. The fund thus created is payable from the General Fund of the county.

Respectfully submitted,

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

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

## SYLLABUS

**354. Nevada National Guard—Accounting for County Advancements of Funds.**

(1) Sections 23 and 82, chapter 153, Statutes 1929, interpreted as providing means for reimbursing counties for National Guard expenses paid, at ultimate expense of State appropriation for military purposes (vide section 36½ General Appropriation Act of 1929).

(2) Section 23 of said Act is not an appropriation, and does not amount to providing a lien against the General Fund.

## INQUIRY

CARSON CITY, December 27, 1929.

The State Treasurer has received three receipts from D. W. Dunkle, Treasurer of Washoe County, in the total sum of \$36.05. These receipts represent money paid by Washoe County under the provisions of chapter 153, Statutes 1929, section 23.

(1) Can receipts of this sort be accepted in settlement of taxes collected for the State and, if so, how must the transaction be handled by the State Controller?

(2) Shall the Controller issue a warrant reimbursing the Treasurer, and to what appropriation and fund shall he charge the same?

## OPINION

(1) Section 23, Statutes 1929, chapter 153, provides as follows:

It shall be the duty of the board of county commissioners of any county in which public arms, accouterments, or military stores are now had, or shall hereafter be received for the use of any companies of the Nevada national guard, subject to approval by the adjutant general, to provide a suitable and safe armory with light, water, and heat, and for the payment of incidental expenses of each company of the national guard organized within such county. The expenses of procuring and maintaining such armories and the incidental expenses incurred by each company shall be paid out of the general fund of the county to the commanding officer of such company, to be paid by the county treasurer on presentation of the auditor's certificate that such allowance has been made by the board of county commissioners. The treasurer shall require duplicate receipts from the person presenting said certificate, one of which shall be forwarded to the adjutant general, the other thereof shall be delivered to and received by the state treasurer as so much money and shall be considered and allowed for the full amount thereof in the settlement by the controller and state treasurer with the county treasurer. Such expenses shall not exceed one hundred (\$100) dollars per month for rentals for any company, nor fifty (\$50) dollars for incidental expenses.

It will be observed that the section authorizes the County Treasurer to present such receipts to the State Treasurer and the State Treasurer receives same "as so much money and shall be considered and allowed for the full amount thereof in the settlement by the Controller and State Treasurer with the County Treasurer."

Answering your first question, therefore, you are advised that the

receipt thus presented must be accepted by the State Treasurer and considered as cash.

(2) In order to handle the transaction in the State Treasurer's office, the State Controller should issue a warrant reimbursing the State Treasurer for the amount. This warrant can only be issued against the fund designated by section 82. This section provides as follows:

The controller of the state must draw his warrants for any amount approved and allowed as provided in this title, and the treasurer of the state must pay the same out of the appropriation for military purposes, if not otherwise provided.

Section 23 specifies no particular fund in the State Treasury from which the amount is payable; section 82, however, provides that all amounts are payable out of the appropriation (section 36½, General Appropriation Act) for military purposes.

The amounts provided for in section 23 could not be paid from the General Fund because section 23 does not constitute an appropriation. *State v. La Grave*, 23 Nev. 25.

Respectfully submitted,

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

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

---

#### SYLLABUS

#### 355. Corporations, Foreign—Insurance Companies—Agents for Acceptance of Service of Process.

(1) Section 8 (Revised Laws, 1273) General Insurance Law, relating to appointment of resident citizen for acceptance of service, does not permit the State Controller in his official capacity to so act, either with or without appointment, unless in the case an agent lawfully appointed removes from Nevada or becomes disqualified, when the statutory exception operates. The office holder, however, may be given power of attorney in his private individual capacity. A corporation being a resident citizen of Nevada may act.

(2) Such companies are presumed to know the law and the State Controller is under no legal duty to point it out to them or their noncompliance therewith. In case of an erroneous appointment, correction may be made thereof without further fee.

#### INQUIRY

CARSON CITY, January 20, 1930.

I have letters from two fire insurance companies asking if the State Controller or the Insurance Commissioner can be named in their power of attorney to accept service for the company in this State.

Section 8 on page 5 of our insurance law pamphlet specifies that a "citizen and resident of the State must be appointed."

The records of the Controller's office show that for many years past the Controller has filed powers of attorney naming the State Controller or the Insurance Commissioner or the State Controller and ex officio

Insurance Commissioner as process agent for fire, life, and casualty companies.

In order that I may administer the law correctly, may I ask the following questions:

First—Can an insurance company other than a surety company appoint the State Controller or the Insurance Commissioner as its process agent, or must it appoint a citizen and resident?

Second—If such appointment is illegal, must I require all insurance companies who have filed their power of attorney naming the State Controller or the Insurance Commissioner to name new process agents?

Third—If the insurance companies are required to appoint agents and have filed their original power of attorney in good faith, shall I charge the regular fee of \$5, or make the correction gratis?

Fourth—Can a corporation or firm be appointed as process agent, or must it always be an individual citizen?

#### OPINION

(1) Section 8, General Insurance Laws of the State of Nevada, provides, in substance, that, before an insurance company organized outside of the State shall be permitted to do business in this State, it must file with the State Controller a certificate enumerating certain facts and, in addition thereto, shall file a power of attorney authorizing a citizen and resident of this State to make and accept service in any proceeding in any of the courts of this State. This section further provides that if a person designated to accept service removes from the State or becomes disqualified, then any citizen having a claim by virtue of any insurance contract may, under these circumstances, make service on such company by serving the State Controller.

It appears, therefore, that the State Controller may not validly accept service unless the agent appointed removes from the State or becomes disqualified. There is no provision in the law, outside of this exception, which would warrant service upon the State Controller. While the individual occupying the official position as State Controller might be lawfully designated as the resident agent, there is no authority in the law for appointing the State Controller in his official capacity as the process agent for an insurance company.

(2) In answer to your second inquiry, it seems to me that this is a question to be decided by the insurance company, whether or not the appointment of the State Controller in his official capacity is a lawful appointment in view of the provisions of section 8.

(3) If insurance companies desire to make an appointment of a citizen and resident of this State as their attorney and have already designated the State Controller as such, I do not think that any charge should be made for filing the second designation.

(4) No objection appears for the designation of a corporation, if such corporation is a citizen and resident of this State.

Respectfully submitted,

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

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

## SYLLABUS

356. **Foods and Drugs—Eggs Sold to Consumer Direct.**

Chapter 164, Statutes 1927, construed to prohibit display or sale of eggs to consumers, even though designated "Uncandled" by sign or label. Seller must actually comply with the law respecting the grades and standards of quality of said eggs, together with legal regulations.

## INQUIRY

CARSON CITY, January 20, 1930.

Your attention is called to Statutes 1926-1927, chapter 164, and a written opinion is requested as to whether the producer may sell direct to consumer uncandled eggs, provided the container is stamped or labeled with the word "Uncandled."

May retail dealer display uncandled eggs and sell same to consumer, provided the same are labeled "Uncandled Eggs?"

## OPINION

Under section 1 of chapter 164, Statutes 1927, it is made unlawful for any person or corporation to sell eggs unfit for human consumption. In order to determine the quality of eggs, it is necessary that the same be subjected to inspection. Under section 5 of the Act, when eggs are sold in lots of half-cases or more and the same are being handled for or are in transit to or being sold to dealers in commercial centers who are to candle and grade the same, it is a sufficient compliance with the law if the same are designated "Not Candled." Before such eggs are offered for sale, however, in my opinion it will be necessary for the seller to have them properly inspected and marked as required by law.

While the provisions of the Act are ambiguous, I am of the opinion that an egg producer may not sell his eggs directly to a consumer without going through the formality of candling and grading the same, and that such eggs may not be sold without this process even if they are labeled "Not Candled." The dealer could not sell uncandled eggs in cartons or other packages even if the same are labeled uncandled. In other words, before these eggs may be offered for consumption to the public they must be candled and graded.

Respectfully submitted,

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

SANFORD C. DINSMORE, *State Food and Drug Commissioner, Reno, Nevada.*

---

## SYLLABUS

## 357. Hides, Inspection of—Fees—County Officers—Compensation of.

Chapter 76, Statutes 1929, providing for hide inspection services to be rendered by the Sheriff, and the Act fixing the salary of the Sheriff of Lyon County as payment in full for all services rendered, require the Sheriff to turn over to the County Treasurer all such inspection fees. Mileage compensation, not being authorized by any law, cannot be collected in connection with such inspections.

## INQUIRY

CARSON CITY, February 4, 1930.

Calling attention to chapter 76, Statutes 1928-1929, being "An Act to provide for the inspection of hides, providing compensation therefor, and other matters relating thereto," this Act provides that it shall be the duty of all Sheriffs, Deputy Sheriffs, Constables, Deputy Constables, Justices of the Peace, and Inspectors of the State Board of Stock Commissioners to inspect such hides and stamp such carcasses in conformity with the Act.

Section 8 of the Act reads:

\* \* \* those authorized by this act to perform such inspections shall be, unless otherwise ordered by the state board of stock commissioners, entitled to charge and receive for such inspection a fee of twenty-five cents.

The Sheriff of Lyon County receives a stated yearly salary which, as provided for by statute, shall be "payment in full for all services rendered."

(1) Should the Sheriff's office, under the foregoing section, turn the twenty-five cent inspection fee over to the County Treasurer, or should he retain it as compensation for the extra work involved?

(2) Where it is necessary for the Sheriff or his deputies to travel several miles to and from the point of inspection, should the Sheriff charge mileage against the person at whose request the inspection was made? If so, should it be at the regular Sheriff's rate of forty cents per mile?

## OPINION

(1) Answering the first query, it is our opinion that, inasmuch as the statute requires that the Sheriff of Lyon County shall receive a salary which shall be in payment in full for all services and requires him to turn over all his fees to the County Treasurer, and inasmuch as chapter 76, Statutes of 1929, requires that he make his inspection of hides as Sheriff, then, necessarily, the fees for such service must be turned over to the County Treasurer the same as other Sheriff's fees.

(2) Answering the second query, it is the general rule of law that mileage can only be collected where a statute specifically provides for it. Since the general statute does not cover this subject, and chapter 76, Statutes 1928-1929, has no such provision, the Sheriff is not entitled to receive mileage in connection with inspection of hides.

Respectfully submitted for the Attorney-General,

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

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

HON. JOHN R. ROSS, *District Attorney of Lyon County, Yerington, Nevada.*

## SYLLABUS

**358. Trading Stamps—Constitutional Law—Police Power.**

(1) Chapter 225, Statutes 1917, although enforced in practice, involves question not passed upon by Nevada Supreme Court, and the Attorney-General gives no opinion as to its constitutionality in such circumstances.

(2) The Act requires a license to be paid by both the person using and the person furnishing trading stamps.

## INQUIRY

CARSON CITY, February 4, 1930.

Calling attention to chapter 225 of the Statutes of 1917, being "An Act relating to the use of stamps, coupons, tickets, certificates, cards or other similar devices, for or with the sale of goods, wares and merchandise, and providing a penalty for violation thereof, and repealing all acts in conflict therewith";

(1) Is the Act constitutional, and, if so, does your office deem it enforceable?

(2) Assuming that question No. 1 is answered in the affirmative, then who should pay the tax—the person, firm, or corporation using the stamps, etc., or the person, firm, or corporation furnishing the stamps, etc., or both the person using and the person furnishing?

## OPINION

(1) The Act referred to has been in force in this State since 1917 and has been enforced in the State. This type of legislation concerning trading stamps is one upon which there is ample authority governing its constitutionality. An extensive note is contained in 26 A. L. R. 707, which covers the existing cases. It will be noted from the authorities therein listed that there is a sharp conflict of authority as to the constitutionality of these Acts.

It is the policy of this office, in such a situation, to hold that such questions should be presented to the courts for determination, inasmuch as there has been no Supreme Court decision in this State on the subject.

(2) The statute itself expressly requires both the person using and the person furnishing the trading stamps to procure the license therein required.

Respectfully submitted for the Attorney-General,

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

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

HON. JOHN R. ROSS, *District Attorney of Lyon County, Yerington, Nevada.*

## SYLLABUS

**359. Intoxicating Liquors—Medicinal Purposes—Pharmacy Licenses.**

Chapter 173, Statutes 1923, section 2, construed to require second and separate license only on substantial change of location, as from one town to another.

## INQUIRY

CARSON CITY, February 10, 1930.

I am obliged to again ask your advice on the following question:

Under the statute known as the Inspector of Pharmacies Act, can a drug firm, incorporated under the laws of this State and doing business in this State, move to another location, still carrying the firm personnel and no change being made in the organization, and continue to sell intoxicating liquors for medicinal purposes on doctors' prescriptions?

## OPINION

The word "pharmacy" is defined under section 2, Statutes 1923, chapter 173. If a pharmacy has been conducted as stipulated in section 2 for the period designated, the corporation or individual running such pharmacy would have the right to have a license issued under the Act where a change in location is made, provided the location of the pharmacy is in the same city or town. A pharmacy that has been established at Reno at a definite location might move from one building in Reno to another; but, if the corporation desiring a permit moves from one town to another, it would not be entitled under the law to a permit until it had complied with section 2.

