

## Compiled Attorney General Opinions

### OFFICIAL OPINIONS OF THE ATTORNEY GENERAL - 1914

#### 109. Licenses--Liquor licenses--Druggist's Liquor License.

The retail drug-store license covers the filling of prescriptions when prescribed by a duly licensed and practicing physician only, and in no other case, and does not cover the sales of liquor, wines, or alcoholic stimulants except when so prescribed. The license to be collected from druggists, who sell liquors, wines, or alcoholic stimulants without such prescription, is fixed at \$100 per year. Upon such payment, however, the \$25 required for druggist's license is waived.

Carson City, January 3, 1914.

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

DEAR SIR: I am in receipt of your favor of the 30th ultimo, asking the construction of chapter 268, page 423, Statutes of 1913, and what license should be collected from a druggist who sells whisky by the bottle without a physician's prescription, but does not sell it by the drink.

The statute in question is an amendment of section 3779, Revised Laws, and the only change therein made by such amendment is the raising of the price of the retail state license to \$100 from \$50, and the raising of the price required for a retail drug-store from \$12 to \$25. It has been heretofore held that a retail drug-store license covers the filling of prescriptions when prescribed by a duly licensed and practicing physician only, and in no other case (see Opinions of Attorney-General, 1912, p. 30), and did not cover sales of liquor, wines, or alcoholic stimulants except when so prescribed. I am satisfied with this opinion of my predecessor that the license to be collected from druggists who sell liquor, wines, or alcoholic stimulants without such prescription is fixed at \$100 per year. On such payment, however, the \$25 required for a druggist's license is, of course, waived.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General.

#### 110. Corporations--Articles of Incorporation--Corporate Name--Notaries Public--Secretary of State.

In the reorganization of corporations the addition of the word "Limited" to the original name of the corporation is not a violation of the provisions of sec. 1108, Rev. Laws, and the Secretary of State must accept for filing, articles bearing such corporate name, notwithstanding the fact that the articles of incorporation bearing the same name, with the exception of the word "Limited," are already on file in his office. A Notary Public who was a party to the instrument, is disqualified to take the acknowledgments thereto.

Carson City, January 9, 1914.

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

DEAR SIR: I am in receipt of your favor of the 7th instant, in regard to articles of incorporation of Indian National Mining Company, Limited, and in response would advise you as follows:

It appears that the State has already accepted articles of incorporation of the Indian national Mining Company, and you inquire whether the addition of the word "Limited" to such name is sufficient to distinguish it from the present company on record.

Section 1108, Revised Laws, provides:

The name of the corporation shall be such as to distinguish it from any other formed or incorporated in this State or engaged in the same business or promoting or carrying on the same business or purpose in this State.

The purpose of this enactment seems to be to prevent one corporation from assuming a name already taken by another in this State for the purpose of misleading the public or in procuring some of the business of the first corporation through similarity of names. In the case of the corporation in question, however, it appears that this company is merely a reorganization of the Indian National Mining Company, with presumably the same stockholders and officers. I do not see how any trouble could arise under the circumstances by this similarity of names, and I think that the addition of the word "Limited" to the name of the original company is sufficient to distinguish it from the former corporation incorporated in this State. Under the circumstances I do not think you would be warranted in refusing to file the articles of this new company now in your possession.

It appears from said articles that one W. H. O'Neil is one of the incorporators of the Indian National Mining Company, Limited, and it also appears that he is a Notary Public, and has taken his own acknowledgment as an incorporator of the company. Section 1107, Revised Laws, provides:

All persons who desire to form a corporation or any one or more specified in this Act shall make, sign and acknowledge before some person competent to take acknowledgments of deeds, and file and have recorded \* \* \* articles of

incorporation.

Inasmuch as Mr. O'Neil is both one of the incorporators and is a Notary Public taking his own acknowledgment, I do not think he is competent to take the acknowledgment of the incorporators of these articles of incorporation, because he is a party to the instrument, and is, therefore, disqualified to take his own acknowledgment. In a note to the case of Havemeyer v. Dahn, reported in 33 L.R.A. 332, the law on this question is distinctly stated as follows:

The cases universally hold, in the absence of any statute affecting the question, that an officer, who is a party to an instrument, is disqualified to take the acknowledgment, and it seems to be generally assumed that the identity of the names is a sufficient indication of the identity of the party and the officer.

On account of such defective acknowledgment, I would advise you that said articles of incorporation be not accepted by you for filing in your office.

The articles are returned herewith.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General.

By EDW. T. PATRICK, Deputy.

111. Counties--County Government--County Commissioners--Budgets--Duty of Preparation Of.

The counties are bound to follow the budget system. It is the duty of the County Commissioners to make a budget of amount of estimated expense of conducting public business the county for the ensuing fiscal year as provided by sec. 3829, Rev. Law. Under Sec. 3818, Rev. Laws, it is the duty of the Board of County Commissioners, if, after equ..... it appears that the levy previously made will result in ..lection of revenue in excess or deficiency of the require... of the county for the current year, to raise or lower the rate.

Carson City, January 12, 1914.

NEVADA TAX COMMISSION, Carson City, Nevada.

GENTLEMEN: The Nevada Tax Commission, under the provisions of section 4 of the Act creating the same, has general supervision and control over the entire revenue system of the ..... and it is its duty and it has the power thereunder to cor.... and advise with the Assessors and County Boards of Equali....I, therefore, deem it advisable to call the attention of Commission to certain matters with reference to county r.... taxation, and county government.

I am of the opinion that under the law as it stands at present time the counties of this State

are bound to follow budget system, and it is the duty of the Board of County Commissioners between the first Monday in January and the first Monday in March of each year to make a budget of the amount estimated expenses of conducting public business of the .... for the next ensuing fiscal year, and that having made .... budget it is the absolute duty of the Board of County Commissioners to keep within the aggregate amount designated in the budget and further that the tax rate shall be such as to raise amount of money necessary to return the amount of the budget and no more.

Section 3829 of the Revised Laws provides:

The Commissioners shall between the first Monday in January and the first Monday in March make a budget of the amount estimated to be required to pay the expenses of conducting the public business of said county for the next ensuing year. The budget shall be prepared in such detail as to the aggregate sum and the items thereof as the Commissioners shall deem advisable. After the final estimate is made in accordance herewith it shall be signed by the majority of the Commissioners and the County Clerk, and the several sums shall then be appropriated for the ensuing fiscal year to the several purposes therein named. The estimate shall be filed in the office of the Auditor.

This section to my mind clearly makes it the mandatory duty of the Board of County Commissioners to prepare this budget fixing the amount of money which will be necessary to pay the expenses of conducting the public business of the county for the ensuing year. In that connection I call your attention to section 3930 of the Revised Laws of the State of Nevada, which provides a penalty, as follows:

It shall not be lawful for the Commissioners or any officer of the county to authorize, allow or contract for any expenditure unless the money for the payment thereof is in the treasury, and especially set aside for such payment. Any Commissioner or officer violating the provisions of this section shall be removed from office in a suit to be instituted by the District Attorney in the county in which said Commissioner resides upon the request of the Attorney-General.

It is clear from the two foregoing provisions that it is the duty of the County Commissioners between the first Monday in January and the first Monday in March to make a budget of the amount estimated to be required to pay the expenses of conducting the public business of the county for the ensuing year, and to prepare such budget in detail both as to the aggregate sum and the items, and it is made unlawful for the Board of County Commissioners to contract for any expenditure unless the money for the payment thereof is in the treasury and especially set aside for such payment. I am confirmed in this view by the provisions of section 3931, which provides in case of great necessity or emergency, with the consent of the State Board of Revenue, the Board of County Commissioners may authorize a temporary loan, and by section 3932, which requires the levy of an emergency tax at the first tax levy following the creation of the emergency indebtedness. You will also observe from sections 3833 and 3834 that all county business must be conducted upon a cash basis, and no loans can be made by the Board of County Commissioners except the emergency loans or bonded indebtedness authorized by law.

In connection with the foregoing I desire to further call your attention to the provisions of “An Act in relation to levying and assessing taxes for state and county purposes,” approved March 19, 1891 (Revised Laws, section 3818), as follows:

All state and county taxes required to be levied by the Boards of County Commissioners of the several counties of this State in pursuance of the revenue laws of this State, shall hereafter be levied by such Boards of County Commissioners on or before the first Monday of March in each year; provided, that if, after the equalization of taxes in the several counties of this State, it shall appear that the levy previously made by the Board of County Commissioners of any county of this State for county purposes will result in the collection of a revenue, either in excess or a deficiency of the requirements of such county for the current year, then, and in such event, the Board of County Commissioners in any such county shall have the power, and it is hereby made the duty of such Board of County Commissioners, to immediately meet and either reduce or raise the rate of taxation, so previously levied, to such a sum as such board in its judgment may consider sufficient to insure the collection of such an amount of revenue as will answer all the requirements of such county for the current year.

From the foregoing section it clearly appears that it is the mandatory duty of the Board of County Commissioners, if, after equalization, it appears that the levy previously made will result in the collection of revenue in excess or deficiency of the requirements of the county for the current year, to raise or lower the tax rate. I am clearly of the opinion from the foregoing sections that it is the absolute duty of the Board of County Commissioners, once having fixed the amount of the budget, to fix the tax rate at such a rate as will raise the amount of the budget and no more, of course leaving a reasonable margin to insure the collection of the amount owing to the possibility of delinquencies.

Therefore, if, after equalization by the Board of County Commissioners and the Tax Commission at their respective meetings in October, there shall be a raise in the assessed valuation, I am of the opinion that it is the mandatory duty of the Board of County Commissioners to correspondingly reduce the county rate.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General.

#### 112. Licenses--Automobile Licenses--Dealer's License.

Under Stats. 1913, 281, a dealer in second-hand automobiles is not required to take out an individual license for each one of the cars in which he deals, but is required to register one vehicle of each style or type dealt in by him. After such registration he may procure as many additional license tags for each style or type of vehicle registered as he may desire.

Carson City, January 24, 1914.

WESTERN AUTO SUPPLY CO., Reno, Nevada.

GENTLEMEN: Your favor of the 8th instant, requesting the interpretation of the automobile law requiring licenses of second-hand cars, received.

The law contemplates that every car within the State, whether purchased now or second-handed, shall have a license, as is shown by the language of section 2 of the Act (Stats. 1913, p. 281): "The owner of every motor vehicle within the State shall file a statement," etc. Section 7 of the Act provides:

The manufacturer of or dealer in motor vehicles shall register one vehicle of each style and type manufactured or dealt in by him, and be entitled to as many duplicate license tags for each style as he may desire.\* \* \*.

It seems that you are dealing in second-handed cars, and inquire whether it is necessary for you to take an individual license out for each one of these cars. In response to your inquiry, let me say that you are not required to take out an individual license for each one of these cars, but under the provisions of section 7 above quoted you are required to register one vehicle of each style or type dealt in by you, and after such registration you may procure as many additional license tags for each style or type of vehicle registered by you as you may desire.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General.

By EDW. T. PATRICK, Deputy.

113. Licenses--Engineer's License--County Commissioners.

Under secs. 3898-3904, Rev. Laws, providing for issuance of engineer's license, the County Commissioners have no right to demand an affidavit that the applicant has had at least one year's experience in the operation of steam boilers and machinery, but an affidavit of the knowledge and experience of the applicant, such as to justify the board in the belief that he is competent to take charge of stationary hoisting machinery of the character on which the applicant is to be engaged, is sufficient.

Carson City, March 21, 1913.

HON. ED. RYAN, Inspector of Mines, Carson City, Nevada.

DEAR SIR: I am in receipt of a letter of February 28 from the Seven Troughs Coalition

Mining Company, addressed to you, asking an interpretation of “An Act authorizing and empowering Boards of County Commissioners to regulate, issue licenses, and to revoke the licenses of stationary engineers and others having charge or control of stationary engines, steam boilers, hoists, and other hoisting apparatus and machinery,” being sections 3898-3904, Revised Laws of Nevada, 1912.

The letter above mentioned states:

The affidavit of competency required by the State is so exacting that it is hard to get men who can qualify--that is, while we can get plenty of men familiar with the operation of gas and electric hoists, very few have had experience with steam. The state law, as exemplified by the affidavits supplied us by the County Clerk, allows for no elasticity of competency, but calls for a certain number of years' experience in the operation of steam and gasoline engines, boilers, hoisting machinery, and hoisting apparatus. The questions we are presenting to you for elucidation are: It is it essential that the operators of such equipment be licensed? And if so, cannot the affidavit of efficiency be qualified so as to meet the requirements of the situation?

Section 3 of said Act provides:

No license shall be granted or issued to any person to operate any stationary engine, steam boiler, hoist, apparatus or machinery, until the applicant therefor shall have taken and subscribed to an oath that he has had at least one year's experience in the operation of steam boilers and machinery, or whose knowledge or experience, is not such as to justify the board before whom such application is made in the belief that he is competent to take charge of all classes of steam boilers and other stationary hoisting machinery.

It will be noted that this section is in the alternative, and I think the County Commissioners have no right to demand an affidavit that the applicant has had at least one year's experience in the operation of steam boilers and machinery, but an affidavit of the knowledge and experience of the applicant, such as to justify the board in the belief that he is competent to take charge of stationary hoisting machinery of the character on which the applicant is to be engaged, is sufficient. In other words, if the applicant is to run a gasoline or electric hoisting apparatus, it is not necessary for him to make an affidavit that he has had at least one year's experience in the operation of hoisting apparatus operated by steam boilers.

