

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL - 1917

2. Officers—Vacancies—Failure to Qualify—Disqualification—Constitutional Law.

If a person elected to the office of Justice of the Peace fails to execute his bond and have the same approved by the County Commissioners on the date prescribed by the law, he does not *ipso facto* forfeit his office. It is the duty of the County Commissioners to declare the office forfeited for failure to file bond by resolution duly passed, and then the board may proceed to fill the vacancy thereby caused.

A star-route contractor cannot be considered as holding "office" within the provisions of art. 4, sec. 9 of the Nevada Constitution.

CARSON CITY, January 6, 1917.

HON. WM. W. ASTLE, *Metropolis, Nevada.*

DEAR SIR: In answer to your favor of the 6th instant, let me say that if the person elected to the office of Justice of the Peace fails to execute his bond and have the same approved by the County Commissioners on the date prescribed by law, he does not *ipso facto* forfeit his office. It is the duty of the County Commissioners to declare the office forfeited for failure to file bond by resolution duly passed, and then the County Commissioners may proceed to fill the vacancy thereby caused.

You further inquire whether a Justice who receives a salary can be a contractor on a star mail route. In answer to this question let me say that ar. 4, sec. 9, of the Constitution of Nevada provides: "No person holding any lucrative office under the Government of the United States or any other power shall be eligible to any civil office of profit under this State."

In my opinion, however, a star-route contractor cannot be considered as holding an "office" under the Government of the United States.

Yours very truly,

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

3. **Quarantine—State Quarantine Officer—Expense of Quarantine.**

Under the provision of sec. 8, chap. 280, Stats. 1913, p. 456, the actual expense of impounding stray dogs must be borne by their owners.

CARSON CITY, January 13, 1917.

HON. H.H. ATKINSON, *District Attorney, Tonopah, Nevada.*

DEAR SIR: Your recent favor addressed to Dr. W.B. Mack, State Quarantine Officer, concerning the quarantine existing by proclamation of the Governor over the dogs and cats of Tonopah, has been referred by Dr. Mack to the Governor and by him to this office for response. This quarantine is being enforced in Tonopah by a member of the Nevada State Police under the direction of the State Quarantine Officer.

The Act providing for a quarantine is found in chap. 280, p. 456, of the Statutes of 1913. Section 8 of said Act provides: "All costs of fumigation, disinfectant or treatment ordered to be performed by said State Quarantine Officer shall be borne by the owner of such commodity."

You inquire: "Would it be possible in your opinion to compel the owner to pay a reasonable expense of impounding under that provision?" In view of the fact that the treatment ordered by the State Quarantine Officer is that dogs and cats shall not be allowed to run at large upon the streets of Tonopah, and in order to enforce this is the Deputy Quarantine Officer must impound such stray dogs and cats as he may find, I am of the opinion that the actual expense thereof must be borne by their owner.

Yours very truly,

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

BY EDW. T. PATRICK, *Deputy*.

**4. Election–Recall Elections–Recall Petitions–Constitutional Law.**

Under Stats. 1913, p. 400, each recall petition should be complete in itself, having a heading and signature.

Each separate petition should be verified by one of the signers thereof.

Under the provisions of sec. 8 of art. 2 of the Constitution twenty-five per cent (25%) of the qualified electors of the State, county, or district electing the officer to be recalled must sign the petition for a recall.

The office of the Justice of the Supreme Court is selected because it is the only state office to which a candidate is elected every two years.

CARSON CITY, January 13, 1917.

HON. G.A. BALLARD, *District Attorney, Virginia City, Nevada*.

DEAR SIR: I am in receipt of your favor of the 12th instant, asking interpretation of certain sections of the recall law (Stats. 1913, chap. 528, p. 400).

It seems that two petitions have been filed with your County Clerk seeking recall of two School Trustees of the Virginia School District no. 2. It further appears that each petition consists of the collection of separate sheets or petitions with the headings removed; that parts containing the signatures being combined under one heading. It further appears that separate petitions which were not separately verified, but that the signatures on several petitions were combined into one and that one verified by the signer of only one of the parts. It seems to me that these petitions are not in proper form because, the headings being removed, there is nothing before the County Clerk by which he can in fact determine that the signatures presented to him were really attached to a petition seeking the recall of the two School Trustees in question.

Moreover, section 3 of said Act contemplates that each separate petition shall be verified by one of the signers thereof.

You also call my attention to the language of the recall amendment of the Constitution, being sec. 8 of art. 2 as the same is set forth in sec. 257, Rev. Laws. Such recall amendment provides: "Not less than twenty-five per cent (25%) of the qualified electors who vote in the \* \* \* district electing said officer at the preceding election for Justice of the Supreme Court shall file their petition in the manner herein provided demanding his recall by the people."

The purpose of this provision of the Constitution is to indicate how many signatures of electors of the district the petition must contain. Thus, if 200 such electors voted at the election

of 1916 for Justice of the Supreme Court, the petition must embrace the signatures of 50 of these. The office of Justice of the Supreme Court is selected because it is the only state office to which a candidate is elected every two years.

It is therefore the opinion of this office that on account of the informality of the petitions above noted the same should not be received and acted upon by your County Clerk.

Yours very truly,

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

BY EDW. T. PATRICK, *Deputy*.

**5. Conveyances–Water Rights–Conveyance of–State Engineer.**

A transfer of assignment of a water right without the acknowledgment required by sec. 1025, Rev. Laws, invalid and no such assignment should be recognized by the State Engineer.

The form of conveyance of a water right should be the same as those used for deeds of real estate.

CARSON CITY, January 13, 1917.