Respectfully submitted,

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

S. C. DINSMORE, *State Food and Drug Commissioner, Reno, Nevada.*

## SYLLABUS

360. **Constitutional Law—State Debt Limitation—Amendment Procedure.**

- (1) The limitation of the State debt is as provided by the Constitution, whether the State be directly or indirectly obligated. (See Opinion 361.)
- (2) Assuming biennial sessions of the Legislature, it requires six years to amend the State Constitution.
- (3) Amendments to the Constitution by initiative, require an enabling Act by the Legislature, as the amendment is not self-executory.

## INQUIRY

CARSON CITY, February 10, 1930.

If there is no agreement reached between the Lower Basin States and the Colorado River Basin it will be necessary at once to make known to the Secretary of the Interior just what action we can take through our State in regard to the Boulder Dam power allocation; therefore, I would appreciate if you would answer the following questions at your earliest convenience:

- (1) Is there a limit, under our Constitution, to the amount the State Legislature can obligate the State for annual payments, where no bond issue is required?
- (2) If so, what is such limit?
- (3) Is there any reason why the State Legislature cannot act as a "medium" in case any certain amount of Boulder Dam power is allocated to the State, securing the necessary funds or bonds from other sources, with which to make proper contracts with the Government, and fully protect the interests of the State through a direct contract?
- (4) Could the State Legislature, under our Constitution, set up an

organization or authority such as the New York "Port of Authority" to handle any particular business of the State, such as the "Boulder Dam power allocation" with proper authority to secure proper means of financing from other sources to properly safeguard the Government against loss from any power allocated the State, and in turn fully protect the State's interest in a separate contract?

(5) What is the procedure and the minimum time required to change the Constitution of the State of Nevada?

#### OPINION

(1, 2) These two questions may be considered together, and they are answered by the provisions of section 3, article IX, of the Constitution of the State of Nevada, which provides:

For the purpose of enabling the state to transact its business upon a cash basis from its organization, the state may contract public debts; but such debts shall never in the aggregate, exclusive of interest, exceed the sum of three hundred thousand dollars; except for the purpose of defraying extraordinary expenses as hereinafter mentioned; every such debt shall be authorized by law for some purpose or purposes, to be distinctly specified therein, and every such law shall provide for levying an annual tax sufficient to pay the interest semiannually, and the principal within twenty years from the passage of such law, and shall specially appropriate the proceeds of said taxes to the payment of said principal and interest; and such appropriation shall not be repealed, nor the taxes be postponed or diminished until the principal and interest of said debts shall have been wholly paid. Every contract of indebtedness entered into or assumed by or on behalf of the state, when all its debts and liabilities amount to said sum before mentioned, shall be void and of no effect. Except in cases of money borrowed to repel invasion, suppress insurrection, defend the state in time of war, or if hostilities be threatened, provide for the public defense.

To enable the State to function on a cash basis, authority is given to incur indebtedness not exceeding three hundred thousand (\$300,000) dollars, exclusive of interest.

Answering your questions propounded under points 1 and 2, you are advised that the limit for which the State may become obligated is the sum of three hundred thousand (\$300,000) dollars, and this amount controls, irrespective of the form which may constitute the evidence of such indebtedness.

(3, 4) These questions are answered by that portion of section 3, Article IX, reading as follows:

Every contract of indebtedness entered into or assumed by or on behalf of the state, when all its debts and liabilities amount to said sum before mentioned, shall be void and of no effect.

An arm or agency of the State would possess no greater right than the State itself. Any contract, therefore, entered into by such an agency as you describe, would be a State contract.

I am of the opinion that the Legislature might legally set up an organization to handle Boulder Dam power allocation, but such agency could not enter into contracts which the State would be prohibited or incapacitated from entering into by virtue of the provisions of the Constitution.

(5) In reply to interrogatory No. 5, the Constitution may be amended under the provisions of article XVI, section 1. In the absence of a special session of the Legislature, a six-year period would have to elapse before an amendment could properly be made under this provision.

Under the amendment of article XIX of the Constitution, adding section 3 relating to the initiative and referendum, the people are given the power to amend the Constitution by initiative petition. The Legislature, however, has failed to provide a method for carrying into effect this amendment to the Constitution and, until such procedure is adopted by the Legislature, in our opinion this method may not be used. (See Opinions of the Attorney-General, 1923-1924, No. 115.)

Respectfully submitted,

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

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

---

SYLLABUS

361. **Constitutional Law — State Debt Limit — Initiative Procedure for Constitutional Amendments—Fiscal Management of Boulder Dam Power Assets.**

(1) The constitutional limit of the State debt is one per cent of the total State assessed valuation.

(2) The Legislature, subject to constitutional limitation, has full power to make appropriate regulations for initiating constitutional amendments and submitting them to the people for enactment.

(3) The State may accept assets arising from compact or act of authorized Federal officers, not involving primary obligations contravening the constitutional state debt limitation, but it may not divest the State of property, however acquired, without a legislative Act.

(4) The fiscal management of assets arising from Boulder Dam power allocations or privileges is a mixed matter of policy and law, and in the absence of facts respecting the State's lawful commitments and acquisitions, the Attorney-General is not able to advise as to the exploitation or commutation of the same.

INQUIRY

CARSON CITY, February 14, 1930.

I have your letter in answer to my inquiry as to the length of time required to amend the Constitution of the State of Nevada, in which you say that: "Under the amendment of article 19 of the Constitution, adding section 3 relating to the initiative and referendum, the people are given the power to amend the Constitution by initiative petition. The Legislature, however, has failed to provide a method for carrying into effect this amendment to the Constitution."

(1) If a special session of the Legislature was held and a definite procedure laid down by them to proceed under article 19, section 3, then by following such procedure could the proposed amendment to the Constitution of the State of Nevada be decided by the vote of the people at the general election in November, 1930?

(2) If in the regular session of the Legislature in 1931, such procedure should be laid down, then could the matter be determined by a special election following such regular session?

(3) If the Boulder Dam power should be divided among the States by compact, or allocated to them by the Secretary of the Interior, with the understanding that such allocation could be assigned or transferred to municipalities or other agencies, allowing such municipality or agency to become primarily responsible to the Government for such allocation, could our State legally accept such allocation and make such assignment or transfer?

(4) If assignment or transfer of such power is made, may the State legally specify the conditions under which such assignment or transfer be made, to fully protect the interests of the State, or may the State and such municipality or agency mutually agree on the conditions to be written into the contract between the Secretary of the Interior and such municipality or agency for the full and complete protection of the interests of the State?

#### OPINION

Before answering the above inquiries, I desire to make a correction in the statement contained in Opinion No. 360. In this opinion it was stated that the limit of the State's indebtedness was the sum of three hundred thousand dollars. This statement is incorrect. Under the Constitution, as amended, the State's indebtedness shall not exceed the sum of one (1%) per cent of the assessed valuation of the State.

(1) An answer to this question requires a conjecture as to the possible procedure to be adopted by the Legislature. It is usually customary in cases where an amendment to the Constitution is authorized by direct vote of the people for the Constitution itself or the Legislature to provide a method of procedure to accomplish this purpose. The method usually adopted is for the Legislature to designate the number or percentage of electors whose names must be affixed to the petition requesting an amendment to the Constitution, to designate the time when such petition must be filed and the office where the same must be deposited, and then a further provision that the amendment be submitted to the people for their approval or disapproval at either a general or special election, and a limitation of time before such election when the petition must be filed.

(2) If the procedure adopted by the Legislature authorized the submission of the question at a special election, the amendment could then be determined at a special election.

(3) If the rights of the State are fixed by compact or allocated by the Secretary of the Interior and the State's primary obligation does not exceed the amount specified in the Constitution, the State could legally accept such allocation. An Act of the Legislature, however, will be required to divest the State's interest by assignment or transfer.

(4) An answer to this question would require an intimate knowledge of this State's position as heretofore asserted before the Secretary of

the Interior and in the several conferences had between this State and other States in the attempted reconciliation of their differences. In view of the fact that this office did not participate in any of these negotiations before the Secretary of the Interior nor was this office consulted regarding any of the legal phases arising thereunder, we have not sufficient information as to the stipulations or terms that may be lawfully inserted in the compact between the States or in the allocation of the Boulder Dam power by the Secretary of the Interior to this State, and, therefore, cannot intelligently answer this question.

Respectfully submitted,

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

HON. GEORGE W. MALONE, *State Engineer, Reno, Nevada*.

---

SYLLABUS

**362. Public Utilities—Rate Contracts—Supervision Over and Interpretation.**

(1) The State's power to alter public utility rates does not extend to an executed contract having the United States as one party.

(2) Multiple metering held to be contemplated by language of rate contract.

(3) "Municipal purposes" construed in contract to apply to cities and towns and their needs, rather than as including an irrigation district.

INQUIRY

CARSON CITY, February 21, 1930.

The following inquiries regarding an agreement between the United States and the Canyon Power Company have been made to this office:

(1) Do the provisions of paragraphs 7 and 8 of such agreement constitute a part of the rate schedule of Canyon Power Company, or Nevada Valleys Power Company as successor to Canyon Power Company; and is the Public Service Commission bound to observe the provisions of this agreement, or is it subject to modification by this Commission as being a part of a schedule of a public utility in Nevada?

(2) What interpretation should the Commission place upon the provision of paragraph 8 which provides for the use of 50 kilowatts of electric current at a certain rate specified in this paragraph? The particular question in this case is whether multiple metering was intended by this paragraph.

(3) Do the provisions of paragraph 9 of this agreement require that preference in the use of power generated at the Lahontan plant be given to the city of Fallon, Truckee-Carson Irrigation District and the city of Lovelock?

OPINION

(1) Ordinarily, contracts made by a public utility subsequent to the enactment of the Public Service Law are subject to modification by the Public Service Commission. The particular contract involved in this case, however, is one made with the United States Government. The State Public Service Commission has not jurisdiction over the United States Government in its sovereign capacity, and, therefore,

cannot alter, modify, or in any manner change any contract made by it.

(2) Paragraph 8 of the contract in question reads, in part, as follows: "During the term of this agreement the company shall also furnish the United States not to exceed 50 kilowatts of electric current or so much thereof as may be desired by the United States, to be delivered over the transmission lines constructed and owned by the United States and to be measured by watt-hour meters furnished and installed by the United States at the point of delivery."

The proper interpretation of this paragraph depends upon what effect is given to the words, "watt-hour meters at the point of delivery." Inasmuch as the parties to this contract used the plural designation, "watt-hour meters," it is our opinion that plural metering was intended.

(3) Paragraph 9 of the agreement in question provides as follows: "During the term of this agreement preference in the sale of power generated at the Lahontan plant shall be given, by the company, to municipal purposes."

Such paragraph would require a preference to the city of Fallon and the city of Lovelock for municipal purposes. From the wording of the paragraph and the general use of the word "municipal" it seems hardly possible that the Truckee-Carson Irrigation District could use the power for municipal purposes in the sense in which the word "municipal" is used in the agreement; therefore, the proper interpretation of this paragraph would seem to require that preference be given to the city of Fallon and the city of Lovelock in so far as their demands are for municipal purposes.

Respectfully submitted for the Attorney-General,

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

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

FRANK B. WARREN, *Secretary, Public Service Commission of Nevada, Carson City, Nevada.*

#### SYLLABUS

#### 363. Schools—County Tax Levy for—Application of State School Reserve.

(1) Section 151, subdivision 4(a), School Code, providing for relief to counties out of State School Reserve of the Distributive School Fund, is not connected with section 152.

(2) Section 139 of the School Code must give way to section 152, subdivision 2, if conflict arises.

(3) Section 151, subdivisions 4(a) and 4(b), provide for relief to counties as a whole and not isolated districts.

(4) In case of failure to seasonably obtain relief from the School Reserve before the same currently reverts to the Distributive School Fund (whether by error in reporting tax rate or otherwise) the relief is lost without remedy, and the State Superintendent has no duty in the premises.

#### INQUIRY

CARSON CITY, March 3, 1930.

(1) Section 152, subdivision 2, of the School Code provides that the County Commissioners shall levy a school tax sufficient to provide \$625

per apportionment teacher and not less than \$2 per pupil in average daily attendance, subject, however, to the provisions of paragraph 5(a) in section 151.

What effect does this section have upon section 151, subdivision 4(a), providing for the apportionment of State money from the State School Reserve Fund?

(2) If section 151, subdivision 4(a), is in effect, can any of the counties which have levied a tax of thirty-five cents or more upon the one hundred dollars assessed valuation in past years, and if such levy did not bring in sufficient money to meet the minimum demand under section 152, subdivision 2, now compel the State to pay them any of the relief moneys not apportioned under the provisions of this subdivision?

(3) Does subdivision 2 of section 152, requiring the County Commissioners to levy a tax sufficient to provide \$625 for apportionment teacher and not less than \$2 per pupil in average daily attendance, repeal, by implication, section 139 which limits the tax the County Commissioners may levy to 50 cents on each \$100 valuation of taxable property?