Herewith find copy of this opinion for the use of your correspondent.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General.

114. Licenses--Liquor License--Liquor Dealer.

A proprietress of a "parlor house" purchasing liquor in a quart bottle from a local wholesaler, and selling the same to her guests, is subject to the payment of a state and county liquor license.

Carson City, March 21, 1914.

NEVADA TAX COMMISSION, Carson City, Nevada.

GENTLEMEN: I am in receipt of a verbal request from you for an opinion upon a certain state of facts presented by Mr. Ed. Malley, Sheriff of Nye County, such statement of facts being as follows:

Miss Doe conducts a parlor house, and heretofore has paid state and county retail liquor license. She now desires to avoid the license obligation and proposes to purchase from local wholesaler beer in quart bottles as occasion demands and sell the same to guests as heretofore in the ordinary course of parlor-house entertainment.

Under the above circumstances I see no reason why Miss Doe is not a retail liquor dealer and subject to the payment of the state and county license provided for such purposes, and would recommend that you advise the Sheriff to take steps for the collection of said license.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General

115. Licenses--Billiard and Pool Tables.

An owner of a billiard or pool table, not kept for the exclusive use of himself or his family, is subject to the payment of the license provided in sec. 3727, Rev. Laws.

Carson City, March 21, 1914.

NEVADA TAX COMMISSION, Carson City, Nevada.

GENTLEMEN: With reference to the enclosed correspondence concerning collection of licenses for billiard and pool tables in Lyon County, after due consideration thereof, I am of the opinion that the parties owning such billiard and pool tables and allowing same to be used are liable for the payment of the license thereon, under section 3727, Revised Laws. I note from the correspondence that such persons intend to resist the payment of such license, and would, therefore, suggest that the quickest way to test the question is for the District Attorney to bring an action against one of such owners to compel the payment of such license.

Respectfully submitted,



GEO. B. THATCHER, Attorney-General.

116. Revenue--Taxation--Transient Stock--Rate On.

Under Act for assessment, collection, and distribution of taxes on transient stock (secs. 3845-61, Rev. Laws), the county rate of the home county, rather than that in which the stock grazed as transient, should be the basis of the charge and settlement.

Carson City, April 10, 1914.

HON. GRAY MASHBURN, District Attorney, Virginia City, Nevada.

DEAR SIR: I am in receipt of your favor of the 21st ultimo, asking interpretation of “An Act defining and classifying transient stock and providing for the assessment, collection and distribution of taxes on the same,” etc., being sections 3845-3861, Revised Laws.

You ask “whether, in adjusting the payment of the taxes collected in the home county of such transient stock, the county rate of the home county or that of the county in which the stock grazed as transients should be the basis of the charge and settlement.”

The whole matter is governed by section 3850, Rev. Laws, which provides: “The taxes on all live stock owned by residents of the State and driven or removed from one county to another for the purpose of being grazed, that are grazed for any portion of the year in the county where owned, shall be paid in the county where owned”; which, of course implies that the rate of taxation in the owner’s county is the one to prevail.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General.

By EDW. T. PATRICK, Deputy.

117. Officers--County Officers--Sheriff--County Commissioners--Election.

In the event of the death of a Sheriff--

1. There is no one authorized by statute to exercise such office.
2. The County Commissioners may appoint a successor under secs. 1518 or 2805, Rev. Laws.
3. Any such appointment would be until the next general election only.
4. At the general election in 1914 it will be necessary to elect one person to fill out the balance of unexpired term and also elect a Sheriff for the succeeding term.

Carson City, April 22, 1914.

HON. GRAY MASHBURN, District Attorney, Virginia City, Nevada.

DEAR SIR: I am in receipt of your favor of the 20th instant, asking the opinion of this office concerning certain complications which have arisen out of the death of your Sheriff.

Upon full consideration of the matter I am of the opinion:

First--That there is no one authorized by our statutes to exercise the office of Sheriff of your county.

Second--That your County Commissioners may appoint a successor under sections 1518 and 2805, Revised Laws.

Third--Any appointment under these sections would be until the next general election only and the qualification of the person elected to fill such office. (See sections 2806 and 2813, Revised Laws, and 35 Cyc. 1505.)

Fourth--At the election to be held in November next it will be necessary to provide for the election of some person to fill out the balance of the unexpired term of your Sheriff, and also elect a Sheriff for the succeeding term.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General.

By EDW. T. PATRICK, Deputy.

118. Public Schools--School Trustees--Elections.

Interpretation of secs. 3001-02 relating to election of School Trustees.

Carson City, April 11, 1914.

HON. J. S. ABEL, Deputy Superintendent Public Instruction, Winnemucca, Nevada.

DEAR SIR: I am in receipt of your favor of the 5th instant, asking certain questions in regard to the school election law of this State.

In answer to your inquiries let me say:

First--If the voters of the district failed to elect Trustees on the first Saturday in April, vacancies occur in these offices on the first Monday in May.

Second--In case no election of School Trustees is held on the first Saturday in April, the electors of the district may not hold an election for Trustees on the fourth Saturday after the first Monday in May.

Third--In case no election of School Trustees is held on the first Saturday in April, the Deputy Superintendent has the power to appoint Trustees before the fourth Saturday after the first Monday in May.

Fourth--In filling vacancies that occur on the Board of School Trustees, the Deputy Superintendent has no power to appoint for a term beyond the next succeeding election.

In explanation of the above responses, let me say that in my opinion the vacancies mentioned in section 63 refer only to vacancies caused by resignation, removal, or death. In the event of such vacancies occurring, section 64 would then come into operation if no election was held, and the Deputy Superintendent may appoint, but the general policy of the law of this State and of every State is to allow the electors to fill the vacancies, and the power of an officer to appoint is usually limited to the period extending to the next general election.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General.

By EDW. T. PATRICK, Deputy.

119. Constitutional Law--Pardons and Parole--Convicts--Board of Parole Commissioners.

The Act to establish a Board of Parole Commissioners (secs. 7631-34, Rev. Laws) is constitutional, and majority vote of board (the Governor not concurring therein) is all that is necessary to parole a convict under said Act.

Carson City, April 25, 1914.

HONORABLE BOARD OF PAROLE COMMISSIONERS, AND HON. D. S. DICK...  
WARDEN OF NEVADA STATE PRISON, CARSON CITY, NEVADA.

GENTLEMEN: I am in receipt of your request for an opinion to the status of M. R. Preston, an inmate of the Nevada State Prison, owing to action of the Board of Parole Commissioners taken at its regular meeting on April 24, 1914.

M. R. Preston stands convicted for the crime of murder of second degree, and under a sentence of twenty-five years in Nevada State Prison. Preston was received in the Nevada State Prison on May 29, 1907, and has been incarcerated therein ever since said day serving said sentence. At a meeting of the Board of Parole Commissioners M. R. Preston duly and regularly made application for a prole, and the same was heard and considered and on the 24th day of

April, 1914, upon a vote being taken, Chief Justice, Senior Justice, Junior Justice, and Attorney-.... voted in favor, and for a parole of said M. R. Preston as ..... of the Board of Parole Commissioners, and Governor Tasker L. .... voted against the application and against the parole of Preston.

The question arises as to the effect of a majority vote in favor of the parole without the assenting vote of the Governor and whether or not the Board of Parole Commissioners has the .... and authority by a majority vote, without the assenting and affirmative vote of the Governor as one of such majority, to parole an inmate of the Nevada State Prison; and there is dir.... presented the question of the constitutionality of an Act or the Board of Parole Commissioners, entitled "An Act to establish a Board of Parole Commissioners for the parole of and govern..... of paroled prisoners," approved March 11, 1909 (secs. 7631, 7633, and 7634 of the Revised Laws of the State of Nevada), whether said Act is in conflict with section 14 of article 5 of the State Constitution of Nevada.

Section 14 of article 5 of the Constitution of Nevada provides

The Governor, Justices of the Supreme Court, and Attorney-General, or a major part of them, of whom the Governor shall be one, may upon such conditions and with such limitations and restrictions as they may think proper, remit fines and forfeitures, commute punishments and grant pardons after convictions, in all cases, except treason and impeachments subject to such regulations as may be provided by law, relative to the manner of applying for pardons.

It is manifest that no pardon, remission of fine or forfeiture, and commutation of punishment or sentence can be granted except by a major part of the officers named in the Constitution, one of whom must be the Governor; but the question presented here is in my opinion not one of pardon, remission of fine or forfeiture, or commutation of sentence. I am of the opinion that there is a clear distinction between them and parole, and especially the parole contemplated by section 7631 of the Revised Laws, creating the Board of Parole Commissioners. Section 7631 provides:

The Governor, the Justices of the Supreme Court, and the Attorney-General are hereby constituted a Board of Parole Commissioners, a majority of whom shall have power to act under the provisions of this statute. They shall have power to establish rules and regulations under which any prisoner, who is now, or hereafter may be, imprisoned in the State Prison, and who may have served one calendar year of the term for which he was sentenced and who has not previously been convicted of a felony and served a term in a penal institution, may be allowed to go upon parole outside of the buildings and enclosures but to remain, while on parole, in the legal custody and under the control of the Board of Parole Commissioners, and subject at any time to be taken within the enclosures of said Prison. They shall have full power to make and enforce rules and regulations governing the conduct of paroled prisoners, and to retake, or cause to be retaken and imprisoned, and convict so upon parole, whose written order certified to by the secretary of the board shall be a

sufficient warrant for all officers named therein to authorize such officer to return to actual custody and conditionally released or paroled prisoner, and it is hereby made the duty of all Sheriffs, officers and members of the State Police, Constables, Chiefs of Police, and all prison or police officers, to execute any such order in like manner as ordinary criminal process; provided, however, that no prison imprisoned under sentence for life shall be paroled until he shall have served at least seven calendar years. If any prisoner so paroled shall leave the State without permission from said board, he shall be held as an escaped prisoner and arrested as such.

It will be noted from the foregoing provision of the parole law that by the express terms thereof a convict "may be allowed to go upon parole outside of the buildings and enclosures," but he remains, under said section and by the express terms thereof, in the legal custody and control of the Board of Parole Commissioners, and subject at any time to be taken within the enclosure of the Prison. The convict, being in the legal custody and under the control of the board and subject at any time to be taken back within the enclosure of the institution, cannot be said to be pardoned, nor can this be said to come within any legal construction of a commutation of sentence or remission of fine. The section does not purport to discharge or shorten his time; it simply authorizes the Board of Parole Commissioners to allow the prisoner to go outside the enclosures of the Prison, but he remains in the legal custody and control of the board. (State v. Peters, 43 Ohio St. 629, 650, 651.)

The Ohio decision above cited is in every way in point here, and is even stronger, because under section 11 of article 3 of the Ohio constitution the Governor is granted exclusive right "to grant reprieves, commutations, and pardons for all crimes and offenses, except crimes of treason and cases of impeachment, upon such occasions as he may think proper, subject, however, to such regulations as to the manner of applying for pardons as may be prescribed by law." It will be observed that the constitutional provision of Ohio is almost identical in language with that of Nevada, and it will be further observed that the parole law of that State is practically that of Nevada.

I am, therefore, of the opinion that M. R. Preston has been paroled, and that a majority vote of the Board of Parole Commissioners is all that is necessary to parole a convict under the provisions of section 7631 of the Revised Laws of Nevada, and that the assent of the Governor is not necessary to make such parole effective.

M. R. Preston is, therefore, entitled to his liberty under parole and under the rules, regulations, and conditions of the Board of Parole Commissioners.

I am further confirmed in the foregoing opinion by the fact that under a similar provision of the Constitution of California a Board of Parole Commissioners has been created, and they have been acting without the assent of the Governor since as far back as 1893. I further find from an examination of authorities that, while the President of the United States is granted exclusive power to grant reprieves and pardons for offenses against the United States by section 2 of article 2 of the Constitution of the United States, yet Congress has passed an Act creating a Board of Parole Commissioners, of whom the President is not one, to parole prisoners. The Act

is almost identical, except as to the personnel of the board, with the Nevada statute. (Chapter 387 of the United States Statutes at Large, vol. 36, p. 810.) The Board of Parole Commissioners have in the past, without the assent of the Governor, granted paroles in at least one or two cases, which paroles have been effective.

I am, therefore, of the opinion that the Act in question is constitutional, and is not in violation of section 14 of article 5 of the Nevada Constitution; and applying the well-known rule of constitutional law--that every law is presumed to be constitutional until declared otherwise by a court of competent jurisdiction--I am of the opinion that it is the duty of the Warden of the Nevada State Prison to release R. M. Preston upon parole, and the duty of the Board of Parole Commissioners to give to M. R. Preston, subject to its rules, regulations, conditions, and restrictions, such a certificate of parole as has been adopted by the Board of Parole Commissioners.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General

120. Nevada School of Industry--Appointment of Commissioners--Negotiation of Loan.

Under Act creating Nevada School of Industry (Stats. 1913, 384) the Governor is authorized to immediately appoint a permanent Board of Government for such institution, and such board may lawfully negotiate a loan for the completion of the said school, and such loan would be a binding obligation against the fund created by such Act.

Carson City, April 27, 1914.

HON. TASKER I. ODDIE, Governor of Nevada, Carson City, Nevada.