HON. W.M. KEARNEY, *State Engineer, Carson City, Nevada*.

DEAR SIR: I am in receipt of your favor of the 8th ultimo, asking opinion of this office as to form of conveyance of water rights. You state: "The question has come up as to whether or not an assignment of the water right without the acknowledgment is valid, and whether or not it is a proper transfer." There can be no doubt that a transfer of water right is a transfer of real property.

Section 1019, Rev. Laws, provides: "Every conveyance in writing whereby any real estate is conveyed or may be affected, shall be acknowledged or proved and certified in the manner hereinafter provided."

Section 1025, Rev. Laws, provides the form of acknowledgment.

From the foregoing I am of the opinion that a transfer or assignment of a water right without the acknowledgment provided by law is invalid and no such assignment should be recognized by your office. The form of conveyance of a water right should be the same as those used for deeds to real estate.

Yours very truly,

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

BY EDW. T. PATRICK, *Deputy*.

**6. Licenses–State Liquor License–Alcohol–Words and Phrases–"Alcohol" Defined.**

Alcohol is a spirituous liquor within the meaning of sec. 6, Stats., 1915, 238.

There is an implied reservation in all state liquor laws relating to saloon licenses that the liquors therein mentioned are potable.

"Denatured alcohol" is defined.

A state liquor license is not required from one selling denatured alcohol, but is required for the sale of pure alcohol.

If the pure alcohol is mingled with some substance which would make it unpalatable and unfit for use as a beverage, it also may be sold without the payment of a liquor license.

CARSON CITY, January 20, 1917.

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

DEAR SIR: I am in receipt of your favor of the 3d instant, asking opinion of this office upon question of the liability of a dealer in alcohol for the payment of state liquor license under sec. 3777, Rev. Laws. The law on this subject is governed by section six of an act to provide revenue for the support of the government of the State of Nevada, etc. (Stats. 1915, p. 238), which provides as follows:

SEC. 6. Every person, firm, company, or corporation manufacturing or selling, either at a retail or wholesale, any spirituous, malt, or vinous liquors, shall, in addition to other licenses provided by law, take out a state liquor license as hereinafter provided, which license shall not be transferable by sale, assignment, or otherwise.

It would appear therefrom that any company selling at retail or wholesale any spirituous liquor is required to take out a state liquor license.

It seems from further correspondence that the firm in question has discontinued its liquor license, but wishes to continue in the business of selling denatured alcohol and 188 per cent pure alcohol. It further appears that the denatured alcohol has mostly been sold to painters and for fuel purposes, and that the 188 per cent pure alcohol is sold to persons for sprains and other similar uses.

In order to form an opinion upon this subject it will be necessary to obtain definitions of certain terms.

In the case of *Pennell v. State*, 123 N. W. 116, alcohol is defined as follows:

Alcohol is a product of fermentation. Malting is a process preliminary to fermentation. Alcohol is separated, not produced, by distillation, and the liquor thus separated containing a percentage of alcohol is called spirituous liquor.

In the case of *Marks v. State*, 133 Am. St. Rep. 20, spirituous liquor is defined as "that which is in whole or in part composed of alcohol extracted by distillation. Whisky, brandy, and rum are examples. That these spirituous or intoxicating is known to courts and juries and proof thereof is not necessary."

On page 27 of the same case we find the following: "Whether pure alcohol comes within the phrases 'spirituous' or 'intoxicating' liquors is a question not well settled \* \* \* ; but the weight of the authorities seems to be to the effect that unless otherwise made by language or provisions of the statute, it will be included in the terms 'spirituous' and 'intoxicating' liquors."

In the case of *Cureton v. State*, 70 S.E. 332, it is stated: "Alcohol is judicially recognized as a spirituous and intoxicating liquor."

There can be no doubt therefore that alcohol is a "spirituous" liquor within the meaning of the statute above quoted.

There is an implied reservation in all our liquor laws relating to saloon licenses that the liquors therein mentioned shall be potable—in other words, that they shall be used as a beverage.

I have been unable to find any judicial definition of the term "denatured alcohol," but Webster's New international Dictionary defines the verb "denatured" as follows: "To deprive of natural qualities; to change the nature of; specif., to render unfit for eating or drinking, without impairing usefulness for other purposes, as alcohol or fat. Spirits are denatured by the addition of small amounts of some substance that will render the liquid unwholesome or unpalatable, as methyl alcohol or pyridine, and, being then available for industrial or domestic purposes only, are

freed from internal revenue tax."

It is the opinion of this office, therefore, that the company in question is not liable for the payment of a liquor license for the sale of denatured alcohol, but is liable for such license on the sale of pure alcohol. If, however, the pure alcohol is mingled with some substance that would make it unpalatable and unfit for use as a beverage it also may be sold without the payment of a liquor license.

Yours very truly,

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

BY EDW. T. PATRICK, *Deputy*.

**7. Public School–Kindergarten–Kindergarten Teachers.**

A kindergarten teacher cannot be considered a grade teacher as to affect the classification of the school in which she is employed.

CARSON CITY, January 22, 1917.

MR. J.E. WALL, *Principal, Las Vegas, Nevada*.

DEAR SIR: I am in receipt of your favor of the 8th instant, asking a certain question in regard to school law. You inquire whether in the classification of your school a kindergarten teacher may be counted as a regular grade teacher.

The classification of school districts is governed by section 76 of the school law (Rev. Laws, 3315), which provides: "All school districts in Nevada are hereby divided into two classes. District employing ten or more regular *grade* teachers shall be known as districts of the first class, and districts employing less than ten teachers shall be known as districts of the second class."

