

# REPORT OF THE ATTORNEY-GENERAL

Section 4130, Rev. Laws, provides: "When required, the Attorney-General shall give his opinion, in writing, upon any question of law, to the Governor, the Secretary of State, Controller, Treasurer, Surveyor-General, the Trustees, Commissioners, or Warden of State Prison, hospital, or asylum, or the officers of any state institution whatever, and to any District Attorney, upon any question of law, relating to their respective offices."

During the past two years opinions have been prepared by this office in response to inquiries submitted by various state officers and others.

In addition to the following opinions, the Attorney-General, or his Deputy, has been in daily consultation with one or more of the officers, of whom he is the legal adviser, on matters of great public importance.

## OPINIONS OF THE ATTORNEY-GENERAL

### 1. 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 possesses 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 Constitu-

tions. 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 instant, 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 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*.

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 a 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 9th 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.*

5. **Constitutional Law—"Small Debtors' Court"—Cities and Towns.**

Section 1, article 6, of the State Constitution, gives ample authority for the establishment of small debtors' courts in incorporated cities and towns.

CARSON CITY, January 22, 1915.

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

DEAR SIR: I have carefully examined "An Act providing for the

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5. Constitutional Law--"Small Debtors' Court"--Cities and Towns. Section 1, article 6, of the State Constitution, gives ample authority for the establishment of small debtors' courts in incorporated cities and towns.

Carson City, January 22, 1915

Hon. EMMET D. BOYLE, Governor of Nevada, Carson City, Nevada.

Dear Sir: I have carefully examined "An Act providing for the creation of small debtors' courts, and defining their powers, jurisdiction and procedure," submitted to you by Mr. J. W. Yowell of Elko, in accordance with your request that I advise you as to the feasibility of establishing such courts in this State.

Article 6, section 1, of the Constitution of the State of Nevada provides:

The Legislature may also establish courts for municipal purposes only in incorporated cities and towns.

Section 9 of said article provides:

Provision shall be made by law prescribing the powers, duties, and responsibilities of any municipal court that may be established in pursuance to section 1 of this article, and also fixing by law the jurisdiction of said court so as not to conflict with the several courts of record.

In my opinion, section 1 above quoted is ample for the establishment of small debtors' courts in incorporated cities and towns, but they could be established in such cities and towns only. Inasmuch as Las Vegas, Carson City and Reno, within my knowledge, are the only incorporated cities and towns in the State, the Act could not be made to have a general application throughout the State without a change in the Constitution.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General

6. Commissary State Police--Lieutenant-Governor's Salary. "An Act regulating the salaries of certain state officials of the State of Nevada," approved March 22, 1913, p. 244, does not repeal secs 4294-96, Rev. Laws, being an Act entitled "An Act creating the office of

Commissary of the State Police, prescribing his duties, fixing his compensation,” etc.

Carson City, February 9, 1915.

Hon. GEORGE COLE, State Controller, Carson City, Nevada.

Dear Sir: I am in receipt of your request for an opinion as to whether or not an Act creating the office of Commissary of the Nevada State Police, prescribing his duties, fixing his compensation, and other matters relating thereto, approved February 8, 1908, has in any wise been repealed by an Act regulating the salaries of certain state officers of the State of Nevada, approved March 22, 1913, p. 244.

The office of Commissary of the Nevada State Police was created by the Act above mentioned, and by section 5 thereof the Commissary of the Nevada State Police shall receive a salary of \$1,200 per annum, payable in equal installments, etc.

The Act regulating salaries of certain state officials of the State of Nevada, approved March 22, 1913, provides in Section 1 the salaries of various officers including the Lieutenant-Governor, who is ex officio Adjutant-General. Section 2 provides as follows: “The foregoing sums shall be in full payment of all duties now or hereafter required of such officers not only for the ordinary duties of such officers, but for all other duties required of such officers in any manner whatever.”

It must be apparent from the reference to the two laws that the office of Commissary of the Nevada State Police is an entirely separate and distinct office from that of Lieutenant-Governor, and is so recognized. It is incorporated in a separate Act, it provides for the duties of such Commissary, and provides for his compensation. (State v. Laughton, 19 Nev. 202; State v. LaGrave, 23 Nev. 373-382; Bradley v. Esmeralda County, 32 Nev. 159-166.)

It will be observed from section 2 of the foregoing Act that it does not refer to ex officio offices, and, even if it did, I am of the opinion that under the case of Bradley v. Esmeralda County, it would not be sufficient to constitute a repeal of the Act creating the Commissary of the Nevada State Police or section 5 of the Act.

It will be observed that in Bradley v. Esmeralda County it was provided that the compensation should be for all services in full and all ex officio services required by law, yet the Supreme Court held that this did not repeal the provisions of the general revenue law providing for the office of the Sheriff as ex officio collector of licenses, and the Sheriff’s right to retain percentages as ex officio collector of licenses was maintained.

Our Constitution further provides by section 17 of article 4 as follows:

Every law enacted by the Legislature shall embrace but one subject, and matter properly connected therewith, which subject shall be briefly expressed in the title; and no law shall be revised or amended by reference to its title only; but, in such case, the Act as revised, or section

as amended, shall be reenacted and published at length.

If section 2 purported to be a repeal of section 5 of the Act creating the office of Commissary of the Nevada State Police, etc., it certainly comes within this inhibition of the Constitution, and even stronger in this particular case, for here there is not even a reference to the title, much less an amendment of the Act by a repeal of section 5 thereof. (State v. Hallock, 19 Nev. 385.)

I am, therefore, of the opinion that “An Act regulating the salaries of certain state officers of the State of Nevada,” approved March 22, 1913, does not repeal section 5 of “An Act creating the office of Commissary of the Nevada State Police, prescribing his duties, fixing his compensation, and other matters relating thereto,” or any other part of said Act.

Yours very truly,

GEO. B. THATCHER, Attorney-General

7. Pure Food Laws. If food products become unfit for food in transit before reaching their destination, such products may be proceeded against under section 10 of the Federal Food and Drugs Act, as long as they “remain unloaded, unsold, or in original unbroken packages.

Carson City, March 16, 1915

Professor S. C. DINSMORE, Reno, Nevada.

Dear Sir: I am in receipt of your favor of the 19th ultimo, enclosing letter from Dr. J. S. Abbott, Chemist in Charge of the Bureau of Foods and Drugs Inspection, and requesting the opinion of this office on a certain matter therein referred to.

Upon examination of the law I concur with the statement contained in the letter of Dr. Abbott “that if food products became unfit for food in transit before reaching the State of their destination, such products may be proceeded against under section 10 of the Food and Drugs Act as long as they ‘remain unloaded, unsold, or in original unbroken packages.’”

The letter of Dr. Abbott and a copy of this letter for your correspondent are herewith enclosed.

Yours very truly,

EDW. T. PATRICK  
Deputy Attorney-General

8. Legislature--Statutes--Appropriations--Reversion of Appropriations. An appropriation for the purchase of specific articles never reverts until such articles have been purchased. All appropriations for the

support of state institutions, carrying on the business of commissions, etc., revert at the end of the fiscal year.

Carson City, March 16, 1915

Hon. GEORGE A. COLE, State Controller, Carson City, Nevada.

Dear Sir: Owing to the press of business in this office, written reply to your request of January 27, for an opinion concerning the law relating to the reversion of appropriations, has been delayed until now.

It has always been held that an appropriation for a specific purpose, such as appropriations for the purchase of typewriters, filing-cases, and things of that character, never reverts until the articles have been purchased. All appropriations for the support of state institutions, carrying on the business of commissions, etc., revert at the end of the fiscal year.

Yours very truly,

EDW. T. PATRICK  
Deputy Attorney-General

9. Surety Companies--Secretary of State--Fees. Any surety company qualified to do business in this State, before the passage of the Act of March 20, 1907 (Rev. Laws, 1348), is not required to pay the filing fee required by said Act.

Under sec. 696, Rev. Laws, the filing of articles of incorporation in the office of the Secretary of State and the payment of the filing fee therefor, if required, is all that is necessary to qualify any surety company to do business in this State, so far as the office of the Secretary of State is concerned. The filing of such articles with the County Clerk in any county of the State, is not contemplated by said section 696.

Carson City, March 16, 1915

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

Dear Sir: I am in receipt of your favor of the 24th ultimo, asking the opinion of this office as to what action must be taken by foreign surety companies in order to be authorized to do business in this State.

Section 696, Revised Laws, provides: "Nor shall any surety company not incorporated under the laws of this State and not heretofore qualified to do business in this State pursuant to existing laws, directly or indirectly take risks or transact business in this State, unless it shall file with the Secretary of State a certified copy of its articles of incorporation, or its charter, or of the statute, or legislative, executive, or governmental Act or other instrument or authority by which it was created, and pay the fees therefor, as otherwise required by law."

You call my attention to the fact that foreign corporations in addition to filing articles in your office

are also required to file a certified copy thereof in the office of the County Clerk of the county wherein its principal place of business in this State is located, and inquire as to “whether the filing of a certified copy of articles of incorporation in this office by a surety company, organized under the laws of another State, is sufficient without the further filing with County Clerk of a copy of said articles duly certified by this office.”

Upon examination of the Acts in question I am of the opinion that any surety company qualified to do business in this State before the passage of the Act of March 20, 1907 (Rev. Laws, 1348), is not required to pay the filing fee required by said Act, but any company coming into the State after the passage of said Act must pay such filing fee.