MY DEAR GOVERNOR: I am in receipt of your request for an opinion upon the necessity and legality of appointing at this time the permanent board of government for the Nevada School of Industry, and your inquiry with respect to what will be necessary and who may properly negotiate a loan or borrow money in order to prepare as soon as possible the Nevada School of Industry.

The Act under which the Nevada School of Industry is created and which provides for its government and supervision, is chapter 254 of the Statutes of Nevada for 1913, entitled "An Act establishing a state institution for delinquent boys, providing for the purchase of a site, erection of buildings, organizing the government of said school, and providing for the maintenance thereof, and creating a tax levy to raise funds for such purpose.

Under the provisions of section 3 it is made the duty of the Governor to appoint two persons, who, with the Governor, constitute a Commission for the establishment of the Nevada School Industry at the town of Elko, and by section 4 the said Commission is authorized to

advertise for plans. Sections 5 and 6 authorize the Commission to accept bids and let the contract or contracts for the construction of the buildings. This same Commission, which is provided for by section 3, and which, it will be seen by reference to sections 4, 5, 6, 7, and 8, have full power and control over the building and establishment of Nevada School of Industry, and all matters in connection therewith. Section 9 provides for a permanent board of government, to consist of the Governor and four other persons appointed by him. Their terms of office, to quote from the statute, expire in one year, beginning January 1. The latter sentence of section 9 provides:

The board of government is hereby authorized to accept gifts, and, in order that the home herein provided for may be prepared as soon as possible, to borrow money at a rate not to exceed 6 per cent, to be repaid from the fund created by this Act.

There seems to be some little conflict and ambiguity as to this sentence taken in connection with the prior declarations in said section 9, and the powers granted to the Commission in sections 4, 5, 6, and 7. I think, however, that if you will appoint at this time your permanent board of government, such appointment will be effective, and while the terms of office of the board of government do not expire until one year after January 1, 1915, according to the wording of the statute, there is nothing which prevents your appointment of the members of the board at this time. This board, as I understand it, will be made up of the same personnel, with the exception of one member, as that of the present Commission appointed by you under section 3. If both the Commission and the permanent board will hold their regular meeting and authorize the negotiation of a loan or the borrowing of money at a rate not to exceed 6 per cent, such action in my opinion would be legal, and would be a binding obligation against the fund created by the Act itself.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General.

1. State Board of Medical Examiners--Physicians and Surgeons--Revocation of Licenses--Due Process of Law.

The possible existence of grounds for revocation of license of a physician and surgeon, contained in sec. 2369, Rev. Laws, does not ipso facto effect a revocation of the license. The person accused is entitled to have a complaint lodged against him, to have due notice thereof, and to introduce such evidence in his own behalf as he may see fit. Otherwise, he would not be accorded the "due process of law" afforded him by the State and Federal Constitutions.

Carson City, May 5, 1914

Hon. S. L. LEE, Secretary, Nevada State Board of Medical Examiners.

Dear Sir: I am in receipt from you of a number of papers and documents relating to the

case of Dr. \_\_\_\_\_ with request for the opinion of this office as to what authority your board possessed in the matter regarding revocation of the license of this person.

Section 2369, Rev. Laws, being section 12 of the Act constituting your board, provides:

The board may refuse a certificate to any applicant guilty of unprofessional conduct, and may revoke any certificate for a like cause. The words "unprofessional conduct" \* \* \* are hereby declared to mean: \* \* \* Sixth--Conviction of any offense involving moral turpitude. Seventh--Habitual intemperance.

It appears from the papers submitted that the person in question has possibly been guilty of an offense involving moral turpitude, and is also addicted to the excessive use of narcotic drugs.

Notwithstanding the possible existence of these causes of revocation of license, I do not think the existence of such causes ipso facto works such revocation. The person in question is entitled to have a formal complaint lodged against him before your board and to have due notice thereof so that he may show cause why such license should not be revoked, if any he has, and to introduce such evidence in his own behalf as he may see fit. Otherwise he would not be accorded the "due process of law" afforded him by both our State and Federal Constitutions. The revocation of his license as a physician, the means by which he acquires his livelihood, is certainly the taking of property, and no property can be taken from a person without due process of law.

Under these circumstances, if the matter is to be pursued further, I would suggest that your board can proceed legally only in the manner above outlined.

Yours very truly,

GEO. B. THATCHER, Attorney-General

2. State Board of Health--Secretary of State Board of Health--Fees. The Secretary of the State Board of Health is not entitled to retain for himself, the fifty-cent fee provided by sec. 2971, Rev. Laws, to be paid for a copy of a death or birth certificate.

Carson City, May 14, 1914.

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

Dear Sir: I am in receipt of your favor of the 5th instant, asking as to the disposition of the 50-cent fee provided to be paid for a copy of a death or birth certificate under section 2971, Revised Laws.

After a careful consideration of the provisions of this section and also section 2976, fixing your salary, I am of the opinion that you are not entitled to the 50-cent fee provided in the



first-named section.

Yours very truly,

GEO. B. THATCHER, Attorney-General

3. Elections--School Elections--Compensation of Inspectors.

An inspector of a school election is not entitled to compensation as such inspector, unless the election is held in a school district of the first class as defined by sec. 3315, Rev. Laws.

Carson City, May 16, 1914.

Hon. JOHN R. MELROSE, District Attorney, Hawthorne, Nevada.

Dear Sir: I am in receipt of your favor of the 6th instance, asking for an opinion concerning certain claims allowed by the Board of School Trustees, Hawthorne District No. 6, in payment for services of the inspectors of election at the recent school election held in Hawthorne.

Section 3283, Rev. Laws, relating to such election, provides:

All such officers (inspectors) shall serve without compensation; provided, that in school districts of the first class the inspectors and clerk of election may be allowed compensation not to exceed four dollars each for services at such elections, said compensation to be paid from the school district funds.

The classification of school districts as provided by section 3315, Rev. Laws, specifies that a district of the first class shall be those employing ten or more grade teachers and the second class those employing ten or more grade teachers and the second class those employing less than ten teachers. I am informed that the Hawthorne District employs one teacher only, and, therefore, it cannot possibly come under the provisions of section 3283 allowing compensation to inspectors of election. It is the opinion of this office, therefore, that these claims are illegal and should not be paid.

Yours very truly,

GEO. B. THATCHER, Attorney-General

121. Nevada Tax Commission--Licenses--State Automobile License Law--Secretary of State.

The Secretary of State may lawfully provide the Nevada Tax Commission with postage

stamps to be bought and taken out of the appropriation provided by Stats. 1913, 280, “For the purpose of defraying actual expenses in procuring licenses and record books, and for the payment of necessary postage.”

Carson City, May 28, 1914.

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

DEAR SIR: I am in receipt of your favor of the 23rd instant, asking the opinion of this office upon a certain resolution passed by the Nevada Tax Commission asking you to furnish said Commission with stamps to defray the expense of such Commission in its efforts to enforce the provisions of the state automobile law.

While the Act in question (Stats. 1913, 280) makes you the collector of this license, there is no provision provided for the enforcement of the same except section 16 of said Act making a violation thereof a misdemeanor. Inasmuch as the Tax Commission is vested with authority over the collection of all licenses, I assume for that reason it has taken up the collection of these automobile licenses also. My information is that this Commission is making a vigorous campaign to collect all licenses due under this Act, and in so doing has gone to considerable expense for postage.

Section 18 of said Act provides an appropriation of \$500 for the purpose of carrying out this provision, and by section 17 you are authorized “to draw against such automobile road fund, not to exceed the sum of \$500 in any one year, for the purpose of defraying actual expenses in procuring license tags and record books and for the payment of necessary postage.”

Taking all these circumstances into consideration, I am of the opinion that you are authorized in furnishing the Nevada Tax Commission with \$20 worth of stamps to be bought and taken out of the appropriation above mentioned.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General.

By EDW. T. PATRICK, Deputy.

122. Licenses--Engineer's License.

The fee for recording an engineer's license in another county under sec. 3902, Rev. Laws, is provided by secs. 1995 and 2007, Rev. Laws, according to the class of the county. Such license does not have to be renewed unless revoked for cause, as provided in sec. 3901, Rev. Laws.

Carson City, May 28, 1914.

HON. JOHN R. MELROSE, District Attorney, Hawthorne, Nevada.

DEAR SIR: I am in receipt of your favor of the 23d instant, asking the construction of the law relative to engineer's license.

You inquire: First--"What is the fee for recording with the Clerk where the license is issued in any other county of the State?" and, second, "Does the license ever have to be renewed?"

In answer to your first question, let me say that the fee for recording this license is provided by sections 1995 and 2007, Rev. Laws, according to the class of the county, said sections each providing a fee "for recording all instruments for each folio," etc.

In answer to your second question, let me say that in my opinion the license does not ever have to be renewed unless it should be revoked for cause as provided in said Act.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General.

By EDW. T. PATRICK, Deputy.

123. Elections--Primary Elections--Registration.

Interpretation of certain sections of new election law (Stats. 1913, 493) concerning opening of registration and qualification for voting at primary election.

In response to inquiries from District Attorneys throughout the State for an interpretation of many sections of the statutes regarding registration of voters, the Attorney-General has issued the following letter:

TO THE DISTRICT ATTORNEYS OF THE STATE OF NEVADA.

GENTLEMEN: In order that there may be uniformity in the administration of that portion of the recent election law pertaining to registrations and voting at primary elections, the following answers to specific inquiries by various officials is respectfully submitted for your guidance:

1. All former registrations have been abrogated. (Chapter 2, section 1, p. 494, Stats. 1913.)
2. The registration both for primary and general election is required to open June 28 (chapter 2, section 5, p. 495, and chapter 3, section 17, p. 520), but that date being Sunday, it

will be best for Registry Agents to commence their work on June 27.

3. Only one registration is required to vote at both primary and general elections. (Chapter 2, section 8, p. 498.)

4. No person is permitted to vote at a primary election unless he has declared his party affiliation in accordance with chapter 2, section 3, subdivision 11, p. 495; chapter 3, section 18, p. 521, but the elector is not required to designate his politics in order to register. (Chapter 2, section 5, p. 496.)

5. Registrations for the primary election to be held September 1, 1914, may be made until August 20. (Chapter 2, section 5, p. 496.)

6. All registrations for both primary and general election are contained in one book, entitled "Official Register." (Chapter 2, section 5, p. 496.)

7. All electors must be registered once and once only in every two years, commencing in 1914. The primary election register this year is a copy, certified by the Registry Agent, of only such electors registered by him between June 27 and August 20 as have declared their party affiliation; for succeeding primary elections during the biennial period of 1914-1916 such list will be supplemented by the addition of the names of all electors, declaring party affiliations, registering after August 20, 1914, and also transfers of registration of electors who have declared party affiliation. (Chapter 2, section 1, p. 494, and chapter 3, section 17, p. 520.)

8. A person registered in 1912, who has not reregistered in 1914, and, therefore, not declared his party affiliation, cannot vote at the primary election in September. (Chapter 3, section 18, p. 521.)

9. Not every elector is required to take the oath prescribed in chapter 2, section 7, p. 497. Sections 7 and 8 of said chapter should be construed together, and the oath is required only from those "whom the agent may not know to be entitled to register," as prescribed in section 8, p. 497.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General.

124. Constitutional Law--Amendments to Constitution--Publication of--Approval of--Secretary of State--County Clerks.

1. Under section 1, article 10, of the Constitution it is not necessary that the resolution be signed by the President or Secretary of the Senate and the Speaker and Chief Clerk of the Assembly, or that it be approved or signed by the Governor, but the entry of the yeas and nays in the journals of the Senate and Assembly shall be sufficient.

2. “An Act providing for the manner of submitting constitutional amendments to the voters of the State of Nevada” (Rev. Laws, 1878-81) was a special Act adopted by the Legislature for the special election of 1889, and has been repealed by implication by sec. 10, chap. 5, p. 551, of the General Election Law (Stats. 1913, 493).

3. When any constitutional amendment is to be submitted to popular vote, the procedure for the Secretary of State and County Clerks to follow thereon is pointed out in the last-named section.

Carson City, July 6, 1914.

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

DEAR SIR: Replying to your request for an opinion regarding No. 22 Assembly Joint and Concurrent Resolution relative to amending section 2 of article 15 of the Constitution of the State of Nevada, pertaining to the official oath, and your request for a written opinion as to the proper method of certifying said resolution to the various County Clerks for the purpose of placing the same on the ballot, and as to the validity of said amendment, owing to the omission of the signatures of the proper officers of the Senate, I beg to advise as follows:

#### STATEMENT OF FACTS

From your letter and from an examination of the records I find that Assembly Joint and Concurrent Resolution No. 22 was passed by the Legislature of 1911, and approved March 18, 1911, and published in the Statutes of 1911, p. 458. That said resolution was again presented to the Legislature of 1913, passed by both Senate and Assembly (see Assembly Journal, pp. 12, 14, 20, and 49; Senate Journal pp. 19, 20, and 37), but after the passage by the session of 1913 it was not presented or filed in the office of the Secretary of State; that it was transmitted to the Senate January 28, 1913, under the signature of T. A. Brandon, Speaker of the Assembly, and W. L. Hacker, Chief Clerk of the Assembly, but was not signed by the President or Secretary of the Senate in the year 1913. In 1911, however, the resolution was signed by the proper officers of both the Senate and Assembly, and approved March 18, 1911, by Tasker L. Oddie, Governor. The resolution was not filed in your office at the close of the Legislature, nor until about April 14, 1914, when Mr. Adamson, Secretary of the Tax Commission, whose quarters were then in the Assembly chambers, was moving out, owing to the Capitol addition, and found same in one of the drawers in the Assembly desk. Mr. Adamson handed the resolution to the Governor, and it was by him transmitted to you.