The kindergarten has never been considered as any grade in public schools. It is in a class by itself and is below the first grade, as pupils from the kindergarten are promoted to that grade.

The grades in public schools consist of twelve, being numbered from one to eight in the elementary schools, and from nine to twelve in the high school. For these reasons it is the opinion of this office that in classification of your school a kindergarten teacher cannot be counted as a regular grade teacher.

Yours very truly,

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

BY EDW. T. PATRICK, *Deputy*.

**8. Licenses–Liquor Licenses.**

Under the provisions of chap. 178, Stats. 1915, 236, dealers in spirituous, malt or vinous liquors must take out a county liquor license and a state liquor license in addition to a federal license.

The County Commissioners have absolute authority to grant or withhold the issuance of county liquor licenses and without such county liquor license no person can engage in the liquor business, even if he has had issued to him a state liquor license.

CARSON CITY, January 22, 1917.

HON. GEORGE A. WHITELEY, DISTRICT ATTORNEY, *Ely, Nevada*.

DEAR SIR: I am in receipt of your favor of the 17th instant, asking opinion of this office in relation to liquor licenses.

It seems that all liquor licenses at Ruth, an unincorporated town, were revoked sometime since by your County Commissioners, and such board refuses to grant any licenses in that town. It further appears that a certain person claims that by virtue of sec. 8, chap. 178, Stats. 1915, the Sheriff must issue a state liquor license upon request, and the payment of the fee provided, and that having obtained a state retail license he may dispose of liquors in the town of Ruth without taking out a county retail license as provided in section 3 of the same chapter, where the sales of liquors to be made are in quantities of a quart and less than five gallons.

It is the opinion of this office that the plan outlined would be contrary to law. Section 3 of said Act provides for a county liquor license. Section 6 requires "Every person manufacturing or selling either at retail or wholesale any spirituous, malt, or vinous liquors shall, *in addition to the other licenses provided by law*, take out a state liquor license."

It has for several years past been required that dealers in spirituous, malt, or vinous liquors take out a county license and a state liquor license in addition to the federal license. The county commissioners have absolute authority to grant or withhold the issuance of county liquor licenses, and without such county liquor license no person can engage in such business even if he has had issued to him a state liquor license.

Yours very truly,

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

BY EDW. T. PATRICK, *Deputy*.

**9. Licenses—Sheep Licenses.**

A sheep-owner who possesses no realty in Nevada but lives in a county different from that in which the license is collected comes now under the seventh subdivision of sec. 16, Stats. 1915, 241, if he owns less than one thousand sheep.

The exemption in said section applies to an answer and holder of land in the State who holds said land in fee simple, and that a squatter's title alone would not be sufficient to entitle him to the exemption.

CARSON CITY, January 24, 1917.

HON. G.J. KENNY, DISTRICT ATTORNEY, *Fallon, Nevada*.

DEAR SIR: I am in receipt of your favor of the 17th instant, asking construction of the sheep-license law. You call my attention to the two laws on this subject appearing respectively on pages 240 and 353 of the Statutes of 1915. The latter Act can have no bearing upon the subject as it is plainly unconstitutional. This Act purports to amend sections 3768-3774, Rev. Laws, which sections were expressly repealed by section 37 of the State revenue Act, chap. 178, Stats. 1915, p. 247. It was approved March 24, 1915, two days after approval of chapter 178 aforesaid. Said sections having been expressly repealed, chapter 232 can have no effect and is void. This is in accordance with opinion 21 contained in the biennial report of the Attorney-General for 1915-1916, a copy of which is herewith enclosed.

It appears that your Sheriff collected of a sheep man the per capita of 15 cents; that said person possesses no realty in Nevada, but lives in Washoe County. In my opinion he comes under the seventh subdivision of sec. 16, Stats. 1915, p. 241, which provides for a license of \$25

per annum if he owns less than one thousand sheep.

In answer to your second question, let me say that it has been decided by this office that the exemption is proviso to sec. 16, Stats. 1915, p. 241, applies only to an owner and holder of land in the State who holds such land in fee simple, and that a squatter's title alone would not be sufficient to entitle him to the exemption.

Yours very truly,

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

BY EDW. T. PATRICK, *Deputy*.

**10. Public Schools—School Trustees—Vacancy.**

The law is silent as to how long a Trustee must be out of the district before his office becomes vacant. If a Trustee leaves a district with no intention of returning, a vacancy occurs immediately.

If a Trustee leaves a district through the necessity of obtaining a living at some other place with no intention of losing his residence in the district, no vacancy would occur, provided the Trustee continues to perform his duties as such.

CARSON CITY, January 31, 1917.

MR. WM. DONOVAN, *Silver City, Nevada*.

DEAR SIR: In answer to the question: "How long must a School Trustee be out of the district before his office becomes vacant?" let me say that our statute is silent on this subject.

If, however, a Trustee leaves the district with no intention of returning a vacancy occurs immediately, but if a Trustee leaves a district through necessity of obtaining his living at some other place with no intention of losing his residence in the district, no vacancy would occur provided that the Trustee continues to perform his duties as such Trustee.

Yours very truly,

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

BY EDW. T. PATRICK, *Deputy*.

**11. Public Schools—School Trustees—Vacancy.**

A School Trustee who has left his district with the intention of returning thereto and manifests such intention by leaving his children within the district does not forfeit his position as Trustee.

CARSON CITY, February 6, 1917.

MR. A.K. POLLARD, *Clerk, Board of School Trustees, Silver City, Nevada*.

DEAR SIR: It appears that Mr. F.C. Bowen, a member of your school board, left Silver City to attend some business with the expectation of returning in March; that his wife is dead, but he has children which he placed in the care of relatives in Silver City on his departure.

