

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL - 1916

50. Licenses—Liquor Licenses—Wholesale Liquor Licenses—Retail Liquor Licenses.

A person who has paid for and received a wholesale liquor license, permitting him to sell liquor in quantities in excess of five gallons, cannot be permitted to sell liquor thereunder in quantities less than five gallons.

Such person must procure, in addition to the wholesale license, a retail license also.

If a bar and restaurant are under the same roof and same ownership, and are operated by the same person, one retail license will be sufficient to cover the sale of liquors, both in the saloon and restaurant.

If a patron desiring to drink liquor in the restaurant is required to pay the waiter in advance for the drink, and thereafter he is served with such drink in the restaurant, the retail liquor license of the saloon from which the drinks are procured is sufficient to cover the transaction, if the restaurant makes no profit from the drinks thus served.

CARSON CITY, January 6, 1916.

HON. E.F. LUNSFORD, *District Attorney, Reno, Nevada.*

DEAR SIR: I am in receipt of your favor of the 3d instant, asking the opinion of this office on certain phases of the liquor license law.

You inquire: "Can a person who has paid for and received a wholesale liquor license permitting him to sell liquors in excess of five gallons also be permitted to sell liquor in quantities of less than five gallons under the wholesale liquor license and without procuring in addition to the wholesale liquor license a retail liquor license also?"

It is the opinion of this office that the person in question should be required to take out both a retail and wholesale liquor license.

You further inquire: "Will persons be permitted to sell liquors in cafés run in conjunction with saloons and who obtain the liquor from the bar without paying an additional license for the privilege of serving liquor in the cafés?"

In response thereto let me say it is the opinion of this office that if the bar and café are under the same roof and the same ownership and are operated by the same person, one license will be sufficient.

But if the ownership of the saloon and the restaurant are different, each is conducting a saloon, and should be required to take out a retail liquor license.

You may call my attention to another phase of the matter, as follows:

A patron desiring any liquor in the café is required to pay the waiter in advance for the drink, and thereafter he is served with same in café. Would this be considered a different condition than that heretofore mentioned?

If the restaurant makes no profit from the drinks that are thus served, the retail liquor license of the saloon from which the drinks are procured is sufficient to cover the transaction.

Yours very truly,

GEO. B. THATCHER, *Attorney-General*.

By EDW. T. PATRICK, *Deputy*.

50 ½. Mining Inspector—Mines and Mining—Officers.

Sec. 4200, Rev. Laws, does not prohibit the Inspector of Mines from owning mines or mining claims or interests or shares of stock in mining claims or mining companies; nor does it prevent him from holding options or contracts for the purchase or sale thereof.

CARSON CITY, January 31, 1916.

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

DEAR SIR: I am in receipt of your request for an opinion upon section 4200, Revised Laws, and particularly the following words:

4200. The Inspector of Mines shall not at the time of his appointment, or at any time during the term of his office, be an officer, director, or employee in or of any mining corporation in this State, or in or of any milling corporations in this State engaged in the business of smelting or reducing ores. * -*- *

This provision prohibits the Inspector of mines from being an officer, director, or employee of any mining or milling corporation engaged in business in the State of Nevada, and is specific upon that point, but this, however, does not prevent or prohibit the Inspector Mines from owning mines or mining claims or milling companies; nor does it prevent him from holding options or contracts for the purchase or sale thereof.

Yours very truly,

GEO. B. THATCHER, *Attorney-General*.

51. Public Schools—School Trustees-Public School Teachers—Nepotism Act.

The Nepotism Act (Stats, 1915, p. 17) does not apply to Boards of School trustees.

Under sec. 2169, Rev. Laws, the husband may permit his wife to appropriate to her own use her earnings, and thereby make the same her separate property.

The husband has the right to appropriate his wife's earnings to his own use, but until such contingency arises, the provisions of section 71 of the School Code (Rev. Laws, 3309), providing that no Trustee shall be pecuniarily interested in any contract made by the Board of Trustees of which he is a member does not apply.

CARSON CITY, February 1, 1916.

HON. JOHN EDWARDS BRAY, *Superintendent Public Instruction, Carson City, Nevada*.

DEAR SIR: I am in receipt of various communications regarding the appointment of a teacher in one of our public schools and your request for an opinion concerning the matter.

It seems that the teacher in question is the wife of one of the School Trustees. This matter presents two questions: First—does such appointment come within the scope of the Nepotism Act? Second—Is it contrary to the provisions of section 71 of the school code?

1. This office has heretofore held that the nepotism law (Stats, 1915, p. 17) does not apply to Boards of School Trustees for the reason that it expressly prohibits any state, township,

municipal, or county officer from employing or keeping in his employ on behalf of the State of Nevada or any county thereof in any capacity any person related to him by blood or marriage within the third degree of consanguinity or affinity. The basis of such decision was that the Legislature, having expressly mentioned state, township, municipal, and county officials, and School trustees not being included in those mentioned, they were excluded from the operation of said Act upon the principle "*Expressio unius est exclusio alterius.*"

2. Through some misconception of the law you have advised the various Deputy Superintendents that, under section 71 of the school code, which says "no School Trustee shall be pecuniarily interested in any contract made by the Board of Trustees, of which he is a member," inasmuch as the statutes of the State and common law state that the wife's earnings belong to the husband, and the husband, therefore, has an interest in the contract made by his wife with the school board as teacher, therefore such employment is unauthorized and illegal.

I am very sorry that through inadvertence and failure to consider the full scope of the matter such an opinion should have been promulgated throughout the State. As a matter of fact section 2169, Revised Laws, provides: "When the husband has allowed the wife to appropriate to her own use her earnings, the same, with the issues and profits thereof, is deemed a gift from him to her, and is, with such issues and profits, her separate property." It is true that the husband has the option under this statute of appropriating the wife's earnings to his own use, but until such a contingency arises it seems that the provisions of this section debar the husband from appropriating his wife's earnings, and section 71 of the School Act does not apply.

Yours very truly,

GEO. B. THATCHER, *Attorney-General.*

52. County Commissioners—Powers—Employment of Additional Clerical Help.

The various Boards of County Commissioners, in cases of emergency, are authorized to employ additional clerical help for the assistance of county officers, under the 13th subdivision of sec. 1508, Rev. Laws.

CARSON CITY, February 1, 1916.

HON. H. C. ROBERSON, *County Treasurer, Goldfield, Nevada*

DEAR SIR: In answer to your undated request for an opinion as to whether or not the Board of County Commissioners may employ clerical help, in cases of emergency, for the assistance of the County Auditor and Recorder, and also for the County Treasurer and ex officio Tax Receiver and County Clerk, let me say that this office has several times decided that the Boards of County Commissioners had such power under the 13th subdivision of section 1508, Revised Laws, defining the powers and jurisdiction of the board.

Trusting this will answer your inquiry, I am

Yours very truly,

EDW. T. PATRICK, *Deputy Attorney-General.*

53. Public Schools—School Districts—School Debts—Abolition of School Districts—County Commissioners.

It is illegal to bring any school district within the terms of section 97 of the School Code (Rev. Laws, 3336) by closing the school under order of the Deputy Superintendent

of Public Instruction.

CARSON CITY, February 1, 1916.

HON. JOHN EDWARDS BRAY, *Superintendent Public Instruction, Carson City, Nevada*

DEAR SIR: I am in receipt of various communications from different persons concerning the abolition of the Forest Home School District by the County Commissioners of Nye County and the subsequent creation of the Good Hope School District containing the same territory of this district was for the purpose of creating a new district which would embrace more territory and children, and, therefore, be better able to take care of itself.

Section 97 of the School Law provides that upon notice from the Deputy Superintendent of Public Instruction that a district has fewer than three resident children in actual school attendance, the Board of County Commissioners shall abolish such district. It appears from the correspondence that the school was closed upon instructions from the Deputy Superintendent of Public Instruction in charge thereof, and that after being closed three days it was abolished on the ground that it had less than three resident children in actual school attendance, ignoring the fact that the school had been closed for the purpose of making it comply with the said section 97. At the time it was abolished by the County Commissioners this school district was in debt for salary of teacher and supplies. It seems to me contrary to public policy to abolish a school district while it is in debt. I am of the opinion that the attempted abolition of this district is illegal.

Yours very truly,

GEO. B. THATCHER, *Attorney-General.*

By EDW. T. PATRICK, *Deputy.*

54. Public Schools—Teachers' Examinations—Deputy Examiners—Nepotism Act.

The deputy Examiners provided for in sec. 3257, Rev. Laws, are employees of the Deputy Superintendent of Public Instruction by whom appointed.

An appointee for such position, if in no wise related to Deputy Superintendent, is not barred from receiving pay for services rendered because he or she may be a prescribed relative of a member of the State Board of Education.

The Nepotism Act does not apply in such a case.

CARSON CITY, February 5, 1916.

HON. JOHN EDWARDS BRAY, *Superintendent Public Instruction, Carson City, Nevada.*

DEAR SIR: I am in receipt of your favor of the 15th ultimo, in regard to appointment of deputy examiners and educational examiners for teachers' semiannual examinations.

You inquire: "Whose employees are deputy examiners for teachers' semiannual examinations?"

Section 3257 provides: "The Deputy Superintendents of Public Instruction shall act as deputy examiners in such counties in their respective districts as shall be designated by the Superintendent of Public Instruction, and the Deputy Superintendents of Public Instruction shall appoint in addition a sufficient number of deputy examiners to provide for all the counties of the

State.”

From the above it seems clear that such deputy examiners are employees of the Deputy Superintendents.

You further inquire.

Is the appointee for the position in question, if in no wise related to the Deputy Superintendents making the appointment, barred from receiving pay from the State for services rendered because he or she may be a proscribed relative of a member of the State Board of Education? In other words, does the so-called nepotism law apply in the case under consideration?

I am of the opinion that such appointment is not in conflict with the Nepotism Act.

Yours very truly,

GEO. B. THATCHER, *Attorney-General*.

By EDW. T. PATRICK, *Deputy*.

54 ½. University of Nevada--State Educational Survey.

The Act to provide for a State Educational Survey (Stats, 1915, p. 370) is intended to cover an educational survey of the State University.

CARSON CITY, February 9, 1916.

MR. GEO. D. KILBORN, *care Nevada State Journal, Reno, Nevada*.

DEAR MR. KILBORN: I am in receipt of yours of February 7 with reference to the scope of chapter 246, Stats. 1915, p. 370, “An Act to provide for a state educational survey by an unpaid commission, and other matters properly connected therewith,” approved March 25, 1915.

I have already given an opinion that this Act includes the University; that it is not limited to the schools, but pertains to all educational needs of the State, to the efficiency of all educational agencies and to the whole educational system. The Act did not limit the investigation or survey to the public school, but made it as broad as the preamble, and applied it to all educational agencies of the State. This is manifest from the preamble, and section 1, after providing for the appointment of the commission, states as follows:

* * * This commission shall make an *educational* survey of the State along the lines set forth in the preamble of this Act, including such other features of educational need as it may deem proper.

Section 2 of the Act provides for a report of the commission’s conclusions to the Legislature, and also for a plan of constructive legislation for the schools of the State. From this section it is manifest that the Legislature desired information with reference to its educational system, and likewise recommendations and plans for constructive legislation.

The foregoing is in substance the oral opinion heretofore given, and is still the opinion of this office.

Yours very truly,

GEO. B. THATCHER, *Attorney-General*.

55. Public Schools—Public School Teachers—Public School Teachers’ Pension Fund.

Section 4 of the Act concerning the Public School Teachers’ Pension Fund, Stats.

1915, p. 304, does not contemplate that the deductions from teachers' salaries therein specified to be paid to the State Treasurer direct.

The only provision in said section is that said deduction be deposited in the State Treasury to the credit of such fund.

There can be no objection to having these remittances made direct to the board and acknowledgment of receipt of same made by the board to persons paying these sums, and a deposit of the aggregate sums of money be made in the State Treasury, at such intervals as may be mutually agreed upon between the board and the State Treasurer and the State Controller.

CARSON CITY, February 18, 1916.

HON. JOHN EDWARDS BRAY, *Superintendent of Public Instruction, Carson City, Nevada*

DEAR SIR: In answer to your verbal inquiry concerning the manner of handling contributions as enumerated in section 1, Stats. 1915, p. 303, of the Public School Teachers Retirement Pension Fund Act, let me say that section 4 of said Act provides:

There shall be deducted each school year commencing September, 1915, from the salary of every teacher subject to the burdens of this Act, nine dollars, and every official whose duty it is to pay said teacher's salary shall make such deductions at such times of payment as shall be directed by the State Board of Education; the amounts thus deducted shall be deposited in the State Treasury to the credit of the public school teachers' permanent fund, and shall constitute part thereof.

The only provision is that said sums of money shall be deposited in the State Treasury to the credit of said fund. The law is silent as to how often it shall be deposited. I can see no objection, therefore, to having the remittances from these sums made direct to your board, and acknowledgment of receipt of same made by your board to persons paying the same, and a deposit of the aggregate sums of money in the State Treasury at such intervals as may be mutually agreed upon between your board, the State Treasurer, and the State Controller.

Yours very truly,

GEO. B. THATCHER, *Attorney-General.*

By EDW. T. PATRICK, *Deputy.*

56. Lincoln Highway—Road Fund—Appropriation.

The expenditure of the sum of \$250,000 or more within the State of Nevada, in construction and repair work upon the Lincoln Highway, by the Lincoln Highway Association, is a condition precedent to the expenditure of any money from the appropriation of \$50,000 made in sec. 2, chap. 275, Stats. 1915, p. 428.

Until said Lincoln Highway Association complies with such condition precedent, the said appropriations is not available for expenditure.

CARSON CITY, February 18, 1916.

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

DEAR SIR: I am in receipt of communication requesting interpretation of chapter 275, Statutes of 1915, p. 428, and especially of section 2 thereof, which provides as follows.

There is hereby appropriated, out of any moneys in the State Treasury not otherwise appropriated, the sum of \$50,000 for the construction and repair work of said Lincoln Highway within the counties aforesaid. Said amount of \$50,000 to be expended in the event that the Lincoln Highway Association expend the sum of \$250,000, or more, within the State of Nevada, in construction and repair work upon said highway.

From a reading of section 2, above quoted, it is evident therefrom that the expenditure of the sum of \$250,000 or more within the State of Nevada in construction and repair work upon said highway is a condition precedent to the expenditure of any money from the appropriation of \$50,000 made in said section 2.

I am therefore of the opinion that until the said Lincoln Highway Association complies with the terms of said section 2 no portion of the said \$50,000 appropriation by this State is available for expenditure.