It clearly appears from the history of the resolution as shown thereon and from the respective Journals of the Senate and Assembly with the nays and yeas taken thereon that such amendment was adopted by the Legislature of 1913 by a majority of all members elected to each house.

I am, therefore, of the opinion that under section 1 of article 16 of the Constitution of the State of Nevada it is not necessary that the resolution be signed by the President and Secretary

of the Senate and the Speaker and Chief Clerk of the Assembly, or that it be approved or signed by the Governor, but that the entry of the nays and yeas in the Journals of the Senate and Assembly is sufficient.

I come then to the question of what is the proper method of certifying said resolution to the County Clerks for the purpose of having the same placed on the ballot to be voted for at the next general election. It will be observed that the Constitution provides that after any amendment to the Constitution shall have passed the Legislature the first time it shall be published three months preceding the time of making a choice for members of the next Legislature. This is the only provision in the Constitution itself regarding publication. It is clear from this provision that the Constitution itself does not require any publication to be made after final passage by two succeeding sessions of the Legislature. The only question, then, is: Has the Legislature prescribed or required publication of a proposed constitutional amendment, and what, if any, publication is necessary? The Supreme Court of this State, in the case of State of Nevada, ex rel. Galusha, v. Davis, 20 Nev. 220, has held that a statute requiring publication of a proposed constitutional amendment is a reasonable requirement sanctioned by the Constitution, and when so required by statute that amendments voted on without such requirement are inoperative. The Act construed in State v. Davis, supra, was "An Act providing for the manner of submitting constitutional amendments to the voters of the State of Nevada" (Rev. Laws, 1878, 1879, 1880, and 1881). I am of the opinion, however, that this Act does not apply at the present time, that Act being a special Act adopted by the Legislature for the special election held in 1889. Even though it be otherwise construed with reference to other constitutional amendments, I am of the opinion that the same has been repealed by implication by section 10, chapter 5, of an Act entitled "An Act relating to elections and removals from office," approved March 31, 1913. Said section 10 fully provides for the publication of constitutional amendments to be voted upon and the manner of certifying the same to the various County Clerks for the purpose of placing the same upon the ballot.

I am, therefore, of the opinion that it is your duty to comply with the provisions of said section 10, and, having done so, you will have properly certified the resolution. Under said section 10 it is your duty within ninety days before the election to certify such constitutional amendment to each County Clerk of this State, sending each of such County Clerks enough copies of such constitutional amendment as are necessary to carry out the provisions of said section. It is further, by said section 10, made the duty of the County Clerk to have posted ten days before the election in each precinct three copies of such constitutional amendment, one of which shall be posted at the polling place or places. If there is a newspaper published in the county, it is the duty of the County Clerk to cause to be published said constitutional amendment therein three times--one publication at least thirty days before the election, another not less than twenty days, and the other not more than ten days before said election.

I am returning herewith said resolution and the letter of Mr. L. F. Adamson.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General.

125. Elections--Primary Elections--Nominations--Nomination Paper--Filing Fee.

The fees required for filing nomination papers by sec. 9, chap. 3, of the Election Law (Stats. 1913, 514), must be paid, even though, in a certain party, there is no contest for nomination to the respective offices to be filled.

Carson City, July 9, 1914.

MR. THOS. M. FAGAN, State Secretary, Socialist Party, Tonopah, Nevada.

MY DEAR SIR: I am in receipt of yours of June 21, requesting an opinion on certain portions of the primary election law.

You have succinctly stated your request in your letter, and, therefore, for the purpose of answering it I will quote the statement of your letter and the question asked:

Now, for candidates of the Socialist Party there will be no contest for any office, and consequently no candidates for office can be put on the official ballot, but the nominations must be certified by the Secretary of State.

Inasmuch as the filing fees are supposed to be levied for the purpose of defraying the expenses of the primary election, it would seem as though that would relieve us from the expense, as we are not putting any expense on the State in this matter.

The question presented by your letter is whether or not, there being no contest in the Socialist Party in the primary election and no Socialist primary ballots being necessary, shall the candidates pay the filing fees required by section 9 of chapter ... of an Act entitled "An Act relating to elections and removal from office," approved March 31, 1913, pp. 493-510, Statutes of Nevada, 1913.

You will note that the foregoing section provides that the candidate shall pay the fee required by the section. It has nothing to do with parties, but with the candidate himself. While it may be true that the filing fee is required for the pose of defraying the expenses of the primary election, yet there is nothing in section 9 or in any part of the primary or general election Act, which so states. It may have that purpose it may have also the additional purpose of being a restriction upon candidates for nominations. The filing fee is required of the candidate, and not the party. If your contention were good, then if there be no contest for any given office in any of the other parties, the candidate would not have to pay any fee, because his name would be certified on the general election ballot, and would not go upon the primary election ballot.

Furthermore, so far as the law is concerned, the Secretary of State could never know until the last minute of the last day whether or not there would be a contest in the Socialist Party for any given nomination or for all of the nominations. I am further confirmed in my opinion by

section 7 of chapter 5, page 550, of the same Act, which provides that independent candidates for office shall pay the same fees as candidates on the primary ballot. In other words, if where the candidate is nominated by petition, and there is no primary or primary expense incident to his nomination, yet the candidate is required to pay the fee.

I am, therefore, of the opinion that it will be necessary for the candidates of the Socialist Party to pay the fees required by said section 9 of chapter 3 in order to be certain that their candidates will appear upon the official ballot.

Mr. Grant Miller some time ago spoke to me concerning this same matter, and indicated that he would probably desire to contest this provision of the law. I am, therefore, sending him a copy of this letter in order that he may be advised as to what my advice will be to the Secretary of State, and, if he desires, the matter may be tested by appropriate action in the Supreme Court.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General.

126. Elections--Registration--Notice of Closing--Nomination by Petition of Electors.

1. Section 6, chapter 2, of the General Election Law (Stats. 1913, 496) requiring Registry Agent to publish notice of close of registration, does not apply to primary elections, but to general elections only.

2. Under section 6, chapter 5, of the General Election Law (Stats. 1913, 550) all nominations by petition of electors must be filed not less than ten days prior to the first of September of the year in which the election shall take place.

Carson City, July 14, 1914.

MR. HENRY M. LILLIS, Registry Agent, Las Vegas, Nevada.

DEAR SIR: I am in receipt of your favor of the 11th instant, asking interpretation of section 6 of chapter 2 and section 6 of chapter 5 of the new election law.

The first-mentioned section provides for twenty days publication of notice of close of registration by the Registry Agent, and you inquire: "Does it apply to primary as well as general election?" This section is an exact reprint of section 6 of an Act entitled "An Act to provide for registration of names of electors and to prevent fraud at elections," appearing in the Statutes of 1869, p. 141. It is contained in chapter 2 of the election Act, which said chapter pertains exclusively to the registration of electors, and it provides that the publication therein specified must be made "for twenty days before the expiration of the time provided for registration prior to any general election and for ten days before the expiration of the time provided by law for registration prior to any special or municipal election.



Taking into consideration that this section was enacted long prior to the existence of primary elections in any State, and also that it is contained in a chapter of the election laws pertaining exclusively to the registration of voters, and also that the elections therein designated are general, special, and municipal elections, I am of the opinion that this section does not apply to primary elections, and that the publication of notice of the time of closing of registry list applies to general elections only, and that such publication must be made twenty days before the next general election in Nevada.

From a reading of section 6 of chapter 5, which pertains to the nomination of independent candidates by petition of electors, and which provides that such certificates of election shall be filed not less than ten days prior to the first Tuesday in September in the year which such elections shall take place, I am satisfied that all nominations by petition of electors for independent candidates must be filed not less than ten days prior to the primary election to be held on the 1st day of September, 1914.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General.

127. Public Highways--Road Government--County Commissioners--Officers.

1. Rev. Laws, 1540, gives County Commissioners the right to transfer money from any other fund to road fund.

2. The Act of 1913, 390, provides for creation of a special road fund by bond issue provided by popular vote.

3. If such road fund is not created, the cost of all county road and bridge work must be paid out of the general fund.

4. Statutes 1913, 36, is illegal as contravening sections 20 and 21, article 4, of the Constitution, and was probably repealed by implication by general road Act of 1913, 390.

5. The employment of a public official is not a contract, and the Legislature may abolish any nonconstitutional office without a claim for salary arising through the occupant thereof.

Carson City, July 16, 1914.

MR. D. C. McDONALD, Chairman Board of County Commissioners, Ely, Nevada.

DEAR SIR: I am in receipt of your favor of the 1st instant, asking an interpretation of the various laws relative to your duty under the different Acts in force in regard to the management of your county roads. I am also in receipt of a letter of the 8th instant from your District Attorney enclosing a copy of his opinion of June 23 to your board on this same matter.

The Acts in question are: Sections 30, 37-40, Revised Laws; Stats. 1913, p. 36, abolishing the office of Road Supervisor of White Pine County, authorizing the division of said county into road districts, and providing for the election of Road Supervisors, and fixing their duties and compensation. This is a special Act relating to White pine County alone, and was approved March 16, 1913. Also an Act to provide for a uniform system of road government (Stats. 1913, p. 390), approved March 26, 1913.

You were correctly advised by your District Attorney that section 1540, Rev. Laws, clearly gives you the right to transfer money from other funds of the county to the road fund, provided there is any surplus in any of the other funds. The Act of 1913, p. 390, provides for the creation of a special road fund by bond issue to be provided by popular vote. If such fund is not created, it is provided that the cost of all county road and bridge works shall be paid out of the county general fund by order of the board. I think that the Act of 1913, 36, is illegal as being in contravention of article 4, sections 20 and 21, of the Constitution; section 20 prohibiting local or special laws; and section 20 prohibiting local or special laws; and section 21 providing that where a general law can be made applicable, all laws shall be general and of uniform operation throughout the State. I am also of the opinion that the Act of 1913, p. 36, which was approved March 6, 1913, being a special Act, was repealed by implication by the general Act of 1913, 390, providing for a general system of road government.

I think you are mistaken in the statement "that a Road Supervisor, or any other official elected by a majority of the qualified electors of his county, cannot be removed from office without just cause by an Act of the Legislature of our State." It has frequently been held that the employment of a public official is not a contract, and that upon abolition of the office by the enactment of a new law, or by the declaration of the Act under which he holds the office to be unconstitutional, confers no right upon such official to continue to perform the duties and receive the compensation attached to the office.

In conclusion, let me say that I am very sorry not to coincide in the position you take in the matter, but I am of the opinion that you are correctly advised by your District Attorney in the communication above mentioned.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General.

128. Elections--Registrations--Alienage--Naturalization.

1. If the Registry Agent is satisfied through propounding the questions provided in sec. 11, chap. 2, of the Election Law (Stats. 1913, 499), that the father of an applicant for registration was duly naturalized, he may be registered.

2. A declaration of intention to become a citizen does not make the alien a citizen. He remains an alien until his naturalization becomes complete.

Carson City, July 16, 1914.

HON. HENRY M. LILLIS, Las Vegas, Nevada.

DEAR SIR: Answer to your favor of the 26th ultimo, asking opinion on certain questions of that portion of the Election Law concerning registration of voters, has been delayed by press of business in the office.

You ask two questions:

1. If a man comes to this country under legal age with his alien father, and does not have his father's naturalization papers, and all the evidence he presents of his father's naturalization is his own word or oath, if he takes an oath that his father was citizen of the United States, does this entitle him to registration, and does it constitute and make him a bona fide citizen for registration?
2. If such alien came to this country under age and his father took out his first papers, but died before he could legally take out his second or full papers, does the father's intention papers qualify the son, and make him a citizen?

Sec. 11, chap. 2, of the Election Law (Stats. 1913, p. 499) provides how a naturalized citizen may become registered in case of the loss or destruction of his certificate of naturalization, and requires the Registry Agent to propound to such applicant certain questions. The purport of such questions is to ascertain from the applicant what would be disclosed by the certificate of naturalization, were the same produced. It has been held that an exemplified copy of the record is the best evidence of naturalization, but it has also been held that when the record of naturalization proceedings has been destroyed, secondary evidence is permissible to prove the party has become a citizen. Under the circumstances enumerated in the first question, if the applicant for registration knows in what court and at what time his father was naturalized, it would be well to require him to procure a copy of the record so that the same might be exhibited to you, but, if he cannot supply such copy of the record, it would be well to propound to him the questions set forth in section 11 under oath, and if from the answers thereto you are satisfied that the applicant's father was naturalized in this country and that the son is entitled to registration, he may be registered by you, or he may be refused registration in your discretion.

In answer to your second question, let me say that the declaration of intention to become a citizen does not make the alien a citizen. An alien remains such until his naturalization becomes complete. Inasmuch as the parent of the person named in your question died before he could take out his second or full papers, citizenship was not acquired by him and his child stands on the same footing, and will have to take the same steps to be naturalized as would any other alien arriving in this country under age.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General.