I am further of the opinion that the filing of articles of incorporation in your office and the payment of the filing fee, if required, is all that is necessary to qualify any surety company to do business in this State so far as your office is concerned, and that the filing of the articles with the County Clerk in any county of this State is not contemplated by said Act.

Yours very truly,

GEO. B. THATCHER,  
Attorney-General

10. Constitutional Law--Elections. An Act providing that at special elections called for the purpose of submitting to popular vote, bond issues or other proposed means for raising revenue for counties, cities, or school districts within the State of Nevada, none other than qualified electors who are taxpayers within said county, city, or school district, shall be eligible or qualified to vote, is contrary to the provisions of section 1 of article 2 of the Constitution, and is void.

Carson City, March 16, 1915

Hon. EMMET D. BOYLE, Governor of Nevada, Carson City, Nevada.

Dear Sir: In accordance with your verbal request I have examined Assembly Bill No. 170, being an Act entitled “An Act relating to special elections for certain county, city, and school-district purposes, and repealing Acts in conflict therewith.”

Briefly stated, the Act provides that at special elections called for the purpose of submitting to popular vote bond issues or other proposed means for raising revenue for counties, cities, or school districts within the State of Nevada, none other than qualified electors who are taxpayers within said county, city, or school district, shall be eligible or qualified to vote at such election.

Section 1 of article 2 of the Constitution provides:

All citizens of the United States \* \* \* shall be entitled to vote for all officers that now or hereafter may be elected by the people, and upon all questions submitted to the electors.



Said article of the Constitution provides the qualifications of electors and the Act in question seeks to impose, in addition to the qualifications specified in the Constitution, a property qualification on electors at the special elections contemplated in said Act.

In the case of State ex rel. Whitney v. Findley, 20 Nev. 198, the Supreme Court had before it an Act somewhat similar to the one in question, and in holding such Act unconstitutional used the following language:

Any citizen possessing the qualifications of an elector as defined in section 1, article 2 of the Constitution is entitled to the right of suffrage. It is not within the power of the Legislature to deny, abridge, extend, or change the qualifications of an elector as prescribed in the Constitution.

For this reason I am of the opinion that the said Act, in that it attempts to impose a qualification not warranted, is unconstitutional and void.

GEO. B. THATCHER, Attorney-General

By EDW. T. PATRICK, Deputy

11. Quarantine--Governor--Private Secretary to Governor. The Governor's private secretary is authorized to certify "a certified copy of a quarantine proclamation," specified in Sec. 4, Stats. 1913, p. 457.

Carson City, March 22, 1915

Mr. GEO. D. SMITH, Secretary to the Governor, Carson City, Nevada.

Dear Sir: I am in receipt of your favor of the 8th ultimo, in reference to section 4 of the quarantine Act (Stats. 1913, p. 457).

Said section 4 provides "a certified copy of such proclamation shall be mailed by registered mail" to certain persons therein specified, and you inquire who is to certify such copies.

It seems that the procedure in your office has been to file the original typewritten copy of each proclamation, signed by the Governor and Secretary of State, with the Secretary of State, and give carbon copy thereof to the printer.

If in addition to the above-outlined procedure, after receiving printed copies from the printer, you add thereto:

Attest: A true copy: \_\_\_\_\_,  
Secretary to the Governor.

signing your name thereto, I think all the requirements of the law will be complied with.

Yours very truly,

GEO. B. THATCHER, Attorney-General

12. Constitutional Law--Fish and Game. An Act of the Legislature providing “Any person or persons complying with the laws relating to fish and game ‘shall be privileged, allowed, and entitled to fish and hunt for game on all waters and overflow lands adjoining and connecting with any meandered lake,’” is unconstitutional in that it deprives persons of property without due process of law.

Carson City, March 24, 1915

Hon. EMMET D. BOYLE, Governor of Nevada, Carson City, Nevada.

Dear Sir: In accordance with your request I have examined Senate Bill No. 173, which provides:

Any person or persons complying with the laws of the State of Nevada relating to fish and game, shall be privileged, allowed, and entitled to fish and hunt for game on all waters and all overflow lands adjoining and connected with any meandered lake in the State of Nevada.

I take it that the object of this Act is to permit fishing and hunting for game on all lands gained by accretion through the subsidence of waters of a lake.

It has been decided frequently that where property is bounded by the waters of a meandered stream or lake the accretion thereto belongs absolutely to the owner of the property to which such accretion pertains.

The Legislature has no right to pass any Act interfering with private property, and the bill seems to be an attempt to license a trespass upon private property for the purpose of fishing and hunting.

In my opinion this Act is unconstitutional, as it deprives persons of property without “due process of law” within the meaning of the Fourteenth Amendment to the Constitution of the United States.

Yours very truly,

GEO. B. THATCHER, Attorney-General

By EDW. T. PATRICK, Deputy

13. Public Schools--Interest-Bearing Warrants--County High Schools. The provisions of secs. 3472-77, Rev. Laws, relating to the issuance of interest-bearing warrants in emergencies are applicable to county

high schools by virtue of sec. 3423, Rev. Laws.

Carson City, April 19, 1915

Hon. JOHN EDWARDS BRAY, Carson City, Nevada.

Dear Sir: In response to your verbal inquiry, let me say that in my opinion the provisions of sections 3473 to 3477 relating to the issuance of interest-bearing school warrants in emergencies are applicable to county high schools under the provisions of section 3423, Rev. Laws, which states:

The county high schools shall be under the same general supervision and shall be subject to the same laws, rules, and regulations governing the other schools of the state school system.

Yours very truly,

GEO. B. THATCHER, Attorney-General

14. Bounties. Section 9 1/2, added to the Sheep Commission Act (secs. 4586-4602, Rev. Laws) by Stats. 1915, p. 372, providing for bounties for the destruction of certain obnoxious animals, does not repeal secs. 718-722, Rev. Laws. The claimant for bounty may demand the same under such Act as he may find more profitable, but cannot claim bounty under both Acts.

CARSON CITY, April 21, 1915

Hon. CHAS. A. McLEOD, Yerington, Nevada.

Dear Sir: The Secretary of State has handed this office for response your letter of the 16th instant, inquiring with reference to section 9 1/2 of the Sheep Commission Act as thereby amended, found on page 372 of the Statutes of 1915.

You inquire if this bounty is paid in addition to the old bounty paid by the counties provided under section 718-722, Rev. Laws. Section 718 was amended by Statutes of 1913, p. 18, changing the rate of bounty. Neither the Act embraced in the Revised Laws nor the Act of 1915 provides what shall be done with the hide after "cutting off the scalps with ears connected" in one case and the "forepaws or feet at the knee, and also cut off the ears and scalp" in the other, but I presume it is the intention of the Legislature under either Act to allow the claimant to retain the balance of the skin of the animal upon which the bounty is claimed.

In my opinion the Act of 1915 does not repeal the Act embraced in sec. 718, et seq., Revised Laws, and the claimant for bounty may demand the same under either Act as he finds it most profitable, but cannot claim bounty under both.

Yours very truly,

GEO. B. THATCHER, Attorney-General

By EDW. T. PATRICK, Deputy.

15. Nevada Tax Commission--Budget--County Commissioners. The County Commissioners, although they have already fixed the county tax rate, are authorized to change such rate in order to meet the loss of revenue from the abolition of county occupation licenses by section 15 of the Tax Commission Act (Stats. 1915, p. 187).

The act of the County Commissioners, in fixing the county tax rate in March of each year as required by law, is merely tentative, and is subject to increase if subsequent events show that it will not produce the required revenue.

CARSON CITY, April 22, 1915

NEVADA TAX COMMISSION, Carson City, Nevada

GENTLEMEN: I am in receipt of communication of the 19th instant, signed by Hon. L. F. Adamson, Commissioner-Secretary, wherein you call my attention to subdivision 7, chapter 153, page 182, Statutes of 1915, empowering your board to require Boards of County Commissioners to submit a budget. You further state:

By the provisions of chapter 178 of Session Laws, 1915, practically all county occupation licenses were done away with. This Act was approved March 22, 1915, becoming a law on that date, and by it all county revenues were considerably reduced. This, you will note, was after the date on which, according to the Revised Laws, the budget for 1915 was made up and the tax rate levied by the Board of County Commissioners. In Humboldt County it seems the District Attorney is of the opinion they now have no right to change the tax rate for 1915 to make it meet this loss of revenue. If that be so, and the Assessor proceeds with the collection of personal property tax under the original rate, it is very likely to mean a considerable additional loss of revenue.

I am of the opinion that the County Commissioners, notwithstanding that they have already fixed the county tax rate, are now authorized to change such rate in order to meet the loss of revenue from the abolishment of county occupation licenses by the provisions of section 15 of the Tax Commission Act, which provides as follows:

All acts herein required between the assessment and the collection of the taxes or commencement of suit shall be directory only; and no assessment, or act relating to assessment or collection of taxes shall be illegal on account of informality, nor because the same was not completed with the time required by law.

In other words, the act of the County Commissioners in fixing the county tax rate in March was merely tentative, and is subject to increase if subsequent events show that it will not produce the required revenue.

The correspondence enclosed with your letter is herewith returned.

Yours very truly,

GEO. B. THATCHER, Attorney-General

16. Licenses, Taxation--Cities and Towns--County Commissioners. Stats. 1915, p. 236, repeals as a class all county occupation licenses. The right of cities and towns to impose occupation licenses was not interfered with.

CARSON CITY, April 21, 1915

Mr. E. A. KLEIN, Elko, Nevada.