Yours very truly,

GEO. B. THATCHER, *Attorney-General*.

By EDW. T. PATRICK, *Deputy*.

57. Teachers' Pension Fund—Taxation—Revenue—County Commissioners

The 3-mill tax provided by clause 3, sec. 1, chap. 198, Stats. 1915, p. 304, is a state tax.

While the Board of County Commissioners may not modify or change the rate, it is certainly their duty to provide for collection of this tax.

If the collection of the tax was omitted through oversight during the year 1915, the county is liable to the State for the amount of the tax, and failure to collect the same would not absolve the county from its duty and liability to pay the State the amount thereof.

CARSON CITY, March 6, 1916.

HON. E.F. LUNSFORD, *District Attorney, Reno, Nevada*

MR. DEAR SIR: I am in receipt of yours of February 27 with reference to the additional three-mill tax for teachers pension fund (Stats. 1915, p. 303), which your county failed to collect for the year 1915.

I see no reason why your Board of County Commissioners may not add that amount as provided by subdivision 3 of section 1 of chapter 198, Stats. 1915. It is true that this is a state tax, and, while the Board of County Commissioners may not modify or change the rate, it seems to me that it is certainly their duty to collect the tax. During the year 1915 through some oversight the same was not collected in Washoe County. Your county, however, is liable to the State for the amount of this tax, and the failure to collect the same would not absolve Washoe County from its duty and liability to pay the State (*State v. Esser*, [35 Nev. 429](#), 437). And your county in my opinion is at this time liable to the State for the amount of said taxes. However, we appreciate the fact that it was only due to an oversight that the money was not actually collected, and feel further that if we should insist upon it at this time some other fund of your

county must necessarily be short. We, therefore, suggest that you add an additional three mills to your tax rate in order that the matter may be taken care of.

Yours very truly,
GEO. B. THATCHER, *Attorney-General*.

58. Crimes and Punishments—Gambling—Saloonkeepers.

Certain stated facts held not to constitute gambling within the meaning of the term, as defined in Crimes and Punishments Act.

CARSON CITY, March 8, 1916.

HON. J.E. CAMPBELL, *District Attorney, Yerington, Nevada*.

DEAR MR. CAMPBELL: For some reason answer to your favor of October 22, 1915, asking an interpretation of the gambling law of this State upon a certain state of facts, has been overlooked until now. You inquire:

Supposing that a game of poker is played in this State in a saloon and that as certain pairs of cards appear during the progress of the game, poker chips are deposited in a glass or tray and are later during the game redeemed at the bar in drinks for the players in the game or in cards used in the game by them, said drinks or cards being sold by the proprietor of the saloon at the same price at which he sells them to the general public in the regular course of trade, is this (1) a violation of the law in relation to gambling found on page 31 of Statutes of Nevada, 1915, on the part of the proprietor of the saloon? (2) on the part of the players in the game who drink the drinks or use the cards, so obtained by them?

In my opinion the above state of facts does not constitute gambling either on the part of the proprietor of the saloon or on the part of the players of the game who consume the drinks or use the cards so obtained for the reason that the consumer, as above narrated, seems to come within the proviso contained in the last few lines of the above mentioned Act, viz.: "*provided, however, that nothing in this paragraph shall be construed as prohibiting social games played only for drinks.*"

The entire purpose of the Act seems to be to punish any saloonkeeper who makes a profit from the game itself, by taking out chips for certain hands, which he retains as his profit. In the case in question the only profit of the saloonkeeper is from the sale of drinks and cigars, which he sells at the same price at which he sells them to the general public and in the regular course of trade.

Regretting the delay in answering this communication, I am

Yours very truly,
EDW. T. PATRICK, *Deputy Attorney-General*.

59. Public Schools—Public School Elections—Electors, Registration Of.

Chap. 199, Stats. 1915, p. 308, provides the method for registration of electors at school elections.

This Act does not conflict with section 47 of the School Code (Rev. Laws, 3285), but it enlarges registration privileges by including city election registrations as well as general election registrations, and lengthens the time of registration for school elections.

CARSON CITY, March 8, 1916.

MR. B.D. BILLINGHURST, *Superintendent Reno Schools, Reno, Nevada.*

DEAR SIR: I am in receipt of your letter of the 6th instant, asking the opinion of this office as to what law governs the registration of electors for the ensuing school election. After careful consideration of the references contained in your letter. I am of the opinion that chapter 199, Stats. 1915, p. 308, being the latest expression of the Legislature upon that subject, is the law governing such registration. This chapter does not conflict with section 47 of the 1911 School code, governing the election of School Trustees, but it enlarges registration privileges by including city election registrations as well as general election registrations and lengthens the time of registration for school elections.

Yours very truly,
EDW. T. PATRICK, *Deputy Attorney-General.*

60. Delinquent Tax Sales—Sheriff—Certificate of Delinquent Tax Sale.

The purchaser of property at a delinquent tax sale, being the successful bidder for all the property offered for sale, cannot designate the subdivisions of land which he purchased.

The purpose of a delinquent sale is to realize the full amount of the taxes charged against the property.

If less than the full amount is purchased under terms of section 3651, being a fractional amount thereof, it is the duty of the Sheriff to issue to the purchaser a certificate thereof, to the undivided interest in the property, which he purchased.

CARSON CITY, March 11, 1916.

HON. D.P. RANDALL, *Sheriff, Yerington, Nevada.*

DEAR DICK: I am in receipt of your letter of the 7th instant asking how you should issue certificates to a purchaser at a delinquent tax sale. It seems that there were about 5,000 acres of land to be sold, and the party bid in the whole property for the full amount of taxes, delinquency, and costs; another party bid full amount of taxes, delinquency, and costs for 1,080 acres of land, designating by subdivisions the land that he would take; then the first party bid the amount due for nine-tenths of the .080 acres, and it was finally sold at the full amount of tax, delinquency, and costs for six-and-one-half tenths of 1,080 acres.

It seems that the purchaser now claims that he can designate the six-and-one-half tenths that he bought by subdivisions. You inquire if you can issue a certificate to him for the six-and-one-half tenths, describing the same by subdivisions, or will you have to issue certificate for an undivided six-and-one-half tenths of the 1,080 acres.

Section 3651, Revised Laws, relates to the subject of sales of property for delinquent taxes and provides "the bidding at tax sales under the provisions of this section shall be for the smallest quantity of property that will pay the taxes, penalty, and costs." The purpose of the delinquent sale is to realize the full amount of the taxes charged against the property, and the law contemplates that the property be sold, with the proviso, whoever, that the smallest quantity that will pay the taxes, delinquency, and costs be sold. In the case in question, it appears that the

purchaser was willing to pay all taxes and costs and delinquency for six-and-one-half tenths of the 1,080 acres. He might have been willing to make the same offer for one-thousandth or one-hundred-thousandth of the land. In such a case, how would you set it off to him, in case the property was not redeemed from this delinquent sale? The statement of this proposition shows its absurdity.

In such case three-and-one-half tenths of the tract in question would remain in the original owner against whom the tax was assessed, and the purchaser at the delinquent sale would have the balance. In order to settle the respective holdings of those two claimants, a partition suit would have to be brought, and this is no portion of your business as Sheriff.

From the above considerations, I am of the opinion that your certificate should issue for an undivided six-and-one-half tenths of 1,080 acres.

Yours very truly,

EDW. T. PATRICK, *Deputy Attorney-General.*

61. Public Schools—Public School Elections—School Trustees—electors, Registration Of.

Chap. 199, Stats. 1915, p. 308, is the means provided by the Legislature for the registration of electors at school elections.

CARSON CITY, March 17, 1916.

HON. J.A. CAMPBELL, *District Attorney, Yerington, Nevada.*

DEAR SIR: In accordance with your request, I have carefully examined the question as to the law governing the registration of voters at the coming school election and find as follows:

Section 3285, being section 47 under chapter 6 of the school code, was adopted word for word as section 9 of chapter 7 of the election law of 1913 (Stats. 1913, p. 561).

The election law of 1915 (sec. 148, Stats. 1915, p. 507) provides: "School Trustees shall be elected in accordance with the provisions of chapter 6 of an Act entitled 'An Act concerning public schools and repealing certain Acts relating thereto,' approved March 20, 1911." This election Act was approved March 29, 1915.

By chapter 199, Stats. 1915, p. 308, section 9 of chapter 7 of the election of 1913 was amended in two particulars only: In the town or city election" were added, and the word "eight" in the next to the last line of the section was changed to "ten." The addition was made for the purpose of obviating the necessity of reregistration of a number of women electors in Reno, who had registered for the city election of 1915.

The provisions of the election Act of 1915, above quoted, in providing that the School Trustees should be elected in accordance with the provisions of chapter 6 of the election law of 1913 certainly referred to such chapter as amended by subsequent legislation.

Section 9 of chapter 7, adopted in the school code by the election law of 1913, was amended at the same legislative session as the one which enacted the election law of 1915. Therefore it is reasonable to suppose that the Legislature, in enacting the provisions of section 148 of the general election law of 1915, had in mind the amendment of section 9 of chapter 7 of the election law of 1913 and had no intention of repealing the said chapter 199 of the Statutes of 1915.

I am therefore of the opinion that said chapter 199 is the existing law regulation registration of electors at the coming school election.

Yours very truly,
EDW. T. PATRICK, *Deputy Attorney-General.*

62. Public Health—Birth Certificate—Local Health Officers.

Under the provisions of secs, 2965, 2970, Rev. Laws, the local health officer is justified in rejecting a birth certificate not fully filled out nor legible.

No specified time is allowed for the correction of an informal certificate, and the law therefore allows a reasonable time so to do.

CARSON CITY, March 17, 1916.

DR. J.J. CAMPBELL, *Pioche, Nevada.*

DEAR SIR: Dr. S.L. Lee has referred to this office, for response, your letter of the 2d instant addressed to him, concerning a certain birth certificate.

The law makes the certificate issued by the attending physician the permanent record of a child's birth and for various apparent considerations this certificate should be in proper form and contain all law. Section 13, clause 21, requires "all certificates, either of birth or death, shall be written legibly, in unfading black ink, and no certificate shall be held to complete and correct that does not supply all of the items of information called for herein, or satisfactorily account for their omission."

The certificate in question is disfigured by erasures and some of the information required is not contained therein.

Under the circumstances, you were correct in rejecting the certificate. Section 19 of the Vital Statistics Act provides "if a certificate of birth is incomplete, he shall immediately notify the informant, and require him to supply the missing items if they can be obtained."

No specified time seems to be allowed for the correction of this informal certificate and the law therefore allows a reasonable time for such purpose. The original certificate is herewith returned.

Trusting this will give you the information desired, I am

Yours very truly,
EDW. T. PATRICK, *Deputy Attorney-General.*

63. Public Schools—School Districts, Consolidation of—State Board of Education.

The word "adjacent" means "lying near," "close," or "contiguous." A petition for consolidation of school districts, under the terms of the School Consolidation Act (Stats. 1915, pp. 27-30) of districts lying 40 to 50 miles apart cannot be said to comply with section 1 of said Act, requiring that the districts be "adjacent."

Such consolidation petition, being an illegal petition, should be rejected by the State Board of Education.

CARSON CITY, March 17, 1916.

HON. JOHN EDWARDS BRAY, *Superintendent Public Instruction, Carson City, Nevada*

DEAR SIR: I am in receipt of your favor of the 9th ultimo, asking information of this office on certain questions concerning the School Consolidation Act, comprised in pages 27-30 of the Statutes of 1915. It seems that the districts proposed to be consolidated are those of Bunkerville, Mesquite, St. Thomas, St. George, Logan, Overton, and Moapa, all situated in Clark County, Nevada. Section 1 of the Act provides "Any two or more adjacent school districts may unite for the purpose of establishing a single consolidated district."

The word "adjacent" is defined by Webster to mean "lying near," "close," or "contiguous," but it is sometimes said to be synonymous with "adjoining," "near," "contiguous." In some decisions courts held it to mean "in the neighborhood or vicinity of," and in other "adjoining or contiguous to."

The word means no more than "lying near," "close," or "contiguous," but not actually adjoining. The properties or districts may be adjacent, although other properties may intervene between them.

I am informed that from Moapa to Bunkerville is a distance of 40 or 50 miles over roads, which, at certain portions of the year, are impassable. In contemplation of law, it cannot be said that these two school districts are "adjacent" in the sense of "lying near," "close," or "contiguous."

I am, therefore, of the opinion that the consolidation petition presented to your board is not a legal petition and should therefore be rejected.

For these reasons it is unnecessary to answer in detail the other inquiries concerning this Act contained in your letter.

Yours very truly,
EDW. T. PATRICK, *Deputy Attorney-General.*

64. Corporations—Foreign Corporations, Reinstatement of—Procedure Necessary

The only acts necessary to reinstate a foreign corporation, which has lost its right to do business in this State, is a full compliance with the terms of sec. 1186, Rev. Laws.

CARSON CITY, March 18, 1916.

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

DEAR SIR: I am in receipt of your favor of the 16th instant, enclosing letter from P.B. Ellis, requesting information as to what procedure should be followed to reinstate a foreign corporation which has lost its right to do business in this State, and also requesting that you be advised thereon.

The acts required of all foreign corporations authorized to transact business in this State are as follows:

Section 85 of the General Corporation Law (Rev. Laws, 1186) required that a statement be filed with the Secretary of State by the president and secretary of the corporation, giving the names of all the directors, trustees, and officers, with date of election or appointment of each, term of office, residence and postoffice address of each, character of his business, and the name of the resident agent in this State in charge of said office and upon whom process can be served.

Section 5025, Rev. Laws, provides the method of service of summons upon foreign corporations, in case of failure of such corporation to appoint a resident agent or to reappoint within fifteen days after the vacancy occurs in such agency.

Section 3048, Rev. Laws, requires every foreign corporation entering this State for the purpose of doing business therein to file with the Secretary of State a copy of its articles of incorporation.

After a foreign corporation has been authorized to do business in this State, by complying with the terms of section 3048 aforesaid, the only duty that seems to be imposed upon it is the filing of the list of officers, required by section 1186, the maintenance of the principal office in this State and of a resident agent in charge thereof.

From the above considerations, I am of the opinion, therefore, that the only acts necessary to reinstate a foreign corporation, which has lost its right to do business in this State, is a full compliance with the provisions of section 1186 aforesaid.

Yours very truly,
EDW. T. PATRICK, *Deputy Attorney-General.*

65. Public Schools—Teachers—Teachers' Pension Fund—County Normal Schools.

The County Normal Schools lie within the definition of "public schools." Teacher of County Normal Schools are therefore entitled to participate in the beneficial provisions of the Public School Teachers' Retirement Salary Fund Act, chap. 198, Stats. 1915, p. 303.