129. Election--Primary Elections--Primary Ballots--Judicial Districts, Nominations In.

1. Where there is no contest in the party primary no ballots need be printed.

2. In the event of a candidate running as an independent for the office of District Judge in a district composed of two or more counties, it is necessary for him to file his petitions with the County Clerk of each county, and pay each Clerk a proportionate share of the fee of \$100. The petition should be in duplicate or triplicate, as the case may be, so that a complete petition is filed with each Clerk.

Carson City, July 19, 1914.

HON. N. W. WILLIS, District Attorney Lyon County, Yerington, Nevada.

DEAR SIR: I am in receipt of yours of the 17th instant, requesting an opinion concerning certain phases of the election law.

The questions presented by your letter are:

1. In the event of no contest in the Socialist Party in the primary election, is it necessary to print Socialist primary ballots?
2. Now, where, and what filing fees must be paid by an independent candidate nominated by petition for District Judge in the counties of Lyon and Churchill?

I will answer your questions in the order named:

1. Subdivision 9 of section 14 of chapter 3 of "An Act relating to elections and removals from office" provides that where there is no party contest for any office the name of the candidate for party nomination shall be omitted from the ballot, and shall be certified by the proper officer as a nominee of his party for such office. Section 15 of the same chapter provides, inter alia, for distribution of sample ballots to each voter at least ten days before each primary election, and for the correction of errors in the sample ballot. It will be observed that section 7 of chapter 3 provides that nomination papers for the September primary election shall be filed at least thirty days prior to the date of the primary election, and the proper officers have twenty days thereafter in which to prepare and distribute samples of the primary ballot. It seems to me to be quite clear that it is the intent of the Legislature, when there is no contest in the party primary, that no ballots need be printed. I am, therefore, of the opinion that, if there is no contest in the Socialist Party for state or county offices, it will be unnecessary to prepare any ballots whatsoever for the Socialist Party.

2. In answer to your second question, let me say that in my opinion in the event of a candidate running independent for the office of District Judge, it will be necessary for him to

file his nomination papers--to wit, his petitions--with the County Clerk of Lyon County and the Count Clerk of Churchill County, and pay each County Clerk a fee of \$50. This will necessitate the obtaining of duplicate petitions by independent candidates running by petition for the office of District Judge in your district.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General.

130. Elections--Nomination by Petition of Electors.

Sections 3 to 7, pp. 549-50, Stats. 1913, provide means for independent nomination by petition of electors. Any elector may lawfully run as an independent candidate by a petition for any office, unless such person was defeated at a primary election for the same office.

Carson City, July 23, 1914.

HON. J. M. REQUA, Justice of the Peace, Palisade, Nevada.

DEAR SIR: I am in receipt of your favor of the 22d instant, inquiring: "Will it be legal fora person to run as an independent candidate by petition at the coming general election?"

In answer thereto let me say section 7, Statutes of 1913, p. 513, concerning the primary law, provides:

Nothing shall be construed as prohibiting the independent nomination of candidates to be voted for at any general election by electors of bodies of electors as now provided by law, but a candidate defeated at a primary election held under the provisions of this Act shall be ineligible for nomination to the same office at the same election.

Sections 3 to 7, on pages 549-50, Statutes of 1913, provide a means for independent nomination by petitions of electors. These sections provide briefly that a certificate of nomination signed by electors residing within the district or political division for which the nomination is to be made. Such certificate shall state the name of the party or principle which the person nominated by petition of electors represents, but in so doing the name of no political party existing at the last preceding election shall be used. For offices to be voted for by electors of the whole State, such certificate shall be filed with the Secretary of State. Certificates for all other political offices shall be filed with the Clerks of the respective counties for any officers to be voted for, and where the district embraces more than one county the certificate shall be filed with the Clerk of each county. No certificate of nomination shall contain the name of more than one candidate for each office to be filled. No person shall join in nominating more than one nominee for each office to be filled, and no person who has voted in a convention for or against a candidate for any office shall join in naming any other candidate for that office, and no person

shall be nominated for more than one office. The certificates are required to be filed with the Secretary of State or County Clerk not less than ten days prior to the first Tuesday in September preceding election. The fees for filing certificates of nomination are the same as provided by section 8, Statutes of 1913, p. 514, for filing nomination papers for primary elections.

From the foregoing provisions I am of the opinion that any elector may lawfully run as an independent candidate by petition for any office to be filled by the electors at the coming general election, unless such person was defeated at a primary election for nomination to the same office.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General.

131. Elections--Registrations--Registry Agent--Minors.

1. A person who arrived in Reno or the State on April 1, 1914, cannot be registered for the primary election of September 1, 1914.

2. A young man who becomes of age in September, 1914, cannot be registered for the primary election of September 1, 1914, unless he was born on the 1st of September.

Carson City, July 30, 1914.

HON. LEE J. DAVIS, Registry Agent, Reno, Nevada.

DEAR SIR: I am in receipt of your favor of the 22d instant, asking: "Can a citizen be registered for the primary election who arrived in Reno or the State on April 1, 1914?" and also: "Can a young man who becomes of age in September take part in the primary?"

My answer to both of these questions would be "No." Article 2, section 1, of the Constitution, provides: "Every male citizen of the United States of the age of twenty-one and upwards, who shall have actually and not constructively resided in the State six months and in the district or county thirty days next preceding any election, shall be entitled to vote," etc.

From the circumstances enumerated in the first question it would appear that the person in question will have resided in this State the required six months on October 1, 1914. As the primary election takes place September 1, he will not have acquired citizenship on that day, but any time after October 1 he should be permitted to register for the general election.

In the second question, the person about whom you inquire it appears will not become 21 years of age until some time in September. The constitutional provision above quoted limits the right of suffrage to male citizens of the age of 21 years and upwards. At the primary election on the 1st of September, unless he was born on the 1st of September, he would not have the

requisite age, but he also may register for the general election.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General.

132. Elections--Primary Elections--Ballots.

1. Where there is no contest in a party for a certain office, and there is a candidate for the party nomination for that office, the proper officer must certify his nomination without his name going on the primary ballot.

2. The ballot should not contain the names of those candidates for nomination who have no opposition for nomination for such office.

3. In the preparation of primary ballots the Christian name should be given first, preceding the surname, the surnames being arranged in alphabetical order. In the general election it has always been customary to print the surname first, followed by the Christian name of the candidate.

Carson City, August 8, 1914.

HON. GRAY MASHBURN, District Attorney Storey County, Virginia City, Nevada.

DEAR SIR: I am in receipt of your favor of the 3d instant, asking certain questions in regard to the Primary Election Law, some of which have already been answered verbally.

Repeating some of the information given you, I would say:

1. Where there is no contest in a party for a certain office and there is a candidate for the party nomination for that office, the proper officer must certify his nomination without his name going on the primary ballot.

2. The ballot should not contain the names of those candidates for nomination where there is no party contest for the nomination for that office.

3. In the preparation of primary ballots, you inquire whether the surname or the Christian name of the candidate should be given first. Subdivision 6 of section 14, chapter 3, p. 516, provides: "The names of the candidates for each office shall be grouped in alphabetical order according to the surnames of such candidates for office," and on page 518 is given a sample ballot wherein the candidates for United States Senator appear as "John Doe," "Richard Roe," being in alphabetical arrangement of the surnames of the candidates for that office. The Australian ballot law, in section 12, page 552, provides: "The names of the candidates for each office shall be arranged according to the surname, except," etc.

Inasmuch as the form on page 518 gives the Christian name of the candidate first, and the surnames are arranged in alphabetical order, and as such form refers to primary elections only, I think it would be best to follow the form, and let the Christian name of the candidate precede the surnames, the surnames being arranged in alphabetical order. For instance, there are four candidates for the nomination for the office of Supreme Court Judge. In my opinion these names should appear on the ticket in the following order: H. F. Bartine, B. W. Coleman, A. A. Heer, and G. F. Talbot. For the general election, however, it has always been customary to print the surname first followed by the Christian name of the candidate, and at such general election I think this custom should be followed.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General.

133. Officers--State Officers--Resignation--Withdrawal Of.

An officer who presented to the proper authority his resignation to take effect on a designated future day may, before such day, withdraw it, notwithstanding the acceptance thereof.

Carson City, August 8, 1914.

HON. JOHN EDWARDS BRAY, Reno, Nevada.

DEAR SIR: I am in receipt of verbal request for an opinion on the following matter:

You submitted to me two letters from Mr. J. F. Abel, Deputy Superintendent of Public Schools, reading as follows:

Winnemucca, Nevada, July 27, 1914.

SUPT. JOHN EDWARDS BRAY, Carson City, Nevada.

DEAR SIR: Kindly accept my resignation as Deputy Superintendent of the Third Supervision District, said resignation to take effect on August 8, 1914.

Sincerely yours,

J. F. ABEL.

Winnemucca, Nevada, August 1, 1914.



TO THE STATE BOARD OF EDUCATION, CARSON CITY, NEVADA.

DEAR SIR: I hereby withdraw my resignation as Deputy Superintendent of Public Instruction, which was tendered to Superintendent John Edwards Bray and which was to take effect August 8, 1914.

You are notified that I shall continue to perform the duties of said office and to exercise the powers belonging to it.

Sincerely yours,

J. F. ABEL,  
DEPUTY SUPERINTENDENT FOR DISTRICT  
NO. 3.

It appears that after the receipt of the first letter the State Board of Education held a meeting, and informally accepted Mr. Abel's resignation, and the question you now ask is whether, in view of such informal acceptance, Mr. Abel was at liberty to withdraw such resignation as indicated by his letter of August 1. In his first letter Mr. Abel tendered his resignation, to take effect August 8, and before the expiration of that time he wrote to you withdrawing his resignation. This matter has already been passed upon in the case of State, ex rel. Ryan, 30 Nev. 409, where under a similar state of facts it was held: "A Sheriff who presented to the Board of County Commissioners his resignation to take effect on a designated future day, may before such day withdraw it, notwithstanding the board's acceptance thereof."

I am, therefore, of the opinion, under the decision above mentioned, that Mr. Abel's withdrawal of his resignation having reached you before the expiration of the date set by him for his resignation to take effect, his withdrawal of the same was effective, notwithstanding the action of the board in informally accepting the same.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General

134. Elections--Registrations--Registry Lists, Printing of--County Commissioners.

The printing of the registry list, after being certified by the Registry Agent, rests with the Board of County Commissioners.

Carson City, August 13, 1914.

HON. LEROY PIKE, Assistant District Attorney, Reno, Nevada.

DEAR SIR: I am in receipt of your favor of the 7th instant, asking an opinion on certain phases of the Election Law of 1913.

You call my attention to the fact that on page 493, under section 12, this law provides for the publication and printing of the registry list, and that sections 13 and 17 also refer to the same matter. You ask my opinion as to whether the printing of the registry list shall be given by the Registry Agent or by the Board of County Commissioners. Upon consideration of subdivision 2, section 1508, and sections 1509, 1530, 1539, and 2867, Revised Laws, I am of the opinion that the printing of the registry list rests, after being certified by the Registry Agent, with the Board of County Commissioners.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General.

135. Elections--Independent Nomination--Nomination by Petition of Electors--Who May Sign.

1. No person who has voted in a convention for or against a candidate for any office shall join in nominating by petition, or otherwise, any other nominee for the same office.

2. An elector, who has registered as a member of one of the several political parties for a primary election, is not thereby disqualified from signing nominating petitions of independent candidates for office.

3. An elector, who signs an independent candidate's petition, is not thereby disqualified from voting in party primaries.

Carson City, August 14, 1914.

HON. E. O. PATTERSON, County Clerk of Ormsby County, Carson City, Nevada.

DEAR SIR: I am in receipt of your letter of August 11, submitting for my opinion the following question:

Can an elector, who signs an independent candidate's petition, vote at the ensuing primary election?

Your question presents as a corollary a further question:

Can an elector, who has registered as a member of one of the political parties of this State, sign the nominating petition of an independent candidate?

Section 2 of chapter 3 of "An Act relating to elections and removals from office,"

approved March 31, 1913, provides:

All candidates for elective public offices shall be nominated as follows: 1. By direct vote at primary elections held in accordance with the provisions of this Act; or, 2. By nominating petitions signed and filed as provided by existing laws. \* \* \*

It is manifest from this section at almost the outset of the Primary Law that independent candidates may be nominated by petition. This is followed by a further provision of the Primary Act itself, subdivision c of section 7, which provides as follows:

© Nothing herein shall be construed as prohibiting the independent nomination of candidates to be voted for at any general election, by electors or bodies of electors, as now provided by law, but a candidate defeated at a primary election held under the provisions of this Act shall be ineligible for nomination to the same office at the same election.

Section 2 of chapter 5 of “An Act relating to elections and removals from office,” approved March 31, 1913, under the title “Australian Ballot Law,” defines a convention and the purposes for which it may be held. Section 3 is the legislative authority for the nomination of independent candidates by petition, and is as follows:

A candidate for public office may be nominated otherwise than by a primary election in the manner following: A certificate of nomination shall be signed by electors residing within the district or political division for which candidates are to be presented equal in number to at least ten percent of the entire vote cast at the last preceding election in the State, district, or political division for which the nomination is to be made; provided, that such certificates shall not be valid unless signed by five voters. Said signatures need not all be appended to one paper, but each signer shall add to his signature his place of residence. One of the signers of each such certificate shall swear that the statements therein made are true, to the best of his knowledge and belief, and a certificate of such oath shall be annexed. Such certificate of nomination shall have the same effect as a nomination shall have the same effect as a nomination made by a primary election. The certificate of nomination herein provided for shall state the name of the party or principle which the person nominated by petition of electors represents, but in so doing the name of no political party existing at the last preceding general election shall be used.