It further appears that there is a vacancy in your school board caused by the resignation of one of its members, and that you have called an election fill such a vacancy.

You inquire under the circumstances above stated whether the election should be held for one or two members of your board. I am of the opinion that there is but one vacancy in the Board of

School trustees of your school district, namely, that caused by the resignation of one of your members.

The fact that Mr. Bowen is not now residing in Silver City does not cause a vacancy in his office, because it appears that he has the intention of returning to Silver to reside and has manifested such intention by leaving his children there.

In the preparation of the ballots for the coming election the ballots shall have the designation "Vote for One." Any ballots cast at such election containing the name of two persons for Trustee are void and should be disregarded in the counting of the same.

Yours very truly,

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

BY EDW. T. PATRICK, *Deputy.*

**12. Initiative Petitions—Constitutional Law—Legislature—Secretary of State.**

Under the provisions of section 1 of article 4, and article 19 of the Constitution it is the duty of the Secretary of State to submit an initiative petition in turn to both houses of the Legislature.

CARSON CITY, February 6, 1917.

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

DEAR SIR: I am in receipt of your favor of the 5th instant, inquiring concerning the disposition of prohibition petition as follows:

The prohibition petition containing the required number of names was duly filed in my office, submitted to the Legislature through the lower house (the Assembly) and by that body acted upon and lost by a vote of 5 for and 31 against.

There seems still to be some question as to whether the law has been fully complied with, and I wish, in your official capacity, you would give me an opinion under the circumstances as to whether this petition should again be presented to the Legislature, this time through the upper house (the Senate), so that the full Legislature would have a chance to act on it.

Your prompt attention to this matter will greatly oblige.

The provision of the Constitution on this subject is to be found in article 19 of the Constitution and provides as follows:

Initiative petitions, for all but municipal legislation, shall be filed with the Secretary of State not less than thirty (30) days before any regular session of the Legislature; the Secretary of State shall transmit the same to the Legislature as soon as it convenes and organizes.

Section 1 or article 4 of the Constitution provides as follows:

The legislative authority of this State shall be vested in the Senate and Assembly, which shall be designated "The Legislature of the State of Nevada," and the sessions of such Legislature shall be held at the seat of government of the State.

It therefore appears that the Legislature consists of both Senate and Assembly.

Therefore in transmitting this prohibition to the Assembly only for action it has been submitted to but one branch of the Legislature and that one branch has acted adversely on such

petition.

It is my opinion that this petition should now be submitted by you to the Senate, where it will become a Senate bill, and that house should have the opportunity to take such action on the bill as it may see fit.

Yours very truly,

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

BY EDW. T. PATRICK, *Deputy*.

**13. Water–Water Law–Water Commissioners–Claims Against County.**

Sections 52 to 58 of the state water law provides a system of police regulation and distribution of the waters.

These sections do not go into effect until after there has been a determination of the State Engineer or court under the provisions of sections 18 to 59.

The claim of a Water Commissioner for services and expenses is not a proper claim against a county where there has been no adjudication or determination of a stream under the provisions of section 18 to 39 of the state water law.

CARSON CITY, February 7, 1917.

HON. THOMAS E. POWELL, *District Attorney, Winnemucca, Nevada*.

MY DEAR SIR: Yours of January 11, asking the opinion of this office upon a claim presented to Humboldt County by Scott E. Jamison, as Water Commissioner, for salary and expenses in the regulation of the diversion dam, etc., of the Humboldt-Lovelock Irrigation Light and Power Company Canal, was duly received.

I have been delayed in answering request and giving you the opinion by reason of press of business in this office.

I am of the opinion that the validity of this claim against Humboldt County must rest upon a construction of sections 18 to 39 and sections 52 to 58 of the state water law of 1913 as amended in 1915 (See Stats. 1913, p. 192, Stats. 1915, p. 378). Sections 18 to 39 provide a system of adjudication for the various stream systems in this State. Sections 52 to 58 provide a system of police power of regulation and distribution of the waters.

I am of the opinion that sections 52 to 58 do not come into effect until after there has been a determination by the State Engineer or the court under the provisions of sections 18 to 39.

Section 53 provides: "Said water district shall not be created until a necessity therefor shall arise and shall be created from time to time as the *priorities and claims to the streams of the State shall be determined*."

I further call your attention to the provision of section 54 which reads as follows:

It shall be the duty of the State Engineer to divide or cause to be divided the waters of the natural streams or other sources of supply in the State, among the several ditches and reservoirs taking therefrom, according to *the rights of each respectively*, in whole or in part, and to shut or fasten, or cause to be shut or fastened, the headgates or ditches, and to regulate or cause to be regulated, the controlling works of reservoirs, as may be necessary to insure a proper distribution *of the waters thereof*. Such State Engineer shall have authority to regulate the distribution of water among the various users under any partnership

ditch or reservoir where *rights have been adjudicated in accordance with existing decrees.*

These provisions of our law are adopted from the laws of Oregon and have been construed by the Supreme Court of that State, and I take it that this construction is part of our water law. I refer you to the case of *Wattles v. Baker County*, 117 Pac. 417.

I also call your attention to the case of *Parshall et al. v. Cowper*, 143 Pac. 302, and *Van Buskirk v. Red Buttes L. & L.S. Co.*, 156 Pac. 1122, 1125, which to my mind sustain this construction.

I refer you also to the opinion of Justice Norcross in the case of *Ormsby County v. Kearney*, [37 Nev. 314](#), 338, in which Judge Norcross uses the following language:

In considering the constitutionality of sections 18 to 51 inclusive, they should be viewed with reference to the purpose designed to be accomplished by sections 52 to 56. The latter sections are clearly administrative. Before they can be put into force the relative rights of the water users upon a stream must be ascertained.