CARSON CITY, March 18, 1916.

HON. HARRY J. COOGAN, *Executive Secretary Teachers' Pension Fund, Carson City, Nevada*

DEAR SIR: I am in receipt of your favor of the 17th instant, asking: "Are the teachers of county normal schools eligible for membership under the provisions of the Public School Teachers' Retirement Salary Fund Act, as found in chapter 198, Stats. 1915, p. 303?"

Section 12 of said Act provides: every public school teacher who shall have complied with all the requirements of this Act," etc.

Section 13 uses the same language.

Section 15 provides: "This Act shall be binding upon all such teachers employed in the public schools of this State," etc.

Section 16 provides: This Act shall be binding upon all teachers elected or appointed to teach in the public schools of this State," etc.

The Act seems to have been enacted for the benefit of teachers of the public school of this State and it is therefore necessary to determine what is a "public school." A public school is defined to be "a school that derives its support entirely or in part from moneys raised by general, state, county, or district taxes."

Public schools are again defined as meaning "the schools which are established, maintained, and regulated under the statute law of the State."

County normal schools of this State derive their support entirely or in part from moneys raised by the general, state, county, or district taxes, and are established, maintained, and regulated under the statute law of this State.

This would seem to bring the county normal schools within the terms of the above definitions of "public schools," and I am, therefore, of the opinion that the teachers of county normal schools are entitled to participate in the beneficial provision of the Act in question.

Yours very truly,
EDW. T. PATRICK, *Deputy Attorney-General.*

66. Fish and Game—Private Fish Hatcheries—State Fish Commissioner—Licenses

The State Commissioner is authorized under the provisions of secs. 2073 and 2080, Rev. Laws, to issue a license for the sale of fish from a private fish hatchery lying partly within Nevada and partly in California.

CARSON CITY, March 20, 1916.

MR. GEO. T. MILLS, *State Fish Commissioner, Carson City, Nevada.*

DEAR SIR: I am in receipt of a letter handed me by you from one of your correspondents, wherein he makes application for a license entitling him to the privileges of section 5 of the law relating to the establishment of private fish hatcheries (Rev. Laws, 2080).

It seems that your correspondent has a hatchery lying partly within this State and partly in California, and you inquire whether you are authorized to issue him a permit under said section.

Section 2072 provides: Nothing in this Act shall be so construed as to hinder the taking of trout or other fish, by the rightful owners thereof or by their agents, in any manner, at any season whatever, from the waters of private ponds by them constructed or maintained for the purpose of raising trout or other fishes; nor to prohibit the sale of trout or other fishes or of their fry or ova from private hatcheries lying wholly or in part within the State of Nevada.”

The section under which license is demanded reads as follows: “every person, firm, or corporation engaged in the business of buying and selling, packing and preserving, or otherwise dealing in trout or other food fishes, obtained from private hatcheries of this State, shall procure a license for such business from the Fish and Game Warden of the county wherein such selling, packing, and preserving is done, and shall pay an annual license fee of \$2.50.”

I am of the opinion, therefore, that, taken in connection with section 2073, above quoted, you are authorized under section 2080 to issue a license, as requested by your correspondent.

Yours very truly,
EDW. T. PATRICK, *Deputy Attorney-General.*

67. Eight-Hour Law—Employer and Employee—Marble Quarries.

Sec. 6557, Rev. Laws, relating to the period of employment in open-pit and open-cut mines applies to men working in marble quarries.

CARSON CITY, March 30, 1916.

HON. W.E. WALLACE, *Labor Commissioner, Carson City, Nevada.*

DEAR SIR: I am in receipt of your verbal request for an opinion as to whether the eight-hour law applies to men working in marble quarries.

Section 6557 of the Revised Laws of Nevada provides as follows:

The period of employment of working men in open-pit and open-cut mines shall not exceed eight hours in any twenty-four hours, except in cases of emergency where life or property is in imminent danger.

The question involved is whether a marble quarry is an open-pit or open-cut mine.

In 27 Cyc. at page 531 is found the following:

The primary meaning of the word "mine," standing alone, is an underground excavation made for the purpose of getting *minerals*; a pit or excavation in the earth from which metallic ores or other mineral substances are taken by digging.

It is also extended to a quarry or place where anything is dug.

Again, on page 532 of the same volume we find the following:

Mineral is not confined to metals only, but primarily means all substances other than the agricultural surface of the ground, * * * such as stone or clay.

In the case of *Hendler v. Lehigh Valley R.R. Co.*, 209 Pa. St. Rep. 260, the court held that marble was a mineral. Also, in the case of *Ruttledge v. Kress*, 17 Pa. Sup. Ct. Rep. 190, the Superior Court held that building stone was a mineral within the statute. The reasoning in these cases is to the effect that substances valuable for building purposes are minerals.

Under the laws of the United States land chiefly valuable for building stone are permitted to be located as placer claims, and this would indicate that quarries are to be considered as mines.

I am, therefore, of the opinion that the eight-hour law applies to men working in the marble quarries in this State.

Yours very truly,

GEO. B. THATCHER, *Attorney-General*.

68. Elections—Electors—Candidates—Registration—School Trustees.

Registration is not qualification as elector, but is a mere condition of a right to vote imposed by the wisdom of the Legislature for the prevention of fraud and to promote regularity and order in elections, and a person is not required to be a registered voter in order to be a candidate for School Trustee.

CARSON CITY, March 30, 1916.

MRS. JAMES G. WOOD, *Box 153, Virginia City, Nevada*.

DEAR MADAM: I am in receipt of your letter of March 30, asking for an opinion upon the following question:

Two women of this town are running for School Trustee. One of them * * * did not register to vote. Is she eligible to run for Trustee under these circumstances?

Section 3 of article 15 of our Constitution provides as follows:

No person shall be eligible to any office who is not a qualified elector under this Constitution * * * ; *provided* , that females over the age of twenty-one years, who have resided in this State for one year and in the county or district six months next preceding any election to fill either of said offices, shall be eligible to the office of Superintendent of Public Schools or School Trustees.

A qualified elector is defined in section 1 of article 2 of our Constitution, as amended in 1914, as follows:

All citizens of the United States, not laboring under disabilities named in this Constitution, of the age of twenty-one years and upwards, who shall have actually and not constructively resided in this State six months and in the district or county thirty days next preceding any election, shall be entitled to vote for all officers that

now or hereafter may be elected by the people. * * *

You will observe, therefore, that a qualified elector is any person over the age of twenty-one years, a citizen of the United States, and who has actually and not constructively resided in the State six months and in the district thirty days next preceding the election. This defines a qualified elector. Registration is not a qualification of an elector, but is a mere condition to the right to vote imposed by the wisdom of the Legislature for the prevention of fraud and to promote regularity and order in the elections.

I am of the opinion, therefore, that the person named is a legally qualified elector, and entitled to be a candidate and elected to office, even though she is not registered.

Yours very truly,

GEO. B. THATCHER, *Attorney-General*.

69. Public Schools—Teachers—Teachers' Pension Fund.

If a retired teacher meets all the requirements of sec. 12, Stats. 1915, p. 307, he is entitled to receive a pension notwithstanding the fact that he has not paid into the Teachers' Pension Fund any money whatever. Under such circumstances, however, he must comply with the provisions of section 5 of said Act.

CARSON CITY, March 30, 1916.

HON. JOHN EDWARDS BRAY, *Superintendent Public Instruction, Carson City, Nevada*

DEAR SIR: I am in receipt of your favor of the 19th ultimo, asking for an opinion as to the meaning and scope of sections 12 and 13 of the Public School Teachers Retirement Salary Fund Act, Stats. 1915, p. 307, and in which you inquire:

Is a teacher who taught in Nevada thirty years more or less, and retired, on account of physical incapacity or other reason, eight or ten years prior to the passage of the above-referred-to Act, entitled now to come under its provisions?

Section 12 of said Act provides for the payment of pension to every public school teacher, who shall have served as a legally qualified teacher for at least thirty years, at least fifteen of which shall have been in the public schools of this State including the last ten years of service immediately preceding retirement. The proviso to said section is: "that application for such salary be made * * * within two years after the approval of this Act."

Section 5 of said Act points out a method by which a public school teacher, otherwise qualified, but has not paid in nine dollars for each year's service up to and including thirty years, may receive a pension.

Construing the proviso of section 12 in connection with section 5, I am of the opinion that the person in question, if he meets all the requirements of section 12, is entitled to receive a pension, notwithstanding the fact that he has not paid into the teacher's pension fund any money whatsoever. Under such circumstances he must, of course, comply with the provisions of section 5 of said Act.

Yours very truly,

GEO. B. THATCHER, *Attorney-General*.

By EDW. T. PATRICK, *Deputy*.

70. Public Schools—School Elections—School Trustees—Computation of Time.

Under the provisions of sec. 3297, Rev. Laws, a candidate for School Trustee who has filed his notice of candidacy with the County Clerk by letter which came into the hands of said County Clerk on March 27, the election being held on April 1, has filed his notice in ample time.

CARSON CITY, March 31, 1916.

MR. H.L. MORRISON, *Carlin, Nevada.*

DEAR SIR: I am in receipt of your favor of the 30th ultimo, with enclosures as stated, asking interpretation of section 3297, Rev. Laws, providing as follows:

In school districts having a voting population of one hundred (100) or over, candidates for the office of School Trustee shall, not later than five days before the day of election, have their names filed with the County Clerk of said county, etc.

It seems that on March 25 you mailed a letter, containing your application as candidate for School Trustee in Carlin District, to the County Clerk. This letter should have reached the County Clerk on the same day, but for some reason it did not come into his hands until March 27. It is claimed that this letter was received too late to comply with the law requiring the filing of names of candidates "not later than five days before the day of election."

The school election will be held this year on April 1. The letter was received by the County Clerk at some time on Monday, March 27. It is a general rule that fractions of days are not recognized in law. Monday may, therefore, be recognized as a full day. Your notice of candidacy was, therefore in his hands Monday, Tuesday, Wednesday, Thursday, Friday, or full five days before the election which occurs on Saturday April 1.

I am, therefore, of the opinion that your notice of candidacy was filed in due time, and that you are entitled to have your name placed upon the ballot for the ensuing school election.

For your information, I am sending you a copy of an opinion of this office rendered last year concerning a similar question, which arose in regard to the interpretation of section 8 of the Corrupt Practices Act.

Yours very truly,

EDW. T. PATRICK, *Deputy Attorney-General.*

71. Public Schools—School Teachers—Public School Teachers' Retirement Salary Fund.

Under the provisions of section 5 of an Act to provide for the payment of retirement salaries of public school teachers (Stats. 1915, p. 303), applicants for retirement salary on account of disability, are required to pay into the permanent fund a total sum of \$270.

CARSON CITY, June 2, 1916.

HON. HARRY J. COOGAN, *Executive Secretary, P. S. T. R. S. Fund Board, Carson City, Nevada.*

DEAR SIR: I am in receipt of your favor of the 1st instant asking opinion of this office on

the following question:

Are applicants for retirement salary on account of disability required to pay into the permanent fund a total sum of \$270, the same as other applicants who will have taught the full thirty years prior to applying for retirement salary?

This subject is fully covered by the express language of section 5 of the Act establishing the Teachers Fund Board, which provides:

No person shall, except as hereinafter otherwise provided, be eligible to receive the benefits of this Act who shall not have paid into said Public School Teachers Permanent Fund an amount equal to nine dollars for each year of service up to and including thirty years; *provided, however*, that the difference between the amount actually paid by such teacher of thirty years' service and two hundred and seventy dollars, may be paid into said fund by such teacher at the time of retirement, with the same effect as if the full sum of two hundred and seventy dollars had been paid at the rate of nine dollars per year before retirement.

This applies to all applicants for relief under the Act whether on account of retirement after thirty years of service or retirement on account of disability.

It is, therefore, the opinion of this office that applicants for retirement salary on account of disability are required to pay into the permanent fund a total sum of two hundred and seventy dollars, the same as other applicants who have taught for thirty years prior to applying for retirement salary.

Yours very truly,
EDW. T. PATRICK, *Deputy Attorney-General*.

72. Corporations—Railroad Corporations—Foreign Corporations—Fees—Secretary of State.

The fees for filing articles of incorporation by foreign corporations are those provided in sec. 1203, Rev. Laws, as amended by Stats. 1913, p. 58.

CARSON CITY, June 15, 1916.

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

DEAR SIR: I am in receipt of your favor asking for written opinion as to what fees are chargeable by your office for the filing of articles of incorporation, both of railroad corporations organized under the laws of this State and foreign corporations.

The first general incorporation law of this State (Stats. 1865, p. 359) provided no fee to be exacted for filing articles of incorporation.

The general corporation law now in force (Stats. 1903, p. 121) provides a fee or tax on the capital stock of corporations organized in this State in section 102 of said Act (Rev. Laws, 1203). This section was amended by Stats. 1913, p. 58, increasing the minimum tax to be paid.

The same provisions were repeated in the Act creating a fee bill for the office of Secretary of State (Stats. 1913, p. 277).

The first provision for the admission of corporations organized under the laws of another State to do business in this State is contained in the sections 1346-7, Rev. Laws. Under that Act no tax on the capital stock of foreign corporations was exacted.

While said Act was still in force, section 20 of the Act providing for the incorporation of railroads (Rev. Laws, 3531) was amended by adding: "That before any corporation incorporated or organized otherwise than under the laws of this State shall be entitled to any of the rights

granted by this Act, it shall file in the office of the County Recorder of each county in which said railroad or any part, extension, or branch thereof shall be situated a copy of its articles of incorporation in the manner and form * * * required by section 1346, Revised Laws"; thus making it comply with provisions of sections 1346-7, Rev. Laws, above mentioned.

On March 20, 1907, an additional Act in relation to foreign corporations "which shall *hereafter* enter this State for the purpose of doing business therein" was passed (Rev. Laws, 1348-50). Section 2 of said Act (Rev. Laws, 1349) provides on filing certified articles, papers, or other instruments of incorporation as required in section 1 of the Act, said corporation shall pay the same fees to the Secretary of State as are paid by corporations organized under the laws of this State.

It is generally understood that the Act embraced in sections 1346-7 has been superseded by the last-mentioned Act; the first Act applying to foreign corporations entering this State to do business therein prior to March 20, 1907, and the latter Act applying to all corporations thereafter entering this State to do business.