Section 4 of the said chapter provides for the place and manner of filing of certificates of nomination or petitions of independent candidates. Section 5 of said chapter 5 defines the requisites of the petition, and prescribes the only disqualification that can be found with reference to who may or may not sign independent candidates’ petitions, section 5 being as follows:

No certificate of nomination shall contain the name of more than one candidate for each office to be filled. No person shall join in nominating under the provisions of

section 4 of this Act more than one nominee for each office to be filled, and no person who has voted in a convention either in person or by proxy for or against any candidate for any office, shall join in nominating, in any manner, any other nominee for that office, and no person shall accept a nomination to more than one office.

The only disqualifications that are expressly made are those enumerated in section 5 that no person who has voted in a convention, either in person or by proxy, for or against a candidate for any office shall join in nominating by petition or otherwise any other nominee for the same office, and this, I believe, is the only disqualification which exists. The Election Law and the Primary Law are purely statutory, and unless the Legislature makes further disqualifications than those enumerated in the statutes, no other disqualification should be read into the Act. The Legislature has expressed the only disqualification, and applying the maxim "Expressio unius est exclusio alterius," it would seem that the Legislature has expressed the only disqualification it intended to make.

I am therefore, of the opinion that an elector who has registered as a member of one of the several political parties of this State for a primary election is not thereby disqualified from signing nominating petitions of independent candidates for office, and that such signatures, if otherwise qualified, are proper, and should be counted in making up the necessary percentage required to be upon independent petitions.

I am further of the opinion that an elector who signs an independent candidate's petition is not thereby disqualified from voting in party primaries, if he is properly registered for such primary. It is not a requisite that a member of a party shall vote or intend to vote for every nominee of his party at the ensuing election, and that it is well shown by the nomination papers of candidates, which only require of candidates that they shall intend to vote for a majority of the candidates of said party. See subdivision a, section 7 of chapter 3, of an Act entitled "An Act relating to elections and removals from office," approved March 31, 1913. No stricter rule or requirement certainly could be applied to electors within a party than to the candidates of the party.

I am further confirmed in this opinion by section 18 of the Primary Law, which gives the grounds for challenge, and while one of the grounds for challenge is that the intended voter does not belong to the particular party designated upon the register, yet there is no right of challenge by reason of the fact that an elector has signed an independent candidate's nominating petition. A man may be a member of a party and entitled to participate in the selection of candidates, even though he does not intend to support all of the candidates of the party.

I further call your attention to the opinion of my predecessor in office, the late Honorable Cleveland H. Baker, contained in the Report of the Attorney-General for the years 1911-1912 at pages 145, 146, and 147, in which Mr. Baker held, and with which I am of full accord, that there is no provision of law prohibiting electors who have voted in a primary election from signing a petition of an independent candidate for nomination to an office to which a nominee had been selected at the primary.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General.

136. Elections--Candidates--Corrupt Practices Act, Statements Under--Time for Filing.

August 27, 1914, is the day designated by Corrupt Practices Act (Stats. 1913, 478) for filing ante-election statement, and September 16, 1914, for filing post-election statements.

Carson City, August 25, 1914.

HON. L. F. ADAMSON, Carson City, Nevada.

DEAR SIR: I am in receipt of your favor of the 24th instant, inquiring as to the date on which the preliminary statement required of every candidate for nomination or election to public office under section 8 of the Corrupt Practices Act (Stats. 1913, p. 478).

Said section provides as follows:

Every candidate for nomination or election to public office \* \* \* shall five days before and fifteen days after the election at which he was a candidate file with the Secretary of State (or County Clerk or City Clerk) an itemized sworn statement setting forth all moneys or other valuable thing contributed. \* \* \*

The question to be determined, therefore, is, what is meant by the expression "five days before"? In the case of Ward v. Walters, 63 Wis. 39, it was decided that where an Act was required to be done a certain number of days or weeks (before a certain other day upon which another act is to be done), the whole number of days or weeks must intervene before the day fixed for doing the second act. In Cyc. 38, p. 317, it is said:

Either the day on which the period begins or the day on which it expires must be included and the other excluded.

In the same volume, on page 14, it is said:

It is a general rule that fractions of days are not recognized in law.

The primary election occurring on the 1st of September, five full days before that date would fall on the 27th of August under the law, not regarding fractions of days.

I am, therefore, of the opinion that August 27, 1914, is the day for filing the pre-primary expenses statement of candidates required by section 8 of the Corrupt Practices Act.

The second statement required of candidates fifteen days after election is to be filed on

September 16, 1914.

Respectfully submitted,  
GEO. B. THATCHER, Attorney-General.

137. Elections--Candidates, Disqualification of--Constitutional Law.

1. A primary election is not such an election for state and county officers as is contemplated in the Constitution.

2. A Postmaster, whose compensation amounts to about \$1,000 per annum, may make a campaign for nomination to office, and will be eligible to the office he seeks if he tenders his resignation as Postmaster to the proper officer prior to general election day.

Carson City, August 26, 1914.

MR. CHAS. T. WASHEIM, Wadsworth, Nevada.

DEAR SIR: I am in receipt of your favor of the 21st instant, calling my attention to section 9, article 4, of the Constitution, and stating that a certain Postmaster had filed his papers as a candidate for office of Justice of the Peace, that his compensation amounts to about \$1,000 per annum, and that he has not resigned as Postmaster.

You inquire: "Is his candidacy legal" Can he await result of election before resigning?"

The section of the Constitution to which you refer reads as follows:

No person holding any lucrative office under the Government of the United States, or any other power, shall be eligible to any civil office of profit under this State; provided, that Postmasters whose compensation does not exceed five hundred dollars per annum, or Commissioners of Deeds, shall not be deemed as holding a lucrative office.

This matter was brought before the Supreme Court of the State of Nevada in the case of State, ex rel. Nourse, v. Clar, 3 Nev. 569. In that case the resignation of Mr. Clarke as United States District Attorney, while he was a candidate for Attorney-General of the State, was mailed to the proper officer the day preceding the election. It was held therein that such resignation was valid, that Mr. Clarke had resigned such office without the consent of the appointing power, and that the acceptance of such resignation took effect from the time it was deposited in the mail when it became beyond his power to withdraw it.

It has frequently been decided that a primary election is not such an election for state and county officers as is provided in the Constitution. It is merely a means of nominating a party candidate. After such nomination the candidate does not become an officer until elected to the office.

Taking into consideration the decision of the case above referred to, I am of the opinion that the Postmaster in question, if selected as a candidate, may make his campaign as such, and will be eligible to the office which he seeks, provided he tenders his resignation as Postmaster to the proper officer prior to election day.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General.

138. Elections--Railroad Employees--Short Ballots.

Railroad men voting on transfers provided in sec. 15, chap. 2, General Election Law (Stats. 1913, 502); not in their county of residence, are permitted to vote the short ballot only.

Carson City, August 26, 1914.

MR. J. COPLEY, Imlay, Nevada.

DEAR SIR: I am in receipt of your favor of the 24th instant, asking an interpretation of section 15, chapter 2, of the Election Laws (Stats. 1913, p. 502), and inquiring whether railroad men holding transfers are allowed to vote for county and precinct in which they were originally registered.

The said section was section 10 of "An Act to provide for the registration of electors," approved March 5, 1869. It was amended by Stats. 1911, 332, and the amended section appears in the Revised Laws as section 1714. The said amendment contains the provision in regard to electors employed in moving trains, stages, mails, or otherwise upon any of the transportation routes of this State. Section 250, Revised Laws, being section 1 of article 2 of the Constitution, provides the qualification of electors, and that they shall have actually resided in the State six months, and in the county thirty days. After the enactment of the amendment of 1911 a doubt arose as to the constitutionality of allowing railroad men to vote in any county other than that of their residence, and for that reason the election law was modified at the session of 1913 as it now appears. From a cursory reading of the section in question it would appear that railroad men holding transfers would be entitled to vote for county and precinct officers when voting out of the county, but on perusal of the whole section it appears that any other duly qualified elector detained away from home on election day is only permitted to vote the short ballot containing the state officers. It would be unconstitutional for the Legislature to make a classification between these two classes of men, allowing one to vote a full ticket and the other only a short ballot when away from home, and for these reasons I am led to the opinion that under the section in question railroad men voting on election day away from their county of residence are permitted to vote the short ballot only.

I trust this will give you the information desired, and ask you to call upon me if any other questions should arise.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General.

P.S.--When the transfer is from one precinct or township to another in the same county, railroad men can vote a full ticket.

139. Elections--County Clerks--Short Ballots.

The provisions of sec. 15, chap. 2 (Stats. 1913, 502), of the Election Law, referring to short ballots, applies to primary elections. The quantity of such short ballots to be furnished lies in the discretion of the County Clerk.

Carson City, August 29, 1914.

HON. E. O. PATTERSON, County Clerk, Carson City, Nevada.

DEAR SIR: I am in receipt of your favor of the 28th ultimo, asking interpretation of section 15, chapter 3, of the Election Law, referring to short ballots.

You inquire whether this provision applies to primary elections, and, if so, in what quantity they are to be provided, and how marked to distinguish them from the official ballots.

In response, permit me to say that I am of the opinion that said section does apply to primary elections. The quantity to be furnished is in your discretion, and the short ballots must be printed in every respect identical with the official ballots, except that all legislative, district, and county officers to be voted for either for nomination or election shall be left off, so that it will be impossible for an elector to participate in county affairs when voting a short ballot.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General.

140. Weights and Measures--Act Concerning--Interpretation Of.

The Weights and Measures Act (Stats. 1911, 37) was enacted for the protection of the consumer only, and applies to goods sold in original packages. The purpose of the law was to show the consumer how much actual weight is contained in the original package.



Carson City, September 10, 1914.

THE J. K. ARMSBY COMPANY, San Francisco, Cal.

GENTLEMEN: I am in receipt of your favor of the 4th instant, asking for an interpretation of the net-weight law of this State (Stats. 1911, 37).

You inquire whether it is necessary that the net weight should appear on the outside of bean sacks which weigh anywhere from 80 to 85 pounds.

In my opinion this law was enacted for the protection of the consumer only, and applies to goods sold in original packages. The retailer, I presume, pays you for the actual amount of beans contained in the sack, and the purpose of the law was to show the consumer how much actual weight he was getting in the original package. Under these circumstances, I am of the opinion that the law does not apply to the case in question, and it is not necessary for you to mark the net weight of the beans upon the sack itself.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General.

141. Elections--Registration--Registry Agent, Fees Of.

Under Stats. 1913, sec. 17, p. 504, the Registry Agent is entitled to 25 cents for each name by him regularly registered, and under sec. 17, p. 520, "a reasonable sum for copying names from one register to another." Registry Agent is also entitled to a fee of 25 cents for registering transfers from one precinct to another.

Carson City, September 15, 1914.

HON. ARTHUR E. BARNES, Registry Agent, Goldfield, Nevada.

DEAR SIR: Owing to the press of business in this office, answer to your favor of the 28th ultimo, asking construction of section 17, chapter 2, p. 504, and section 17, chapter 3, p. 520, of the Election Law, Statutes of 1913, has been delayed until now.

In my opinion all old registrations were wiped out by this law, and every elector was required to register anew this year, such registration to continue for two years. With this premise, I think there is no conflict whatever between the two sections mentioned. Under section 17, page 504, you are entitled to the sum of 25 cents for each name by you legally registered, and section 17, page 520, provides "for all new names he shall be paid as now allowed by law."

I am, therefore, of the opinion that you are entitled to 25 cents for each name legally registered, and in addition “a reasonable sum for copying the names from one register to another,” as provided in section 17, p. 520.

Although you did not inquire about the matter, I have answered in response to other inquiries that a Registry Agent is entitled to a fee of 25 cents for registering transfers from one precinct to another.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General.

142. Elections--Registration--Registry Agent, Fees Of.

Under Stats. 1913, sec. 17, p. 504, the Registry Agent is entitled to 25 cents for each name by him regularly registered, and under sec. 17, p. 520, “A reasonable sum for copying names from one register to another.” The Registry Agent is also entitled to a fee of 25 cents for registering transfers from one precinct to another. The Registry Agent is not entitled to any fee for making or posting the list of registered voters, nor for posting notice required to be posted, nor for any other service in connection with registration, except as above stated.

Carson City, September 15, 1914.

HON. JOHN R. MELROSE, District Attorney, Hawthorne, Nevada.

DEAR SIR: I am in receipt of your favor of the 9th instant, asking in regard to compensation of Registry Agents under the Election Law.

Such law contains two provisions in regard to this question, namely, section 17, p. 504, and section 17, p. 520. The law contemplates an entirely new registration of voters this year, all previous registrations being wiped out. Under said sections the Registry Agent is entitled to 25 cents for each name legally registered by him and also “a reasonable sum for copying the names from one register to another, the amount to be fixed by the County Commissioners,” as provided in section 17, p. 520.

I think that the Agent is also entitled to a fee of 25 cents per name for making transfers of voters. By that is meant a transfer of a voter legally registered in one precinct to another precinct.