IN view of the provisions of our water law just before referred to the decisions of the Supreme Court of Oregon and Wyoming above referred to and the opinion of Judge Norcross in the case of *Ormsby County v. Kearney*, I am of the opinion that the claim of Scott E. Jamison for services and expenses as Water Commissioner is not a proper claim against Humboldt County, no adjudication or determination ever having been made of the Humboldt River under the provisions of sections 18 to 39 of the Statutes of 1913 and 1915 constituting the state water law.

Yours very truly,

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

BY EDW. T. PATRICK, *Deputy.*

#### **14. Licenses—Glove Contests.**

The question whether the contestants are to receive any part of the gate receipts or any gratuity or reward or compensation in any way does not affect the amount of license.

Until the enactment of the statute of 1897, glove contests were prohibited by law and there is no statute providing for such contest at a lower license fee than \$100.

CARSON CITY, February 7, 1917.

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

DEAR SIR: I am in receipt of your favor of the 1st instant, asking opinion of this office on the prize-fight law. You state:

Parties have made application to the Sheriff's office of this county for a license giving them permission to participate in a four-round glove contest, and are willing, they state, to sign an affidavit to the effect that they are not to receive any part of the gate receipts or any gratuity or reward or compensation in any way, shape or form for such contest.

The original prize-fight law, passed in 1897, provided a license fee of one thousand dollars. In 1913 (Stats. 1913, p. 234) sections 1, 3, 3, and 9 of said act were amended. The material purport of such amendments was to limit the contest to a ten-round go and reduce the license fee to one hundred dollars.

The question whether the contestants were to receive any part of the gate receipts or any

gratuity or reward or compensation in any way was never held to affect the amount of license. Until the enactment of the statute of 1897, glove contests were prohibited by law and there is no statute providing for such contests at a lower license fee than one hundred dollars.

I am, therefore, of the opinion that your Sheriff was correct in refusing to issue the license for any amount less than one hundred dollars, and he should not permit this contest to be held without full payment of such sum.

Yours very truly,

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

BY EDW. T. PATRICK, *Deputy*.

**15. Health Officers–Vital Statistics Law–Undertakers.**

Where communication between a health officer and undertaker is difficult and apt to be delayed, the undertaker may communicate the facts required of him by section 9 of the vital statistics law (Rev. Laws, 2960) by telephone or telegraph, if he follows up the same by written certificate embodying the same facts.

CARSON CITY, February 20, 1917.

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

DEAR SIR: In answer to your request for an interpretation of section 9 of the vital statistics law (Rev. Laws, 2960), let me say that in my opinion in a case where communication between the health officer and undertaker is difficult and apt to be delayed, the undertaker may communicate the facts therein required of him by telephone or telegraph, if he follows up the same by a written certificate embodying the same facts.

Yours very truly,

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

BY EDW. T. PATRICK, *Deputy*.

**16. Licenses–Liquor Licenses–Restaurants–Saloons.**

A retail liquor license is not required under the following statement of facts: A saloonkeeper has a lease on a building occupied by his saloon in the front and a restaurant in the rear operated by a subtenant. Liquor is served in the restaurant by purchasing liquor from the saloon and said liquor is paid for by waiters who order it. Once a week the saloonkeeper under the terms of his lease allows the restaurant keeper a percentage on the sale of the liquor purchased at his bar for consumption in the restaurant. Such percentage is paid for the service on the part of the waiters for serving the liquor in the restaurant part of the building. The restaurant keepers have no further interest and obtain no further profit in the sale of the liquor except as stated.

CARSON CITY, February 23, 1917.

HON. A.N. SALISBURY, *Assistant District Attorney, Reno, Nevada*.

DEAR SIR: I am in receipt of your of the 19th instant, requesting the opinion of this office with reference to liquor licenses. The statement of facts is as follows:

Heidtmann & Klaus have a lease on the property and building called "Kane's

Buffet" occupied by a saloon in front and by a restaurant in the rear operated by Baccha & Vincent under a sublease from Heidtmann & Klaus, called "Kane's Café." Liquor is served in Kane's Café by purchasing the same from the saloon, and the liquor is paid for by the waiters who order it. Once a week Heidtmann & Klaus, under the terms of their lease, allow Baccha & Vincent a percentage of the amount paid for liquors purchased at their bar for consumption in Kane's Café. This percentage is paid for the service on the part of the waiters for serving the liquor in the restaurant part of the building. Baccha & Vincent have no further interest and obtain no other profit in the sale of the liquor except as stated.

I am of the opinion that under this statement of facts one license for Heidtmann & Klaus is all that is required. Kane's Café, operated by Baccha & Vincent, is not engaged in the liquor business, and is not liable to pay a retail liquor license.

Yours very truly,

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

BY EDW. T. PATRICK, *Deputy.*

**17. Building and Loan Associations.**

Under section 7, Stats. 1915, 341, a building and loan association which was formerly in business in this State, but withdrew its solicitors therefrom and since then its sole business has been the collection of loans made prior to its withdrawal from the State, is not "doing business within the State" within the terms of said section and, therefore, is not required to file the report mentioned in such section with the State Bank Examiner.

CARSON CITY, March 1, 1917.