(4) Assuming that section 151, subdivision 4(a), is in effect, then is the amendment to section 152, subdivision 2, Statutes 1925, providing that the County Commissioners levy a tax sufficient to raise \$625 per apportionment teacher and \$2 per pupil, effective?

(5) If section 151, subdivision 4(a), is not effective, would section 139 remain in effect and limit the maximum tax to fifty cents on each \$100?

(6) Would the educational districts of Clark County receive relief from the State School Reserve Fund, under section 151, subdivisions 4(a) and 4(b), when the individual district had met the requirements of these subdivisions? In other words, might either school district be entitled to relief although the other district was not?

(7) Would a county high school district of Lyon County be entitled to relief under section 151, subdivision 4(b), when the county high school district met the requirements of this subdivision, regardless of whether the other county high school districts were entitled to this relief or not?

(8) In case of an error on the part of the County Treasurer in reporting the special rate as less than fifteen cents instead of fifteen cents or more, and, in the meantime, all of the State School Reserve Fund has been apportioned before the error has been discovered and the State Controller and State Treasurer have made the entries on their books and the counties have received their allotments in accordance with the apportionment, what are the duties of the State Superintendent in connection with such apportionment?

#### OPINION

(1) Section 151, subdivision 4(a), reads in part as follows:

Whenever any county shall have levied 35 cents on the hundred dollars assessed valuation of the county for elementary school purposes, if such levy does not bring in an amount of money equal to that required by law of such county for elementary school purposes, exclusive of bonds and interest thereon, the superintendent of public instruction shall apportion to said county from the State School Reserve Fund a

sum of money such that taken with the amount raised by the levy of 35 cents on the hundred dollars by the county will be sufficient to make the sum required by law of such county for elementary school purposes \* \* \*.

Section 151, throughout, relates to the apportionment of the State Distributive School Fund, of which the State School Reserve Fund is a part.

Section 152 relates to the apportionment of moneys raised by the county, and to the amount of money that must be raised by the county.

The two sections are independent, and the provisions of section 152, subdivision 2, have no effect upon the awarding of relief to the counties provided for in section 151. The relief awarded by section 151, subdivision 4(a), is determined solely by the fact that in certain counties a levy of thirty-five cents has been made on the one hundred dollars assessed valuation, and that such levy has failed to bring in enough money to amount to that sum required by law of such county for elementary school purposes.

(2) This question should be answered in the negative, for the reason that section 152, subdivision 3, provides that any money remaining in the State School Reserve Fund on the 30th day of June and the 31st day of December of any year shall revert to the State Distributive School Fund. When such a reversion has taken place, the right to secure any reimbursement for the preceding semiannual period is lost.

(3) This question is answered by Opinion No. 325, 1929-1930, holding that section 152, subdivision 2, controls.

(4) This question must be answered in the affirmative, for the reason that the two sections are independent, as pointed out in the answer to your first inquiry.

(5) The answers heretofore given to the preceding questions render the answer to this question unnecessary.

(6) Section 151, subdivisions 4(a) and 4(b), provides for relief to counties and not to school districts; therefore, these educational districts could not take advantage of the law.

(7) This inquiry is answered in the negative, for the same reasons as stated in the answer to inquiry No. 6.

(8) There are no duties prescribed by law for the State Superintendent in this regard, after the fund is exhausted.

Respectfully submitted for the Attorney-General,

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

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

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

---

## SYLLABUS

364. **State Highway Act—Purpose of State-County Highway Funds.**

Machinery purchased with State-county highway funds cannot be used for exclusive county purposes but belongs on the State Highway system within the county.

## INQUIRY

CARSON CITY, March 3, 1930.

Where road machinery has been purchased from the County-State Highway Fund, may such machinery be used on county roads or must it be used exclusively on State highways within the county?

## OPINION

By section 11 of the State Highway Act, the County-State Highway Fund was dedicated to State highway purposes, to be expended under the direction of the State Highway Engineer. Because of this fact, no moneys could be used to purchase machinery to use on county roads, and, therefore, machinery purchased from this fund could not be thereafter used for exclusive county purposes but must be used on the State highway system.

Respectfully submitted for the Attorney-General,

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

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

HON. FRANKLIN E. WADSWORTH, *District Attorney of Lincoln County, Pioche, Nevada.*

## SYLLABUS

365. **Crimes and Punishment—Mine Safety.**

Revised Laws, 6799, providing for safety equipment in vertical mine shafts according to depth, is a mandatory requirement of law enforced also by punishment for violation as for a misdemeanor.

## INQUIRY

CARSON CITY, March 4, 1930.

Referring to section 6799 of the Revised Laws of the State of Nevada, as amended, to wit: "An Act to amend an Act entitled 'An Act concerning crimes and punishments, and repealing certain Acts relating thereto,' " approved March 17, 1911, I will ask you to kindly give me your opinion as to whether or not the above section mentioned makes it mandatory upon any person or persons, company or corporation to sink or work through any vertical shaft, at a greater depth than three hundred and fifty feet, unless the same be provided with safety cage, safety crosshead, or safety skip.

## OPINION

Section 6799, Revised Laws of Nevada, provides:

It shall be unlawful for any person or persons, company or companies, corporation or corporations, to sink or work through any vertical shaft, at a greater depth than three hun-

dred and fifty feet, unless the said shaft shall be provided with an iron-bonneted safety cage, safety crosshead or safety skip, to be used in the lowering and hoisting of the employees of such person or persons, company or companies, corporation or corporations. The safety apparatus shall be securely fastened to the cage, crosshead or skip, and shall be of sufficient strength to hold the cage, crosshead or skip loaded at any depth to which the shaft may be sunk; *provided*, that where safety crosshead is used for other than sinking purposes the same shall be equipped with gates as provided by law for cages; *and provided further*, that where skips are used for other than sinking purposes platforms for men to stand on when being hoisted or lowered shall be placed in said skip not less than four feet from top of same, and that an overhead bar be provided for the men to hold to. In any shaft less than three hundred and fifty feet deep where no safety cage, safety crosshead or safety skip is used and where crosshead or crossheads are used, platforms for employees to ride upon in lowering and hoisting said employees shall be placed above said crosshead or crossheads. Any person or persons, company or companies, corporation or corporations, or the managing agent of any person or persons, company or companies, corporation or corporations, violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in the sum of five hundred dollars, or imprisonment in the county jail for a term of six months, or by both such fine and imprisonment.

It is not only the mandatory duty of the corporation or company to provide the safeguards mentioned in said statute, but it is also a misdemeanor for any company or corporation to violate the provisions of this section.

Respectfully submitted,

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

HON. A. J. STINSON, *Inspector of Mines, Carson City, Nevada*.

---

SYLLABUS

366. **Motor Vehicles—Carriers—Licenses.**

(1) Chapter 197, Statutes 1929, does not extend to a mere owner of a motor vehicle leased to another.

(2) Nor is a mail carrier, carrying out his contract only, within said requirement.

INQUIRY

CARSON CITY, March 10, 1930.

(1) Is an owner of a motor vehicle who leases such motor vehicle to another, liable for the license required by chapter 197, Statutes of 1929?

(2) Does a mail contractor operating a motor vehicle in carrying out such contract, and who carries no passenger or property for hire required to procure such license?

## OPINION

(1) Where the relation between the parties is merely a lease of motor vehicle equipment, such relationship does not bring the lessor within the terms of the Act as a person engaged in the business of transporting passengers or property for hire. *State v. Bee Hive Auto Service*, 242 P. 384; *State v. Herty Driv-Ur-Self Stations*, 271 P. 331.

(2) A mail contractor engaged in that business solely is not engaged in the business of transporting passengers or property for hire, within the meaning of chapter 197, Statute 1929. *State v. Johnson*, 243 P. 1073.

Respectfully submitted for the Attorney-General,

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

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

FRANK B. WARREN, *Secretary, Public Service Commission of Nevada, Carson City, Nevada*.

## SYLLABUS

367. **Undertakers and Embalmers.**

A license is required from one who embalms bodies for local burial.

## INQUIRY

CARSON CITY, March 17, 1930.

Whether or not an embalmer's license is required by a person embalming bodies for local burial.

## OPINION

In view of the provisions of sections 4449 and 4451, Revised Laws of Nevada 1912, it is the opinion of this office that one embalming bodies for local burial is required to secure an embalmer's license.

Respectfully submitted for the Attorney-General,

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

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

HON. FRANK J. CAVANAUGH, *Treasurer, Nevada State Board of Embalmers, Tonopah, Nevada*.

## SYLLABUS

368. **Motor Vehicles—Carriers—Licenses.**

Chapter 197, Statutes 1929, does not apply to operations exclusively over a route consisting entirely of a private highway.

## INQUIRY

CARSON CITY, March 20, 1930.

Whether or not a motor vehicle operator who operates for hire over a highway constructed and maintained solely by private persons is required to secure the license provided for by chapter 197, Statutes 1929.

## OPINION

The license required by chapter 197, Statutes 1929, covers only those motor vehicles which transport persons or property over the public highways of the State. Therefore, a man operating solely on a private highway would not be required to secure the license. However, if any part of his route is over the public highway he would be required to comply with the law.

Respectfully submitted for the Attorney-General,

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

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

HON. J. F. SHAUGHNESSY, *Chairman, Public Service Commission of Nevada, Carson City, Nevada.*

## SYLLABUS

369. **Public Works—Preference to Citizens and Ex-Service Men over Aliens Regardless of Qualifications—Contracts and Subcontracts, Aliens May Not Be Given.**

(1) Under chapter 60, Statutes 1929 (chapter 168, Statutes 1919, amended chapter 129, Statutes 1921; chapter 60, Statutes 1929) aliens are not eligible to hold a subcontract for State highway construction.

(2) Order of priority established among certain eligible classes of employees, subject to "qualifications being equal," does not imply any eligibility to aliens, however "qualified," when it is sought to displace them.

## INQUIRY

CARSON CITY, April 21, 1930.

I would appreciate your opinion of the following questions regarding employment of citizens, ex-service men, and aliens, as provided in chapter 60, Statutes 1928-1929.

In section 1, referring to qualifications of applicants: (1) Must preference be given to citizens or ex-service men over aliens, irrespective of qualifications, or does qualification apply only to citizens and ex-service men where a citizen, ward, or ex-service man applies for employment being held by an alien; (2) would aliens holding a subcontract on State highway construction be subject to the provisions of chapter 60, Statutes 1928-1929?

## OPINION

Section 1, Statutes 1921, as amended Statutes 1929, page 89, provides:

SECTION 1. 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 with 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, and in all cases where persons are so employed preference shall be given, qualifications of the applicants being equal, first, to honorably discharged soldiers, sailors and marines of the United States who are citizens of the State of Nevada; second, to other citizens of the State of Nevada; *provided*, nothing in this act shall be construed to prevent the working of prisoners by the State of Nevada, or by any political subdivision of the state, on street or road work or other public work; 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 or persons who have been honorably discharged from the military service of the United States are not available for such employment; nor to prevent the exchange of instructors between the University of Nevada and similar institutions of the North and South American countries; *and provided further*, that any alien so employed shall be replaced by any citizen, ward, or ex-service man of the United States applying for employment.

This section specifically designates that only citizens or wards of the United States or persons who have been honorably discharged from military service of the United States shall be employed by any officer of the State of Nevada, et cetera. The section further provides that of the persons so designated preference shall be given where the qualifications of the applicants are clear, first, to honorably discharged soldiers, sailors, etc., second, to other citizens of the State of Nevada.

Aliens may only be employed where the conditions as are stated in the Act exist, to wit, when it can be shown that citizens or wards of the United States \* \* \* are not available for such employment.

Answering your questions, with these provisions of the law in mind, you are advised that the preference and qualifications provisions recited in the statute are not applicable to aliens, but apply only to citizens of the United States.

Under the terms of this Act, aliens would not be qualified to hold a subcontract on State highway construction, and the giving of such contract would be in direct violation of the law.

Respectfully submitted,

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

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

---

SYLLABUS

370. **Schools—Life Diploma—Teaching Required.**

INQUIRY

CARSON CITY, April 22, 1930.

An opinion is desired on the following points concerning the issuance of life diplomas to teachers:

(1) Can teaching experience gained on the nonrenewable third and second grade certificates be counted in meeting the requirement for a first grade elementary life diploma?

(2) Can experience gained in the elementary schools be counted in meeting the requirement for the high school life diploma?

(3) Can experience gained in the high schools be counted in meeting the requirement for a first grade elementary life diploma?

(4) Would the fact that a person held both a high school and an elementary certificate entitle them to the life diploma of both classes even though their teaching experience had been altogether in the field of high school work or altogether in the field of elementary education?

#### OPINION

Section 28 of the School Code prescribes the conditions under which life diplomas may be secured. Among the conditions required is the following:

A life diploma granted under this section shall be of the same grade and of the same name as the certificate held by the applicant at the time of the application for the life diploma.

The conditions required for such diplomas are purely statutory and there is apparently no requirement as to what the character of teaching shall be other than that expressed in section 28 of the Code.