Inasmuch as the law provides that the 25 cent shall be “as full compensation for all services rendered by Registry Agents under the provisions of this Act” (p. 504), I do not think the Agent is entitled to any fee for making and posting the list of registered voters, nor for

posting any notice required to be posted, nor for any other services in connection with registration except as above stated.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General.

143. Revenue--Taxation--Indian Agents--Indian Reservations.

Unless an Indian reservation is expressly excepted from the jurisdiction of a State when admitted, the property of all persons within the limits of the reservation, except that of Indians, is subject to taxation by the State. The goods of an Indian Agent on an Indian reservation and used by him for his personal use in government buildings, upon government land, is subject to taxation.

Carson City, September 18, 1914.

NEVADA TAX COMMISSION, Carson City, Nevada.

GENTLEMEN: I am in receipt of your inquiry as to whether or not personal property consisting of household furniture, etc., belonging to an agent on an Indian reservation and used by him for his personal use in government buildings upon government land, is subject to taxation.

In 22 Cyc. 150, I find the following principle laid down:

Unless a reservation is expressly excepted from the jurisdiction of a State when admitted, the property of all persons within the limits of the reservation, except that of Indians, is subject to taxation by the State.

This principle is fortified by the citation of several cases in the United States Supreme Court, and other cases. The enabling Act of this State, vol. 1, Rev. Laws, p. 56, makes no exception whatever of an Indian reservation.

I am, therefore, of the opinion that the property in question is subject to taxation.

I am returning herewith letter from Mr. W. A. Van Voorhis.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General.

144. Elections--Candidates--Corrupt Practices Act--Statement of Candidates.

A candidate who has no opposition in the primary, and whose name is therefore certified as the party candidate for the office, and whose name therefore does not appear upon the primary ballot, is not compelled to file the statement of expenses required by sec. 8 of the Corrupt Practices Act (Stats. 1913, 478).

Carson City, September 24, 1914.

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

DEAR SIR: I am in receipt of your favor of the 17th instant, advising me that R. A. McKay filed in your office, in accordance with law, his nomination paper for the office of Attorney-General on the Republican ticket, and further that said McKay has failed to file the statements required under section 8 of the Corrupt Practices Act (Stats. 1913, 478).

I am advised that R. A. Gott and R. A. McKay on August 1 both filed nomination papers as candidates for nomination for said office; that afterwards both of these gentlemen attempted to withdraw the nomination papers filed by them respectively, the said Gott about 3:30 o'clock in the afternoon, and McKay about 4 o'clock on the same day. By an action brought in the Supreme Court it was decided that the withdrawal of Mr. Gott was legal, and, this leaving Mr. McKay as the only applicant for the Republican nomination for such office, he automatically became the Republican nominee of such office under and by virtue of the operation of subdivision 9, section 14, of the Primary Election Act (Stats. 1913, 517). By reason of such fact Mr. McKay's name did not appear on the ballot, and he was required to make no contest in the primary election. Section 8 of the Corrupt Practices Act, to which you call my attention, provides:

Every candidate for nomination or election to public office \* \* \* shall five days before and fifteen days after election at which he was a candidate, file with the Secretary of State. \* \* \*

It thus appears that there was no election at which Mr. McKay was a candidate, and I am, therefore, of the opinion that said section 8 does not apply to his case, and that no statement either before or after the primary election can be lawfully required of him.

You are, therefore, instructed to certify out Mr. McKay's name to the various County Clerks of this State as the Republican nominee for the office of Attorney-General of the State.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General.

By EDW. T. PATRICK, Deputy.

145. Fish and Game--Beaver, Protection Of.

There appears to be no valid enactment regarding the protection of beaver in this State.

Carson City, October 9, 1914.

HON. GEORGE B. RUSSELL, Game Warden, Elko, Nevada.

DEAR SIR: Formal answer to your telegram of the 29th ultimo, has been delayed by press of business in this office.

As advised by telegram to you, I am of the opinion that section 2100, Revised Laws, has been repealed, and there is no provision in the laws of this State for the protection of beavers. My reasons for so thinking are as follows:

The said section 2100 is section 16 of an Act purporting to be approved March 24, 1909, entitled "An Act providing for the protection and preservation of game." It is clearly section 16 of "An Act providing for the protection and preservation of different species of wild game," approved March 28, 1901 (Stats. 1901, p. 121). In said section the closed season extended to April 1, 1910. By Act of 1909, p. 212, this section was amended extending the closed season to April 1, 1920. At the same session of the Legislature (Stats. 1909, p. 213) "An Act providing for the protection and preservation of game," approved March 24, 1909, was passed, in which no mention whatever was made of beavers. As this Act was approved one day later than the Act amending section 16, referring to beaver, it must be construed to be the intention of the Legislature to repeal by implication the Act of the previous day protecting beaver, and, therefore, all legislation for the protection of this game seems to have been wiped out.

It is unfortunate that such is the case, and I would ask that you keep this information to yourself as much as possible, so that there may not be an indiscriminate slaughter of this animal. The matter will be called to the attention of the Legislature at its next session for action.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General

By EDW. T. PATRICK, Deputy.

146. Crimes and Punishments--Live Stock.

Section 6641, Rev. Laws, called to the attention of peace officers of the State.

Carson City, October 10, 1914.

TO ALL PEACE OFFICERS OF THE STATE:

GENTLEMEN: Section 6641, Revised Laws of Nevada, 1912, provides as follows:

Any person slaughtering any cattle shall keep for the period of ten days, in some place where the same may be seen, the hide intact, with the ears on, and shall on demand of any person or persons be required to produce the hide, with the ears on, for the said period of ten days. It shall be unlawful for any person to sell any bovine animal to the keeper of any butcher shop or any market in this State, without having, and upon request exhibiting to such butcher, the hide containing the brand and other marks upon the hide of such animal, or for any person peddling the meat of any bovine animal, who is not the keeper of any shop or meat market, to sell such meat without having in his possession, then and there, and upon request exhibiting, the hide of such animal containing the brand and other marks thereon. It shall be unlawful for the keeper of any slaughterhouse, or person engaged in slaughtering cattle for sale in this State, to purchase any cattle for slaughter, or any slaughtered bovine animal, without having exhibited to him the hide of such animal, and examining the brand and other marks upon such hide, and making and entering in a book kept for that purpose, and as hereafter provided in this section, a description of such brand and marks, with the name of the person from whom the purchase was made and the date of such purchase. It shall be the duty of every keeper of any slaughterhouse, engaged in the business of slaughtering any bovine animals, to keep at his slaughter-house, place of business or office, a book in which shall be recorded and preserved a description of the brand and other marks upon the hide of each slaughtered bovine animal, with the name of the person from whom the animal was purchased when such name is known or can be ascertained, and the date of such purchase. Said book shall be open to the Hide Inspector or the owner of any cattle during business hours. Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty nor more than five hundred dollars, or by imprisonment in the county jail not exceeding six months, or both.

It has been brought to my attention that this salutary measure is being generally disregarded in all parts of the State, in that keepers of slaughter-houses preserve no record of stock bought by them, and that peddlers of beef, not keepers of shops and meat markets, fail to have in their possession the hide of the animals the flesh of which is being sold by them. Both of these practices are in plain violation of said law.

Your particular attention is called to this statute, to the end that its provisions may be rigidly enforced.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General.

147. Crimes and Punishments--Conspiracy.

1. Certain facts held not to constitute a public offense.

2. A conspiracy to commit a crime against public justice, namely, disturbing the public peace and interfering with the authorities in the administration of justice, must be manifested by some overt act, before action can be taken.

Carson City, October 15, 1914.

CAPTAIN J. P. DONNELLEY, Carson City, Nevada.

DEAR CAPTAIN: I am informed by you that a band of 30 or 40 men left the Southern Pacific train at Hazen some time since, and are making their way south along the line of the railroad track, their avowed destination being the town of Tonopah.

It appears from your statement that these men are mainly young, well dressed, are committing no depredations, are supplied with cash, and are paying for such food as they require.

Under the circumstances narrated above, I cannot see that these men are committing any crime, and there is no reason for interference with them by the police authorities of the State on that account.

However, you inform me that these men are threatening that when they reach Tonopah they expect to make trouble with the authorities there on account of the recent conviction and imprisonment of one of their number. If this is true, they are engaged in a conspiracy to commit a crime against the public justice, namely, disturbing the public peace and interfering with the authorities in the administration of justice. Until these men commit an overt act in the furtherance of this conspiracy, they cannot be interfered with, and your efforts must be directed to procuring evidence of such conspiracy.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General.

By EDW. T. PATRICK, Deputy.

148. Taxation--Revenue--Nevada Tax Commission--State Board of Equalization.

The law creating the Nevada Tax Commission (Stats. 1913, 175) requires said Commission to continue its sessions as a State Board of Equalization until its business is completed. If by reason of compliance with the provisions of this Act a delay ensues so that the

various county officials required to take action by the revenue laws cannot do so within the period therein designated, such laws ought to be regarded as directory only, and the period of time within which such county officials are to take action be extended the length of such delay.

Carson City, October 23, 1914.

NEVADA TAX COMMISSION, Carson City, Nevada.

GENTLEMEN: I am in receipt of your favor of the 22d instant, calling my attention to certain features of the revenue laws of this State whereby it appears that, if such laws are considered mandatory, it will be impossible for the various county officials to comply with the same, for the reason that it will be impossible for your Commission to complete its labors as a State Board of Equalization and return its findings within the time prescribed by the revenue laws for the action of such county officials.

The laws in question are as follows:

Section 3 of the Act creating your Commission (Stats. 1913, p. 176) provides for one regular session to be held annually, commencing on the second Monday in October of each year, and continue from day to day until the business is completed.

Section 6 of said Act provides that at such regular session in October the Commission shall review the tax rolls of the various counties as corrected by the County Boards of Equalization, and may raise or lower the valuations therein for the purpose of state equalization.

Section 3640 of the Revised Laws provides that “within five days after the adjournment of the Board of Equalization, its Clerk shall enter upon the assessment roll all the changes and corrections made by the board, and shall immediately deliver said corrected roll, with his certificate attached, to the County Auditor.”

Section 3641 provides that “the County Auditor, as soon as the assessment roll is delivered to him by the Clerk of the Board of Equalization, shall proceed to add up the valuations \* \* \* and on or before the fourth Monday in October (first Monday in November, see sec. 3795) of each year, deliver same to the ex officio Tax Receiver.” \* \* \*

Section 3644 provides that “taxes will become delinquent on the first Monday in December,” after which a penalty is added.

Section 2 of the act creating your Commission provides that “the members of said Commission shall have power to prescribe rules and regulations for their own government and governing the procedure and order of business of all regular and special sessions.” \* \* \*

Section 4 of said Act provides that “the enumeration of the said foregoing eight special powers shall not be construed as excluding the exercise of any needful and proper power and



authority of said Commission, in the exercise of its general supervision and control over the entire revenue system of the State not in conflict with the law.”

Section 10 of said Act provides that “all provisions of this Act are mandatory.”

It appears from your statement that “it is a physical impossibility for this Commission to complete its labors as a State Board of Equalization and return its findings within the time limit prescribed by the said law for the county officials’ action.”

All of the sections of the Revised Laws hereinbefore mentioned were passed previous to the enactment of the statute creating your Commission, which was approved March 20, 1913, and in so far as said old laws conflict with any part or portion of the Nevada Tax Commission Act, the same are repealed or are to be considered as directory only.

The law requires your Commission to continue in session from day to day until its business, as a State Board of Equalization, is complete. If by reason of a compliance with the mandatory provisions of this law, requiring you to continue your business as a State Board of Equalization until the same is completed, a delay ensues so that various county officials required to take action by the statute above mentioned cannot take such action within the periods therein designated, the said statutes ought to be regarded as directory only, and the period of time within which such county officials are to take action is to be extended the length of such delay.

Until your work is completed no action can be taken by the county officials, and, as it is impossible for your board to complete its business within the period of time required by the old law, the same is to be regarded as superseded and to be considered directory only.

It is my opinion that the powers of the Commission extend even to deferring the date of delinquency, should this be considered advisable, in view of delay occasioned by their activities.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General.

By EDW. T. PATRICK, Deputy.

149. Revenue--Taxation--Chattel Mortgages, Taxation Of.

The listing of chattel mortgages by the Assessor, and the placing of the same upon the assessment roll, is a double taxation, and is contrary to the letter and spirit of section 1, article 10, of the Constitution.

Carson City, October 29, 1914.

NEVADA TAX COMMISSION, Carson City, Nevada.

GENTLEMEN: I am in receipt of your favor of the 15th instant, advising me that one of the County Assessors has furnished your Commission with a statement of chattel mortgages, which the County Board of Equalization has instructed the Assessor to place on the roll of that county for the year 1914. You further state that all of the property covered by these chattel mortgages has been assessed as personal property. You further point out that under the provisions of chapter 289, p. 578, of the Statutes of 1913, a mortgage, deed of trust, contract, or other obligation by which a debt is secured, and which is a lien or incumbrance against real property is exempted from taxation. You further contend that, while this chapter applies specifically to real property mortgages, it occurred to you that if it was so confined it makes it discriminatory, and further, by assessing mortgages and the property itself, there would be a double assessment of the property, which is not contemplated either by the law or the Constitution of the State of Nevada.