The language of section 102 of the General Corporation Act (Rev. Laws, 1203), relating to taxes to be paid by domestic corporations, has by the enactment of section 1349, Rev. Laws, been made applicable to foreign corporations. Section 1348, Rev. Laws, certainly includes railroad corporations within its terms.

By enactment of the present foreign corporation Act, it is a reasonable assumption to consider that the Legislature intended it to apply to all foreign corporations hereafter entering this State to do business therein.

From the foregoing, I am of the opinion that the fees provided in section 1203, Rev. Laws, apply to railroad corporations whether the same are foreign or domestic.

Yours very truly,
EDW. T. PATRICK, *Deputy Attorney-General.*

73. Physicians and Surgeons—State Board of Medical Examiners.

A practitioner of a drugless system of medicine before receiving a license to practice in this State must successfully pass an examination on all subjects mentioned in sec. 2365, Rev. Laws, except materia medica and therapeutics.

CARSON CITY, June 20, 1916.

MR. HOMER MOONEY, *Reno, Nevada.*

DEAR SIR: Dr. S.L. Lee has turned over to this office for response your favor of the 12th instant, addressed to him, concerning the admission to practice medicine, surgery, and obstetrics in this State by a Mr. LeMasters.

Section 2365, Revised Laws, governs t his subject, and, prior to the amendment of said section on page 380, Stats. 1911, the drugless school of medicine was not recognized in this State. At the instance of several osteopaths the amendment in question was passed, and now any practitioner of the drugless system may be permitted to practice such system in the State upon passing examination upon all the topics mentioned in said section except materia medica and therapeutics.

The former rule in this State concerning admission to practice has been relaxed to this extent, and such extent only.

On September 3 of last year this office rendered an opinion to Dr. Lee that osteopaths are prohibited from prescribing opiates and narcotics unless they pass the examination on therapeutics and materia medica required by the Medical Practice Act. This opinion was based upon the safety and welfare of those employing physicians that the public might be assured that dangerous drugs were not being administered by persons having no knowledge of their uses.

It is the opinion of this office, therefore, that Dr. Lee was correct in refusing a license to practice medicine generally to the person in question. If he wishes to take the examination in materia medica and therapeutics. I see no reason that a license could be further refused him.

Yours very truly,
EDW. T. PATRICK, *Deputy Attorney-General.*

74. Quarantine—State Quarantine Officer—District Attorneys.

Secs. 5 and 8, chap. 280, p. 456, Stats. 1913, and secs. 9, 10, 11, and 17, chap. 268, p. 396, Stats. 1915, clothe the state sanitary officer with full power to compel immunization of diseased hogs.

The claim for serum or vaccine used in the treatment of such animals becomes at once a lien upon them, and the lien is to be enforced by the District Attorney of the county in which the work is performed.

CARSON CITY, June 20, 1916.

DR. W.B. MACK, *State Quarantine Officer, Reno, Nevada.*

DEAR SIR: I am in receipt of your favor of the 17th instant, asking the opinion of this office as to your powers in the matter of quarantine.

You call my attention to sections 5 and 8, chapter 280, Statutes of 1913, and sections 9, 10, 11, and 17 of chapter 268, Statutes of 1915. Upon examination of the same I am satisfied that the above-mentioned laws clothe you with full power in the premises to compel immunization of the diseased hogs.

In answer to your request for an outline of the procedure, which you are to take regarding the collection of claims for serum or vaccine, I am of the opinion that these claims under the law become at once a lien upon the animals treated, and the lien is to be enforced by the District Attorney of the county in which the work is performed.

Yours very truly,
EDW. T. PATRICK, *Deputy Attorney-General.*

75. Corporations—Domestic Corporations—Foreign Corporations—Railroads—Secretary of State.

If a foreign railroad corporation has properly entered this State for the purpose of doing business therein by complying with the laws relating to foreign corporations, the Secretary of State is not authorized to receive for filing articles of incorporation of a domestic railroad corporation with the same or similar name.

CARSON CITY, June 20, 1916.

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

DEAR SIR: I am in receipt of your favor of the 16th instant, asking the advice of this office as to your right to receive and file articles of incorporation of a domestic railroad company under the name of the Surprise Valley Railway Company.

It seems that a foreign corporation under the laws of Utah, under the same name has already filed its articles of incorporation with you. In 10 Cyc. on pages 151-3 it is stated:

While the name of a corporation is not in strictness a franchise, yet the exclusive right to its use may be protected in equity by the writ of injunction by analogy to the protection of trademarks, * * * and the absence of a fraudulent intent is no defense to an action for such relief. * * * The doctrine, prior in time, prior in right, prevails, so that the body which first becomes entitled to use a particular corporate name will be protected in the use of that name as against another body, incorporating at a later period and assuming the same name.

Also on pages 154-5 of the same work is the following:

Enabling Acts which provide for the granting of so-called charters or certificates of incorporation by the Secretary of State or other ministerial state office generally prohibit the granting of such charters or certificates where the name assumed conflicts with the name of an existing corporation. Under such a statute, it has been well held that, although the office of the Secretary of State in this respect is a ministerial one, yet his power of refusing such certificate is not restrained to cases where the assumed corporate name is an exact imitation of the name of the preexisting corporation, but that he has a discretion to refuse such a certificate where the name assumed so nearly resembles that of an existing corporation that confusion on the part of the public would be likely to arise between the two companies.

From the above I am of the opinion that you could not be justified in receiving and filing the articles of incorporation of the domestic corporation tendered.

The correspondence relating to this matter is herewith returned.

Yours very truly,

EDW. T. PATRICK, *Deputy Attorney-General.*

75½. Elections—General Elections—Primary Elections.

The primary election law (Stats. 1915, p. 453) construed.

CARSON CITY, June 26, 1916.

To the County Clerks of the State of Nevada.

GENTLEMEN: Many questions with regard to the primary law with reference to registration and with reference to the election law have been presented to this office, most of which at the present time deal with the duties of the County Clerks and Registry Agents, with reference to the primaries and registration. I have, therefore, decided, for the benefit of County Clerks and Registry Agents, to incorporate them into one opinion. Copies of this letter are enclosed herewith with request that you distribute them among the various Registry Agents in your respective counties.

Primary elections for delegates to both state and county conventions is the second Tuesday in August, to wit: August 8.

Every political party, which casts 10 per cent of the total vote of the State, as shown by the highest vote cast for the candidates for state office, is entitled to elect delegates to a party convention, and to nominate its candidates by a convention.

Each county is entitled to one delegate to the state convention for each 100 votes or major fraction thereof cast for such party within the county. In county conventions each precinct is entitled to one delegate for every twenty votes or major fraction cast for such party, provided that every precinct, which cast ten votes at the last general election, or which registers ten votes at the close of registration for the primary, shall be entitled to one delegate. (See section 8.) Delegates to state conventions are also delegates at large to the county convention, and entitled to sit, vote, and act therein. The party vote, upon which apportionment is made, is that of the party candidate for Representative in Congress at the last general election.

The candidate for delegate shall be a qualified elector within the State, county, and precinct which he desires to represent. He shall, not earlier than thirty nor later than ten days before the primary election, file a verified certificate with the County Clerk setting forth his name and residence, the name of the party he desires to represent as a delegate, the length of his residence in the State and county, the convention (whether state or county) to which he aspires to be a delegate, and that he is a member of the political party he seeks to represent, and that he voted for a majority of the candidates of such party at the last preceding general election (or he did not vote at such general election, giving reasons), and that he intends to vote for a majority of said ticket at the coming election; that he will attend the convention or conventions if elected unless unavoidably prevented from so doing. Under this provision women are as eligible as men as delegates to state and county party conventions.

The above certificate must be filed not earlier than thirty nor later than ten days before the primary election, to wit: August 8.

Separate ballots shall be printed for each political party.

It is the duty of the county central committee of the respective political parties to apportion the delegates to the county convention by precincts, and file a certificate of such apportionment with the County Clerk, subscribe by the chairman and secretary, on or before the second Monday in July, to wit: July 10. A like certificate of apportionment must be filed on or before the same date by state central committee, apportioning delegates to which counties are entitled in the state convention. (See section 8.)

It is the duty of the county central committee of the several political parties in the various counties to nominate to the County Clerk two persons for election officers, and from the persons nominated the County Clerk shall select three inspectors and two clerks to act as election officers in each precinct. In the event that there should not be enough nominated to make up three inspectors and two clerks, I am of the opinion that the Clerk may appoint the additional officers necessary to make up the required number, keeping in mind that each party is entitled to equal representation as near as may be. If the officers appointed by the county central committee refuse to act, the Registry Agent shall open the polls, deliver and receive the ballots, count, canvass, and return the same. (See section 11.)

Registration opens for the primaries July ; *provided, however*, that any persons who have registered for any special election held since January 1, 1916, shall be considered registered for the primary. Every person to be entitled to vote at the primary must designate his political party to the Registry Agent. A person who has registered, but has not designated his political party at the time of registration, may do so, and have the same entered by the Registry Agent at any time

prior to ten days immediately preceding the primary election, which is the date of the close of primary registration.

Independent candidates may be nominated by petition of 10 per cent of the entire vote cast at the last preceding general election in the State, district, or political division for which the nomination is made. Such certificates, however, shall contain at least the signatures of five electors. Certificates of nomination of independent candidates must be filed on or before the first Tuesday in September.

Certificates of independent candidates for office to be voted for by the electors of the entire State or by districts composed of two or more counties shall be filed with the Secretary of State; all others shall be filed with the County Clerk of the county wherein the officers are to be voted for.

Yours very truly,
GEO. B. THATCHER, *Attorney-General.*

76. Elections—Registration—Primary elections—Nomination by Petition of Electors.

It is absolutely necessary for all persons expecting to vote at the primary elections to appear before their respective Registry Agents and have their names registered.

All previous registrations, except those made this year for special elections in accordance with the latter portion of sec. 15, p. 468, Stats. 1915, have been wiped out.

The law requires the personal appearance before the Registry Agent of every elector seeking registration except those special instances provided for by sec. 16, p. 468, Stats. 1915.

Certificates of nomination by petition of electors must be filed on or before the first Tuesday in September as provided on p. 461, Stats. 1915.

The fact that a person has voted at the primary election for delegates to the state and county convention does not preclude him from signing an independent nomination, unless he was a delegate to the state or county convention.

CARSON CITY, July 10, 1916.

HON. B.L. HOOD, *Registry Agent, Lovelock, Nevada.*

DEAR SIR: In answer to your favor of the 7th instant, let me say that it is absolutely necessary for all persons expecting to vote at the primary election to appear before their respective Registry Agents and have their names registered.

In the opinion of this office, all previous registrations, except those made this year for special elections in accordance with the latter portion of section 5, page 468 of the Statutes of 1915, have been absolutely wiped out. On the 1st of July there were no registrations whatever except those mentioned on page 468.

The law requires the personal appearance before the Registry Agent of every elector seeking registration except in those special instances provided for by section 16, page 468, Statutes of 1915.

In answer to your second question, let me say that, in the opinion of this office, certificates of nomination by petition of electors must be filed on or before the first Tuesday in September preceding the election as provided on page 461 of the Statutes of 1915.

The fact that a person has voted at the primary election for delegates to the state and county convention does not preclude him from signing an independent nomination, unless he was a delegate to the state or county convention, as the provisions contained on said page “no person shall sign such certificate of petition if he has voted in any convention, either in person or by proxy” applies to delegates to the conventions only.

Trusting this will give you the information desired, I am

Yours very truly,

EDW. T. PATRICK, *Deputy Attorney-General.*

77. Public Schools—University of Nevada—Educational Survey Commission

The expenses for transportation and living of an expert of the United States Bureau of Education while engaged in an educational survey of the University may lawfully be paid by the Educational Survey Commission out of the appropriation made in the Act creating said commission (Stats. 1915, p. 370).

CARSON CITY, July 10, 1916.

His Excellency, EMMET D. BOYLE, Governor of Nevada, Carson City, Nevada.

SIR: I am in receipt of your favor of the 8th instant, setting forth a resolution recently adopted by the Educational Survey Commission, the resolution portion of which provides “that a committee * * * be hereby authorized and directed to proceed forthwith to arrange for securing the assistance of the United States Bureau of Education in the survey of the State University in full accordance with the provisions of said Act.”

The Act in question is chapter 246 of the Statutes of 1915, entitled “An Act to provide for a State Educational Survey by an unpaid commission and other matters properly connected therewith.”

You state “a survey conducted by the commission with the aid of the U.S. bureau referred to will entail the payment of traveling and living expenses of the expert of the Bureau who may be sent out here,” and ask the opinion of this office as to the right of the commission to pay such expenses out of the appropriations made by the above-entitled Act.

This office has already decided that the Act in question contemplates a survey of each of the educational institutions of the State, including the University of Nevada.

Inasmuch as the proposed survey includes the University of Nevada, it is my opinion that the payment of expenses of expert of the U.S. Bureau of Education, designated above, may lawfully be paid by the commission out of the appropriation made in the Act creating it.

Yours very truly,

EDW. T. PATRICK, *Deputy Attorney-General.*

78. Public Schools—School Elections—School Trustees.

In school districts with fewer than one hundred voters, written ballots in the form prescribed by the statute are legal.

The fact that no register was returned to the Deputy Superintendent of Public Instruction with the returns of the election does not invalidate the election.

CARSON CITY, July 12, 1916.

HON. G.E. ANDERSON, *Deputy Superintendent, Las Vegas, Nevada.*

DEAR SIR: Your favor of the 7th instant, asking information on certain points connected with the school election law, received.

You state that in certain districts with fewer than one hundred voters the ballots were prepared by some one person who wrote them out in a certain form, and inquire: "Was the election legal where only such ballots as are described above were used, granting that everything else connected with the election was legal?"

You further inquire: "Does the fact that no register was returned to my office with the 'returns' from the election invalidate the election, granting that they used a precinct register and everything connected with the election otherwise than the return of the register to me is regular and legal?"

Section 3290, Rev. Laws, being section 52 of the School Law, provides:

The voting shall be by ballot, either written or printed, and when two or more Trustees are to be elected for different terms, the ballot shall designate such terms as "long term" and "short term" respectively.

This section expressly permits written ballots, and is only restricted by the terms of the following section: "*provided*, that in all school districts having a voting population of one hundred or over, the School Trustees shall have the ballots printed."

It is therefore not an objection to the legality of this election that written ballots were used, and I am of the opinion that the election was legal.

In answer to your second question, section 3298, Rev. Laws, prescribes the duty of the election board on completion of counts. In districts of the first class certain duties are prescribed, and in districts of the second class other duties are prescribed.