Dear Mr. Klein: Owing to the press of business in this office, answer to your favor of the 19th ultimo, inquiring as to whether or not a license fee imposed by the County Commissioners for merchandising applies to a manufacturer, has been delayed until now.

You state: "According to their theory (Commissioners' theory) even a farmer who raises his stuff and selling it to the grocer should pay a license, but they do not follow that out in practice."

In answer thereto let me say that the products of farms have always been exempt in this State, in that the imposition of an occupation tax is purely statutory, and the Legislature may, if it sees fit, omit to levy such tax on certain businesses.

Senate Bill No. 124, which passed the recent session of the Legislature and was approved March 22, repeals as a class occupation licenses so far as the counties are concerned. The right of cities and towns to impose such occupation license as they see fit was not interfered with. I take it that the license complained of is a town license. Should the proper authorities of any city or town in the State see fit to impose a merchandising license within the limits of any such city or town, I do not see why it would not apply to the manufacturer or wholesaler the same as it would to the retailer. I am of the opinion that such application would be proper and legal.

I should be glad, however, to have this matter tested in the courts so that it may be definitely settled.

Yours very truly,

GEO. B. THATCHER, Attorney-General

By EDW. T. PATRICK, Deputy

17. Appropriations--State Agricultural Society. The appropriation provided in chapter 189, Stats. 1915, p. 279, was for the State Agricultural Fair to be held at the city of Fallon. A bill by the State Agricultural Society for the improvement of the race track, owned by said society in Reno, could not lawfully be paid out the same.

CARSON CITY, April 22, 1915

Mr. J. W. LEGATE, Clerk, Board of Examiners, Carson City, Nevada.

Dear Sir: I am in receipt of your favor of April 20, submitting a bill by the State Agricultural Society for improvements on the race track owned by the society in Reno, with request for a written opinion as to the legality of the claim.

Chapter 27, page 26, Stats. 1915, provides that the State Board of Agriculture "shall provide for an annual fair or exhibition by the society of all the industries and industrial products of the State at the City of Fallon."

Chapter 189, page 279, of the same laws, provides:

Section 1. The sum of \$5,000 for each of the years 1915 and 1916 is hereby appropriated \* \* \* to aid the State Agricultural Society in holding annual fairs in each of said years.

Sec. 2. The sum of \$3,000 is hereby appropriated \* \* \* to aid the State Agricultural Society in erecting, maintaining, and improving the buildings and grounds of the society; provided, that without any expense to the State the said society secure the necessary grounds on which to hold said annual fair or fairs.

The claim in question amounts to \$868.51, and appears to be wholly for labor and material furnished between January 20, 1915, and April 19, 1915, in improving the race track owned by the State Agricultural Society in Reno, Nevada.

In my opinion this claim is not a just and legal claim against the State for the following reasons:

Chapter 27, above-mentioned, provides for holding the State Fair at Fallon.

Section 2 of chapter 189 provides an appropriation "to aid the State Agricultural Society in erecting, maintaining, and improving the grounds of the society.

This latter section would seem to indicate the grounds of the society at Reno unless the proviso thereto is carefully read, which is: "provided, that without any expense to the State the said society secure the necessary grounds on which to hold said annual fair or fairs."

It, therefore, appears that the appropriation provided in section 2 is for the fair to be held at Fallon, and the money therein provided is to be used in erecting, maintaining, and improving the buildings and grounds at that place. The appropriation provided in section 1 of chapter 189 cannot be liable for the payment of this claim, for it is specifically limited in its purpose "to aid the State Agricultural Society in holding annual fairs," which by the provisions of section 27 above quoted are to be held at Fallon. [chapter]

I have consulted the State Controller, and he advises me that he can find no other appropriation out of which this claim may be paid.

Yours very truly,

GEO. B. THATCHER, Attorney-General

By EDW. T. PATRICK, Deputy.

18. State Labor Commissioner--Salary--Appropriation. The salary of the State Labor Commissioner is payable out of the appropriation provided in section 14 of the Act creating such office (Stats. 1915, p. 311), and is not payable out of the General Fund of the State.

CARSON CITY, May 8, 1915

Hon. W. E. WALLACE, Commissioner of Labor, Carson City, Nevada.

Dear Sir: In accordance with your request I have carefully considered the provisions of chapter 203, page 311, Status. 1915, creating the office of Labor Commissioner, and especially sections 1 and 14 thereof, for the purpose of ascertaining whether the salary of \$600 per annum, provided in section 1, is payable out of the General Fund or is payable out of the fund appropriated by section 14 of said Act.

If it were not for the enactment of said section 14, I would unquestionably be of the opinion that your salary is payable out of the General Fund of the State, but in view of the provisions of section 14 "all salaries and expenses enumerated in this Act shall be paid from the appropriation named in the section, and shall in no manner be taken from the General Fund of the State," the rule that the creation of an office and the fixing of a definite salary therefore makes the same payable out of the General Fund, becomes inoperative, and your salary in view of the language of section 14 above quoted is unquestionably payable out of the appropriation of \$5,000 made in said section 14.

Yours very truly,

GEO. B. THATCHER, Attorney-General

19. Constitutional Law--Liquor Licenses. That portion of section 10 of the new revenue law (Stats. 1915, p. 239), requiring that one-half of the county liquor licenses be returned to the city, is not unconstitutional because the entire matter of the assessment of licenses and the disposition thereof is committed by law to the discretion of the Legislature, and that body may make such regulations concerning it as it sees fit.

CARSON CITY, May 8, 1915

Hon. E. F. LUNSFORD, Reno, Nevada.

I have carefully considered the matter referred to in your favor of the 21st ultimo, in which you say:

Several of the saloon owners of this city have requested me to obtain from you a written opinion as to the constitutionality of that part of the new revenue Act which requires the payment of the county liquor license by those engaged in the liquor business within incorporated cities.

You further state:

The point raised by the saloonkeepers is this: They believe that the law is unconstitutional because of the one-half being returned to the city.

I am unable to perceive any constitutionality in this law for the reason that the entire matter of the assessment of licenses and the disposition of the proceeds is committed by law to the discretion of the Legislature, and that body may make such regulations as it sees fit.

Yours very truly,

GEO. B. THATCHER, Attorney-General

20. State University--President's Salary--Board of Regents. Under sec. 4641, Rev. Laws, the Board of Regents of the University of Nevada has the right to prescribe the duties of the President and fix his salary. If it was agreed that the President's salary should be paid in twelve equal monthly installments covering the full year, instead of nine equal monthly installments covering the university year, and the President had completed the university year with the exception of four days, and the failure to serve the four days is due to the death of the President, his estate is entitled to payment for the full year, less the four days not served.

CARSON CITY, May 10, 1915

Honorable BOARD OF EXAMINERS, Carson City, Nevada.

Gentlemen: I am in receipt of your request for an opinion of this office upon the claim of "The Estate of Joseph Edward Stubbs, Deceased," in the sum of \$1,249.97.



This claim is in the usual form, but attached thereto is a resolution of the Board of Regents of the State University concerning said claim. The facts with reference to the claim are as follows:

That Joseph Edward Stubbs was President of the State University of the State of Nevada, and had been such President for many years; that he was employed the last time September 1, 1913, and his compensation fixed by the State Board of Regents at \$5,000 per annum.

It also appears from the said resolution that the university year 1913-1914 was from September 1, 1913, to June 1, 1914, and that Dr. Stubbs died on the 27th day of May, 1914, and it further appears from said resolution that said yearly compensation of \$5,000 was understood and agreed to be for the university year, but that the President of the University had agreed that the salary might be paid in twelve equal installments covering the full year instead of nine equal installments covering the university year, the period of employment.

Section 4641 of the Revised Laws of Nevada, subdivision 6, confers upon the Board of Regents the right "to prescribe the duties of the President and fix his salary \* \* \*." It appears from this resolution and from the understanding of the board that Dr. Stubb's salary was fixed at \$5,000 per annum for the university year. The university year had been completed with the exception of four days, and Dr. Stubbs in my opinion had earned his full annual salary under the terms of the contract and his employment by the Board of Regents.

I am, therefore, of the opinion that the claim of the Estate of Joseph Edwards Stubbs in the sum of \$1,249.97 is a valid claim against the State with the exception that a deduction should be made in auditing the claim of compensation for four days between the 27th day of May, 1914, and the 1st day of June, 1914, which would amount to \$74.06.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General

21. Constitutional Law--Taxation--Revenue. Secs. 3768-74, Rev. Laws, are expressly repealed by section 37 of the State Revenue Act, chapter 178, Stats. 1915, p. 247. Chapter 232, Stats. 1915, p. 353, purports to amend said sections. It was approved March 24, 1915, two days after approval of chapter 178, aforesaid. Said sections having been expressly repealed, chapter 232 can have no effect and is void.

In addition, the title of said chapter 232 purports to be an amendment, while the body of the Act sets forth original provisions in regard to the sheep license and amends nothing whatever. It is therefore unconstitutional in that it is contrary to the provisions of art. 4, sec. 17, of the Constitution.

CARSON CITY, May 21, 1915

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

Dear Sir: Your attention is respectfully called to the following conditions of certain revenue laws passed at the last session of the Legislation:

Chapter 178, approved March 22, 1915, is entitled "An Act to provide revenue for the support of the government of the State of Nevada, and to repeal all Acts and parts of Acts in conflict therewith." Sections 16 to 21 of said Act provide for sheep-grazing licenses. Section 37 of said Act expressly repeals "An Act supplemental to 'An Act to provide revenue for the support of the government of the State of Nevada, and to repeal certain Acts relating thereto, approved March 20, 1891, and all Acts amendatory thereto, and to provide for a license upon the business of owning, raising, grazing, herding, or pasturing sheep in the several counties of the State of Nevada, and to declare a violation thereof a misdemeanor, and to provide a punishment therefor, approved March 12, 1895.'"