The requirements being purely statutory, it is, therefore, the opinion of this office that all the questions asked shall be answered in the affirmative.

Respectfully submitted for the Attorney-General,

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

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

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

---

#### SYLLABUS

371. Waters—Priorities—Order of Determination—Distribution of Waters.

#### INQUIRY

CARSON CITY, May 16, 1930.

In the matter of the adjudication of Little Rock Creek and Pole Creek, listed on page 57 under the Taylor and Sheehan Ranches in the Order of Determination of the Humboldt River, the claim has been made that in view of the note at the bottom of the page:

Pole and Rock Creeks are small streams of variable flow and the culture area and character of the culture varies. Claimants Taylor and Sheehan and their predecessors have at all times used the entire flow of said streams, reaching their points of diversion, increasing and decreasing the amount of culture area and changing the character thereof to adapt

themselves to the amount of the flow. The claimants are entitled to the entire flow of said streams reaching their points of diversion for irrigation of the land specified,

all of the flow of these two streams is to be used by Taylor and Sheehan Ranch, regardless of the priority being served on the river.

It is my judgment that the date of priority listed for these creeks, 1878, controls the use of the water and that when the priority of 1878 is being served there is no question, in view of the note quoted above, but that they are entitled to all of the flow; when the priorities are cut below the date of 1878, they would not be entitled to use the flow of these creeks. The question is, then:

When the priorities being served on the Humboldt River are cut below the date of 1878, is the Taylor and Sheehan Ranch entitled to the use of the water furnished by Little Rock Creek and Pole Creek?

#### OPINION

Under the Order of Determination, as quoted by you, the entire flow of said streams constitutes the rights of claimants. In addition, the order further determines that claimants and their predecessors in interest have at all times used the entire flow of said streams.

If any other claimant disputed this finding, it was his duty, under the law, to file an exception to such determination and, in the absence of such an exception in the record, the determination as made by the State Engineer would be conclusive.

Under the law, it is your duty to distribute the water in accordance with the Final Order of Determination.

With the above statement in mind, it is difficult to understand, in face of the Order of Determination and the finding therein contained, how any other claimant, irrespective of the date of priority, would be entitled to use any part of the water of these two creeks.

Respectfully submitted,

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

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

---

#### SYLLABUS

##### 372. Taxation—Sale by County Treasurer.

Where amount of tax delinquency exceeds three hundred dollars, County Treasurer has no authority to sell property.

#### INQUIRY

CARSON CITY, June 2, 1930.

Can a County Treasurer sell property where the delinquent taxes, exclusive of poll tax and penalties, exceed the sum of three hundred dollars?

#### OPINION

You call my attention to chapter 162, Statutes 1926-1927. Section 9 of this law appears to make it discretionary with the County Treasurer as to whether or not, in giving the required notice, he includes in such notice delinquent taxes where the amount exceeds

three hundred dollars. However, your attention is called to an amendment to section 9, Statutes 1926-1927, chapter 178, where it is specifically provided that the County Treasurer shall advertise property in all cases where the delinquent tax does not exceed the sum of three hundred dollars and the County Treasurer is authorized to sell the same.

It is my opinion, therefore, that the County Treasurer may not sell property where the delinquent tax, exclusive of poll tax and penalties, exceeds the sum of three hundred dollars.

Respectfully submitted,

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

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

SYLLABUS

373. **Health, Public—Appointment of County Health Officer and County Physician.**

INQUIRY

CARSON CITY, June 9, 1930.

In appointing a county health officer under the provisions of section 6 of the State Board of Health Act, approved March 27, 1911, as amended, is it within the duties of the State Board of Health to also appoint such person county physician?

OPINION

Section 6 of the Act mentioned confers upon the State Board of Health the power, under certain circumstances, to appoint a county health officer, but no authority is granted to the Board to appoint a county physician.

Respectfully submitted for the Attorney-General,

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

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

DR. E. E. HAMER, *Secretary State Board of Health, Carson City, Nevada.*

SYLLABUS

374. **Medical Practice Act—Optometry—Use of Word "Doctor."**

A person licensed to practice optometry may not lawfully use the word "Doctor."

INQUIRY

CARSON CITY, June 11, 1930.

Whether or not an optometrist may legally advertise himself as "Dr. ———, Eye Specialist," or "Dr. ———, Specialist in the Eye."

OPINION

Section 13 of the Medical Practice Act makes it a misdemeanor for any person to practice medicine without a license therefor. This section also provides that "it shall be regarded as practicing medicine

within the meaning of this act if any one shall use in connection with his or her name the words or letters 'Dr.,' 'Doctor,' \* \* \* or any other title, word, letter, or other designation intended to imply or designate him or her as a practitioner of medicine, or surgery, or obstetrics in any of its branches."

The Act relating to optometry, page 2882, vol. III, Revised Laws of 1919, section 16, also provides that nothing in that Act shall give the right to persons so licensed to use the word "Doctor" in connection with their names.

It is, therefore, the opinion of this office that a person licensed to practice optometry does not, by securing such license, have a right to use the word "Doctor" in connection with his name.

Respectfully submitted for the Attorney-General,

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

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

DR. E. E. HAMER, *Secretary, Nevada State Board of Health, Carson City, Nevada*.

#### SYLLABUS

#### 375. School—Vacancies in Office—Appointments—Elections.

#### INQUIRY

CARSON CITY, JUNE 12, 1930.

Will you kindly give me your opinion on the following questions:

(1) In case a vacancy occurs on a Board of School Trustees due to any of the causes listed under "Vacancies in Office," page 80 of the 1927 School Code, what date may the School Board set for an election to fill the vacancy? Does section 63 of the 1927 School Code fix this date definitely for the fourth Saturday following the occurrence of the vacancy, or may the election be set at a date prior to the fourth Saturday following the occurrence of the vacancy?

(2) In case of a vacancy on a Board of School Trustees, are there any times when the Deputy Superintendent has authority to appoint a trustee to fill the vacancy previous to the fourth Saturday after the vacancy occurs?

(3) In case of a vacancy on a Board of School Trustees and in case the School Trustees fail to post notices of an election for the filling of the vacancy, may any three electors in the district post notices for an election to fill this vacancy, said notices to be posted not more than ten days nor less than five days before the fourth Saturday after the occurrence of the vacancy?

(4) In case the regular biennial election is not held in April, when does the vacancy on the board occur, and when may the Deputy Superintendent make the appointments to the Board of Trustees? May the Deputy appoint immediately after the fourth Saturday following the regular April election date, or must the Deputy wait until the fourth Saturday following the first Monday in May?

#### OPINION

(1) The Board is required to set the fourth Saturday after the vacancy occurs for the election named. This is a definite date, and the election cannot be held prior to that time.

(2) A Deputy Superintendent may fill a vacancy previous to the fourth Saturday after the vacancy occurs in the case mentioned in section 64 of the School Code, where the vacancy occurs by reason of the failure to elect trustees at the regular April election.

(3) In accordance with the provisions contained in section 46 of the 1927 School Code, any three electors may post notices for an election to fill the vacancy in case the School Trustees fail to post such notices.

(4) The questions asked in this subdivision are fully answered by Opinion No. 118, rendered by the Attorney-General's office on April 11, 1914. This opinion holds that the vacancy mentioned occurs on the first Monday in May; and that the Deputy Superintendent may appoint before the fourth Saturday following the first Monday in May.

Respectfully submitted for the Attorney-General,

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

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

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

---

SYLLABUS

376. **Statutes—Uniform Illegitimacy Act—Payment Costs.**

Where proceedings under Act are instituted by public authorities no costs accrue; where instituted by individual costs must be paid by such person.

INQUIRY

CARSON CITY, June 26, 1930.

The following questions are asked concerning chapter 87, Stats. 1923, p. 142, known as the "Uniform Illegitimacy Act." Sections 7-14, inclusive, of this Act provide for the complaint, warrant, and preliminary hearing, among other things.

(1) Must the county pay the cost of the reporter to take the testimony in shorthand and reduce it to writing to be returned to the District Court?

(2) The last paragraph of section 14 provides: "The warrant, the examination reduced to writing, and the security, shall be returned to the District Court." Shall these papers returned to the District Court in this proceeding be filed in the criminal register or in the civil register in the office of the County Clerk?

(3) In the event the papers are to be filed in the civil register, is it the duty of the County Clerk to collect a filing fee from the complainant, or must he file them without any charge?

(4) The preliminary hearing and trial under this Act seem to be of a quasi-criminal nature. Is it the duty of the District Attorney to represent the complainant in these proceedings under this Act?

OPINION

The Act in question sets forth the proceedings, which the weight of authority holds to be of a civil nature.

Section 7 of the Act provides: "The proceeding to compel support may be brought by the mother, or, if the child is or is likely to be a public charge, by the authorities charged with its support."

By reason of the provisions of section 7, it is the opinion of this office that, where the proceedings are brought by the public authorities, the county must pay the cost of the transcript and there would be no fee on filing the case with the County Clerk, and it would be the duty of the District Attorney to represent the public authorities. On the other hand, if the proceeding was brought by the mother, it being a civil proceeding, the same rules would apply as to other civil proceedings.

Respectfully submitted for the Attorney-General,

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

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

HON. MERWYN H. BROWN, *District Attorney, Humboldt County, Winnemucca, Nevada*.

---

SYLLABUS

377. **Motor Vehicle—License—Leasing Car.**

Leasing automobile with driver requires license as common carrier.

INQUIRY

CARSON CITY, July 8, 1930.

Whether or not persons renting motor vehicles and providing a driver for a stipulated sum are liable for a license as a carrier for hire.

OPINION

This office has heretofore rendered an opinion that merely leasing an automobile without driver did not come within the provisions requiring a license by persons conducting the business of operating automobiles for hire; however, when a driver is furnished, the car is under the control of the company leasing the car, and it is the opinion of this office that such company comes within the statutes requiring a license.

Respectfully submitted for the Attorney-General,

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

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

PUBLIC SERVICE COMMISSION OF NEVADA, *Carson City, Nevada*.

---

SYLLABUS

378. **Schools (See Opinion No. 383)—Term of Office of Persons Appointed School Trustees.**

INQUIRY

CARSON CITY, July 14, 1930.

Your opinion is desired regarding the following statement of facts: At the last general election J. W. Treat, deceased, was elected for long term member of the Lander County Board of Education. Mr. J. W. Treat died on January 3, 1930, and just recently Walter W. Anderson, Superintendent of Public Instruction, appointed Jasper Vail to the vacancy. I do not know how the appointment was worded,

but presume that it was worded as provided for in section 178 of the School Code, that is, for the "unexpired term."

Question: Does Jasper Vail hold his office until January 1, 1933, or will he have to run for election this fall?

From a reading of your Opinion 117 as the same appears in your Biennial Report, 1923-1924, and Opinion 137, it is my own opinion that Mr. Vail holds office until January 1, 1933, but, in view of the fact that the same may be questioned, I desire your official opinion on the above question.

#### OPINION

When Opinion No. 117 was written, section 64 of the School Code contained different provisions than those contained in the present School Code. Under section 64 as enacted by the Legislature of 1925, Statutes of Nevada, p. 168, the statute specifically provides that "The term of office of any trustee appointed by the Deputy Superintendent shall not extend beyond the first Monday in May following the next regular school election."

It is my opinion, therefore, that Mr. Vail would be governed by these provisions of the law, and that his term would not extend until January, 1933.

Respectfully submitted,

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

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

---

#### SYLLABUS

#### 379. Referendum—Signer's of Petition Withdrawal of Name—Determination of Qualification of Signers—Moot Questions.

- (1) Signers of referendum petition may not withdraw.
- (2) Secretary of State has no authority to pass on qualifications of signers of such petition.
- (3) Moot questions cannot be determined.

#### INQUIRY

CARSON CITY, July 14, 1930.

Under date of July 5, Mr. L. C. Branson filed with the Secretary of State a referendum petition aimed at the repeal of chapter 99, Statutes of Nevada, 1923, the same being the statute under which this Commission was created and now operates. The filing of this petition has raised several points on which we should appreciate your opinion, as follows:

- (1) Can the signers of this petition withdraw their names?
- (2) Can this petition as a whole be declared invalid on the basis that some of the signers are nonelectors and, in fact, aliens, even though it carries enough other signatures of bona fide electors to supply the number legally required on such a petition?
- (3) If the petition as filed with the Secretary of State is carried at the next general election and chapter 99, Statutes of Nevada, 1923, is repealed by vote of the people, will chapter 155, Statutes of Nevada, 1921, be automatically revived and become effective?
- (4) If the petition in question is successful and chapter 99, Statutes of Nevada, 1923, is repealed at the next general election by vote

of the people, can the 1931 Legislature pass a new Act covering the same ground and along the same general lines?

## OPINION

(1) Answering question No. 1, the Supreme Court of this State in the case of *State v. Scott*, 285 P. 511, held that, under the provisions of our law, voters who sign petitions cannot legally withdraw their names from such petitions. Quoting from a decision by the Supreme Court of Iowa, our Supreme Court concluded that jurisdiction attached on the day when the legal petition was filed. It further concurred in the ruling that "The power to act having been conferred upon the board by virtue of the legal petition, it could not be impaired or taken away by the protests or demands to withdraw the same of the petitioners."