HON. GILBERT C. ROSS, *State Bank Examiner, Carson City, Nevada.*

DEAR SIR: I am in receipt of your request for an interpretation of section 7 of "An Act providing for the incorporation of domestic, building, and loan associations," etc., approved March 24, 1915, 341, which provides as follows:

SEC. 7. On or before the first day of March of each year, every building and loan association doing business within this State, whether domestic or foreign, shall cause to be filed in the office of the State Bank Examiner a statement of its affairs as is required in the next preceding section, and shall cause a copy thereof duly certified by the State Bank Examiner to be published at least four times in some newspaper in this State and having a general circulation therein, such publication to be completed on or before the first day of May and proof thereof filed in the office of the State Bank Examiner.

Your inquiry is promoted by a response you have had to demand for report from a certain savings and loan company of California. It appears therefrom that said company was formerly in business in this State, but withdrew its solicitors therefrom in the year 1915, and since then its sole business has been collection of loans made prior to its withdrawal from the State.

I am of the opinion that such acts of said company do not constitute "doing business within this State," as the company is in effect only closing up business heretofore done and, therefore, such company is not compelled to file with you the report mentioned in section 7.

The letter referred to is herewith enclosed.

Yours very truly,

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

BY EDW. T. PATRICK, *Deputy*.

**18. Public Schools–School Trustees–School Teachers–Vacations.**

Under section 104 of the School Code (Rev. Laws, 3343) school Trustees are authorized to grant Christmas holidays for two weeks and pay teachers for both such weeks.

If, in the event of an epidemic, school is closed for a period of three weeks, the teachers are entitled to pay for all of such period.

CARSON CITY, March 1, 1917.

MR. JAMES V. COMERFORD, *Ely, Nevada*.

DEAR SIR: In answer to your favor of the 23d ultimo, asking "If a two-weeks' vacation is allowed by a Board of School Trustees at Christmas, can such board refuse to allow salary for such time?" let me say that the same question was submitted by another Deputy Superintendent in December last in the following form:

Would section 104 of chapter 8 of school laws permit School Trustees to grant Christmas holidays of two weeks and pay teachers for one or both of such weeks.

To this Mr. Thatcher responded: "Think section 104 mentioned permits School Trustees to grant Christmas holidays of two weeks and pay teachers for both of such weeks."

Your second question is as follows: "If, in the event of an epidemic, school is closed for a period of three weeks are teachers entitled to pay for any part or all of such period.?"

Yours very truly,

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

BY EDW. T. PATRICK, *Deputy*.

**19. Railroads–Railroad Commission–Reports–Secretary of State.**

Both the enactment of Stats. 1917, 84 (Rev. Laws, 3555), requiring railroad companies to make and file annual reports with the Secretary of State, and Rev. Laws 3556, requiring the Secretary of State to furnish blanks for such reports, have been repealed.

The only provision now existing in regard to such reports is section 4568, Rev. Laws, as amended (Stats. 1917, 83), requiring an annual report to be made to the Railroad Commission.

CARSON CITY, March 13, 1917.

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

DEAR SIR: By the enactment of Senate Bill No. 64 (Stats. 1917, p. 84), which has this day been signed by the Governor, section 3555, requiring railroad companies to make and file annual report to the Secretary of State, and section 3556, requiring your office to furnish blanks for such report, have been repealed.

The only provision now existing in regard to such reports is section 20 of the Railroad

Commission Act, being section 4568, Revised Laws of Nevada, which requires an annual report to be made to the Railroad Commission.

Yours very truly,

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

BY EDW. T. PATRICK, *Deputy*.

**20. Corporations—Foreign Corporations—Secretary of State.**

Sections 1346 and 1348, Rev. Laws, do not apply to a foreign corporation which owns a piece of mining property in the State, but which is not operating the same, holding for some future date. Under the provisions of section 5024, Rev. Laws, all foreign corporations owning property in this State are required to appoint and keep an agent upon whom all legal processes may be served and to file the certificate therein described with the Secretary of State.

CARSON CITY, March 22, 1917.

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

DEAR SIR: In compliance with your verbal request I submit herewith the opinion of this office on the following questions:

First—What papers are required to be filed, either with the Secretary of State or county officials, by a foreign corporation which owns a piece of mining property in the State of Nevada which it is not operating but simply holding until some future date?

Second—What papers are required to be filed, either with the Secretary of State or county officials, by a foreign corporation which owns and leases to residents of Nevada certain real estate, but which does not transact any other business?

Section 1346 of the Revised Laws of Nevada, 1912, provides as follows:

Every incorporated company or association created and existing under the laws of any other State, or of any foreign government, shall file in the office of the County Recorder of each county in this State, wherein such corporation is engaged in carrying on business of any character, a properly authenticated copy of their certificate of incorporation, or of the act or law by which such corporation was created, with a proper certificate of the officers of the corporation as to the genuineness of the same; and to each of such certificates shall be appended a duly certified list of the officers of such corporation, which said list, with the proper supplemental certificate, shall be corrected as often as a change in such officers occurs; and a copy of such certificate, duly certified to by the County Recorder wherein such certificate is filed, may be introduced in evidence to prove the fact of the existence of such corporation, without further proof.

Section 1348 of the Revised Laws of Nevada, 1912, provides as follows:

Every corporation organized under the laws of another State, Territory, the District of Columbia, a dependency of the United States, or foreign country, which shall hereafter must, before commencing or doing any business in this State, file in the office of the Secretary of State of the State of Nevada a certified copy of said articles of incorporation, or of its charter, or of the statute or statutes, or legislative, or executive, or governmental acts, or other instrument or authority

by which it was created, and a certified copy thereof, duly certified by the Secretary of State of this State in the office of the County Clerk of the county where its principal place of business in this State is located.

The question arises under section 1346 as to what constitutes "engage in carrying on business of any character," and under section 1348 what constitutes "enter this State for the purpose of doing business therein."