The above-named Act is set out in sections 3768-74 of the Revised Laws. Chapter 232, Stats. 1915, purports to amend said last-named Act. It was approved on March 24, 1915, two days after the approval of chapter 178 aforesaid, and having been expressly repealed, chapter 232 can have no effect and is void. In addition to the foregoing objection the title of chapter 232 is "An Act to amend \* \* \*," while the body of the Act sets forth original provisions in regard to sheep licenses, and amends nothing whatsoever. It is, therefore, contrary to the provisions of article 4, section 17, of the Constitution, which provides: "No law shall be revised or amended by references to its title only, but in such case the Act as revised or section as amended shall be reenacted or published at length."

Yours very truly,

GEO. B. THATCHER, Attorney-General

22. Health Officers--County Health Officers--Deputy County Health Officers--County Commissioners. The provisions of sec. 2957, Rev. Laws, as amended by Stats. 1913, p. 126, concerning the appointment of health officers, is not mandatory. The law requires the appointment of a local health officer and leaves the appointment of deputies permissible.

CARSON CITY, June 5, 1915

Hon. EMMET D. BOYLE, Governor of Nevada, Carson City, Nevada.

Dear Sir: I am in receipt of letter of April 10, addressed to you from Dr. Edward Dunscomb, and your request that an opinion be rendered as to whether or not it is mandatory on the part of the County Commissioners to appoint deputy health officers.

The appointment of such officers is regulated by section 2957 of the Revised Laws as amended by Statutes of 1913, p. 126. Said amended section provides:

The Board of County Commissioners shall appoint a local health officer for a period of not less than one year, who \* \* \* IS EMPOWERED TO APPOINT such deputy or deputies as may be necessary, with the approval of the Board of County Commissioners.

I see nothing mandatory in the language of this section compelling the County Commissioners to

appoint deputy health officers. The law requires the appointment of a local health officer, and leaves the appointment of deputies by the local health officer permissible.

Yours very truly,

GEO. B. THATCHER, Attorney-General

By EDW. T. PATRICK, Deputy

23. Notaries Public--Commissions--Cancellation of Commissions--Appointment--Governor--Secretary of State. In order to secure cancellation of a commission of a Notary Public, the Notary should tender his resignation of such office; the same be accepted by the Governor, and such resignation and acceptance be filed with the Secretary of State.

The sureties upon an officer's bond may be released by proceeding according to the provisions of secs. 2880-84, Revised Laws.

CARSON CITY, June 12, 1915

Hon. EMMET D. BOYLE, Governor of Nevada, Carson City, Nevada.

Dear Sir: This office is in receipt of a letter of the 9th instant, addressed to yourself from Hon. J. W. Davey, County Clerk, concerning cancellation of commission issued to one E. D. Campbell, together with request for advice in the premises.

In order to secure cancellation of the commission I would recommend that Mr. Campbell tender his resignation as Notary Public, and that the same be accepted by you, and such resignation and acceptance be filed with the Secretary of State. The sureties on Mr. Campbell's bond may be released by proceeding according to the provisions of sections 2880-84 of the Revised Laws.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By EDW. T. PATRICK, Deputy.

24. Nevada Hospital for Mental Diseases--Patients--Drug Habit. No persons may be admitted to the Hospital for Mental Diseases by reason of addition to a drug habit alone. In addition it must appear that the Judge or Clerk committing the person be satisfied that he or she is unsafe to be at large, because of his homicidal, suicidal, or incendiary disposition.

CARSON CITY, June 26, 1915

Hon. EMMET D. BOYLE, Governor of Nevada, Carson City, Nevada.

Dear Sir: In answer to your verbal inquiry whether persons addicted to the use of harmful drugs could be admitted to the Nevada Hospital for Mental Diseases for treatment for such drug habit without formal commitment, I would answer that in my opinion such cannot legally be done.

Section 7 of an Act entitled "An Act concerning the insane of the State" (Stats. 1913, p. 348), as amended by Stats. 1915, p. 88, provides: "It shall be the duty of the District Judge \* \* \* upon the application of any person \* \* \* setting forth that any person by reason of insanity is unsafe to be at large because of his homicidal, suicidal, or incendiary disposition, and even these must not be cases \* \* \* as the result of alcoholic excesses, or drugs \* \* \* to cause the said person to be brought before him." \* \* \*

Said section further provides a compensation for the examining physician of not to exceed \$10 per half day nor \$20 for a whole day. This is the only provision in our statutes in reference to commitment of persons to the Hospital for Mental Diseases, and no provision is made for receiving victims of the drug habit for treatment. As you will note from the above quotation, the Judge committing the patient must be satisfied that the patient is unsafe to be at large because of his homicidal, suicidal, or incendiary disposition, and unless such facts appear the Judge cannot commit any such person to the asylum.

Yours very truly,

GEO. B. THATCHER, Attorney-General

By EDW. T. PATRICK, Deputy

25. Mining Inspector--Employer and Employee--Mines and Mining. Under the provisions of sec. 6799, Rev. Laws, if a shaft is deeper than 350 feet, safety cage, safety crosshead, or safety skip must be used for employees. If less than 350 feet, a platform above the crosshead must be used, and the employers are compelled to see that their men ride upon such platform.

CARSON CITY, June 26, 1915

Hon. A. J. STINSON, Inspector of Mines, Carson City, Nevada.

Dear Sir: I am in receipt of communication of May 25 from the Kimberly Consolidated Mines Company, addressed to you, together with your request for an opinion thereon.

The writer of the letter refers to sections 38 and 39 of the mine inspection law in reference to riding upon the cable, bail, or rim of the bucket. The writer is correct in stating that the bail of the bucket is the part to which the hoisting cable is attached. I don't think that the right sections of the statute have been applied to the case in question, and would refer you to section 6799 of the Revised laws. It seems from the letter in question that a crosshead is being used in this mine. Said section provides that in working through any

vertical shaft at a greater depth than 350 feet the shaft shall be provided with an iron-bonneted safety cage to be used in lowering and hoisting employees, and it further provides that in any shaft less than 350 feet, where no safety cage is used and where crosshead or crossheads are used, platforms for employees to ride upon in lowering and hoisting said employees shall be placed above said crosshead or crossheads. If a shaft is deeper than 350 feet, a safety cage, safety crosshead, or safety skip must be used for employees. If less than 350 feet, a platform above the crosshead must be used, and the employers are compelled to see that their men ride upon the platform under the above section.

Yours very truly,

GEO. B. THATCHER, Attorney-General

By EDW. T. PATRICK, Deputy

26. Crimes and Punishments--Gambling--Saloonkeeper. A saloonkeeper taking out any percentage in a poker game for the purpose of defraying the expenses and costs of the table, lights, and license, or for any other purpose would be committing a felony.

CARSON CITY, June 26, 1915

Hon. E. F. LUNSFORD, Reno, Nevada.

Dear Sir: Your favor of the 20th instant, asking interpretation of the gambling Act, received.

You state: "The saloonmen desire to take out a certain percentage from the bets in poker games for the sole purpose of defraying the expense and costs of the table, lights, and license."

I am of the opinion that any saloonman taking out any percentage in a poker game for any purpose would be committing a felony under the laws of this State.

Yours very truly,

GEO. B. THATCHER, Attorney-General

By EDW. T. PATRICK, Deputy

26 ½. Eight-Hour Law--Mines and Mining--Churn Drills--Employer and Employee. Prospecting on lode claims with churn drills on 12-hour shift is a violation of sec. 6557, Rev. Laws.

CARSON CITY, June 28, 1915

Hon. A. J. STINSON, State Mine Inspector, Carson City, Nevada.

Dear Sir: In response to various inquiries which we have been receiving of late, I wish to state that I am of the opinion that prospecting on lode claims for mineral with churn drills on a twelve-hour shift is a violation of section 6557 of the Revised Laws, which provides an eight-hour shift for men working in open-pit and open-cut mines.

Yours very truly,

GEO. B. THATCHER, Attorney-General

by EDW. T. PATRICK, Deputy

27. State Agricultural Society--State Board of Examiners--Deficiencies. The State Board of Examiners is authorized to declare deficiencies in favor of the State Agricultural Society, in order to enable said society to keep in repair its grounds and buildings, and the construction of additional stalls.

CARSON CITY, July 12, 1915

STATE BOARD OF EXAMINERS, Carson City, Nevada.

Gentlemen: Replying to your request for an opinion as to the authority of the Board of Examiners to allow a deficiency to the State Agricultural Society:

I am of the opinion that the resolution is in due form, and also that it is within the powers and duties of the State Agricultural Society to keep in repair the grounds. I am likewise of the opinion that the building of additional stalls and repairs of other buildings are proper proposed objects for the expenditure of such deficiency, if it be allowed. The fact that the Agricultural Society has leased the grounds to the Reno Jockey Club seems to be immaterial, and in no wise has any bearing on the expenditure. The question will be whether or not the repairing of the grounds and the repairing of the buildings are necessary. If they are determined to be necessary by the State Agricultural Society, and the Board of Examiners concurs in that decision, such board may allow the deficiency.

I return herewith the resolution of the State Board of Agriculture.