(2) In answer to your second question, the Supreme Court of this State in the case of *State v. Glass* held that, if the petition had annexed to it the legal number of names, together with the affidavit required by law, the party designated by the statute to receive the petition was but a ministerial officer who had no authority to exercise judicial discretion in determining whether or not the names appearing thereon are aliens or nonelectors.

As to whether or not the sufficiency of the petition may be attacked by court proceedings is not a matter for me to determine.

The Secretary of State, if the petition appears to be in due form, has no discretion but to file the same and, if he is not prevented by court action from placing the same on the official ballot, the matter will be submitted to the voters for decision.

Respecting the questions enumerated under your third and fourth queries, the same are moot questions and are based upon a contingency that may or may not happen. This office, in accordance with its established custom, for the reason that the questions are moot, cannot render a decision upon the matters presented until such time as the matters submitted can be considered existing public questions that must be determined.

Respectfully submitted,

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

STATE RABIES COMMISSION, *University of Nevada, Reno, Nevada*.

## SYLLABUS

380. Elections—Names on Primary Ballot Where but One Party Has Candidates—Filing Fee Paid by Worthless Check.

(1) Where two are seeking nomination in same political party for which there is no other candidate, the names of the two candidates must appear on primary ballot.

(2) If Clerk accepts check in payment of filing fee and no funds are in bank to pay check, the Clerk has no authority to omit name of such candidate from ballot.

## INQUIRY

CARSON CITY, August 5, 1930.

(1) You are referred to the case of *State v. Beemer*, 51 Nev. 192, where section 22 of the Primary Election Law, as amended 1927, was construed.

In view of this decision, where two men are seeking nomination as candidates for an office in the same political party must their names appear on the primary ballot?

(2) Where a candidate pays his filing fee with check and the check is returned because there is not sufficient funds in the bank to meet the check, and this appears after the date for filing declarations has expired, does such candidate forfeit the right to have his name placed on the ballot?

(3) Under Statutes 1929 it is mandatory with the County Commissioners to fix salaries of township officers at their regular meeting in July. Where this meeting is recessed until July 28, may salaries be fixed at the later meeting?

(4) Assuming that on the meeting on July 5 proper order was made fixing salaries, but Clerk failed to enter the order, could the omission be corrected?

## OPINION

(1) Prompted by an abundance of precaution, it is my opinion that the names of the two candidates of the same political faith aspiring for the nomination for an office for which there is no candidate either as an independent or other political party the names of the two candidates should appear on the primary ballot.

The Legislature has specifically provided that where but two candidates have filed for a nonpartisan office the names of such candidates shall be omitted from the primary election ballot and such candidates shall be declared to be the nominees for such office. The Legislature, however, has not prescribed the same conditions for other offices other than nonpartisan offices.

(2) The County Clerk would have the right to insist that all parties filing declarations with him under the Election Law pay the fees for such filing in cash. Having accepted a check which he had no authority to accept, and it appearing that the check is returned not paid for want of sufficient funds, the County Clerk would be personally responsible for the amount of the check and the transaction would in no way affect the right of the party to have his name placed on the ballot.

(3) The Board of County Commissioners would have the right under the law to fix the salaries of township officers at the recessed meeting.

(4) The minutes of the Clerk could be corrected by proper order.

Respectfully submitted,

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

JOHN R. ROSS, *District Attorney of Lyon County, Yerington, Nevada*.

---

## SYLLABUS

## 381. Statutes—Amendment—Provision of Latter Act Prevails.

Section 3619, Rev. Laws, 1912, was amended Statutes 1927, chapter 162. By Statutes 1927, chapter 178, section 3619 was again amended. The provisions of the latter statute prevail.

## INQUIRY

CARSON CITY, August 5, 1930.

Attention is called to section 3619, Revised Laws of Nevada, 1912, and an opinion is requested as to the legal rates to be charged for advertising delinquent taxes.

Reference is made to chapter 162, Statutes 1927, and chapter 178, Statutes 1927.

## OPINION

Section 3619, Revised Laws, 1912, was amended by Statutes of 1927, chapter 162, and under this amendment the cost for publishing delinquent taxes could not exceed three dollars. This amendment was approved March 28, 1927. By Statutes 1927, chapter 178, section 3619 was again amended, with a provision and reference to charges for publication of delinquency that the same should not be more than the legal rate. This latter amendment was approved March 29, 1927.

It is my opinion that the amendment approved March 29, 1927, must prevail and, therefore, the charge for publishing delinquent taxpayers is fixed at an amount not more than the legal rate.

Respectfully submitted,

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

CLAUDE H. SMITH, *Secretary, Nevada State Press Association, Fallon, Nevada.*

## SYLLABUS

## 382. Referendum—Elections—Effective Date of Law Repealed by Referendum—Expenditure of State Money Under Such Law.

Where existing law is repealed by referendum vote, such law becomes inoperative at the time designated under section 26 of General Election Laws.

## INQUIRY

CARSON CITY, August 5, 1930.

If chapter 99, Statutes of Nevada 1923, is repealed at the next general election on the basis of the petition filed by Mr. Branson with the Secretary of State, upon what date will such repeal become effective?

On the basis of the above, up to what date would it be legally safe for this Commission to incur liabilities to be paid out of their present appropriation? Would claims covering liabilities incurred by this Commission have to be in the hands of the State Controller prior to the date of repeal as above, or would they be honored and paid after the date of such repeal, providing they cover only obligations created prior thereto?

## OPINION

(1) Section 97 of the General Election Law provides in part that when a majority of the electors voting on the question shall signify

disapproval, the law or resolution so disapproved shall be void and of no effect.

There is no direct provision in the law which definitely determines the effective date when such law or resolution disapproved shall become effectual. However, we must read this section of the law with other provisions of the Election Law of this State in order to arrive at a correct conclusion.

Section 26 of the Election Law provides that on the third Monday of December succeeding such election the Chief Justice of the Supreme Court and the Associate Justices shall meet and canvass the vote "for and against any question submitted." The Legislature in enacting this section has created a body for the purpose of making a canvass of the votes cast and conclusively determine by such canvass the result of such election.

It is my opinion that if the measure presented is approved by the voters, the law would not be repealed until the machinery set up by the Legislature to determine the correctness of the count had functioned and publicly proclaimed the result of the canvass. In other words, the third Monday of December would be the date such repeal would become effective if the voters approved such measure.

(2) Your Commission could not incur or pay liabilities after the third Monday of December.

Respectfully submitted,

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

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

---

SYLLABUS

383. Schools — Corrections Made in Opinion No. 378 — Distinction Between School Trustees and County Boards of Education.

INQUIRY

CARSON CITY, August 25, 1930.

Reference is made to Opinion No. 378. The question presented in this opinion was whether or not a person appointed as a member of the County Board of Education would hold office for the balance of the unexpired term.

OPINION

In submitting the question, reference was made to Opinions Nos. 117 and 137. These two opinions dealt with the term of office of a School Trustee appointed to fill a vacancy and not to a member of the County Board of Education. In arriving at the conclusions in Opinion No. 378, we applied the law applicable to School Trustees to members of the County Boards of Education.

School Trustees are appointed by the Deputy Superintendents of Public Instruction, while members of the County Boards of Education are appointed by the Superintendent of Public Instruction. Under section 178 of the School Code, it is specifically provided that the Superintendent of Public Instruction, when a vacancy occurs, shall fill the vacancy for the unexpired term. It must follow, therefore,

that when the Superintendent of Public Instruction fills a vacancy it is for the unexpired term and not until the next election.

Under the facts stated in Opinion No. 378, Mr. Vail would hold office for the balance of the unexpired term.

Respectfully submitted,

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

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

---

SYLLABUS

384. **Schools—Nepotism Act—Effect of Failure to Notify Teacher of Reemployment.**

(1) Statutes 1928, chapter 181, automatically reemploys a teacher when School Board fails to notify teacher as provided.

(2) The Nepotism Act has no application under these circumstances, because employment is consummated by law.

INQUIRY

CARSON CITY, August 25, 1930.

Your answer is requested to the following question, namely:

Can a teacher, disqualified by relationship for employment as teacher under chapter 22, section 1, Statutes of Nevada, 1926-1927, be employed under chapter 151, section 1, Statutes of Nevada, 1928-1929, without unanimous vote of the School Board, by simply giving notice to the Board of Trustees of the district of acceptance of reemployment when the other conditions specified in the statute authorize reemployment under such notice of acceptance?

Under chapter 22, section 1, Statutes of Nevada, 1926-1927, provision is made by which the disqualification in the degree therein mentioned may be overcome, or removed, by unanimous vote of the Trustees, where the teacher is related to only one of the Trustees.

Chapter 151, section 1, Statutes Nevada 1928-1929, makes provision for the reemployment of teachers automatically, by the teacher giving notice, within 10 days after May 15, of acceptance of reemployment, when no notice has been given the teacher by the Board of Trustees in respect to reemployment.

A teacher in this county, within the degree of relationship to one of the School Trustees prohibited in chapter 22, gave the Board of Trustees, in proper time, notice of acceptance of reemployment, after failure of the Board of Trustees to give her written notice as to reemployment.

The teacher claims under chapter 151, section 1, Statutes Nevada, 1928-1929, that she is relieved of the necessity of unanimous vote of the School Trustees in favor of reemployment, by virtue of having filed with the Board notice of acceptance of reemployment at the proper time.

OPINION

Statutes 1926-1927, chapter 22, section 1, makes it unlawful "for any School Trustee \* \* \* to employ on behalf of the State of

Nevada \* \* \*, in any capacity, any relative of such employer within the third degree of consanguinity or affinity." It is further provided in the Act that the provisions "shall not apply to school districts when the teacher so related is not related to more than one of the Trustees and shall receive a unanimous vote of all members of the Board of Trustees."

Statutes 1928, chapter 151, makes it the duty of the school board to notify teachers, in writing, on or before the 15th day of May of each year, concerning the reemployment of such teachers for the ensuing year. This section also provides as follows: "In case the board through its proper official shall fail so to notify its teachers, then those teachers who are employed and who have been so employed for the major part of the current year shall be deemed reelected on the same terms as for the then closing school year, and the board shall issue the regular contract in such cases as though the board had elected said teachers in the usual manner; *provided*, that any teacher who shall have been informed of his reelection by written notice from the board, or who shall have been automatically reelected in accordance with the provisions of this Act, in either event shall, within ten days thereafter, present to the board in writing his or her acceptance of the position."

In the facts stated by you, it appears that on the 15th day of May there were but two legally qualified and acting members of the school board. One of such members was related by marriage to the teacher.

It further appears that no affirmative action was taken by the board and that the teacher was not advised, under Statutes 1929, chapter 151, that her services were no longer required.

It further appears that within the time stated by this section the teacher in question submitted to the board in writing her acceptance of the position.

I am of the opinion that, inasmuch as the board failed to notify the teacher as required by Statutes 1928-1929, it is now the duty of the board to issue to the teacher the regular contract, with the same force and effect as though the board by unanimous vote had elected said teacher.

If the board did not desire to retain the services of the teacher they had the right, under the law, to so advise her within the time required, and their failure to do the things the law requires them to do *ipso facto* calls into operation the provisions of this section of the law.

Her reemployment as a teacher does not require the affirmative votes of all members of the board. When they failed to notify her that her services were not required, the provisions of law in themselves constituted the authority for her election, and no affirmative vote of the members of the board is required.

For these reasons, therefore, I conclude that the teacher is entitled to her contract.

Respectfully submitted,

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

HON. J. A. HOULAHAN, *District Attorney, Goldfield, Nevada*.

## SYLLABUS

## 385. Elections—Number of Names to Appear on Ballot for Assembly Where One Party Does Not Have Full Number of Candidates.

(1) Under Statutes 1927, page 325, where one party has not a sufficient number of candidates for Assembly to complete the ticket for these offices, the law requires sufficient names to be placed on ballot at general election so that the same exceed in number twice the number to be elected.

(2) At a primary election fifteen Republicans sought nomination for Assembly and six offices were to be filled. At the same election but two Democrats sought the nomination for said offices. The law requires the names of the highest ten Republicans plus the names of the two Democratic candidates to appear on the general election ballot.

RENO, September 6, 1930.

MR. ELWOOD H. BEEMER, *County Clerk, Reno, Nevada.*

DEAR SIR: You have requested the opinion of this office concerning the number of names that should appear upon the election ballot of the general election in November for Assemblymen from District No. 3.

At the recent preliminary election there were fifteen Republican candidates for the six nominations that party was entitled to, and there were two Democrats for the nomination to which that party was entitled. There were, consequently, no candidates on the Democratic ticket for four of the offices of Assemblymen.

Each member of the Assembly holds a separate and distinct public office. Each has his own individual compensation, and his own independent vote on matters that come before the lower house of the Legislature. The six persons elected from District No. 3 will each, therefore, be elected to a separate and distinct office.