A classification of school districts is provided for in section 3315, Rev. Laws, throwing into the second class all those districts employing less than ten teachers, and, as you state that the districts in question contained fewer than one hundred voters, I presume they all belong to the second class.

The provision in section 3298 in regard to returns by election board is as follows: "In districts of the second class said poll list, tally list, tally sheet, registry list, and all ballots cast, upon the count being completed, shall be delivered to the County Superintendent of Public Instruction and kept on file in his office."

School elections, especially in districts of the second class, are intended to be more or less informal, and it would be wrong to subvert the intention of the voters as expressed by the ballots because of an error or omission of the election judges.

You state that in the case in question the election board used a precinct register, and everything connected with the election otherwise than the return of the register was regular and legal.

In view of the fact that it is within your power to compel the election board to return the register to you, it is the opinion of this office that notwithstanding the fact that the register was not delivered to you, the election in question was valid and legal. Yours very truly,

EDW. T. PATRICK, *Deputy Attorney-General.*

79 Public School—Union School Districts—Dissolution of Union School Districts.

The word "June" in sec. 3325, Rev. Laws, providing that union school districts "may

be dissolved in June of any year,” is directory only, and not mandatory.

CARSON CITY, July 13 1916.

HON. JOHN EDWARDS BRAY, *State Superintendent Public Instruction, Carson City, Nevada.*

DEAR SIR: I am in receipt of your oral request for a construction of section 86 of the school code, in relation to union school districts, reading as follows:

SEC. 86. The union school, or district, herein provided for may be dissolved in June of any year by mutual consent or action of the Boards of School Trustees in the districts interested, or by unanimous action of the school board of either district; *provided*, that no indebtedness incurred by the joint board exists; *and provided further*, that in case of dissolution by action of only one of the two districts as herein prescribed, at least thirty days' notice of intention to dissolve shall have been given to the joint board.

You inquire whether the word “June” in said section is directory or mandatory.

In 36 Cyc., p. 1157, I find the following:

A mandatory provision in a statute is one, the omission to follow which renders the proceeding to which it relates illegal and void, while a directory provision is one of the observance of which is not necessary to the validity of the proceeding. Whether a particular statute is mandatory or directory does not depend upon its form, but upon the intention of the Legislature, to be ascertained from a consideration of the entire Act, its nature, its object, and the consequences that would result from construing it one way or the other.

Also on page 1158 and page 1160 the following:

When a particular provision of a statute relates to some immaterial matter, as to which compliance with the statute is a matter of convenience rather than substance, or where the directions of a statute are given merely with a view to the proper, orderly, and prompt conduct of business, the provision may generally be regarded as directory.

A statute specifying a time within which a public officer is to perform an official act regarding the rights and duties of others is directory merely.

It is a well-known fact that all the public schools of the State are now closed and will not reopen until early in September, allowing ample time to give the thirty days' notice prescribed in said section and at the expiration of which time there is still an ample period for the segregated school districts to make provision for the ensuing school term.

From the considerations aforesaid, I am of the opinion that the word “June” in said section is director only and not mandatory, and, if immediate action is taken under said section, the dissolution of the union districts may be legally achieved.

Yours very truly,

EDW. T. PATRICK, *Deputy Attorney-General.*

80. Fish and Game—Governor—Mammals—Permits to Take for Scientific Purposes.

Sec. 16, Stats. 1915, p. 432, manifests the wilful intention of the Legislature to withhold from any person the right to grant permits or take animals for scientific purposes, and the Governor therefore has no authority to grant such permit.

CARSON CITY, July 13, 1916.

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

DEAR SIR: I am in receipt of your oral request for an opinion as to whether, as the fish and game law now stands, you may legally grant a permit for the taking of mammals of this State for scientific purposes.

Up to the last session of the Legislature this subject was covered by sec. 3095, Rev. Laws. The proviso of said section was as follows:

Provided, however, that nothing in this Act shall be so construed as to prohibit any resident person or persons, firm, company, corporation, or association from taking (upon a written permit from the State Board of Fish and Game Commissioners) any bird, animal, or fowl or the nest or eggs of any bird or fowl for the purpose of propagation or domestication, or for scientific purposes.

This section is section 11 of an Act entitled "an Act providing for the protection and preservation of game, and repealing all Acts and parts of Acts in conflict therewith," approved March 24, 1909.

The Legislature at its Twenty-Seventh Session, however, passed an Act, approved March 26, 1915, under almost a similar title and containing many of the provisions of the last-mentioned Act.

It may therefore be assumed that the Act of 1909 has been repealed by the Act of 1915.

Said Act is chapter 277 of the Statutes of 1915, appearing on page 432 and following.

Section 16 of said Act contains the following: "Nothing in this Act shall be so construed as to prohibit any person (upon a written permit of the Governor of the State) from taking or collecting any bird or fowl or collecting the nest and eggs of the same, for strictly scientific purposes."

It will be observed that the right to grant such permit has been transferred from the State Board of Fish and Game Commissioners to the Governor of the State, and that the word "animal," contained in the proviso of section 11 of the 1909 Act, has been expressly omitted.

In my opinion this manifests the wilful intention of the Legislature to withhold from any person the right to grant permits to take animals for scientific purposes.

It is therefore the opinion of this office that you have no authority to grant the desired permit.

Yours very truly,

EDW. T. PATRICK, *Deputy Attorney-General.*

81. Corporations—Articles of Incorporation—Preferred Stock.

Under the provisions of sec. 10 of the General Corporation Act of this State, preferred stock may be so issued that after drawing its preferred dividend it will participate with the common stock in the earnings of the company, if the articles of incorporation so provide.

CARSON CITY, July 13, 1916.

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

DEAR SIR: Some time since you referred to this office for an opinion a letter of Hon. Albert D. Ayres on a question "whether or not, under section 10 of the Nevada Corporation Act, preferred stock can be so made that, after drawing its preferred dividend, it will participate with the common stock in the earnings of the company."

After careful examination of the authorities cited in the letter of Mr. Ayres, and other authorities, I am of the opinion that if the articles of incorporation so provide, preferred stock can be legally so issued.

A carbon copy of this opinion is herewith enclosed for your correspondent.

Yours very truly,
EDW. T. PATRICK, *Deputy Attorney-General.*

82. Aliens—Naturalization—Registration.

A woman of foreign birth who acquires American citizenship by marriage to a citizen is assumed to retain the same after the termination of the marital relation if she continued to reside in the United States, unless she makes formal renunciation thereof before a court having jurisdiction to naturalize aliens.

CARSON CITY, July 14, 1916.

MRS. H.W. BONHAM, *Silver City, Nevada.*

DEAR MADAM: Further answering your favor of the 6th instant, in reference to the registration of a woman of foreign birth, who is the widow of a naturalized citizen, let me say that I am today in receipt of a letter from the examiner in charge of the U.S. Department of Labor Naturalization Service, as follows:

Your inquiry of the 8th instant, relating to the citizenship status of a widow of foreign birth whose husband is deceased, appears to be answered by section 4 of the Act of March, 2, 1907, which provides: "That any foreign woman who acquires American citizenship by marriage to an American shall be assumed to retain the same after the termination of the marital relation if she continues to reside in the United States, unless she makes formal renunciation thereof before a court having jurisdiction to naturalize aliens, or if she resides abroad she may retain her citizenship by registering as such before a United States consul within one year after the termination of such marital relation."

From the above it would appear that the lady in question, unless she has made formal renunciation of her United States citizenship, is entitled to be registered.

Yours very truly,
EDW. T. PATRICK, *Deputy Attorney-General.*

83. Elections—Aliens—Registration—Women.

A woman, a native-born citizen of the United States, loses her American citizenship upon marriage to an alien.

CARSON CITY, July 24, 1916.

HON. HARLEY A. HARMON, *County Clerk, Las Vegas, Nevada.*

DEAR SIR: In answer to your favor of the 19th instant, asking the status of a married woman whose husband is not a citizen of the United States, she being a native-born citizen of this country, let me say that in my opinion she has lost her United States citizenship by marriage, as the law presumes she takes the nationality of her husband.

Yours very truly,
EDW. T. PATRICK, *Deputy Attorney-General.*

84. Elections—Primary Elections—Computation of Time—Delegates to Conventions.

Where time is given until a day named, or an act must be performed by or before a certain day, the time does not, in the absence of a contrary intention, include the designated day, and the act must be done prior thereto.

A certificate of nomination as delegate to a party convention filed under section 5 of the Primary Act (Stats. 1915, p. 453), by July 29, will fully comply with the law.

A person cannot run for delegate to both state and county conventions.

CARSON CITY, July 25, 1916.

HON. J.E. CAMPBELL, *District Attorney, Yerington, Nevada.*

DEAR SIR: I am in receipt of your favor of the 20th instant, asking two questions concerning the primary law:

- (1) What is absolutely the last day to file certificates of nominations as delegates to the party conventions: Is it July 28 or July 29? The inquirer is not contented with the advice that to make it safe he should file on July 28. He wants to file on the last day and thinks that is July 29.
- (2) Can the same elector run as candidate for delegate to both the state and county conventions, and if elected to both positions legally qualify and sit in both? This would give the state delegate two votes in the county convention.

Section 1 of the primary law fixes the election for the second Tuesday in August of each even-numbered year, which would make the election this year fall on August 8.

Section 5 of said Act requires that the elector, desirous of becoming a delegate to the party convention, "not earlier than thirty days or later than ten days before such primary election," file his verified certificate with the County Clerk.

The question then is when said ten-day period elapses. In 38 Cyc., p. 319, I find the following:

Where time is given until a day named, or an act must be performed by or before a certain day, the time does not, in the absence of a contrary intention, include the designated day, and the act must be done prior thereto.

Applying this rule, you must exclude August 8 altogether, but in estimating the ten-day period August 7 may be included. Figuring from July 29 as the last day of filing, this would allow three days in July and seven days in August to complete the full ten-day period.

As the law does not recognize fractions of a day, I am of the opinion that any certificate filed on July 29 will fully comply with the law.

Answering your second question, let me say that section 5 in enumerating what shall appear in the verified certificate to be filed with the County Clerk provides: "the convention, *whether state or county*, before which he aspired to be a delegate."

The language italicized certainly gives the elector the choice as to which convention he wishes to be a delegate, but the word "whether" limits him to choice of one, and the opinion of this office therefore is that such elector cannot run as a candidate for delegate to both the state and county conventions.

Yours very truly,

EDW. T. PATRICK, *Deputy Attorney-General.*

85. Revenue—Taxation—Jitney Dance—Dances.

A hall where a jitney dance is conducted is an “amusement hall” within the meaning of section 1 (Stats. 1915, p. 236), and is subject to the license therein provided.

Any person coming with the provisions of said above-mentioned license Act failing to take out the proper license is guilty of a misdemeanor and his crime is punishable as such.

CARSON CITY, July 25, 1916.

HON. E.F. LUNSFORD, *District Attorney Washoe County, Reno, Nevada.*

DEAR SIR: Answering your favor, asking the opinion of this office as to whether a so-called jitney dance is subject to the license exacted by the second subdivision of section 1, page 236, Statutes of 1915, being “an Act to provide revenue for the support of the government of the State of Nevada,” etc., let me say:

It appears from your letter that any person may visit the jitney dance nightly and pay 5 cents per dance for the privilege of dancing, the manager supplying the music, lights, and hall.

Said second subdivision provides as follows

For each theater, opera house, or amusement hall, during all of the time the same is being conducted for business, \$5 per day if granted for a term less than one month; if granted for one month, \$20 for the said month; if granted for one quarter-year, the sum of \$40 for said quarter-year; if granted for one year, the sum of \$75 for said year.

The question then is whether the so-called jitney dance, not being a theater or opera house, is “an amusement hall” and therefore subject to license.

The New International Dictionary of the English Language defines the word “amusement” as “state of being amused; pleasurable diversion; also, that which amuses; entertainment; distraction; and gives as synonyms therefore “diversion, entertainment, recreation, relaxation; avocation; pastime; sport.”

The same dictionary gives the definition of the word “hall” as follows: “The assembly room of a hall; hence, any large apartment devoted to purposes of assembly or entertainment; as, a convention hall, music hall; a dance hall.”

These dances are open to the public and are conducted in a dance hall for the purpose of sport, relaxation, or recreation, and it would appear therefore that they are “amusement halls” within the meaning of the section in question.

You call my attention to a citation from 38 Cyc., page 254, that “the word ‘amusement’ is synonymous with diversion, entertainment, relaxation, recreation, pastime; and places of amusement include not only theaters, music halls, and the like, but dance halls.”

In view of this judicial interpretation of the word “amusement,” and the fact that the hall is open to the public upon the payment of a small fee and is run presumably for the purpose of profit, it is difficult to escape the conclusion that these jitney dances constitute “an amusement hall” within the meaning of the statute.

It is therefore the opinion of this office that the jitney dance is subject to the license provided in the above-quoted section.

You called my attention to the fact that there is no penalty of the violating of this section of the license Act.

Section 6266 classifies crimes as follows:

A crime is an act or omission forbidden by law and punishable upon conviction by * * * fine or other penal discipline. Every crime punishable by a

fine of not more than \$500, or by imprisonment in the county jail for not more than six months, is a misdemeanor.

Section 36 of the Act in question provides:

Any person who shall violate any other provision of this Act within the degree of a misdemeanor shall, upon conviction thereof, be punished by a fine of not less than \$10 nor more than \$300, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

It would appear therefore that any person coming within the provisions of the license Act, who fails to take out the proper license, is guilty of misdemeanor and his crime is punishable as such.

Yours very truly,

EDW. T. PATRICK, *Deputy Attorney-General.*

86. Elections—Primary Elections.

Under the provision of section 11 of the Primary Election Act (Stats. 1915, p. 456), if one or more of the election board appear on the morning of the primary election to act, those of the board present are entitled to appoint persons to fill the vacancy, having regard, however, for the provisions of section 46 of the General Election Law (Stats. 1915, p. 480), so that all the election board shall not be of the same political party; and in the event only of none of said election board appearing to conduct the election, then the provision of section 11 of the primary law authorizing the Registry Agents to open the polls, deliver and receive the ballots, and count and canvass and return the same, applies.

CARSON CITY, August 4, 1916.

HON. H.F. EBERT, *Registry Agent, Palisade, Nevada.*

DEAR SIR: I am in receipt of your favor of the 3d instant, asking for course of action at the coming primary election, in case only one or two inspectors or clerks appear or act on the election board.

Section 27 of the Primary Law (Stats. 1915, p. 460) provides:

The general election laws, in so far as they are applicable and not in conflict with the provisions of this Act, shall apply to primary elections.