Yours very truly,

GEO. B. THATCHER, Attorney-General

28. Bounties--Noxious Animals. Secs. 718-722, Rev. Laws, and Stats. 1915, pp. 372, 399, relating to payment of bounties for destruction of noxious animals, all are in existence, but, owing to the difference in

methods of collecting the county prescribed in the various Acts, a person who has collected bounty under one Act cannot utilize the other Acts for the collection of further bounties.

CARSON CITY, July 14, 1915

Hon. J. T. DUNN, Winnemucca, Nevada.

Dear Sir: In answer to your favor of the 2nd instant, concerning bounties on noxious animals, let me say that in the opinion of this office the Act embraced in sections 718-22, Revised Laws, the Act of 1915, p. 372, and the Act of 1915, p. 399, all are in existence, but owing to the difference in methods of collecting the bounty prescribed in the various Acts, the first mentioned being the presentation of the scalp, and the others requiring the presentation of the entire skin, and requiring the County Clerk to cut off the four paws or feet at the knee, and also cut off the ears and scalp and destroy them, a person who has collected bounty under one Act cannot utilize the other Acts for the collection of further bounties.

Yours very truly,

GEO. B. THATCHER, Attorney-General

By EDW. T. PATRICK, Deputy.

29. County Officers--Revenue Officers--Salaries--State's Proportion of Salaries. By the provisions of chapter 53, Stats. 1915, p. 73, the State's proportion of the salaries of the deputies of all county officers concerned in the collection of revenue has been cut off.

CARSON CITY, July 14, 1915

Hon. E. F. Lunsford, Reno, Nevada.

Dear Sir: I am in receipt of your letter of the 6th instant, asking further interpretation of chap.53, p. 70, Stats. 1915.

In response thereto, I desire to say that it was and still is the opinion of this office that by the Act above mentioned the State's proportion of the salaries of all deputies heretofore allowed has been cut off. I shall be glad, however, to see this question tested.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

30. Revenue--Taxation--Licenses--Sheep Licenses. Sec. 16, Stats. 1915, p. 240, should be

interpreted by reading into said sections the word "resident" between the words "Every" and "person." Section 16a is a legislative amendment to the Act as originally drawn, and by implication modifies the opening clause of section 16.

CARSON CITY, July 14, 1915

Hon. E. F. LUNSFORD, Reno, Nevada.

Dear Sir: Upon receipt of your favor of the 6th instant, relative to the collection of sheep licenses in this State, I conferred with Mr. L. E. Adamson, Secretary of the Nevada Tax Commission, in regard to the matter, and found that he had already rendered an opinion to one of the State's Sheriffs, in which this office concurs, as follows:

Section 16a is a legislative amendment to the Act as originally drawn, and by implication modifies the opening clause of section 16. Our opinion is that it is necessary to read into the law, on account of this modification, the word "resident" between the words "Every" and "person" at the beginning of section 16. In other words, the law as it stands gives preferential treatment to the resident owner of sheep, requiring him to pay license only at the graduated rate shown when he is not exempt, and requiring the nonresident owner, when not exempt by reason of owning real estate, to pay at the flat rate of 15 cents per head.

It is our further opinion that the term "real estate" as referred to, is intended to apply only to acreage realty capable of exempting a portion of the sheep from license, and does not mean town or residence property.

Yours very truly,

GEO. B. THATCHER, Attorney-General

By EDW. T. PATRICK, Deputy

31. Revenue--Taxation--County Auditor--Quarterly Reports--Publication--State Controller. Sec. 3746, Rev. Laws, is repealed by Stats. 1915, p. 248. Since said repeal, the County Auditor and Treasurer are not compelled to make quarterly reports therein provided for, or to publish said reports.

Quarterly reports and settlement may be demanded of the County Treasurer by the State Controller under the provisions of Stats. 1915, p. 94.

CARSON CITY, August 4, 1915

Hon. GEO. A. COLE, State Controller, Carson City, Nevada.

Dear Sir: I am in receipt of a letter addressed to you from Hon. Edgar Eather, Auditor and Recorder of Eureka County, wherein he asks the effect of the repeal of section 3746, Revised Laws. This section was



repealed by Stats. 1915, p. 248. It provided for quarterly reports from the County Auditor and Treasurer of each county containing certain specific information, and further provided for the publication of such quarterly report in some newspaper published in the county.

In my opinion, by such repeal all of the provisions of said section have been completely wiped out. The Auditor and Treasurer are not compelled to make quarterly reports, and such reports need not be published in a newspaper or the county.

The only control you now have over county officers charged with collection of revenue is that contained in section 4 of chapter 76, Stats. 1915, p. 94, wherein it is provided: "He [the controller] shall have the power to direct the collection of all accounts or moneys due the State, and if there be no time fixed or stipulated by law for payment of any such accounts or moneys, they shall be payable at the time set by the Controller."

Yours very truly,

GEO. B. THATCHER, Attorney-General

32. Crimes and Punishments--Fines, Remission of--Board of Pardons--Governor. The power to remit the unpaid portion of any fine lies in the Board of Pardons, and not in the Governor personally.

CARSON CITY, August 10, 1915

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

Dear Sir: I am in receipt of a letter of August 9, from J. A. Langwith addressed to you, concerning the application for the remission of the unpaid fine of one Tony Medeiros, together with your verbal request for information as to what body can remit such unpaid portion of fine.

This question was recently settled in the case of Ex Parte Shelor, 33 Nev. 361, wherein it was decided:

In view of the Constitution (art. 5, sec. 14) providing that the Governor, Justices of the Supreme Court, and Attorney-General, or a majority of them, of whom the Governor shall be one, may remit fines and forfeitures, commute punishments, and grant pardons, section 13, providing that the Governor can suspend the collection of fines and forfeitures and grant reprieves for not exceeding sixty days dating from the time of conviction, authorizes the Governor to suspend the collection of fines for only sixty days, and not indefinitely, as this would create a conflict between the two sections.

From the foregoing I am of the opinion that the power to remit the unpaid portion of this fine lies in the Board of Pardons, and not in the Governor personally.

Yours very truly,

GEO. B. THATCHER, Attorney-General

By EDW. T. PATRICK, Deputy

33. Medical Practice Act--Osteopaths--Opiates and Narcotics. Under the Medical Practice Act, osteopaths are prohibited from prescribing opiates and narcotics unless they have taken and passed the examination in materia medica and therapeutics required by said Act.

CARSON CITY, September 3, 1915

Dr. S. L. LEE, Carson City, Nevada.

Dear Sir: I am in receipt of your verbal request for an opinion as to the right of osteopaths to prescribe opiates or narcotics under the laws of this State.

Section 8 of the Medical Practice Act provides for an examination of all applicants for certificates to practice medicine, surgery, or obstetrics in this State on certain designated subjects, and contains the following proviso: "That any person who is a regular graduate from a regularly chartered college of the practice of the system of what is general known and recognized as the drugless system, may present themselves for examination under the regulations hereinbefore specified, and shall be required to pass an examination in all the subjects noted, with the exception of materia medica and therapeutics, and upon the passing satisfactorily of said examination by the board, shall have issued to them a license to practice the said system of drugless medicine in this State, under the same rules and regulations prescribed and required of the practitioners of other systems of medicine."

It is well known that all osteopaths belong to the "drugless system," and certainly they have been admitted to practice their system of medicine in this State only within the operation of the proviso above quoted.

It would be entirely wrong to excuse practitioners of this school of medicine from the examination in materia medica and therapeutics, and afterwards permit them to prescribe deadly poisons or opiates and narcotics without having shown any knowledge of their uses or effects.

It would be entirely wrong to allow a practitioner of a drugless system to prescribe drugs in the practice of the profession, unless he has shown himself, by examination, qualified to do so.

I am therefore of the opinion that under the laws of this State osteopaths are prohibited from prescribing narcotics and opiates.

Yours very truly,

GEO. B. THATCHER, Attorney-General

By EDW. T. PATRICK, Deputy

34. Crimes and Punishments--Racing--Gambling. Betting upon races conducted outside the State in the manner below described, is gambling.

CARSON CITY, September 4, 1915

Hon. E. F. LUNSFORD, District Attorney, Reno, Nevada.

Dear Sir: I am in receipt of your favor of the 28th instant, submitting a certain state of facts, and asking the opinion of this office as whether the same is a violation of our antigambling laws.

The facts as stated in your letter are as follows:

Certain individuals, and for the purpose of this opinion we will say A, who has a fixed place of business, receives a report each day of the entries and the prices paid on the same at San Francisco, and receives bets from any and all individuals, staking, as he says, his judgment against all or each bettor, lays any odds he desires, and does not maintain a book, but simply gives a receipt or memorandum of the bet to the bettor, and in the event that the bettor wins A pays the same as soon as the returns are in from each race. The money never leaves the hands of A, but it is the contention of those so engaged that they have a perfect right to bet with whomever they desire, and that the practice, even though they lay odds, does not constitute "buying, selling, or dealing in pools, or making books on horse-races."

In answer to your inquiry, I would refer you to opinions numbered 33 and 85 appearing on pages 32 and 73 of the Biennial report of the Attorney-General for the years 1913-14. The syllabi of such opinions read as follows:

33. Section 253 of the Crimes and Punishments Act as amended by Stats. 1913, p. 235, prohibits gambling of every kind and nature. When a stake is contributed by the participants alone, and a contestant is to have the fund thus created, this constitutes gambling prohibited under said section.

85. Amendment to section 253 of the Crimes and Punishments Act prohibits all gambling of any character or nature, including buying or selling or dealing in pools, or making books on races, whereby money is wagered between two or more persons in such a manner that one must be the loser and the other the gainer, dependent upon chance. The new playback clause of this section is enforceable, and a violation thereof is a misdemeanor.