The Statutes of Nevada (Stats. 1927, p. 325) provide, in so far as is material to this question:

The party candidate who receives the highest vote at the primary shall be declared to be the nominee of his party for the November election. In the case of an office to which two or more candidates are to be elected at the November election, those party candidates equal in number to positions to be filled who receive the highest number of votes at the primary shall be declared the nominees of their party; *provided*, that if only one party shall have candidates for an office or offices for which there is no independent candidate, then the candidates of such party who received the highest number of votes at such primary (not to exceed in number twice the number to be elected to such office or offices at the general election) shall be declared the nominees for said office or offices.

I have conferred on this question with Attorney-General M. A. Dickinson, and am authorized to state that this is the joint opinion of the Attorney-General's office and of this office.

The statute heretofore mentioned has already been construed by the Supreme Court of Nevada in the case of *State ex rel. Pittson v. Beemer*, 51 Nev. 192. Under the provisions of this statute and as the same has been interpreted by the Supreme Court of this State, it is our opinion that there should be printed upon the November ballot the names of the highest ten Republican candidates for the Assembly

from District No. 5, plus the two Democratic candidates for the same offices.

Yours very truly,

LESTER D. SUMMERFIELD,

*District Attorney of Washoe County, Nevada.*

SYLLABUS

386. **Statutes—Expenditures Confined to Purposes of Law.**

The activities of a State board in expending money must be confined to provisions of statutes.

INQUIRY

CARSON CITY, September 15, 1930.

Has the Board of Barber Examiners the right to use money in its fund to have a new and different barber bill prepared to present to the Legislature, and has it the right to use these funds for the expenses of obtaining signatures from a majority of the shops in the State?

OPINION

Chapter 131, Statutes 1929, gives the Board of Barber Examiners, in section 16, the right to use such funds for all necessary and proper expenses in carrying out the provisions of the Act. The expenses named in the inquiry are totally outside of the provisions of the Act and have no connection with it.

The purpose outlined in your inquiry is to create a new and different Act, and, therefore, the expenditures would not be justified.

Respectfully submitted for the Attorney-General,

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

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

DR. E. E. HAMER, *Secretary, State Board of Health, Carson City, Nevada.*

SYLLABUS

387. **Schools—Evening Schools—Maximum Compensation To Be Paid Teachers.**

INQUIRY

CARSON CITY, October 8, 1930.

Under the school law providing for evening schools, and calling your attention to sections 3 and 5 on page 162 of the School Code of 1927, the question has arisen here as to whether or not teachers are entitled to more than \$1 per hour and not more than \$40 per teacher for school month. The county high school has evening school and they are paying the teachers \$2 per hour.

I would like to know if there is a limit upon the amount that teachers can be paid and, if so, what is the limit?

## OPINION

Under section 3, Statutes 1917, 354, it becomes the duty of the Superintendent of Public Instruction to apportion from the State Distributive School Fund certain sums for maintaining evening schools. Under the specific provisions of the Act, the maximum amount shall not exceed one dollar per hour or more than forty dollars per teacher per school month.

Under section 5, if the Legislature for any reason has failed to provide funds for the support of evening schools, the Board of School Trustees may present annual budgets to the County Commissioners, and the County Commissioners shall determine the amount to be allowed for the maintenance and salaries of said school.

I conclude from reading the statute that, where the teachers are paid from the Distributive School Fund, the maximum amount payable to each teacher in the evening school is one dollar per hour or not more than forty dollars per month. Where the Legislature, however, has failed to provide funds for the support of evening schools, the County Commissioners may fix the salary of such teachers at any amount they feel would be reasonable.

Respectfully submitted,

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

HON. E. E. WINTERS, *District Attorney of Churchill County, Fallon, Nevada.*

## SYLLABUS

388. Insurance—Fraternal Benefit Associations—Juvenile Insurance Prohibited.

## INQUIRY

CARSON CITY, October 8, 1930.

Under the laws of the State of Nevada can a fraternal beneficiary association or fraternal life insurance company write insurance on the lives of juveniles through a guardian?

## OPINION

Section 8, Statutes 1891, provides as follows:

No corporation doing business under this act 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.

Under the provisions of this section, juvenile insurance is prohibited, and it would make no difference if the insurance contract were to be made through a guardian.

Respectfully submitted,

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

GEORGE A. MARTIN, *Deputy State Controller, Carson City, Nevada.*

## SYLLABUS

## 389. Constitution—Referendum—Statute in Conflict—Construction Vote Necessary to Adopt.

(1) The Constitution requires that before referendum is adopted a majority of electors voting must indicate choice before effective actions ensue.

(2) Statute requiring majority of votes on question is contrary to Constitution and is of no effect.

(3) Rabies law not repealed because not voted on by majority voting at election.

## INQUIRY

CARSON CITY, December 29, 1930.

In order to be certain of the standing of the State Rabies Commission law, may I have your opinion on the following questions:

1. Was the law repealed by the referendum vote of the recent election?

2. Can bills against the Commission be legally paid from the appropriation for the support of the Commission made by the 1929 Legislature?

## OPINION

At the November election, 1930, there was submitted to the voters by referendum the question as to whether or not the Act of the Legislature approved March 8, 1923, and known as "The Rabies Law," should be approved. The official returns of the election establish that 11,567 votes were cast in the affirmative and 11,586 cast in the negative. The official returns also show that for the office of Governor 34,634 votes were cast.

Under article XIX, sections 1, 2, and 3 of the Constitution of the State of Nevada authorize initiative and referendum petitions. Section 2 of article XIX provides: "When the majority of the electors voting at a state election shall by their votes signify approval of a law or resolution, such law or resolution shall stand as the law of the state, and shall not be overruled \* \* \*. When such majority shall so signify disapproval, the law or resolution shall be void and of no effect."

In order to provide a machinery so that these provisions of the Constitution might be carried into effect, the Legislature enacted a law regarding the referendum. Under section 97, section 2535 of Compiled Laws of Nevada 1929, it is provided that: "When a majority of the electors voting on the question of the approval or disapproval of any act at a state election shall, by their vote, signify approval of the same, such act shall stand as the law of the state \* \* \*."

It is quite apparent that when the Legislature enacted the referendum measure it overlooked the fact that the Constitution required a majority of the electors voting at a State election rather than a majority of electors voting on the question submitted. Under the legislative Act, as quoted, the Act referred to by you would be repealed because a majority of electors voting on the question signified their disapproval of the Act.

I am of the opinion, however, that so much of section 2535, *supra*, as conflicts with the provisions of the Constitution is invalid and of no effect, and that the provisions of the Constitution must govern, requiring a majority of the electors voting at a State election to signify their

disapproval of the Act. It is apparent from the official returns that a majority of the electors voting at the election of 1930 did not signify their disapproval of the Act, neither did they signify their approval of the Act. The Act, therefore, remains in full force and effect.

In answer, therefore, to your first question, the same is answered in the affirmative.

Your second question is also answered in the affirmative.

Respectfully submitted,

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

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

---

## CASES PENDING JANUARY 1, 1929

## 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. J. G. Scrugham, 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—George 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. Pedrolì. 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.  
 Batiste 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 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 Supreme Court of Nevada—Guy C. Dewey v. Public Service Commission of Nevada et al., 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.

#### 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—George S. Green v. Highway Department, etc. Damage suit. Complaint filed June 15, 1926.

#### 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.

#### Tax Commission

(Including Escheats and Inheritance Tax Matters)

In the Eighth Judicial District Court, Churchill County—Matias Jauregui v. Churchill County. Complaint filed August 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 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. Complaint mailed to District Attorney for filing February 20, 1924. Action to recover bullion tax.

In the Fifth Judicial District Court, Nye County—State of Nevada v. Tonopah Belmont Mining Company. Complaint mailed to District Attorney for filing February 20, 1924. Action brought to recover bullion tax.

In the Sixth Judicial District Court, Pershing County—State v. Rochester Silver Corporation. Complaint mailed to District Attorney for filing February 20, 1924. Action brought to recover bullion tax.

In the Ninth Judicial District Court, White Pine County—State of Nevada v. Nevada Consolidated Copper Co. Complaint mailed to District Attorney for filing February 29, 1924. Action brought to recover bullion tax.

In the Fifth Judicial District Court, Nye County—State v. West End Consolidated Mining Co. Action brought to recover bullion tax. Complaint mailed to District Attorney for filing April 22, 1924.

In the Second Judicial District Court, Washoe County—Re Estate of Henry S. Hansen, deceased. Notice of hearing on inheritance tax appraisement filed November 14, 1924.

In the First Judicial District Court, Douglas County—A. J. Pedrolí 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. Pedrolí 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—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 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 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—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 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 Third Judicial District Court, Eureka County—In the Matter of the Estate of Pierre Anxo, Deceased. Notice of appraisement filed April 24, 1924. Action instituted to escheat estate to State of Nevada.

In the First Judicial District Court, Storey County—Comstock Milling Corporation, a corporation, v. Nevada Tax Commission, Frank Kline et al. 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 al. 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 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.

#### 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—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

Kalamber 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.

#### General

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.

#### CASES COMMENCED 1929-1930

##### Tax Commission

(Including Escheats and Cases Instituted to Have Previously Escheated Estates Revert to Alleged Heirs)

In the First Judicial District Court, Ormsby County—In the Matter of the Estate of Owen Leonard, Deceased. Action brought on petition of alleged heir to secure possession of Owen Leonard estate previously escheated. Petition filed April 1, 1929.

In the First Judicial District Court, Ormsby County—Kitty Willey Beach v. The State of Nevada, and Ed. Peterson, State Controller of the State of Nevada, and George B. Russell, State Treasurer of the State of Nevada. Action brought to recover escheated estate by alleged heir. Summons issued and complaint filed April 29, 1930.

In the Tenth Judicial District Court, Clark County—In the Matter of the Estate of Richard Busteed, Deceased. Action brought to have estate escheat to State of Nevada. Attorney-General advised of escheatable estate May 26, 1930.

In the First Judicial District Court, Ormsby County—Sierra Pacific Power Company, a corporation, v. Nevada Tax Commission et al. Action to secure reduction of assessed valuation of company's property to \$750,000. Summons and complaint served on Attorney-General May 29, 1930.

In the First Judicial District Court, Ormsby County—John Gobel v. The State of Nevada, Ed. Peterson, State Controller, and George B. Russell, State Treasurer of the State of Nevada. Action brought to recover escheated property. Petition to recover escheated property served on Attorney-General September 3, 1930.

In the First Judicial District Court, Ormsby County—In the Matter of the Estate of Owen Leonard, Deceased. Action brought to recover moneys escheated to the State of Nevada from the estate of John Leonard, deceased. Petition of heir for payment of money in State Treasury filed September 22, 1930.

In the First Judicial District Court, Ormsby County—Mary Ellen Forney Snyder, Amanda M. Forney, Melvina E. Forney, Emma Forney Brownwell, Carl W. Forney, Clarence H. Forney, Margaret Forney Gardner v. The State of Nevada, and Ed. Peterson, State Controller, and George B. Russell, State Treasurer of the State of Nevada. Action to recover property of Charles Franklin Forney, deceased, which escheated to the State of Nevada in 1921. Petition of alleged heirs filed October 4, 1930.

In the Tenth Judicial District Court, Clark County—In the Matter of the Estate of Moss Nuhimonto, Escheat matter, Clark County. On October 27, 1930, Attorney-General advised of death of Nuhimonto on October 17, 1930, and of the fact that W. G. Mores of Las Vegas is to apply for letters of administration.

In the First Judicial District Court, Ormsby County—Edward John Mack, Thomas George Mack, and Mary Mack v. State of Nevada, and Ed. Peterson, State Controller, and George B. Russell, State Treasurer of the State of Nevada. Action brought to recover moneys escheated to State of Nevada from the estate of John Edward Mack. Petition to recover escheated property served on Attorney-General November 23, 1930.

##### Criminal Cases

In the Supreme Court of Nevada—The State of Nevada v. C. E. Mills. On appeal from a judgment of the Clark County District Court wherein defendant

was found guilty of driving a motor vehicle while under the influence of intoxicating liquor. Notice of appeal filed March 14, 1929.

In the Supreme Court of Nevada—R. H. White, sometimes known as "Bob" White, v. State of Nevada. Action brought on appeal from judgment of death for murder committed in Elko County. Notice of appeal filed January 1, 1929.

In the Supreme Court of Nevada—The State of Nevada v. Rosa Watts. Action to set aside judgment of the District Court of Humboldt County finding appellant guilty of murder. Record on appeal filed January 31, 1930.

In the Supreme Court of Nevada—State of Nevada v. Wallace McNeil. Appeal from judgment of second degree murder, Nye County. Record on appeal filed September 28, 1930.

In the Supreme Court of Nevada—The State of Nevada v. L. Ceja. Appeal from judgment of first degree murder rendered by Humboldt County court. Application for stay of execution of sentence pending appeal filed September 8, 1930.

In the Supreme Court of Nevada—State of Nevada v. Lloyd Robison. Appeal from White Pine County court judgment of second degree murder. Transcript on appeal filed September 22, 1930.