Section 48 of the General Election Law (Stats. 1915, p. 481) provides:

If, through any accident, sickness, or inability on the day of election, of such inspectors, or any one thereof, to serve, the inspector or inspectors present on the morning of election may appoint some suitable person to fill the vacancy.

Section 11 of the Primary Election Law (Stats. 1915, p. 456) provide:

If the officers appointed by the county central committee refuse to act, the Registry Agent shall open the polls, deliver and receive the ballots, and count and canvass and return the same.

Section 46 of the General Election Law (Stats. 1915, p. 480) provides:

It shall be the duty of said Boards of County commissioners * -*- * to appoint three capable and discreet persons, possessing the qualifications of electors (who shall not be of the same political party), to act as inspectors of election at each election precinct.

In answer to your interrogatories, from the foregoing statutes I am of the opinion that, if one or more of the election board appear on the morning of election to act, those present are entitled

to appoint persons to fill the vacancy, having regard, however, to the provision of section 46 above quoted, so that all the election board shall not be of the same political party; and, in the event only of none of said election board appearing on election morning to conduct the election, then the provision of section 1 of the Primary Law above quoted will apply and you are authorized to conduct the election.

Yours very truly,
EDW. T. PATRICK, *Deputy Attorney-General.*

**87. Elections—General Elections—Nominations—Independent Candidates—
Nomination by Petition of Electors—Delegates.**

A delegate to a county or state convention cannot sign the petition of an independent candidate.

One who has signified his intention of coming before a county convention for nomination cannot sign the petition of an independent candidate.

A delegate to a county convention can come before such convention for nomination to office.

CARSON CITY, August 11, 1916.

MR. N.E. BARTOO, *Registry Agent, Battle Mountain, Nevada.*

DEAR SIR: I am in receipt of your favor of the 9th instant, asking the following questions in regard to the election laws of this State:

First—Can a delegate to a county or state convention sign the petition of an independent candidate without jeopardizing such petition?

Second—Can one who has signified his intention of coming before a county convention for a nomination sign the petition of an independent candidate without jeopardizing the petition of such independent candidate or the party signing it?

Third—Can a delegate to a county convention come before such convention for nomination to office?

There are two provisions in regard to the nomination of candidates by petition of electors.

The first is found on page 461 of the Statutes of 1915, and reads as follows:

No certificate of nomination shall contain the name of more than one candidate for each office to be filled, and no person shall sign such certificate or petition who has voted in any convention, either in person or by proxy, for or against any candidate for office.

The second is contained in section 42 of the General Election Law, page 479, of the Statutes of 1915, and reads as follows:

No certificate of nomination shall contain the name of more than one candidate for each office to be filled. No person shall join in nominating under the provisions of section 40 of this Act, more than one nominee for each office to be filled, and no person who has voted in a convention, either in person or by proxy, for or against any candidate for office, signing an independent petition.

Both these sections contain the prohibition against a person who has voted in any convention, either in person or by proxy, for or against any candidate for office, signing an independent petition.

The county convention provided for in the Primary Law (Stats. 1915, p. 453) is a convention organized for the purpose of nominating party candidates for the respective county offices, and it

would therefore be contrary to the spirit and intent of such law for a delegate to said convention to sign the petition of an independent candidate, and, in the opinion of this office, the answer to your first question would be "No."

For the same reasons, the answer to your second question would be "No."

In answer to the third question, let me say that I am of opinion that a delegate to a county convention may come before such convention for a party nomination to office.

Yours very truly,
EDW. T. PATRICK, *Deputy Attorney-General.*

88. Public Schools—Pupils—County High Schools.

To make a pupil eligible for admission to a county high school he must hold a diploma from the eighth grade of the elementary schools, or, under the direction and authority of the State Board of Education, pass the examinations for admission required by sec. 3421, Rev. Laws.

CARSON CITY, August 15, 1916.

MR. R.L. WAGGONER, *Principal of High School, Yerington, Nevada.*

DEAR SIR: Mr. E.E. Hull called on me this morning and stated that you desired advice of this office on the following question:

Can a high-school principal admit to his school a pupil not possessing a certificate of graduation from the eighth grade?

This subject is governed by section 181 of the school code, being section 3421, Revised Laws. Said section provides as follows:

All county high school shall be open for the admission of graduates holding diplomas from the eighth grade of the elementary schools of the State; *provided*, that the examinations for the said diplomas shall have been given under the direction and authority of the State Board of Education; and to such other pupils as shall pass the examination shall be conducted under the direction and authority of the State Board of Education.

It is apparent from a reading of said section that the pupils eligible for admission to county high school must hold diplomas from the eighth grade of the elementary schools of the State, or, under the direction and authority of the Board of Education, pass an examination for admission to the county high school.

Under circumstances, the opinion of this office is that you cannot admit to your school a pupil not possessing a diploma from the eighth grade of some elementary school of this State unless, under the direction of the State Board of Education, an examination is held and such pupil successfully passes such examination.

Yours very truly,
EDW. T. PATRICK, *Deputy Attorney-General.*

89. Elections—Primary Elections—Delegates to Convention—Tie Vote.

Under the provisions of section 20 of the Primary Election Act (Stats. 1915, p. 459) all tie votes should be decided by the county central committee after reasonable notice. The party against whom such committee decides may contest before the state convention.

The decision of the county central committee is not absolutely necessary. A delegate seated in the state convention is entitled to a seat and to act in the county conventions as a delegate thereto.

CARSON CITY, August 15, 1916.

HON. WM. McKNIGHT, *Secretary Democratic State Central Committee, Carson City, Nevada*

DEAR SIR: In your favor of this date, you state that in one of the counties of this State a tie exists between two delegates to the state convention, and you inquire how such tie should be decided and whether the delegate seated in the state convention is also a delegate to the county convention.

Section 3 of the Primary Election Act (Stats. 1915, p. 453) sets forth the apportionment of delegates to state and county conventions and contains the proviso:

That delegates to the party state conventions shall also be delegates to the party county conventions.

Section 20 of said Act (p. 459) provides:

If the vote for two or more delegates be a tie and it be necessary to determine such tie in order to entitle one or more of such delegates to a seat in the convention, such tie shall be determined by the county central committee after reasonable notice of a time and place for such determination given to all persons having such tie vote; *provided*, that such persons receiving a tie vote may contest before the convention, and shall be entitled to a seat in the convention in the absence of the person entitled to the seat by the decision of the committee.

Section 23 of said Act (p. 459) provides that the said state convention shall be held on the first Tuesday of September.

Section 21, same page, provides that the county convention meets two weeks before the county convention.

It is a law of all parliamentary bodies that they are the sole judges of the election and qualification of their members, and any action taken by such bodies is final and binding.

The statute points out a way for the determination of tie votes, viz:

Such tie shall be determined by the county central committee after reasonable notice of a time and place for such determination given to all persons having such tie vote; *provided*, that such persons receiving a tie vote may contest before the convention.

I am, therefore, of the opinion that all ties should be decided by the county central committee after reasonable notice to the parties concerned; that the party against whom the county central committee decides may contest said decision before the state convention; that the decision of the county central committee is not absolutely necessary, in that the state convention is the sole judge of the election and qualification of its members and that the delegate seated in the state convention is entitled to a seat and to act in the county convention as a delegate thereto, under the express provisions of section 3 of the Primary Act.

Yours very truly,

EDW. T. PATRICK, *Deputy Attorney-General.*

90. Corporation—Licenses—Saloon License—Transfer of Saloon License.

Where one person has purchased all the capital stock of a corporation engaged in the

saloon business, and does not intend to dissolve the corporation but continue to carry on the business in the corporate name, no transfer of either the state or county liquor license is necessary.

CARSON CITY, August 17, 1916.

HON. J.C. HARRIS, *Sheriff, Elko, Nevada.*

DEAR SIR: I am in receipt of your favor of the 15th instant, concerning liquor licenses.

It seems that a corporation, under the name and style of Elko Liquor Company, has been conducting a saloon in Elko; that all licenses therefor are issued in the name of said corporation; that some person has purchased all the capital stock of the corporation; that he does not intend to dissolve the corporation, but carry on the business in the corporate name.

You desire an opinion from this office as to whether or not the business can be legally carried on with the licenses that have been issued in the corporate name, or whether it will be necessary for the corporation to take out new licenses, as the statute says "state liquor licenses shall not be transferable"

It is the opinion of this office that the corporation may lawfully conduct business under the licenses heretofore issued to it, for the reason that the licenses are issued to the individual (the corporation) to whom they were originally issued, and therefore there will be no transfer necessary of either the state or county liquor license.

Yours very truly,

EDW. T. PATRICK, *Deputy Attorney-General.*

91. Elections—General Elections —Nomination by Petition of Electors—Independent Candidates.

A woman 21 years of age or over, possessing the qualifications of an elector, may legally sign the petition of an independent candidate.

An elector may sign as many nominating petitions as he pleases, providing they are for different offices.

CARSON CITY, August 18, 1916.

MR. GEORGE L. KAEDING, *Battle Mountain, Nevada.*

DEAR SIR: I am in receipt of your favor of the 18th instant, asking two questions in regard to the nomination of candidates by petition of electors. These are:

First—Can women 21 years of age or over legally sign the petition of an independent candidate this year?

Second—Can an elector who has declared his intention of running independent, legally sign the petition of another independent?

At the bottom of page 460, Statutes of 1915, the following provision on the question may be found:

A certificate of nomination shall be signed by electors within the State, district, or political subdivision for which the candidates are to be presented, equal in number to at least ten percent of the entire vote cast at the last preceding general election in the State, district, or political subdivision for which the

nomination is made; *provided*, that such certificate shall contain the signatures of at least five electors.

The same provision may also be found in section 40, page 478, of the same laws.

An elector is a person possessing all the qualifications prescribed by the Constitution to entitle one to vote; that is, he or she must be native-born or naturalized; must have resided six months in the State and thirty days in the county.

Present registration is not absolutely necessary if the person possesses the qualifications above stated.

In answer to your first question, I would therefore state that it is the opinion of this office that a woman, 21 years of age or over, possessing the qualifications of an elector may legally sign the petition of an independent candidate.

This is true, although the enfranchisement of women has almost doubled the voting strength of this State.

There is not prohibition against an elector signing as many nominating petitions as he pleases, provided they are for different offices. If an elector has declared his intention of running for Sheriff, for instance, he may legally sign the petition of another independent who is running for the office of Justice of the Peace.

Trusting this will answer your inquiries, I am

Yours very truly,

EDW. T. PATRICK, *Deputy Attorney-General.*

92. Elections—Registration—Registry Agent—Fees.

A Registry Agent is entitled to 25 cents per name for all original registrations, which fee includes copying and preparation of the poll books and check lists.

In addition to the above, he is entitled to a reasonable compensation for making the supplemental register, required in section 12 of the Primary Act (Stats. 1915, p. 456).

CARSON CITY, August 22, 1916.

HON. N.P. MORGAN, *District Attorney, Eureka, Nevada.*

DEAR SIR: In answer to your favor of the 20th instant, let me say that it is the opinion of this office that the Registry Agent is entitled to 25 cents per name for all original registrations, which includes the copying and preparation of the poll books for use at the polls, and for check lists.

In addition to the above he is entitled to a reasonable compensation, to be fixed by the County Commissioners, for making up a supplemental register, required in section 12 (Stats. 1915, p. 456).

Yours very truly,

EDW. T. PATRICK, *Deputy Attorney-General.*

93. Public Schools—County High Schools—Admission of Pupils.

Under the provision of sec. 3421, Rev. Laws, the State Board of Education may lawfully provide that in case of failure in one or more studies, the pupil may be conditionally promoted to the high school within the discretion of the Deputy Superintendent.

CARSON CITY, August 31, 1916.

MR. R.L. WAGGONER, *Principal Lyon County High School, Yerington, Nevada.*

DEAR SIR: Your favor of the 21st instant, in reference to the admission of students to your school, received.

The regulations of the State Board of Education do provide that, in case of failure in one or more studies, the pupil may be conditionally promoted to the high school within the discretion of the Deputy Superintendent. you inquire whether the State Board has the power to make such a regulation.

Section 3421, Rev. Laws, being section 181 of the School Code, points out who are pupils eligible to county high schools. This section provides that the examinations for promotion to said schools shall be given under the direction and authority of the State Board of Education.

It does not, however, specify any certain credit, and, as the examinations are under the full control of the State Board, it appears to me that said board has the right to promulgate the regulation in question.

It is, therefore, the opinion of this office that on receipt of a conditional promotion of any pupil by your Deputy Superintendent, you are required to receive him or her into your school.

Yours very truly,

EDW. T. PATRICK, *Deputy Attorney-General.*

94. Court Stenographer—Criminal Practice.

Under the provision of sec. 6977, Rev. Laws, relating to employment of a stenographer in preliminary examinations, where the words of a witness are taken direct upon the machine, the stenographer is entitled to not exceeding 20 cents per folio for transcribing, in addition to \$8 per day for reporting.

CARSON CITY, September 1, 1916.

HON. J.E. CAMPBELL, *District Attorney, Yerington, Nevada.*

DEAR SIR: I am in receipt of your favor of the 26th ultimo, asking information of this office on that portion of section 6977, rev. Laws, relating to employment of a stenographer in preliminary examinations, reading as follows:

The compensation for the services of a stenographer employed as provided in this section shall be such an amount as shall be approved by the magistrate and District Attorney, not exceeding eight dollars per day for reporting, and twenty cents per folio for transcribing, to be paid out of the county treasury as other claims against the county are allowed and paid.

The compensation provided therein is not exceeding \$8 per day for reporting and 20 cents per folio for transcribing.

Transcribing has been defined as "making a copy from the original words," and is certainly what the reporter does when he or she types the testimony directly on the machine. For this reason I am satisfied that the basis of compensation for the stenographer is 20 cents per folio for transcribing, in addition to the \$8 per day for reporting.

There is no way provided to remunerate the stenographer for expenses for board and lodging

when away from home on such preliminary.

Yours very truly,
EDW. T. PATRICK, *Deputy Attorney-General.*

95. Attorneys—Attorney's Fee—Civil actions—Justice of Peace.

The reasonable attorney's fee allowed the prevailing party by section 5814 as part of the costs is to be allowed to regularly admitted attorneys only.

CARSON CITY, September 6, 1916.