In the last-named opinion, in the case of Bell v. State, 37 Tenn. 507, gaming is defined as "an agreement between two or more to risk money or anything of value on a contest or chance of any kind, where

one must be the loser and the other gainer.”

Under the above stated of facts, it is evident to all that there is an agreement between two or more to risk money or something of value on a contest or chance whereby one or the other must lose.

The amendment to section 253 of the Crimes and Punishments Act as amended by Stats. 1913, p. 235, has therefore been twice held by this office to prohibit gambling of every kind or nature.

At the last session of our Legislature this section was twice amended, namely, on pages 31 and 462 of the Statutes of 1915. Both amendments repeat the prohibition against “buying, selling, or dealing in pools, or making books on horse-races,” but contain an exception in favor of racing associations licensed to conduct race meetings in this State, pursuant to law, and in case of such associations the betting is limited to the “paris mutuels” system.

The amendment on page 462 contains an additional exception as follows: “save and except playing of poker, stud-horse poker, five hundred, solo, and whist, when the deal alternates and no percentage taken.”

With the exceptions above noticed, gambling, within the meaning of the definition of the same as contained in Bell v. State, supra, of any kind, or by trick or device, is absolutely prohibited.

There can be no doubt that, upon the state of facts submitted, the parties are engaged in gambling, and are liable to punishment for the commission of a felony.

I am confirmed in this opinion by a consideration of the following cases, dealing expressly with this subject, namely:

COM. v. SULLIVAN, 105 N.C. 895.  
EVERHART v. PEOPLE, 130 Pac. 1076.  
STATE v. SCOTT, 68 Atl. 258.  
STATE v. ROSE, 105 Pac. 82.  
COM. v. WATSON, 27 N.E. 1003.  
STATE v. FALK, 33 Atl. 913.  
STATE v. TOWNSEND, 50 Mo. App. 690.  
BROWN v. STATE, 13 S.W. 236.  
WILLIAMS v. STATE, 21 S.W. 662.

Yours very truly,

GEO. B. THATCHER, Attorney-General

35. Revenue--Taxation--Licenses--Sheep License. The exemption from license provided by Stats. 1915, p. 236, does not apply to a lessee of grazing lands.

CARSON CITY, September 17, 1915

Mrs. GEORGE M. SOUTHWARD, Winnemucca, Nevada.

Dear Madam: I am in receipt of your favor of the 9th instant, asking information in regard to sheep license law.

You inquire: "Does the law require that an owner of sheep must own an acre of land for every two sheep, or does it ..... land owned, controlled or leased?"

The answer to your inquiry is very explicitly stated in our laws. Chapter 178, page 236, of the Statutes of 1915, is an Act entitled "An Act to provide revenue for the support of the government of the State of Nevada," etc. Section 16 of said Act provides a graduated license according to the number of sheep owned and grazed. After dividing sheep owners into six classes the following proviso is ac.....

Provided, that the provisions of this section shall not apply to any person, persons, firm, company, association, or corporation who shall be the owner and holder of land in the State of Nevada equal to one acre for each three sheep so owned, raised, grazed, herded, or pastured; and provided further, that the lessee of lands shall not be deemed or taken as the owner and holder of land within the meaning of the provisions of this section.

I am therefore of the opinion from the plain terms of the statute that the exemption from license does not apply to lessee of grazing lands.

Yours very truly,

GEO. B. THATCHER, Attorney-General

By EDW. T. PATRICK, Deputy

36. Public School Bonds--Redemption Of. By the provisions of section 197a of the School Code, added by Stats. 1915, p. 60, the County Treasurer has the right to purchase, out of the funds therein provided, school bonds at the lowest bid offered and pay the entire amount out of such fund.

CARSON CITY, September 18, 1915

Hon. Wm. E. ORR, Pioche, Nevada.

Dear Sir: I am in receipt of your favor of the 16th instant, asking legality of certain actions of your County Treasurer, based on section 197a of an Act concerning public schools, added by Stats. 1905 [1915], p. 60.

It seems that Pioche school district has had for several years a bonded indebtedness existing, and have

for several years been accumulating a fund for the payment thereof, known as the "Pioche School District Bond Sinking Fund," under a special tax provision, presumably as provided in section 197 of the public school law. It further appears that under the provisions of section 197a your Treasurer has given the necessary notice therein provided and has received bids for the surrender of these school district bonds at \$108. It further appears that these bonds will not mature for a number of years, and their redemption at the price stated will effect a considerable saving to the taxpayers of the school district.

You state that the Treasurer submitted to you the question as to whether or not he had the right to pay out of the above-named fund the sum of \$108 for each bond, that being the lowest bid received, and there being no other fund from which to draw the premium of \$8 asked by the owner of the bonds for their redemption prior to maturity.

You state you informed him that he had such authority under section 197a, above mentioned, and that, should he redeem the bonds at \$108 and pay the entire amount out of the above-named fund, his act would be legal.

The added section (197a) was prepared by this office at the request of the Elko County delegation. It seems that county was in a situation similar to your school district in that it had quite a sum of money in one school district bond sinking fund, and the bonds would not mature for some years, and, unless some measure was provided, interest would have to be paid on the bonds for a number of years, at a great expense to the taxpayers of the district.

The Elko County delegation wished to have a special Act drawn up to meet this particular situation, but after consultation it was decided, as there might be other school districts in the same situation, that a general Act would be better.

The circumstances narrated in your letter bring them exactly within the provisions of amended section 197a. The acts of the Treasurer seem to be fully in compliance with the provisions of said section.

By purchasing the \$100 bonds at \$108 the purpose of the Act in saving additional interest and expense to the taxpayers, will be effected, and for these reasons I am of the opinion that your advice to the Treasurer in your case was strictly in accordance with the spirit and intent of the law, and he may redeem the bonds in question at \$108, and pay the entire amount out of the Pioche School District Bonds Sinking Fund.

Yours very truly,

GEO. B. THATCHER, Attorney-General

By EDW. T. PATRICK, Deputy

37. Crimes and Punishments--Prize Fights--Licenses. Under the amended Act permitting the licensing of prize fights, Stats. 1913, p. 234, the license fee of \$100 covers all the events or contests in one evening in the same place and under the management of one person, both preliminary and the main event.

It is immaterial to the State, subject to the conditions named, whether one or ten bouts be pulled off during the period of the license.

CARSON CITY, September 21, 1915

C. L. NOBLE, Acting Secretary, Local Executive Committee, Fallon, Nevada.

Dear Sir: I am in receipt of your favor of the 17th instant, enclosing poster of a proposed boxing contest to be held in Fallon on September 23.

You state that you are informed by the County Sheriff that the license for this bout will be \$300, and that it was your understanding that the license would be but \$100, and you ask for the advice of this office in the premises.

The poster shows that there are to be three glove contests on the evening in question, to be conducted all at the same place, namely: Temple Hall, in Fallon. The contests are between Antone Lagrave and Jack Burns, between Beans Carranza and Spike Shannon, and between Mike McGovern and Kid Peters.

The law concerning the licensing of glove contests was passed in 1897, so as to permit the Corbett-Fitzsimmons fight to take place in this State, and is embraced in sections 3881-89 of the Revised Laws.

This Act remained unamended until the session of 1913, when sections 1, 2, 3, and 9 of said Act were amended by Stats. 1913, p. 234. Upon the Act as amended two opinions of this office have been rendered, which two opinions are numbered 34 and 67, appearing on pages 34 and 61 of the Biennial Report of the Attorney-General for 1913-14, a copy of which is sent you under separate cover.

In the first opinion, in answer to the inquiry of the Hon. Gray Mashburn, District Attorney of Storey County: "Will one license of \$100 cover all the events or contests in one evening in the same place, and under the management of one person, both preliminary and the main event?" You will note that it was decided that, "under the Act in question, it has always been customary to allow preliminaries, and have one license fee cover all the events or contests of one evening. If it had been the intention of the Legislature to change the custom, it would have been provided in the act."

The same is reiterated in the opinion on page 61 of said report.

The license fee exacted is for the granting of a privilege to the licensee to violate the law prohibiting prize fights during the day or evening covered by the license, and it is immaterial to the State whether one or ten bouts be pulled off during the existence of the license.

From the foregoing I am of the opinion that the license fee to be exacted, even though three separate events are scheduled to take place, is \$100 only.

Yours very truly,

GEO. B. THATCHER, Attorney-General

By EDW. T. PATRICK, Deputy

38. Licenses--Saloon Licenses, Cities, Towns--Counties. Under the provisions of sec. 10, chap. 178, Stats. 1915, p. 239, incorporated cities are not entitled to one-half, or any part, of the state retail or wholesale liquor licenses, provided in section 3 of said Act.

CARSON CITY, September 22, 1915

Hon. GEO. A. COLE, State Controller, Carson City, Nevada.

My Dear Sir: I am in receipt of your request for a construction of section 10, chapter 178, Statutes of Nevada, 1915, "An Act to provide revenue for the support of the government of the State of Nevada, and to repeal all Acts or parts of Acts in conflict therewith," approved March 22, 1915.

The question presented is: Are incorporated cities entitled to one-half of the state retail or wholesale liquor licenses, collected within corporate limits of the cities?

I am of the opinion that they are not; that under the provisions of said section they are entitled only to one-half of the county licenses collected therein.

You will observe that by section 8 a retail liquor dealer is one who deals in liquors in quantities less than five-gallons, and by section 9, for the purpose of state license, a wholesale liquor dealer is one who deals in liquors in quantities in excess of five gallons.