The general conclusion of the courts is that for a foreign corporation to make a purchase of real estate and hold and lease the same are not acts which constitute the doing, transacting, or carrying on of business within the domestic State in violation of such statutory provisions as set out above. (See 19 Cyc. 1268-1269.)

There fore it is the opinion of this office that the provisions of sections 1346 and 1348 do not apply to such foreign corporations as hereinabove described.

Section 5024 of the Revised Laws of Nevada, 1912, provides as follows:

Every incorporated company or association created and existing under the laws of any other State, or Territory, or foreign government, or the Government of the United States, owning property or doing business in this State, shall appoint and keep in this State an agent upon whom all legal process may be served for such corporation or association. Such corporation shall file a certificate, properly authenticated by the proper officers of such company, with the Secretary of State, specifying the full name and residence of such agent, which certificate shall be renewed by such company as often as a change may be made in such appointment, or vacancy shall occur in such agency.

Under this last quoted section *all foreign corporations owning property in this State* are required to appoint and keep in this State an agent upon whom all legal processes may be served for such corporation, and shall file the certificate therein described with the Secretary of State.

It is, therefore, the opinion of this office that the provisions of this section must be complied with by all foreign corporations owning property in this State.

Yours very truly,

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

BY EDW. T. PATRICK, *Deputy.*

**21. Public Schools—Deputy Superintendent of Public Schools.**

Should Assembly Substitute for Assembly Bill no. 217 become a law, it would abolish the office of Deputy Superintendents of Public Instruction now provided, save and except one General Deputy Superintendent of Public Instruction, even though section 3 of said Act should be declared void.

CARSON CITY, March 26, 1917.

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

DEAR SIR: Hon. John Edwards Bray, State Superintendent of Public Instruction, has informed me that you desire an opinion as to the constitutionality of Assembly Substitute for Assembly Bill No. 217, and I therefore transmit the same herewith.

The Act in question is entitled "an Act to amend certain sections of an Act entitled 'An Act concerning public schools and repealing certain Acts relating thereto,' approved March 20, 1911,

and all Acts amendatory thereof and supplementary thereto."

The Act consists of seven sections. Section 1 amends section 8 as follows:

Section 8. Each county of the State is hereby established and created as a special educational supervision district.

Section 2 amends section 9, and provides for the appointment of one General Deputy Superintendent of Public Instruction, and fixes his term of office.

Section 3 amends section 11 to read as follows:

SECTION 11. The County Board of Education or Board of High-School Trustees of any county, may, by resolution adopted at any regular or special meeting, appoint any qualified person or persons as District Deputy Superintendent of Public Instruction, and fix the compensation of such officer or officers, and define their powers and duties, and the compensation shall be paid out of the general school fund of such county or district; *provided*, that the powers and duties so conferred and prescribed shall not conflict with the powers and duties prescribed by the Superintendent of Public Instruction or the State Board of Education.

Section 4 of the Act amends section 13 of the original Act, and fixes the salary of the General Deputy Superintendent of Public Instruction, and provides for his traveling expenses.

Section 5 repeals section 12 of the original Act.

Section 6 repeals section 16 of the original Act, and section provides that the Act shall be effective June 15, 1917.

Sections 2, 4, 5, and 6 of the Act are undoubtedly constitutional, and there can be no constitutional objections to any of these sections. Section 1, which makes each county in the State a special educational supervision district, and section 3, which amends section 11, and provides for the appointment of District Deputy Superintendents of Public Instruction for the Supervision Districts, should be construed together; and, so construed, it appears that the District Deputy Superintendent of Public Instruction is an officer having jurisdiction within a county only, and such Deputy District Superintendent of Public Instruction is appointed by the *County Board of Education* or Board of High School Trustees of any *county*. his compensation is likewise payable out of the general school fund of such *county*. Certainly such officer borders close to the line of being a county officer, and, therefore, a County Superintendent of Schools. Section 32 of article IV of our Constitution, Revised Laws, sec. 290, provides as follows:

SEC. 32. The Legislature shall have the power to increase, diminish, consolidate, or abolish the following county officers: County Clerks, County Recorders, 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 records and of the Boards of County Commissioners in and for their respective counties.

You will observe from this section that, while the Legislature has power to increase, diminish, consolidate or abolish any of the enumerated county officers, yet if these offices exist the Constitution further provides: "The Legislature shall provide for their election by the people," and such office if it exists cannot be made appointive but must be elective by popular vote. (*State ex. rel. Clarke v. Irwin*, [5 Nev. 111](#), 125). Section 3, in my opinion, is of doubtful constitutionality.

I have already stated that in my opinion sections 2, 4, 5, 6 and 7 are undoubtedly constitutional.

I am of the opinion that even though section 3 be of doubtful constitutionality, it would not affect the Act as a whole, and that, should the Court declare the Act unconstitutional, its decision would not go further than to declare section 3 void.

I am of the opinion that, should Assembly Substitute for Assembly Bill No. 217 become a law, it would completely abolish the offices of Deputy Superintendents of Public Instruction now provided by law, save and except one General Deputy Superintendent of Public Instruction, even though section 3 of said Act should be declared void.

Yours very truly,

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

BY EDW. T. PATRICK, *Deputy*.

**22. Officers—Appointment of Officers—Deputy Superintendent of Public Instruction.**

Every appointment to office must be based upon a different authority so to do. There must be a statute creating the office and fixing the compensation thereof, although the general appropriation bill provided for the salary and expenses of a Deputy Superintendent of Public Instruction. The State Superintendent of Public Instruction is not authorized to appoint any person, because the act creating such office was vetoed by the Governor.