#### Highway Department

In the First Judicial District Court, Ormsby County—C. A. Robinson v. State of Nevada. Action to recover judgment for \$2,601.25 and costs for alleged balance due on highway contract. Complaint filed June 13, 1929.

In the Third Judicial District Court, Lander County—The State of Nevada, on relation of the Department of Highways thereof, v. William A. Marshall. Action brought to obtain condemnation of lands in Lander County for State highway purposes. Complaint filed October 1, 1930.

#### State Engineer

In the First Judicial District Court, Ormsby County—In the Matter of the Determination of the Relative Rights of Claimants and Appropriators of the Waters of the Carson River and Its Forks. Action brought to adjudicate waters of Carson River system. The following exceptions were filed:

J. H. Stodieck, February 4, 1929.

Thomas N. Wilslef, February 9, 1929.

Willie Rabe, February 11, 1929.

Chris Johnson and Knox Johnson, February 13, 1929.

Schulz Bros., February 16, 1929.

Chris Johnson, Knox Johnson, H. H. Springmeyer Land & Livestock Co., J. H. Stodieck, and Thomas Wilslef (additional exceptions), February 28, 1929.

In the Supreme Court of Nevada—Mexican Dam & Ditch Company, a corporation, et al. v. District Court of the First Judicial District of the State of Nevada, in and for the County of Ormsby, and Hon. G. A. Ballard, Judge thereof. Action brought to restrain District Court from proceeding with the matter of the determination of the relative rights of users of the waters of the Carson River. Petition for writ of prohibition filed April 6, 1929.

In the Fourth Judicial District Court, Elko County—William W. Kane v. George W. Malone, as State Engineer of the State of Nevada. Action to restrain State Engineer from proceeding with attempted determination of the relative rights to the use of the waters of Conway Creek, Elko County. Complaint filed and restraining order issued March 16, 1929.

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 on complaint of C. L. Tobin, Phil M. Tobin, and Frank S. Tobin, copartners doing business under the firm name and style of Circle Bar Ranch, and C. L. Tobin to secure order from District Judge directing State Engineer to distribute waters of stream system in accordance with Final Order of Determination. Petition filed June 3, 1929.

In the Sixth Judicial District Court, Humboldt County—In the Matter of the Determination of the Relative Rights of Claimants and Appropriators to

the Waters of the Humboldt River Stream System and its Tributaries. State of Nevada v. W. W. Whitacre and Emeterio Plaza. Contempt case in regard to diversion of water in Elko County. Complaint prepared and sent to County Clerk for filing June 17, 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. State of Nevada v. Bill Drown, John Doe, Arthur Drown, Clark Drown, Charles Drown, Al Griswold, and J. L. Hylton. Contempt matter for diverting waters of Humboldt River. Criminal complaint filed July 1, 1929.

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 on petition of Intermountain Investment Company to have State Engineer ordered to divert water into Lovelock District. Petition filed July 2, 1929.

In the Supreme Court of Nevada—State of Nevada ex rel. George W. Malone as State Engineer of the State of Nevada and George W. Malone v. District Court of the Sixth Judicial District of the State of Nevada, in and for the County of Humboldt, Frank T. Dunn, acting District Judge of said Court. Action to compel Judge Dunn to rule and determine a contempt proceeding. Petition for writ of mandamus filed August 12, 1929.

In the Fourth Judicial District Court, Elko County—In the Matter of the Determination of the Relative Rights in and to the Waters of Thousand Springs Creek and its Tributaries in Elko County, State of Nevada. Action brought to adjudicate the waters of Thousand Springs Creek. Preliminary Order of Determination filed May 15, 1929.

In the Tenth Judicial District Court, Lincoln County—In the Matter of the Determination of the Relative Rights in and to the Waters of Pahranaagat Lake and its Tributaries in Lincoln County, State of Nevada. Action brought to adjudicate rights of claimants. Affidavit of compliance with jurisdictional requisites filed October 10, 1929.

In the Sixth Judicial District Court, Pershing County—In the Matter of the Determination of the Relative Rights of Claimants and Appropriators to the Waters of the Humboldt River Stream System and its Tributaries. Action brought on petition of T. & S. Cattle Company to restrain State Engineer from removing tight dams in Humboldt River. Petition for an order modifying the activity of the State Engineer filed March 27, 1930.

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 compel State Engineer to distribute waters of adjudicated streams in accordance with Final Order of Determination. Petition of John Leland Hylton for an order directing and controlling the State Engineer's activities filed May 24, 1930.

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. State of Nevada v. James McDermott, John Doe Welch, and Grayson Hinckley. Contempt of court proceedings. Complaint for criminal contempt filed June 20, 1930.

In the Supreme Court of Nevada—State of Nevada ex rel. Grayson Hinckley v. The Sixth Judicial District Court of the State of Nevada, in and for the County of Humboldt, and Hon. Frank T. Dunn, Presiding Judge thereof. Action on appeal from judgment of Sixth Judicial District Court finding relator guilty of contempt. Application for writ of certiorari presented to Supreme Court July 19, 1930.

In the Supreme Court of Nevada—Pacific Live Stock Company, a corporation, v. George W. Malone, State Engineer of the State of Nevada. Action brought to compel State Engineer to assume control of distribution of waters of Quinn River. Petition for alternative writ of mandate filed August 12, 1930.

**Public Service Commission**

In the Second Judicial District Court, Washoe County—Piekwick Stage Lines, Inc., a corporation, v. Public Service Commission of Nevada, and J. F. Shaughnessy, H. R. Martin, and George W. Malone, as Commissioners thereof, and Southern Pacific Company, a corporation, and Western Pacific Railroad Company, a corporation, et al. Action to have set aside order entered by Commission on April 8, 1929, denying plaintiff's application for certificate of public convenience and necessity to operate a motor vehicle stage line as a common carrier over the public highways between Reno and Nevada-Utah State line. Complaint served June 17, 1929.

**Original**

In the Second Judicial District Court, Washoe County—In the Matter of the Estate of Frances Miller, Deceased. Action brought to prevent probate of will and to have estate escheat to State of Nevada. Objections to probate of will filed June 24, 1929.

In the First Judicial District Court, Ormsby County—In the Matter of the Estate of Joseph Poujade, Deceased. Action to administer estate bequeathed to the State of Nevada. Petition that holographic will be admitted to probate and that letters testamentary issue to Attorney-General filed May 3, 1930.

In the Justice's Court of Ely Township, White Pine County—State of Nevada v. William C. Douglass. Action to compel Consolidated Coppermines Corporation to install safety devices in Emma shaft, pursuant to provisions of Sec. 6799, Rev. Laws, 1912. Affidavit and complaint sworn to by State Mine Inspector A. J. Stinson and mailed to District Attorney of White Pine County for filing July 23, 1930.

**General**

In the Supreme Court of Nevada—In the matter of the Application of R. H. Cowles for a writ of prohibition against the Board of Capitol Commissioners of the State of Nevada, and Hon. F. B. Balzar, Hon. Morley Griswold, Hon. W. G. Greathouse, Hon. Ed. C. Peterson, and Hon. George Russell, as members of said Board. Action to restrain the Board of Capitol Commissioners from carrying into effect the lease on the Nevada State Building in Reno. Petition for writ filed July 3, 1929.

In the Supreme Court of Nevada—In the Matter of the Application of Charles Nixon, by his next friend, Albert H. Johnson, for a writ of habeas corpus. Action to secure release of Nixon from Nevada State Prison on the grounds that his term of sentence has expired. Petition filed July 6, 1929.

In the Supreme Court of Nevada—In Re Lawrence Heckman. Action to restore petitioner his liberty and prevent his extradition to Nebraska on a charge of desertion of wife and minor child. Petition for writ of habeas corpus filed October 16, 1929.

In the Sixth Judicial District Court, Pershing County—H. F. Davidson v. G. Gallo. Action to test validity of chapter 200, Stats. 1925 (Stock Commission Act). Complaint filed December 5, 1929.

In the Sixth Judicial District Court, Humboldt County—E. Reinhart Company, a corporation, v. Fred Coolidge and L. S. Scott, and Coolidge & Scott, a copartnership consisting of Fred Coolidge and L. S. Scott. Action brought on judgment rendered by district court in favor of E. Reinhart Company and to attach moneys due the contracting firm from the State of Nevada. Writ of execution issued and served upon State Highway Department on March 11, 1930.

In the Supreme Court of Nevada—State of Nevada v. A. A. Payne. On appeal from District Court's decision sustaining demurrer to information charging sale of uninspected meat in violation of secs. 6 and 10, chap. 76, Stats. 1929. Opening brief of appellant filed June 4, 1930.

In the Supreme Court of Nevada—In the Matter of the Application of William C. Douglass for a writ of habeas corpus. Action brought to test validity of sec. 6799, Rev. Laws, 1912. Petition for writ of habeas corpus filed August 2, 1930.

In the United States Supreme Court—State of Arizona v. State of California, State of Nevada, State of Utah, State of New Mexico, State of Colorado, State

of Wyoming, and Ray Lyman Wilbur, Secretary of the Interior. Action brought to have declared unconstitutional the Colorado River Compact and the Boulder Canyon Project Act, and to enjoin defendants from enforcing or carrying out said compact and doing any act or thing pursuant to the Boulder Canyon Project Act. Complaint and precept received by Attorney-General on October 10, 1930.

In the Supreme Court, State of California—In the Matter of the Estate of Henry Wood, Deceased. Action brought to set aside judgment rendered by Superior Court of Santa Cruz County on complaint to determine interest in estate. Bill of exceptions to conclusions of law, findings of fact, and judgment filed November 13, 1929.

#### CASES CLOSED SINCE JANUARY 1, 1929

In the First Judicial District Court, Ormsby County—In the Matter of the Determination of the Relative Rights of Claimants and Appropriators of the Waters of the Carson River and Its Forks. Order of determination filed on November 21, 1928, and exceptions thereto taken. Writ of prohibition issued by Supreme Court halting hearing of proceedings April 6, 1929.

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. Motion for new trial denied; findings settled June 4, 1929.

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 on complaint of C. L. Tobin, Phil M. Tobin, and Frank S. Tobin, copartners doing business under the firm name and style of Circle Bar Ranch, and C. L. Tobin to secure order from District Judge directing State Engineer to distribute waters of stream system in accordance with Final Order of Determination. Petition filed June 3, 1929. Order entered as prayed June 5, 1929.

In the First Judicial District Court, Ormsby County—In the Matter of the Estate of Owen Leonard, Deceased. Action brought on petition of alleged heir to secure possession of Owen Leonard estate previously escheated. Petition filed April 1, 1929. Judgment dismissing petition entered June 15, 1929.

In the Supreme Court of Nevada—Guy C. Dewey v. Public Service Commission of Nevada et al., 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. Order dismissing appeal filed June 24, 1929.

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. State of Nevada v. Bill Drown, John Doe, Arthur Drown, Clark Drown, Charles Drown, Al Griswold, and J. L. Hylton. Contempt matter for diverting waters of Humboldt River. Criminal complaint filed July 1, 1929. In accordance with stipulation, ordered that motion to dissolve the order to show cause be granted and demurrer sustained July 1, 1929.

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 on petition of Inter-Mountain Investment Company to have State Engineer ordered to divert water into Lovelock District. Petition filed July 2, 1929. July 3, 1929, State Engineer ordered to serve equal priorities with water.

In the Second Judicial District Court, Washoe County—In the Matter of the Estate of Frances Miller, Deceased. Action brought to prevent probate of will and to have estate escheat to State of Nevada. Objections to probate of will filed June 24, 1929. Objections overruled July 5, 1929.

In the Sixth Judicial District Court, Humboldt County—In the Matter of the Determination of the Relative Rights of Claimants and Appropriators to the

Waters of the Humboldt River Stream System and Its Tributaries. State of Nevada v. W. W. Whitacre and Emeterio Plaza. Contempt case in regard to diversion of water in Elko County. Complaint prepared and sent to County Clerk for filing June 17, 1929. Motion to dissolve the order to show cause granted and demurrer sustained July 11, 1929.

In the Supreme Court of Nevada—In the Matter of the Application of Charles Nixon, by his next friend, Albert H. Johnson, for a writ of habeas corpus. Action to secure release of Nixon from Nevada state prison on the grounds that his term of sentence has expired. Petition filed July 6, 1929. Writ dismissed July 12, 1929.

In the Supreme Court of Nevada—In the Matter of the Application of R. H. Cowles for a writ of prohibition against the Board of Capitol Commissioners of the State of Nevada, and Hon. F. B. Balzar, Hon. Morley Griswold, Hon. W. G. Greathouse, Hon. Ed. C. Peterson, and Hon. George Russell, as members of said board. Action brought to restrain the board of capitol commissioners from carrying into effect the lease on the Nevada State Building in Reno. Petition for writ filed July 3, 1929. Demurrer sustained; proceedings dismissed July 27, 1929.

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. Order denying petition for rehearing filed August 13, 1929.

In the Fourth Judicial District Court, Elko County—State of Nevada v. Elkora Mines Co. Complaint mailed to District Attorney for filing February 29, 1924. Action to recover bullion tax. Settled and compromised by Tax Commission September 14, 1929.