County licenses, however, under section 3, are collected of any person dealing in liquors in less quantities than one quart.

You will observe that the closing paragraph of section 10 gives to incorporated cities one-half of the amount of license money collected from persons dealing in liquors in less quantities than one quart.

I am therefore of the opinion that incorporated cities are not entitled to one-half or any part of the state retail or wholesale liquor licenses, but are entitled to one-half of the county liquor license as provided for in section 3 of the Act.

Yours very truly,

GEO. B. THATCHER, Attorney-General

39. Public Schools--Public School Teachers--Teachers' Pension Fund--University of Nevada. Chap.



198, Stats. 1915, p. 303, relating to the Teachers' Pension Fund, does not include the professors of the University of Nevada.

Section 15 of said Act (p. 307), providing a date within which certain teachers must deliver a notification that they agree to be bound by and avail themselves of the benefits of this Act, is directory only.

The Act applies only to teachers who were in the employment of the public schools of the State at the time of the approval of the Act and those who were subsequently employed.

CARSON CITY, October 16, 1915

Hon. EMMET D. BOYLE, Governor of Nevada, Carson City, Nevada.

Dear Sir: This office is in receipt of a communication from you under date of October 15, and also of a communication from the Secretary of the Public School Teachers Retirement Salary Fund Board, under date of October 13, asking interpretation of certain features of "An Act to provide for the payment of retirement salaries to public school teachers of this State," etc., being chapter 198, Statutes of Nevada, 1915.

Inasmuch as certain of the questions are duplicated, both communications will be answered in this response to your inquiry.

One question propounded is: Is the University of Nevada comprehended under the terms of this Act? In my opinion the professors of the University of Nevada are not included in the Act for the reason that therein certain duties are required of School Trustees. The Act as a whole relates to salaries of public school teachers, and it would lead to great confusion to hold that the public schools include the University in that numerous provisions of the statute relating to public schools, if interpreted to include also the University, would lead to either confusion or render them void. I am further confirmed in this opinion by perusal of chapter 204, page 314, Statutes of 1915, under which the Board of Regents of the University are empowered to establish emeritus positions and providing substantially the same benefits contemplated in the Pension Fund Act.

Answering further the question of Professor Bray, the date designated in section 15 of the Act on or before which certain teachers must deliver a notification that they agree to be bound by and avail themselves of the benefits of this Act is, in my opinion, directory only.

In answer to your first question, I am of the opinion that the Act applies only to teachers who were in the employ of the public schools of this State at the time of the approval of the Act and those who were subsequently employed.

Your second question has already been answered. In my opinion it would be proper to order the deduction of such amount from the salaries of teachers who were in the employ of the state public schools on the date of the approval of the Act, and at the same time notify such teachers that, if they elect to not avail themselves of the benefits of the Act, such amount will be rebated; in other words, placing the burden of rejecting the Act upon such teachers as may not desire to come under its provisions.

Yours very truly,

GEO. B. THATCHER, Attorney-General

By EDW. T. PATRICK, Deputy

40. Public Schools--Public School Teachers--Teachers' Pension Fund. Under the provisions of section 15 of the Teachers' Pension Fund Act, Stats. 1915, p. 307, all teachers employed in the public schools of this State on the date of the approval of said Act who do not give notice of the acceptance of the terms of the Act within reasonable time after October 1, 1915, are forever debarred from claiming the benefits thereof.

CARSON CITY, October 16, 1915

Hon. John Edwards BRAY, Superintendent of Public Instruction, Carson City, Nevada.

Dear Sir: Supplementing my letter of this date to Governor Boyle, concerning the public school teachers pension fund, and in response to your inquiry, let me say that, in my opinion, under the provisions of section 15 of the Act, all teachers employed in the public schools of this State on the date of the approval of said Act, who do not give notice of the acceptance of its terms within a reasonable time after October 1, 1915, are forever debarred from claiming the benefits of said Act.

Yours very truly,

GEO. B. THATCHER, Attorney-General

By EDW. T. PATRICK, Deputy

41. Panama-Pacific Exposition--Commissioner of Panama-Pacific Exposition--Traveling Expenses. The Commissioner of the Panama-Pacific Exposition, while traveling on official business, comes within the provisions of "An Act fixing the allowance for expenses of any state officer, commissioner, or other employee while traveling, or at destination, on official business" (Chap. 22, Stats. 1915, p. 19).

CARSON CITY, October 25, 1915

Hon. GEO. T. MILLS, Exposition Commissioner, Carson City, Nevada.

Dear Mr. Mills: I am in receipt of yours of October 9, requesting an opinion of this office as to whether or not the Exposition Commissioner to the Panama-Pacific and Panama-California Expositions comes within the provisions of "An Act fixing the allowance for expense of any state officer, commissioner, or other employee, while traveling or at destination on official business," approved February 13, 1915 (Stats.

1915, p. 19).

I am of the opinion that this Act does apply to the Exposition Commissioner. In your letter you take the position that it applies only to employees, but the specific wording of the Act is any individual officer, or commissioner, or other employee. The Exposition Commissioner in my opinion comes clearly within the word "commissioner," but if there were any doubt about that, I think the word "individual" is sufficiently broad to embrace the office of Exposition Commissioner.

Yours very truly,

GEO. B. THATCHER, Attorney-General

42. Counties--County Commissioners--Criminal Practice--District Attorneys. The Board of County Commissioners has power to employ additional counsel in the prosecution of criminal cases under the powers conferred on them in the 12th and 13th subdivisions of sec. 1508, Rev. Laws, and they are also empowered to ratify the acts of the District Attorney in employing such counsel.

CARSON CITY, December 5, 1915

Hon. THOMAS E. POWELL, District Attorney, Winnemucca, Nevada.

Dear Sir: Some time ago you requested my opinion upon the power of the Board of County Commissioners to employ additional counsel in the prosecution of criminal cases arising in your county.

I am of the opinion that the board has such powers under subdivision 12 of section 1508, Rev. Laws, relative to powers and jurisdiction of the board, which provides:

12th--To control the prosecution and defense of all suits to which the county is a part. \* \* \*

And also under subdivision 13, which provides:

13th--To do and perform all such other acts as may be lawful and strictly necessary to the full discharge of the powers and jurisdiction conferred upon the board.

I am clearly of the opinion that, under the foregoing sections, it is within the power of the County Commissioners to employ additional counsel to assist the District Attorney in the prosecution of criminal cases arising in the county. See Ellis v. Washoe County, 7 Nev. 291; Clarke v. Lyon County, 8 Nev. 182.

It may be said that the county is not a party to criminal cases, but it is not strictly necessary that the county be a party to the record in order to authorize the County Commissioners to employ additional counsel. It is enough if the litigation affects the county. For instance, Washoe County employed Torreyson & Summerfield to prosecute the case of State v. V. & T. R.R. Co., reported in 23 Nev. 283. The county was not a party to the litigation, yet it was affected thereby, and the Supreme Court refused to review by certiorari the

contract employing them. (State ex rel. Thompson v. Washoe County, 23 Nev. 247.)

It seems clear to me that criminal prosecution of cases arising within the county directly affects the county itself. As a matter of fact, the county is more directly affected than the State.

I am, therefore, of the opinion that the Board of County Commissioners of your county is authorized to employ counsel in the prosecution of criminal cases to assist the District Attorney, and that it is also empowered to ratify the acts of the District Attorney in employing such counsel. See Ellis v. Washoe County, 7 Nev. 291; Clark v. Lyon County, 8 Nev. 182.

Yours very truly,

GEO. B. THATCHER, Attorney-General

43. Public Schools--Deputy Superintendent, Powers of--Public School Warrants. Under the provisions of clause 2, sec. 67 of the School Code (Rev. Laws, sec. 3305), a Deputy Superintendent of Public Instruction is justified in refusing to approve the plans for a schoolhouse until the same have been modified in accordance with his instructions.

The Deputy Superintendent of Public Instruction has no authority to sign school warrants, and cannot make same valid by his signature.

CARSON CITY, December 15, 1916 [1915]

Mr. GEORGE E. McCRACKEN, Deputy Superintendent of Public Instruction, Fallon, Nevada.

Dear Sir: Owing to the continued absence of the writer from the office, answer to your favor of the 7th of October, asking certain questions concerning the School Law, has been delayed until now. I trust that this letter will be of service notwithstanding the delay.

Section 67, page 27, of the School Law, provides:

No public school shall be erected in any school district until the plans of the same have been submitted to and approved by the Deputy Superintendent of Public Instruction. The County Auditor shall draw no warrant for the payment of any bill for the erection of any schoolhouse until notified by the Deputy Superintendent of Public Instruction.

Under the above-quoted section I think you are justified in refusing to approve to approve the plans for the school in question until the heating arrangements have been changed in such manner as you think best.

You state:

The law states that a majority of a Board of School Trustees must sign warrants on the Auditor

for school moneys. Under conditions in which death or removal leave only one Trustee, and others refuse to serve, could a Deputy Superintendent sign with the one remaining member and make the warrants valid orders in the hands of the Auditor or Treasurer for the payment of a teacher's salary and other proper bills of the school district?

My answer to this question is that in my opinion you have no authority to sign school warrants and make them valid in any contingency.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General

44. Crimes and Punishments--Indians--Selling Liquor to Indians--Criminal Practice--Witnesses.

Section 242a, added to the Crimes and Punishments Act by Stats. 1915, p. 355, applies only to Indians not wards of the Government.