Section 1 of article 10 of the Constitution provides:

The Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal, and possessory. \* \* \*

Under the facts narrated in your letter, an owner of unincumbered personal property in the county in question should pay the state, county, and school tax on the just valuation of such personal property as fixed by the Assessor, while a person who is unfortunate enough to be obliged to borrow money upon his personal property would have to pay a tax, not only upon the value of the property fixed by the Assessor, but would indirectly have to pay an additional tax upon the amount of the mortgage against his property, which additional tax would be collected by the mortgagee in the shape of additional interest on the mortgage so as to enable the mortgagee to meet the tax assessed upon the mortgage.

There is no doubt in my mind that this is double taxation, and is contrary to the letter and spirit of the section of the Constitution above quoted, and is not contemplated by either the law or the Constitution of this State.

The tax could be set aside for the reasons stated, but on account of the small amounts involved in each case it is improbable that any mortgagee will feel himself justified in fighting this double tax.

As you are aware, the statute above referred to (Stats. 1913, 578) was passed for the purpose of doing away with this double taxation on account of mortgages on real property, and in my opinion a mortgage on personal property should be disregarded for this same reason.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General.

By EDW. T. PATRICK, Deputy.

150. Revenue--Taxation--Banks, Real Estate Of.

The real estate belonging to any bank is assessable in the same manner and form as other real estate is assessed to the owners thereof. If a bank acquires property under foreclosure, and the deed thereto is recorded before the fixing of the county tax rate by the Commissioners, such property should be assessed to the bank, rather than to the previous owner thereof.

Carson City, October 29, 1914.

NEVADA TAX COMMISSION, Carson City, Nevada.

GENTLEMEN: I am in receipt of a letter of September 5 from Mr. John Hayes, Assessor of Washoe County, with reference to the matter of taxes on certain real estate which is now the property of the Nixon National Bank, also a letter of August 22 from Mr. F. M. Lee, vice-president of said bank, in relation to the same matter, and have your verbal request for an opinion on the question therein involved.

It appears that the Assessor assessed this property to the record holders thereof for the year 1914; that the county tax levy was fixed by the Board of County Commissioners on the first Monday in March of said year. The property in question is now all owned by the Nixon National Bank by deeds dated, respectively, January 1, 1914, January 21, 1914, and May 22, 1914.

Section 3618, Revised Laws of Nevada, provides:

The Board of County Commissioners of each county shall, on or before the first Monday of March, of each year, fix the rate of county taxes for such year, designating the number of cents on each hundred dollars of property levied for each fund; and shall levy the state and county taxes upon the taxable property of the county.

Section 3619 of the Revised Laws provides:

Every tax levied, under the provisions or authority of this Act, is hereby made a lien against the property for the tax levied upon the personal property, of the owner of such real estate, which lien shall attach upon the day on which the taxes are levied in each year, on all property then in this State, and on all other property whenever it reaches the State, and shall not be satisfied or removed until all the taxes are paid, or the property has absolutely vested in the purchaser under a sale for taxes.

Section 3624 of the Revised Laws provides:

Between the date of the levy of taxes and the first Monday of September in each year, the County Assessor \* \* \* shall ascertain, by diligent inquiry and examination, all property in his county, real or personal, subject to taxation, and also the names of all persons, corporations \* \* \* owning the same; \* \* \* and he shall then determine the true cash value of all such property, and he shall then list and assess the same to the person, firm, corporation, \* \* \* owning it.

Section 3821 of the Revised Laws provides:

The real estate belonging to any bank shall be assessed to it in the same manner and form as other real estate is assessed to the owners thereof.

In the case of the property in question, Mr. Hayes assessed the same against the record owners thereof as the same appeared on the first Monday in March, 1914, and it is contended by the bank, the present owner of said real estate, that it is entitled in making its statement for the purposes of assessment to deduct from such statement "the proportionate value of the real estate belonging to the bank," as provided in section 3820 of the Revised Laws.

I do not see, in view of the provisions of section 3619, above quoted, making the tax levy apply against the property possessed on the day on which the taxes are levied for the year, how this contention can be properly sustained by the bank. It appears, however, that on the date of the fixing of the tax levy by the County Commissioners, two of the parcels of property in question had been deeded to the bank and presumably said deeds were immediately placed upon record, and if said deeds were recorded on or before the first Monday in March, 1914, such property should have been assessed to the bank rather than to the previous holders thereof. One of said deeds was dated January 1, 1914; the other January 21, 1914. In regard to these two pieces of property, I think the bank is entitled to deduct the value thereof from said statement under the provisions of section 3820, but the deed to the other piece of property being dated May 22, 1914, and presumably filed later, being after the levy of taxes by the said County Commissioners, the property set forth in said deed was properly assessed to the former holder thereof.

The letter referred to is herewith returned.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General.

By EDW. T. PATRICK, Deputy.

151. Revenue--Taxation--Patented Mining Claims, Assessment Of.

A fractional patented mining claim should be assessed at not less than \$500.

Carson City, December 2, 1914.

NEVADA TAX COMMISSION, Carson City, Nevada.

GENTLEMEN: I am in receipt of your favor of the 27th ultimo, asking for an opinion on the question of the assessment of fractional patented mining claims, upon which the necessary amount of work required by section 1, chapter 83, Statutes of 1913, has not been performed.

You inquire how such mining claims should be assessed. Section 1 of said Act provides: "Each patented mine shall be assessed not less than \$500." \* \* \* Section 2 provides: "The County Assessor shall assess each patented mine in his county at not less than \$500, and return the said assessment as now required by law." The statute in question does not seem to contemplate the assessment of any patented claim, whether whole or fractional, at less than \$500 per claim, and in my opinion under said statute the Assessor is required to assess a fractional patented mining claim at not less than \$500.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General.

152. State Institutions--Nevada Hospital for Mental Diseases, Revenue from Pay Patients.

The fees received from pay patients at the Nevada Hospital for Mental Diseases should be put to the credit of the appropriation for the support of the institution, and not into the State General Fund.

Carson City, December 6, 1914.

MR. E. D. VANDERLIETH, Secretary Board of Directors, Nevada Hospital for Mental Diseases, Carson City, Nevada.

DEAR SIR: I am in receipt of your favor of the 3d instant, inquiring: "Do the fees received from paying patients at said Hospital go into the fund or appropriation for the support of the institution as articles and products sold, or into the General Fund of the State?"

At the last session of the Legislature an Act was passed entitled "An Act in relation to the sale of articles and products of state institutions not required for their own use and consumption," being chapter 187, p. 265, of the Statutes of 1913. Section 1 of said Act provides:

The products of any state institution, or any article not required for its own use or consumption, may be sold by market value, and the proceeds of such sale shall be deposited in the fund or appropriation for the support of such institution, and not in the General Fund.

I understand that it has been the custom heretofore that the fees received from paying patients at your Hospital were paid into the General Fund of the State. The general intent and purpose of the Act above mentioned seems to be to change this rule, and I am of the opinion that such fees should go to the credit of the appropriation for the support of your institution and not into the State General Fund.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General.

153. Elections--Candidates--Corrupt Practices Act--Statement of Candidates.

Under the Corrupt Practices Act (Stats. 1913, 476) a candidate for nomination or election to public office is not required thereby to file vouchers for his expenses. The only vouchers that seem to be required are those provided in section 9 of the Act, from political committees or persons not candidates, spending a sum greater than \$50.

Carson City, December 7, 1914.

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

DEAR SIR: After careful examination of chapter 282, Statutes of 1913, being the Corrupt Practices Act, I am of the opinion that a candidate for nomination or election to public office is not required thereby to file vouchers of his expenses.

The only vouchers that seem to be required are those provided in section 9 of the Act, which requires political committees or any persons not candidates for public office spending a sum greater than \$50 to file vouchers.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General.

154. Public Schools--School Trustees--Free Text-Books.

Under Stats. 1913, 124, the Trustees of each school district are required to furnish pupils all text and supplemental books.

Carson City, December 8, 1914.

MR. ELMER R. YOUNG, Manhattan, Nevada.

DEAR SIR: In answer to your favor of the 21st ultimo, let me say that under chapter 101, p. 124, Statutes of 1913, the Trustees of each school district in the State are required to furnish their pupils with all text and supplemental books which the pupils are required to use, including those in use in the high school.

If your board is unable to supply said books with the funds on hand, I would suggest that recourse be had to the provisions contained in sections 3473-3477, Revised Laws, providing for the issuance of interest-bearing school warrants for emergencies. There is no charge under the statute in question for the books required to be used in the different courses, and they must be furnished by the School Trustees.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General.

155. Elections--County Commissioners--Recount.

Under section 1513, Rev. Laws, the only power the County Commissioners have is to recount all of the ballots. The board has no power to throw out any ballot which has been counted by the election judges or in any way overrule or overthrow any decision of the election board as to the legality of any ballot.

Carson City, December 19, 1914.

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

DEAR SIR: I am in receipt of your telegram, asking the opinion of this office relative to the rights of the County Commissioners in the recount of election returns, under section 1513, Revised Laws of Nevada.

I think the statute itself is plain. It provides for a recount, and further provides that the Board of County Commissioners shall in no case be allowed to throw out any ballot upon any alleged legal defect if, from the face of said ballot, it can upon inspection be ascertained for whom the elector intended to cast his ballot. It is clearly apparent from the foregoing that the only power of the County Commissioners is to recount the ballots between the two officers. The Board of County Commissioners has no power to throw out any ballot which has been counted by the election judges, or in any way overrule or overthrow any decision of the election officers with respect to the legality of any ballot. It is the duty of the board to count all ballots

which were counted by the election officers. Furthermore, the Board of County Commissioners has no power to count or consider any rejected ballots, or in any wise overthrow or interfere with or change or modify the decision of the election officers in rejecting any ballot or ballots. The duties of the board, acting as a Board of Canvassers, are simply clerical and for the purpose of counting the ballots, and for no other purpose.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General.

156. Rewards--Highway Robbery.

The reward offered under the provisions of section 3905, Rev. Laws, is a standing reward and is payable to any person complying with the provisions of said section.

Carson City, December 19, 1914.

HON. TASKER L. ODDIE, Governor of Nevada, Carson City, Nevada.

DEAR GOVERNOR: I am in receipt of your favor of the 3d instant, enclosing claim of E. T. Morton for the capture of William E. Green, and claiming reward of \$250 under the provisions of section 3905, Revised Laws. In your letter you request an opinion as to the legality of this claim.

Said section 3905 provides:

The Governor shall offer a standing reward of \$250 for the arrest of each person engaged in the robbery of, or in the attempt of robbery of, any person or persons \* \* \* upon any highway in the State of Nevada, the reward to be paid to the person or persons making the arrest immediately upon the conviction of the person or persons so arrested. \* \* \*

Said Act does not apply to any police officer. Chapter 94, Stats. 1913, p. 188, makes the appropriation for the payment of rewards offered by the Governor of \$2,000. The Act in question was approved February 26, 1877, and in accordance therewith, on July 27, 1877, Governor Bradley issued a proclamation covering the reward mentioned in the statute. I have been unable to find any revocation of this proclamation of Governor Bradley's. Inasmuch as the statute provides "for a standing reward," I am of the opinion that the claim of Mr. Morton is legal, and is a just claim against the appropriation above mentioned, and should be paid.

Respectfully submitted,

GEO. B. THATCHER, Attorney-General.



4. Corporations--Secretary of State--Service of Process--Fees. An affidavit that a vacancy has occurred in the office of resident agent of a corporation is a sufficient showing under sec. 5022, Rev. Laws, upon which to make service upon the Secretary of State. For issuing certificate of vacancy, the Secretary of State is entitled to receive a fee of \$5. Such certificate, however, is not the return on the summons, but is to be made part of the return. It should be attached to it and refer to the return itself, for which the Secretary of State is entitled to receive a fee of \$5.

The mailing of a copy of the complaint and summons to the Secretary of State does not constitute service upon him. The service should be made upon the Secretary of State by the sheriff or his deputy, or a citizen, as provided in sec. 5022, Rev. Laws.

Carson City, December 23, 1914

Hon. GEORGE BRODIGAN, Secretary of State, Carson City, Nevada.

Dear Sir: I am in receipt of your inquiry concerning the purported service of the complaint and summons in the case of J. P. Sweeney v. Round Mountain Sphinx Mining Co., out of the Seventh Judicial District Court, in and for the County of Esmeralda.

The facts as you give them are as follows: That you received in the ordinary course of mail a certified copy of complaint and summons in said action, and that at the same time you received affidavit of J. P. Sweeney to the effect that a vacancy has occurred in the office of resident agent of this company.

These facts make out a sufficient showing under section 5025, upon which to make service upon the Secretary of State. I am of the opinion that the certificate of vacancy issued by you on the Th day of November is such a certificate as is required by law, for which you are entitled to receive a fee of \$5. This certificate, however, is not the return on the summons, but is to be made a part of the return. It should be attached to it and refer to the return itself, for which you are likewise entitled to receive a fee of \$5.

I am doubtful, however, whether or not the mailing of the copy of the complaint and summons constitutes service upon the Secretary of State. There is nothing in the statute which authorizes service upon the Secretary of State by mail. I am of the opinion that service should be made upon the Secretary of State in accordance with the provisions of section 5022 of the Revised Laws. In other words, it should be made by the sheriff or his deputy or a citizen over the age of 21 years.

Yours very truly,

GEO. B. THATCHER, Attorney-General