In the Fifth Judicial District Court, Nye County—State of Nevada v. Tonopah Belmont Mining Company. Complaint mailed to District Attorney for filing February 29, 1924. Action brought to recover bullion tax. Settled and compromised by Tax Commission September 14, 1929.

In the Sixth Judicial District Court, Pershing County—State v. Rochester Silver Corporation. Complaint mailed to District Attorney for filing February 29, 1924. Action brought to recover bullion tax. Settled and compromised by Tax Commission September 14, 1929.

In the Ninth Judicial District Court, White Pine County—State of Nevada v. Nevada Consolidated Copper Company. Complaint mailed to District Attorney for filing February 29, 1924. Action brought to recover bullion tax. Settled and compromised by Tax Commission September 14, 1929.

In the Fifth Judicial District Court, Nye County—State of Nevada v. West End Consolidated Mining Company. Action brought to recover bullion tax. Complaint mailed to District Attorney for filing April 22, 1924. Settled and compromised by Tax Commission September 14, 1929.

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. Settled and compromised by Tax Commission September 14, 1929.

In the Supreme Court of Nevada—The State of Nevada v. C. E. Milis. On appeal from a judgment of the Clark County District Court wherein defendant was found guilty of driving a motor vehicle while under the influence of intoxicating liquor. Notice of appeal filed March 14, 1929. Petition for rehearing denied September 27, 1929.

In the Tenth Judicial District Court, Lincoln County—In the Matter of the Determination of the Relative Rights in and to the Waters of Pahranaagat Lake and its Tributaries in Lincoln County, State of Nevada. Action brought to adjudicate rights of claimants. Affidavit of compliance with jurisdictional requisites filed October 10, 1929. Decree of distribution rendered October 14, 1929.

In the Supreme Court of Nevada—In Re Lawrence Heckman. Action to restore petitioner his liberty and prevent his extradition to Nebraska on a charge of desertion of wife and minor child. Petition for writ of habeas corpus filed October 16, 1929. Writ dismissed, prisoner remanded October 16, 1929.

In the Fourth Judicial District Court, Elko County—In the Matter of the Determination of the Relative Rights in and to the Waters of Thousand Springs Creek and its Tributaries in Elko County, State of Nevada. Action brought to adjudicate the waters of Thousand Springs Creek. Preliminary Order of Determination filed May 15, 1929. Decree of distribution rendered December 6, 1929.

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. Judgment of conviction of defendant Phipps is reversed, judgment of conviction of defendants Boarth and Kalember confirmed December 19, 1929.

In the Sixth Judicial District Court, Pershing County—H. F. Davidson v. G. Gallio. Action to test validity of chapter 200, Stats. 1925 (Stock Commission case). Complaint filed December 5, 1929. Judgment in favor of defendant February 27, 1930.

In the Supreme Court of Nevada—State of Nevada ex rel. George W. Malone, as State Engineer of the State of Nevada, and George W. Malone v. District Court of the Sixth Judicial District of the State of Nevada, in and for the County of Humboldt, Frank T. Dunn, Acting District Judge of said Court. Action to compel Judge Dunn to rule and determine a contempt proceeding. Petition for writ of mandamus filed August 12, 1929. Judgment entered, writ issued March 28, 1930.

In the Supreme Court of Nevada—R. H. White, sometimes known as "Bob" White, v. State of Nevada. Action brought on appeal from judgment of death for murder committed in Elko County. Notice of appeal filed January 1, 1929. Petition for rehearing denied April 23, 1930.

In the Sixth Judicial District Court, Pershing County—In the Matter of the Determination of the Relative Rights of Claimants and Appropriators to the Waters of the Humboldt River Stream System and Its Tributaries. Action brought on petition of T. & S. Cattle Company to restrain State Engineer from removing tight dams in Humboldt River. Petition for an order modifying the activity of the State Engineer filed March 27, 1930. Order entered directing State Engineer not to interfere with tight dams and to distribute waters of Humboldt River as customarily distributed April 28, 1930.

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 compel State Engineer to distribute waters of adjudicated streams in accordance with Final Order of Determination. Petition of John Leland Hylton for an order directing and controlling the State Engineer's activities filed May 24, 1930. Demurrer overruled. State Engineer ordered to deliver water to petitioner's lands May 28, 1930.

In the Sixth Judicial District Court, Humboldt County—E. Reinhart Company, a corporation, v. Fred Coolidge and L. S. Scott, and Coolidge & Scott, a copartnership consisting of Fred Coolidge and L. S. Scott. Action brought on judgment rendered by District Court in favor of E. Reinhart Company and to attach moneys due the contracting firm from the State of Nevada. Writ of execution issued and served upon State Highway Department on March 11, 1930. Judgment satisfied by Fidelity & Deposit Company of Maryland, sureties on Coolidge & Scott bond, June 7, 1930.

In the Supreme Court of Nevada—Mexican Dam & Ditch Company, a corporation et al. v. District Court of the First Judicial District of the State of Nevada, in and for the County of Ormsby, and Hon. G. A. Ballard, Judge thereof. Action brought to restrain District Court from proceeding with the matter of the determination of the relative rights of users of the waters of the Carson River. Petition for writ of prohibition filed April 6, 1929. Writ of prohibition granted July 1, 1930.

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. State of Nevada v. James McDermott, John Doe Welch, and Grayson Hinckley. Contempt of court proceedings. Complaint for criminal contempt filed June 20, 1930. Judgment rendered July 10, 1930; defendant fined \$200.

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. Praecipe for dismissal with prejudice filed October 9, 1930.

In the First Judicial District Court, Ormsby County—John Gobel v. The State of Nevada, Ed Peterson, State Controller, and George B. Russell, State Treasurer of the State of Nevada. Action brought to recover escheated property. Petition to recover escheated property served on Attorney-General September 3, 1930. Demurrer sustained November 21, 1930; proceedings dismissed.

In the First Judicial District Court, Ormsby County—Mary Ellen Forney Snyder, Amanda M. Forney, Melvina E. Forney, Emma Forney Brownwell, Carl W. Forney, Clarence H. Forney, Margaret Forney Gardner v. The State of Nevada, and Ed Peterson, State Controller, and George B. Russell, State Treasurer of the State of Nevada. Action brought to recover property of Charles Franklin Forney, Deceased, which escheated to the State of Nevada in 1921. Petition of alleged heirs filed October 4, 1930. Demurrer sustained November 21, 1930; proceedings dismissed.

In the First Judicial District Court, Ormsby County—Kitty Willey Beach v. The State of Nevada, and Ed Peterson, State Controller of the State of Nevada, and George B. Russell, State Treasurer of the State of Nevada. Action brought to recover escheated estate by alleged heir. Summons issued and complaint filed April 29, 1930. Demurrer sustained December 19, 1930.

In the First Judicial District Court, Ormsby County—In the Matter of the Estate of Joseph Ponjade, Deceased. Action to administer estate bequeathed to the State of Nevada. Petition that holographic will be admitted to probate and that letters testamentary issue to Attorney-General filed May 3, 1930. Decree of distribution entered December 19, 1930.

In the First Judicial District Court, Ormsby County—C. A. Robinson v. State of Nevada. Action to recover judgment for \$2,601.25 and costs for alleged balance due on highway contract. Complaint filed June 13, 1929. Demurrer sustained; judgment entered dismissing complaint December 19, 1930.

In the Supreme Court, State of California—In the Matter of the Estate of Henry Wood, Deceased. Action brought to set aside judgment rendered by Superior Court of Santa Cruz County on complaint to determine interest in estate. Judgment upholding bequest to Nevada Orphans' Home rendered and petition for rehearing denied November 25, 1930.

## INDEX

Numerals designate opinion numbers.

### OPINIONS

#### OPINION

- 342. Automobiles—Common Carriers—Licenses.
- 339. Automobiles in Trade or Business—Registration and License—Foreign Origin.
- 389. Constitution—Referendum—Statute in Conflict—Construction Vote Necessary to Adopt.
- 361. Constitutional Law—State Debt Limit—Initiative Procedure for Constitutional Amendments—Fiscal Management of Boulder Dam Power Assets.
- 360. Constitutional Law—State Debt Limitation—Amendment Procedure.
- 337. Constitutional Law—Statutes—County Government—Public Utilities—Hawthorne Waterworks Plant Statute Declared Constitutional.
- 330. Corporations, Domestic—Filing Fees—Changing Capitalization.
- 347. Contracts—Validity of—Nepotism Act.
- 355. Corporations, Foreign—Insurance Companies—Agents for Acceptance of Service of Process.
- 365. Crimes and Punishment—Mine Safety.
- 380. Elections—Names on Primary Ballot Where but One Party Has Candidates—Filing Fee Paid by Worthless Check.
- 385. Elections—Number of Names to Appear on Ballot for Assembly Where One Party Does Not Have Full Number of Candidates.
- 346. Fees—Clerk of Supreme Court.
- 333. Fish and Game—Licenses—Statutory Penalties—Misdemeanor.
- 351. Fish and Game—Open Season for Muskrats.
- 356. Foods and Drugs—Eggs Sold to Consumer Direct.
- 373. Health, Public—Appointment of County Health Officer and County Physician.
- 357. Hides, Inspection of—Fees—County Officers—Compensation of.
- 388. Insurance—Fraternal Benefit Associations—Juvenile Insurance Prohibited.
- 340. Intoxicating Liquors—Licenses—Statutes—Repeals—Conflict of Laws.
- 359. Intoxicating Liquors—Medicinal Purposes—Pharmacy Licenses.
- 327. Justices' Courts—Attachment Under \$100—Alternative Statutory Provisions Applicable—Jurisdiction—Fees on Execution.

## OPINION

352. **Medical Practice Act—License.**
374. **Medical Practice Act—Optometry—Use of Word "Doctor."**
366. **Motor Vehicles—Carriers—Licenses.**
368. **Motor Vehicles—Carriers—Licenses.**
350. **Motor Vehicle Common Carriers—Free Transportation—General Antipass Legislation.**
377. **Motor Vehicle—License—Leasing Car.**
354. **Nevada National Guard—Accounting for County Advancements of Funds.**
353. **Official Bonds—Nevada National Guard.**
331. **Public Service Commission—Conditions Annexed to Certificates of Public Convenience.**
362. **Public Utilities—Rate Contracts—Supervision Over and Interpretation.**
369. **Public Works—Preference to Citizens and Ex-Service Men over Aliens Regardless of Qualifications—Contracts and Subcontracts, Aliens May Not Be Given.**
382. **Referendum—Elections—Effective Date of Law Repealed by Referendum —Expenditure of State Money Under Such Law.**
379. **Referendum—Signer's of Petition Withdrawal of Name—Determination of Qualification of Signers—Moot Questions.**
383. **Schools—Corrections Made in Opinion No. 378—Distinction Between School Trustees and County Boards of Education.**
363. **Schools—County Tax Levy for—Application of State School Reserve.**
387. **Schools—Evening Schools—Maximum Compensation To Be Paid Teachers.**
345. **Schools—Industrial Insurance—Liability for Injury to Student.**
370. **Schools—Life Diploma—Teaching Required.**
384. **Schools—Nepotism Act—Effect of Failure to Notify Teacher of Reemployment.**
378. **Schools (See Opinion No. 383)—Term of Office of Persons Appointed School Trustees.**
375. **School—Vacancies in Office—Appointments—Elections.**
336. **State Board of Investments (State Board of Finance Successor), Powers of —State Permanent School Fund.**
348. **State Employees—Vacations Act Not Applicable to County Employee.**
364. **State Highway Act—Purpose of State-County Highway Funds.**
332. **State Highway Law—Taxation—County—State Highway Fund and County Tax Levy Thereunder Is Eliminated.**

## OPINION

338. State Officers—State Funds—Appropriations—Constitutional Law—Courts—Judicial Power—Automobiles, Right to Operate, Determination and Registration of Title.
326. State Officers—Term Limit—Limit When Created by Legislature.
343. State Property—Nevada State Building—State Boards and Commissions—Conflict of Laws.
335. State Property—Statutes—Provision for Sale Strictly Construed—Nevada Historical Society.
381. Statutes—Amendment—Provision of Latter Act Prevails.
386. Statutes—Expenditures Confined to Purposes of Law.
329. Statutes—Salaries of State Employees—Appropriations.
328. Statutes—Title—So Much of Subject Matter Not Embraced in Expressed Title Is Void.
376. Statutes—Uniform Illegitimacy Act—Payment Costs.
334. Taxation—Personal Property—Automobiles Temporarily in State Not Taxable.
341. Taxation—Personal Property—Sale Without Suit.
372. Taxation—Sale by County Treasurer.
325. Taxation—Schools—General School Tax.
349. Taxation—When Not Double—Public School Teachers' Funds.
358. Trading Stamps—Constitutional Law—Police Power.
367. Undertakers and Embalmers.
344. Waters—Irrigation Districts—Grand Juries, Inquisitorial Power—Public Corporations.
371. Waters—Priorities—Order of Determination—Distribution of Waters.