Said Act would apply to a decoy if he were not a ward of the Government.

A decoy, however, in giving his testimony, would be protected by the provisions of sec. 7451, Rev. Laws.

CARSON CITY, December 16, 1915.

Hon. E. B. MERRITT, Assistant Commissioner Indian Affairs, Washington, D.C.

My Dear Sir: Your favor of October 1, with reference to Act of the Legislature of 1915 making it an offense for an Indian to solicit the purchase of intoxicating liquors, at hand. My answer has been delayed pending investigation.

The statute in question is an amendment to the Crimes and Punishment Act by the insertion of a new section called section 242a, and reads as follows:

Any Indian soliciting any person to purchase any intoxicating liquor or substance as set out in the next preceding section of this Act shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding \$500 nor less than \$100, or by imprisonment in the county jail for a term of not less than sixty days nor more than one hundred days. (Stats. 1915, p. 355.)

Section 242. The section immediately preceding, makes it a crime to sell whisky, etc., to an Indian not a ward of the Government. I am clearly of the opinion that section 242a, considered with section 242, applies only to Indians not wards of the Government, and I agree with your opinion in that regard.

I think, however, it would apply to the Piute, a decoy, if he were not a ward of the Government. It has been repeatedly held in this State, and the Courts have so instructed the jury, that intent is not a necessary

ingredient of the crime.

I am of the opinion that the gist of the crime as set out in the statute is in soliciting any person to purchase. There seems to be no direct prohibition against the purchase by the Indian.

The recent amendment in my opinion is a poor one, and I have no sympathy with it whatsoever, because prosecuting the Indians for soliciting or receiving liquors will never stop the traffic. I will call your attention, however, to section 7451 of the Revised Laws of Nevada:

\* \* \* In all cases where two or more persons are jointly or otherwise concerned in the commission of any crime or misdemeanor, either of such persons may be sworn as a witness against another, in relation to such crime or misdemeanor, but the testimony given by such witness shall in no instance be used against himself in any criminal prosecution except upon a charge of perjury committed in the giving of such testimony.

This, it would seem to me, is sufficient protection to Indian witnesses, if it can be explained to them.

If I can be of further assistance to you, I will be glad to respond.

Permit me, however, to suggest that I believe that both the Nevada statutes and the Federal statutes should be changed with reference to the penalties. I have had occasion to observe prosecutions in the Federal Court under this Act. The hobo is always convicted for the reason that invariably he is without money with which to employ counsel. The real offenders, men of means, who traffic in liquor to Indians, escape; but I am satisfied that the reason of it is that juries are loath to send men to the penitentiary for this offense. I am satisfied, if the penalty were a good stiff fine with an alternative, in the discretion of the court, of imposing a prison sentence, that many more convictions of supposedly reputable men, who engage in this traffic, would be had. These are the real offenders, and the ones who do the real harm, for the hobo traffic is negligible compared to this. I believe that the United States District Attorney of this district would concur in this.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

45. District Attorneys--Salaries--White Pine County.

There being no words of limitation, and no words providing that the salary prescribed by chapter 46, Stats. 1913, p. 34, relating to salary of the District Attorney of White Pine County, shall be in full compensation, the said District Attorney is entitled to \$2,500 per annum in addition to the fees prescribed in section 1603, Rev. Laws.

CARSON CITY, December 16, 1915.

Hon. ANTHONY JURICH, District Attorney, Ely, Nevada.

Dear Sir: I am in receipt of yours of December 14, requesting my opinion as to the salary, fees, and

compensation to which the District Attorney of White Pine County is entitled.

Chapter 46 of the Statutes of 1913, p. 34, provides:

From and after the taking effect of this Act, the District Attorney and ex officio Public Administrator in and for White Pine County, Nevada, shall receive an annual salary of twenty-five hundred dollars per year, which salary shall be paid in twelve equal monthly installments. He shall be entitled to all fees prescribed by law with reference to the office of Public Administrator.

This Act fixes the salary of the District Attorney of White Pine County. It is to be observed, however, that there are no words in the statute to the effect that the salary fixed shall be in full for all services. I, therefore, call your attention to section 1603 of the Revised Laws of Nevada under an Act entitled "An Act concerning District Attorneys." Said section provides:

The District Attorney, in addition to the yearly salary allowed by law, shall receive the following fees: For each conviction in capital cases, the sum of one hundred dollars; on the conviction of any other felony, fifty dollars; and for a misdemeanor in the District Court, twenty-five dollars, to be charged against the defendant; for each conviction in a Justice's Court, to be taxed as costs against the defendant (but shall in no case be charged against the county), fifteen dollars; for each suit in the Justice's Court, for delinquent taxes, a fee of five dollars; and in the District Court, ten dollars, with ten per cent on the amount of taxes delinquent, said fee and percentage to be taxed and collected as costs; for all amounts collected by him for the county by action, except for delinquent taxes, ten per cent.

In Tilden v. Esmeralda County, 32 Nev. 319, the Supreme Court of this State held that, while it was proper for the Legislature to suspend this general statute by statutes having particular application to any one of the several counties, such Acts were merely suspensions, and that the general law applies. In that case an Act passed in 1905 fixed the salary of the District Attorney and provided that the same was in full compensation for all services. Later in March, 1907, another Act was passed providing that the District Attorney shall receive \$3,000 per annum and such fees and commissions as are now allowed by law. It was contended that the Act of 1905 repealed the general Act, and that, therefore, under the Act of 1907, no fees and commissions could be paid. The Supreme Court held that the Act of 1905 merely acted as a suspension of the general Act, and the District Attorney was entitled to the fees prescribed under section 1603.

I am of the opinion, there being no words of limitation and no words providing that the salary prescribed by chapter 46 of the Statutes of 1913 shall be in full compensation, that the District Attorney of White Pine County is entitled, in addition to his salary of \$2,500 per annum, to the fees prescribed in section 1603.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

46. County Commissioners--Employees--Nepotism Act--Relatives.

It is illegal for any County Commissioner to give his relatives employment upon the county roads in his district; but if the appointment is made by the board as a whole, there could be no objection thereto.

CARSON CITY, December 29, 1915.

Hon. C. E. WEDERTZ, Wellington, Nevada.

Dear Sir: In answer to your favor of the 27th instant, inquiring whether it is illegal for any County Commissioner to give to his relatives employment upon the county roads in his district, let me say that it is in my opinion illegal; but if the appointment is made by the board as a whole there could be no objection thereto.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By EDW. T. PATRICK, Deputy.

47. White Pine County--County Commissioners--Compensation--Mileage.

By the provisions of Stats. 1907, p. 428, sec. 8, the County Commissioners of White Pine County are entitled to mileage at the rate of 20 cents per mile for each mile actually traveled.

CARSON CITY, December 29, 1915.

Hon. ANTHONY JURICH, Ely, Nevada.

Dear Sir: I am in receipt of your request, under date of December 23, for an opinion as to whether your County Commissioners are entitled to mileage or not.

You call my attention to Stats. 1907, p. 428, section 8 of which Act provides: "The County Commissioners shall each receive an annual salary of \$600 and mileage at the rate of 20 cents per mile for each mile actually traveled, one way only." I am unable to find any subsequent legislation affecting this Act, and it, therefore, appears clear that your Commissioners are entitled to the salary and mileage specified in the above-mentioned Act.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By EDW. T. PATRICK, Deputy.



48. Licenses--State Licenses--Liquor Licenses--Dining and Buffet Cars.

The State is authorized to impose a state liquor license on each dining-car operated by a railroad company in Nevada, at the rate of \$100 per annum.

Restrictions under which said licenses must be used, prescribed.

CARSON CITY, December 30, 1915.

MR. ALLAN POLLOCK, *Superintendent Dining Cars, Southern Pacific Company, San Francisco, Cal.*

Dear Sir: Answer to your favor of the 17th ultimo, requesting advice as to what state and county licenses, if any, are required to cover the sale of liquors in dining and buffet cars running over the lines of your company in this State, has been delayed pending investigation of the subject.

Under the decision of the case of *Harrell v. Speed*, 1, L. R. A. 639, I am of the opinion that the State is authorized to impose a state liquor license on each dining-car operated by your company in Nevada; such license is issued annually at the rate of \$100 per annum.

The recipient of such license is required to restrict the sale of liquors thereunder to *bona fide* passengers and would not be permitted to make sales of liquor except while the train is en route; that is to say, when the car is stopped on regular schedule at intermediate points, it immediately becomes subject to local police regulatory measures, and the disposal of liquor at such times would render it liable to local license. If, however, the liquor has been ordered by the passenger before reaching a regular stop, it may be served without incurring additional liability.

Trusting this will make the matter clear to you, and asking you to call upon me if in need of further advice, I remain

Yours very truly,

GEO. B. THATCHER, Attorney-General.

49. Public Schools--School Trustees--Teachers--Nepotism Act.

It is legal for a married woman, whose husband is a Trustee, to teach under the appointment of a board of which her husband is a member.

Such employment is legal because the Nepotism Act does not include School Trustees.

CARSON CITY, December 30, 1915.

HON. M. C. STROMER, Aurora, Nevada.

Dear Sir: I am in receipt of your favor of the 20th instant, asking if it is legal for a married woman, whose husband is a Trustee, to teach school under an appointment of the board of which her husband is a member.

In response let me say that in my opinion such employment is legal, as the statute concerning nepotism does not include School Trustees.

The statute prescribes no qualifications for a School Trustee, and I presume any legal voter would be duly qualified to compete for the office.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By EDW. T. PATRICK, Deputy.