HON. J.W. DOUGLASS, *Rochester, Nevada.*

DEAR SIR: In answer to your favor of the 4th instant, let me say that, in my opinion, the attorneys' fee which a Justice of the Peace may allow the prevailing party in a civil action as part of the costs (Rev. Laws, 5814), is to be allowed a regularly admitted attorney only. I base this ruling on the fact that, under the common law, attorneys could not sue for fees. They were allowed an *honorarium* only, to be or not at the option of the client. The person representing the plaintiff in this case, not being admitted to practice law, could not sue for and recover a fee from his client, and for that reason, I am of the opinion that you cannot allow an attorney's fee in favor of the plaintiff in this case.

Yours very truly,
EDW. T. PATRICK, *Deputy Attorney-General.*

96. Elections—Primary Elections—Delegates to Conventions.

Under section 24, Primary Election Law (Stats. 1915, 460), a delegate to a state convention must be a resident of the county he represents, and a delegate to a county convention must be a resident of the precinct he represents.

CARSON CITY, September 13, 1915.

HON. JOHN R. MELROSE, *Hawthorne, Nevada.*

DEAR SIR: I am in receipt of your favor of the 11th instant, asking interpretation of section 24 of the Primary Election Law relating to proxies:

Said section covers both state and county conventions, and contains the following proviso:

Provided further, that no person shall be entitled to act as a proxy in a convention unless he or she be a qualified elector and *bona fide* resident of the county *or* precinct he represents.

From the fact that this section refers to both state and county conventions I take it to mean that a delegate to a state convention must be a resident of the county he represents.

Under this interpretation, of course, a proxy to the county convention must be a qualified elector and *bona fide* resident of the precinct he represents.

Trusting this will give you the information desired, I am

Yours very truly,
EDW. T. PATRICK, *Deputy Attorney-General.*

97. Public Schools—Budget—Counties.

The law in relation to budgets does not apply to public school funds. A public school fund, therefore, may be considered a general fund out of which any and all necessary expenses may be paid.

CARSON CITY, September 15, 1916.

HON. JOHN E. BRAY, *State Superintendent Public Instruction, Carson City, Nevada.*

DEAR SIR: I am in receipt of yours of September 15, requesting a review of the opinion of Mr. E.T. Patrick Deputy Attorney-General, heretofore rendered, holding in effect that the general fund of the Lyon County High School may not be used for transportation purposes. I am of the opinion that this office was in error in that opinion.

Evidently, Mr. Patrick in reviewing the matter, thought that the yearly estimate of expenses required should be apportioned into various funds, as is done in county government. The law requires that in all county affairs the Board of County Commissioners shall prepare a budget of estimated expenses, segregating each in detail and apportioning the various amounts to each of the separate funds, such as salaries, indigent, general, etc. Such is not the case, however, with reference to either the general school law or the law governing county high schools. The law governing county high schools requires a yearly estimate of expenses, but makes no provision of dividing that into various funds, but the whole when collected goes into the "High School Fund." The high school fund, therefore, may be considered a general fund out of which any and all necessary expenses may be paid.

I am of the opinion, therefore, that the joint board of trustees or board of education may use the money from the county high school fund for transportation of pupils to and from the school.

Yours very truly,

GEO. B. THATCHER, *Attorney-General.*

98. Crimes and Punishments—Gambling—"Black-jack."

Under Chapter 284, Stats. 1915, p. 462, the playing of "black-jack" is illegal.

CARSON CITY, September 23, 1916.

HON. J.E. CAMPBELL, *District Attorney, Yerington, Nevada.*

DEAR SIR: I am in receipt of your letter of the 11th instant, asking whether certain facts constitute gambling.

Our antigambling statute is chapter 284, page 462, Statutes of 1915. This Act makes it unlawful for any person to deal, play, or carry on, open or conduct in any capacity whatsoever any game of * * * twenty-one, * * * or any banking or percentage game played with cards, dice or any device for money, property, checks, credit or any representative of value.

There can be no doubt that "black-jack," the game towards which your inquiry is directed, is nothing but the game of twenty-one with the deal alternating, and, therefore, it is one of the games prohibited by this statute.

You state: "It has been the practice for a player with considerable capital on the table to buy the deal when he could do so from some other player with little on the table elsewhere, to whom the deal had chanced to come during the progress of the game." There can be no doubt that in

this game there is a percentage in favor of the dealer, or else a player would not be willing to pay for the privilege of dealing. For this reason also this game is illegal and not sanctioned by the Act in question.

It is, therefore, the opinion of this office that parties playing the game of "black-jack" are violating our antigambling statute.

Yours very truly,
EDW. T. PATRICK, *Deputy Attorney-General.*

99. Elections—General Elections—Party Nominations.

A party nominee may withdraw as a candidate at any time. His resignation should be deposited with the chairman of the county central committee if a nominee for county office and with the chairman of the state central committee if a nominee for a state office.

CARSON CITY, October 6, 1916.

HON. ROBERT B. HUNTER, *County Clerk, Elko, Nevada.*

DEAR SIR: In answer to your favor of the 21st ultimo, and confirming further my telegram of this date, let me say as follows:

(1) There is no restriction upon a party nominee withdrawing as a candidate. The primary law required him to file a verified statement that if he received the nomination he would not withdraw, but this provision was dropped in the convention law. For this reason a candidate may withdraw at any time, and the law is silent as to the form which such withdrawal must take. I would suggest that the proper place for the deposit of his resignation would be with the chairman of the county central committee if a nominee for a county office, and with the chairman of the state central committee if a nominee for a state office.

(2) If the candidate intends to withdraw, he certainly should do so in time to prevent inconvenience in printing of ballots.

(3) The central committee can fill a vacancy at any time prior to election, but in case of a vacancy should do so promptly, so as not to delay the printing of the ballots.

(4) The printing of ballots should be delayed as long as possible, so as to provide for possible vacancies caused by either death or resignation.

Trusting this will give you the information desired, and regretting the delay in response, I am

Yours very truly,
EDW. T. PATRICK, *Deputy Attorney-General.*

100. Elections—General Elections—Party Candidates—Election Boards.

A Justice of the Peace is a nominee of the party, by which he was nominated at the convention, notwithstanding he has filed an independent petition; but, in view of the provisions of Section 82, Stats. 1915, p. 492, prohibiting political designation of candidates for judicial office, the question of party designation is not material.

As a matter of public policy a member of the election board, who is also a candidate for office, should not be permitted to serve on the election board.

CARSON CITY, October 9, 1916.

HON. J.E. CAMPBELL, *District Attorney, Yerington, Nevada.*

DEAR SIR: I am in receipt of your favor of the 7th instant, asking certain questions in regard to the election law of 1915.

You inquire first:

What is the status under the election laws of a man who has filed a petition as an independent candidate for the office of Justice of the Peace and who later has been nominated as a regular party candidate by a party convention?

In my opinion the Justice of the Peace in question is a nominee of the party by which he was nominated at the convention, notwithstanding his independent petition; but in view of the provision of section 82, page 492, Statutes of 1915: "that the political designation of each candidate, except in the case of candidates for judicial offices, shall be printed opposite his name," the question of designation is not material, because upon the ballot the name of the party in question will appear without any political designation whatever.

Second: You inquire whether a candidate, who before his nomination had been appointed a member of the election board, is eligible to serve on such board.

There seems to be no provision in our statute stating the qualification of members of election boards, but the entire spirit of our laws is repugnant to the idea that a person may be permitted to sit in his own behalf or cause. During the counting of the votes many questions concerning ballots may arise, a decision of which by the party in question may control the election.

For this reason I am of the opinion that such person, as a matter of public policy, should not be permitted to serve on the election board, and should be removed by the County Commissioners therefrom, if he persists in so doing.

Yours very truly,

EDW. T. PATRICK, *Deputy Attorney-General.*

101. Public Schools—Joint School Districts—County Commissioners.

The Board of County Commissioners has no authority to abolish a joint school district unless it comes within the provision of section 3336, Rev. Laws, namely, that it has fewer than three resident children in actual school attendance.

CARSON CITY, October 16, 1916.

HON. JOHN EDWARDS BRAY, *Superintendent of Public Instruction, Carson City, Nevada.*

DEAR SIR: I am in receipt of your favor of the 14th instant, asking the opinion of this office as to the legality of the action of the Board of County Commissioners of Washoe county abolishing a part of the Derby Joint School District, that part thereof lying in Washoe County.

It appears that this district at the time of such abolishment was then maintaining a school with five or more census children in attendance, and that said joint school has been running continuously for the last eight years.

Section 3320, Revised Laws, provides for the formation of joint school districts upon petition and action by which boards of County Commissioners within the territory to be included in the district may establish such districts.

Section 3336, Revised Laws, points out the only reason for the abolishment of a district, namely, that it has fewer than three resident children in actual school attendance.

Inasmuch as the district in question has been running continuously for the past eight years, I take it that it has during that time always had more than three resident children in actual school attendance.

It is, therefore, the opinion of this office that the action of the Board of County Commissioners in pretending to abolish so much of the joint Derby School district as lies in Washoe county was unauthorized and illegal, and not being sanctioned by law the action taken by such board is void, and that it is the duty of the County Auditor of Washoe County to place the funds apportioned to such district to its credit.

Yours very truly,

EDW. T. PATRICK, *Deputy Attorney-General.*

102. Public Lands—State Lands—State Land Contract—Revenue—Taxation—Delinquent Taxes.

When a contract for the purchase of state lands becomes forfeited all claims against the same by virtue of deeds, taxes, interest, and liens are wiped out, and a subsequent contract holder for such property takes free and clear from all taxes, and is not liable for delinquent taxes prior to date of state contract.

CARSON CITY, May 4, 1916.

HON. C.L. DEADY, *Surveyor-General, Carson City, Nevada.*

DEAR SIR: I am in receipt of your oral request for an opinion in the matter of taxes on a forty-acre tract of land described in Application No. 19406, State Land Contract No. 15248, in the name of Nellie W. Haller.

It appears that this land had previously been sold by state contract to persons other than Nellie W. Haller; that this contract became forfeited, and that the land reverted to the State; that the taxes upon the contract and the land were delinquent for the years 1911, 1912, 1913, and 1914.

I am of the opinion that when a contract for the purchase of state lands becomes forfeited to the State all claims against the same by virtue of deeds, taxes, interest, and liens are wiped out, and a subsequent applicant and contract holder takes free and clear from all taxes, etc., and that the contract in the name of Mrs. Haller or her successor in interest is not liable for delinquent taxes prior to the date of her contract.

I observe also that Mr. Clark, County Treasurer, refuses to clear up the title unless all of the taxes are paid for the years previous to 1915, when Mrs. Haller obtained her contract, although admitting that the taxes for those years are not a lien against the land. In this I think Mr. Clark is right. Mr. Clark, as County Treasurer, has no authority to do other than to follow the express provisions of the statutes, and under the statutes he can accept nothing less than the full payment of the taxes. However, the matter can be taken up by the Board of County Commissioners, and an order can be made by the board striking the taxes prior to 1915 off the rolls.

Yours very truly,

GEO. B. THATCHER, *Attorney-General.*

103. Elections—General Elections—Officers—Candidates—Ballots—Disposition of Ballots.

Where all of the officers specified in section 62 of the General Election Law as the proper custodian of ballots are disqualified, the custody of such ballots should be entrusted to the officer therein first designated, viz: the Clerk of the Board of County Commissioners.

The provisions of said section as to the custody of such returns are directory only.

CARSON CITY, November 1, 1916.

HON. E.F. LUNSFORD, *District Attorney, Reno, Nevada.*

DEAR SIR: This office is in receipt of your favor of the 26th of September, calling attention to section 62, chapter 285, p. 484, Stats. 1915, which specifies the disposition of ballots after canvass by the election board, and directs that the same shall be delivered to the Clerk of the Board of County Commissioners, in the first instance, and to certain other officers in case he is disqualified by being a candidate for office, which disqualification likewise applies to other officers named.

It appears, however, that in Washoe County all of the officers named in said list are candidates for office, and will be voted upon at the next general election. In view of this situation you inquire who is the proper official to receive the election returns.

In 15 Cyc., 377, it is stated:

The manner of forwarding or transmitting election returns is purely a matter of statutory regulation; but these statutes are directory merely unless a noncompliance with them is expressly declared to be fatal, and in the absence of fraud or any suspicion of fraud a mere irregularity in forwarding the returns will not warrant their rejection.

The authority of this work is sustained by the following cases: *Stockton v. Powell*, 15 L.R.A. 42; *Trafton v. Quinn*, 143 Cal. 469; *Ayrt v. Williams*, 70 Pac. 463; *Fowler v. State*, 68 Tex. 30; *Stafford v. Board*, 56 W. Va. 670.

In the case of *Fowler v. State*, *supra*, the following is taken from syllabus 4:

The object of every popular election for office is to ascertain the will of the people as to who shall serve them. The laws enacted to secure this object, in so far as they require the election to be by ballot, the day of the election, and the places within designated precincts where the election shall be held are mandatory. Other provisions prescribing the conduct of and return of an election are directory, and mere irregularities in their observance, which have not prevented the electors from exercising freely and fairly their right of suffrage, and from having their votes properly estimated for the candidates of their choice, must be treated as informalities which do not vitiate the election; provided, such irregularities are not of a character which the law declares shall vitiate an election.

There is nothing said in section 62, the noncompliance of which would vitiate an election. Said section prefers the Clerk of the Board of County Commissioners as the proper custodian, if he is not a candidate, and as all of the officers mentioned in said section are candidates for office, it is the opinion of this office that the provisions of said section as to custody of the returns are directory only, and, as all of the officers therein mentioned are disqualified, the custody of such returns should be entrusted to the other officer as therein designated, namely, the Clerk of the Board of County Commissioners.

Yours very truly,
GEO. B. THATCHER, *Attorney-General*.
By EDW. T. PATRICK, *Deputy*.

**104. State Controller—State General Insurance Fund—State Capitol—
Improvement State Capitol.**

The State Controller is authorized to pay out of the State General Insurance Fund bills for improvements on State Capitol, and such other bills for general state purposes as may be approved by him.

CARSON CITY, November 13, 1916.

HON. GEO. A. COLE, *State Controller, Carson City, Nevada*.

DEAR SIR: I am of the opinion that under section 9 of chapter 99 of the Statutes of Nevada, 1915, with your consent and approval, there may be paid out of the State General Insurance Fund bills for improvements upon the State Capitol and such other bills for the general state purposes as may be approved by you.

Yours very truly,
GEO. B. THATCHER, *Attorney-General*.

105. District Judges—Grand Jury.

Provisions of section 8, page 168, Statutes 1915, making it the duty of the District Judge to call a grand jury at least once a year, in view of the constitutional provision allowing crimes to be prosecuted by information, may be regarded as directory only.

Unless matters are brought to the attention of the District Judge requiring investigation, which only a grand jury can afford, it is within his discretion to dispense with the calling of a grand jury.

CARSON CITY, November 22, 1916.

HON. T.C. HART, *Fallon, Nevada*.

DEAR SIR: On the 20th instant, this office wired you, in answer to your favor of the 18th instant, that the calling of a grand jury was not mandatory. The same telegram promised a letter on the subject, the writing of which has been delayed until now.

You call my attention to section 8, page 68, Statutes of 1915, making it the duty of the District Judge to call a grand jury at least once a year, and from this it would seem that the Legislature had in mind the emphasizing of this provision by the reenactment of this section: but as a matter of fact the section was reenacted by the Legislature merely for the purpose of providing an easier method of summoning grand jurors-by registered mail.

This section is an amendment of the Act of 1873 (p. 176), and at the time of its enactment it was certainly mandatory on the Judge to provide a grand jury in each county at least once a year. Recently, however, the constitutional provision allowing crimes to be prosecuted by information rather than indictment has been adopted, and a statute has been passed requiring books of all county officers to be audited at least once a year. These Acts do away with the necessity of frequent grand juries, and the section in question has thereby become directory only and not

mandatory.

It is, therefore, the opinion of this office that unless matters are brought to your attention requiring investigation, which only a grand jury can afford, it is within your discretion to dispense with the calling of a grand jury, and thus save the county considerable expense.

Yours very truly,

EDW. T. PATRICK, *Deputy Attorney-General*.

106. Corporations—General Corporation Law—Amendments to Articles of Incorporation.

Amendments to articles of incorporation changing the place of business need be filed only with the County Clerk of the county to which its office is changed. If the corporation owns realty in other counties, the amendment must also be filed in that county.

CARSON CITY, December 2, 1916.

MR. C.H. McINTOSH, *Reno, Nevada*.

DEAR SIR: Your favor of November 14th has just been called to my attention.

I agree with you that section 40 of the corporation law is rather vague, but I call your attention to section 70 of the same Act, section 1171, Revised Laws, which seems to me to provide that amendments of articles of incorporation changing the place of business need only be filed with the County Clerk of such county to which its office is changed. Of course, if the corporation owns real property in some other county, such articles must likewise be filed in that county. I take it that your merger company owns property in Humboldt County, and, therefore, it would be necessary for you to file a certified copy of the articles in both places.

Yours very truly,

GEO. B. THATCHER, *Attorney-General*.

107. Corporation—General Corporation Law—Foreign Corporations—Amendments to Articles.

Under section 1348, Rev. Laws, foreign corporations doing business in this State are required to file copies of their articles with the Secretary of State and certified copy with the County Clerk of the county where the principal place of business is located.

Such provisions also apply to amendments of articles of foreign corporations.

CARSON CITY, December 2, 1916.

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

DEAR SIR: I am in receipt of your favor of November 8 requesting the opinion of this office as to the filing of amendments to articles of incorporation of foreign corporations.

Under an Act, approved March 20, 1907, Statutes of 1907, p. 90 (sec. 1348, Revised Laws, 1912), foreign corporations doing business in this State are required to file copies of their articles of incorporation with the Secretary of State and a certified copy thereof in the office of the County Clerk of the county where the principal place of business is located.

I am of the opinion that these provisions in like manner apply to amendments of articles of

incorporation of foreign corporations.

Yours very truly,
GEO. B. THATCHER, *Attorney-General*.

108. Corporations—Articles of Incorporation.

A mistake in the statement of the par value of shares of capital stock of a corporation is an error or omission such as provided by section 39 of the general corporation law (Rev. Laws, 1141). such error can be cured by filing an amendment with the Secretary of State in a certificate provided by said section. It is not necessary to have such amendment filed first with the Clerk, but the same may be filed directly with the Secretary of State.

CARSON CITY, December 7, 1916.

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

DEAR SIR: The company has tendered and offered for filing in your office a certified copy of articles of incorporation, which have been duly filed with the Clerk.

It appears that there is an error in the articles of incorporation in this: It appears from one section of the articles that the capital stock consists of \$10,000, divided into 100 shares of \$100 each. This, I take it, is an error or omission such as provided for by section 39 of the General Corporation Law, Revised Laws, sec. 1141. This error can be corrected by filing an amendment with the Secretary of State in a certificate form in the manner provided in said section. It will not be necessary to have an amendment filed first with the Clerk, but the same can be filed directly with the Secretary of State, and the fees paid to the Secretary of State. I am of the opinion that articles of incorporation having error omission of this character are entitled to be filed. There is nothing in the statute which directs the Secretary of State to refuse to file such articles. The only instance in which the statute directs the Secretary of State to refuse to issue his certificate is that provided in subdivision 2 of section 4 f the General Corporation Act, Revised Laws, sec. 1108, which does specifically provide that the name of the county and of the state and town where the principal office is located, giving street and number if practicable, and, if not, to so describe it that the same may be easily located. If this provision is not complied with, the Secretary of State is authorized is to refuse to issue his certificate. This seems to be the only instance in which the Secretary of State is authorized to refuse to file articles of incorporation. Having both of these sections in mind, I am satisfied you are justified in filing the articles above mentioned.

Yours very truly,
GEO. B. THATCHER, *Attorney-General*.

1. Elections—Presidential Elections—Presidential Electors—Time and Place of Meeting.

The Presidential Electors meet at the State Capitol on the second Monday in January of the year following the election for Presidential Electors.

No provision has been made for allowance to Electors of their expenses and mileage.

Sections 209 and 210 of the U.S. Compiled Stats. 1916, provide for the selection by the Electors of a messenger to deliver the ballot.

the mileage of such messenger is provided for in sec. 213, U.S. Compiled Stats. 1916.

The provisions of sections 2770-71, Rev. Laws, in regard to the time of meeting have

been amended to conform with the United States by law by the Statutes of 1917, 391-2.

CARSON CITY, December 12, 1916.

HON. ROBERT L. DOUGLAS, *Fallon, Nevada.*

HON. JOSEPH I. EARL, *Bunkerville, Nevada.*

HON. JAMES T. GOODWIN, *Lovelock, Nevada.*

GENTLEMEN: This office is in receipt of a number of inquiries with reference to time and place of meeting of the Presidential Electors, their duties and other matters in connection therewith.

Section 203, U.S. Comp. Stats., 1916, provides as follows:

The electors of each State shall meet and give their votes on the second Monday in January next following their appointment, at such place in each State as the Legislature of such State shall direct.

Section 2770 and 2771, Revised Laws of Nevada, 1912, provide that the Electors shall convene at the seat of government on the first Wednesday in December next after their election.

Section 71, Stats. 1915, p. 488, provides that the Justices of the Supreme Court of this State on the third Monday of December succeeding such elections, and canvass the vote cast for the Electors of President and Vice-President of the United States, and that the Governor shall grant a certificate of election to and commission the persons having the highest number of votes.

The Electors not being qualified until their certificates of election are issued by the Governor, it would be impossible for them to meet and vote as provided by secs. 2770 and 2771, Revised Laws of Nevada, 1912. However, the Supreme Court of the United States has held, in construing section 203, U.S. Comp. Stats., 1916, above quoted, as follows:

A state law which fixes the time at which the Presidential Electors of the State shall meet and vote, which is different from that prescribed by an Act of Congress, is invalid as to such provision. (*McPherson v. Blacker*, 146 U.S. 1.)

I am, therefore, of the opinion that the Presidential Electors should meet in Carson City, Nevada, on the second Monday in January next, to wit: January 8, 1917.

No provision seems to have been made by the statutes of this State for any allowance to the electors for their expenses and mileage from their resident to Carson City. It has heretofore been customary for the Electors to stand this expense themselves.

Secs. 209 and 210, U.S. Comp. Stats., 1916, provide that the Electors shall, by writing under their hands, or under the hands of a majority of them, appoint a person to take charge of and deliver to the President of the Senate, at the seat of government, forthwith after the second Monday in January, on which the Electors shall give their votes, one of the certificates of votes given by them.

Sec. 213, U.S. Comp. Stats., 1916, provides that the person appointed by the Electors to deliver the certificates of votes to the President of the Senate shall be allowed, *on the delivery of the list instructed to him*, twenty-five cents for every mile of the estimated distance, by the most usual road, *from the place of meeting of the Electors (Carson City) to the seat of government of the United States (Washington, D.C.)*

From these last-named provisions it will be seen that the person to carry the certificates of votes to Washington is appointed by the Electors themselves, and that such person is allowed, upon delivery of the certificate at Washington, twenty-five cents for every mile of the estimated distance, one way, between Carson city and Washington, D.C.

Yours very truly,

GEO. B. THATCHER, *Attorney-General*.

BY EDW. T. PATRICK, *Deputy*

109. Public Schools—Public School System.

The appointment of a supervisory officer by a County Board of Education would not be in conflict with section 32, article 4, of the constitution, and a county unit plan as recommended by the State Educational Survey Commission is constitutional.

CARSON CITY, December 19, 1916.

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

MY DEAR GOVERNOR: I am in receipt of yours of December 18, requesting opinion of this office as to whether or not the County Unit Plan of Organization and Administration of the Public School System of this State, tentatively recommended by the State Educational Survey Commission is constitutional.

The plan, as outlined in your letter is briefly as follows:

The election of a County Board of Education of a supervisory officer, who will perform the duties now delegated to the Deputy Superintendents of Public Instruction.

The only possible conflict would be with section 32 of article 4 of the State Constitution, which reads as follows:

The Legislature shall have power to increase, diminish, consolidate, or abolish the following county officers: County Clerks, County Records, Auditors, Sheriffs, District Attorneys, County Surveyors, Public Administrators, and Superintendents of Schools. The Legislature shall provide for their election by the people, and fix by law their duties and compensation. County Clerks shall be ex officio Clerks of the Courts of Record and the Boards of County Commissioners in and for their respective counties.

I am of the opinion that the appointment of a supervisory officer by a County Board of Education would not be in conflict with the foregoing provision of our Constitution, and that the plan outlined would be constitutional.

Yours very truly,

GEO. B. THATCHER, *Attorney-General*.

110. Appropriations—When Revert—Educational Survey Commission.

The appropriation in section 3, chapter 246 (Statutes 1915, p. 371), in favor of the Educational Survey Commission does not revert, because it appears that after the first of the year there is something remaining to be done by the Commission.

CARSON CITY, December 20, 1916.

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

DEAR SIR: I am in receipt of your favor of the 19th instant, asking:

Does the appropriation made in section 3, chapter 246, Statutes of Nevada, 1915 (for the support of the Educational Survey Commission), revert on January 1, 1917?

Section 2 of said Act provides for a report by the Commission at the next session of the Legislature of its conclusions, together with a plan of general constructive legislation for the schools proper to carry into effect such conclusions.

This would imply that the Commission must prepare its report after the 1st of January, under which it may incur expenses, and so long as there is anything remaining to be done by that Commission after the date stated, it is my opinion that this appropriation does not revert.

Yours very truly,

EDW. T. PATRICK, *Deputy Attorney-General.*

BIENNIAL REPORT

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

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

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

OPINIONS OF THE ATTORNEY-GENERAL

1. Elections—Presidential Elections—Presidential Electors—Time and Place of Meeting.

The Presidential Electors meet at the State Capitol on the second Monday in January of the year following the election for Presidential Electors.

No provision has been made for allowance to Electors of their expenses and mileage.

Sections 209 and 210 of the U. S. Compiled Stats. 1916, provide for the selection by the Electors of a messenger to deliver the ballot.

The mileage of such messenger is provided for in sec. 213, U. S. Compiled Stats. 1916.

The provisions of sections 2770-71, Rev. Laws, in regard to the time of meeting have been amended to conform with the United States law by the Statutes of 1917, 391-2.

CARSON CITY, December 12, 1916.

HON. ROBERT L. DOUGLAS, *Fallon, Nevada.*

HON. JOSEPH I. EARL, *Bunkerville, Nevada.*

HON. JAMES T. GOODWIN, *Lovelock, Nevada.*

GENTLEMEN: This office is in receipt of a number of inquiries with reference to time and place of meeting of the Presidential Electors, their duties and other matters in connection therewith.

Section 203, U. S. Comp. Stats., 1916, provides as follows:

The electors of each State shall meet and give their votes on the second Monday in January next following their appointment, at such place in each State as the Legislature of such State shall direct.

Sections 2770 and 2771, Revised Laws of Nevada, 1912, provide that the Electors shall convene at the seat of government on the first Wednesday in December next after their election.

Section 71, Stats. 1915, p. 488, provides that the Justices of the Supreme Court of this State shall meet at the office of the Secretary of State on the third Monday of December succeeding such election, and canvass the vote cast for the Electors of President and Vice-President of the United States, and that the Governor shall grant a certificate of election to and commission the persons having the highest number of votes.

The Electors not being qualified until their certificates of election are issued by the Governor, it would be impossible for them to meet and vote as provided by secs. 2770 and 2771, Revised Laws of Nevada, 1912. However, the Supreme Court of the United States has held, in construing section 203, U. S. Comp. Stats., 1916, above quoted, as follows:

A state law which fixes the time at which the Presidential Electors of the State shall meet and vote, which is different from that prescribed by an Act of Congress, is invalid as to such provision, (*McPherson v. Blacker*, 146 U. S. 1.)

I am, therefore, of the opinion that the Presidential Electors should meet in Carson City, Nevada, on the second Monday in January next, to wit: January 8, 1917.

No provision seems to have been made by the statutes of this State for any allowance to the Electors for their expenses and mileage from their residence to Carson City. It has heretofore been customary for the Electors to stand this expense themselves.

Secs. 209 and 210, U. S. Comp. Stats., 1916, provide that the Electors shall, by writing under their hands, or under the hands of a majority of them, appoint a person to take charge of and deliver to the President of the Senate, at the seat of government, forthwith after the second Monday in January, on which the Electors shall give their votes, one of the certificates of votes given by them.

Sec. 213, U. S. Comp. Stats., 1916, provides that the person appointed by the Electors to deliver the certificates of votes to the President of the Senate shall be allowed, *on the delivery of the list intrusted to him*, twenty-five cents for every mile of the estimated distance, by the most usual road, *from the place of meeting of the Electors* (Carson City) *to the seat of government of the United States* (Washington, D. C.).

From these last-named provisions it will be seen that the person to carry the certificates of votes to Washington is appointed by the Electors themselves, and that such person is allowed, upon delivery of the certificate at Washington, twenty-five cents for every mile of the estimated distance, one way, between Carson City and Washington, D. C.

Yours very truly,

GEO. B. THATCHER, *Attorney-General*.

By EDW. T. PATRICK, *Deputy*.