CARSON CITY, March 29, 1917.

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

DEAR SIR: I am in receipt of your favor of the 21st instant, asking opinion of this office on the following question:

Would a definite appropriation for an appointive state officer, providing for his salary and traveling expenses for the ensuing two years, be a sufficient warrant for his appointment in the absence of statutory provision therefor?

In answer thereto I would say that every appointment to office must be based on definite authority so to do; that is to say, there must be a statute creating the office and fixing the compensation therefor.

Inasmuch as the statute creating the office of General Deputy Superintendent of Public Instruction was vetoed by the Governor, there is no authority vested in you to make the appointment in question.

Yours very truly,

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

BY EDW. T. PATRICK, *Deputy*.

**23. Eight-Hour Law—Females.**

The eight-hour law for females (Stats. 1917, 160 applies to all females employed in any manufacturing, mechanical or mercantile establishment, laundry, hotel, public lodging-house, apartment house, place of amusement, or restaurant, or by any express or transportation company.

The only exception thereto is contained in the proviso covering the harvesting, curing, canning or drying of any variety of perishable fruit or vegetable, to graduate nurses or nurses in training in hospitals.

Any employer of any female in any of the lines of business mentioned in the act can not compel a bookkeeper or stenographer to work more than eight hours in a single day.

CARSON CITY, March 29, 1917.

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

DEAR SIR: Owing to press of business in this office, answer to your favor of the 2d instant, asking interpretation of the eight-hour law, has been delayed until now. You inquire:

Will you kindly advise me whether in your opinion any of the persons mentioned in the eight-hour law can work as beekeeper or stenographer more than eight hours in any single day.

The Act in question is Assembly Bill No. 9, which will appear as chapter 14 in the Statutes of 1917. Section 1 of said Act provides:

No female shall be employed in any manufacturing, mechanical or mercantile establishment, laundry, hotel, public lodging-house, apartment house, place of amusement, or restaurant, or by any express or transportation company in this State, more than eight hours during any one day, or more than fifty-six hours in one week. The hours of work may be so arranged as to permit the employment of females at any time so that they shall not work more than eight hours during the twenty-four hours of one day, or fifty-six hours during any one week; *provided, however,* that the provisions of this section in relation to hours of employment shall not apply to nor affect the harvesting, curing, canning or drying of any variety of perishable fruit or vegetables, nor to nurses, nor to nurses in training in hospitals.

The law therefore would seem to apply to all females employed in any manufacturing, mechanical or mercantile establishment, laundry, hotel, public lodging-house, apartment house, place of amusement, or restaurant, or by any express or transportation company ; the only exception thereto is contained in the proviso covering the harvesting, curing, canning or drying of any variety of perishable fruit or vegetables, nor to graduate nurses, nor nurses in training in hospitals.

I am, therefore, of the opinion that any employer of any female in any of the lines of business mentioned in the Act cannot compel a bookkeeper or stenographer to work more than eight hours in any single day.

Yours very truly,

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

BY EDW. T. PATRICK, *Deputy.*

**24. Public Schools—Deputy Superintendent of Public Instruction.**

Section 3251, Rev. Laws, in the absence of any appropriation by the Legislature, makes an appropriation for the payment of the salaries and traveling and office expenses of the Deputy Superintendent of Public Instruction.

CARSON CITY, March 29, 1917.

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

DEAR SIR: I am in receipt of your favor of the 21st instant, asking opinion of this office on the following facts and conditions:

1. Section 3251 of the Revised Laws of Nevada (sec. 13 of School Code) fixes the compensation of Deputy Superintendents at "two thousand dollars per annum."

Question: (a) Assuming that this section has not been legally altered or repealed, would the five Deputies provided for therein, each still be entitled to draw such salary in the absence of any specific appropriation therefor in the General Appropriation Act of 1917?

2. The same section provides for the payment of a Deputy Superintendent's traveling expenses to the amount of "not more than eight hundred dollars" in "any one year" and for the payment of his necessary office expenses, "not more than three hundred fifty dollars" in "any one year."

Question: (b) On the same assumption contained in question (a) above, as to altering or repealing, would a Deputy Superintendent now be entitled to draw for such traveling expenses yearly, in the respective amounts named therefor as a limit, in the absence of any specific sum appropriated for these purposes in the General Appropriation Act of 1917?

In answer thereto let me say that it is the opinion of this office that these questions are completely covered by opinion in the case of *State ex. rel. Davis v. Eggers*, [29 Nev. 469](#), in which it is held "that the Act constituted a sufficient appropriation of the salary of the chairman; but, as it failed to prescribe any maximum expenditure for traveling expenses, the Act was void in so far as it authorized payment of such expenses by the State, under the Constitution, art. 4, sec. 19, providing that no money shall be drawn from the State Treasury except under appropriations made by law."

Answer to each of your questions would, therefore, be in the affirmative.

Yours very truly,

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

BY EDW. T. PATRICK, *Deputy*.

**25. County Clerk—Articles of Incorporation—Fee for Filing.**

Chapter 106, Stats. 1917, 193, reverses the order formerly existing for the filing of articles of incorporation. They must now be first filed and recorded in the office of the Secretary of State. A copy thereof certified by the Secretary of State is to be filed in the office of the Clerk of the county in which the principal place of business of the company is intended to be located.

Formerly the articles were required to be filed and recorded with the County Clerk and duly certified copy thereof filed in the office of the Secretary of State.

Under such new arrangement the County Clerk is not required to record the articles and is only entitled to his usual fee provided by law for filing and indexing all papers required to be kept by him.

CARSON CITY, March 29, 1917.

HON. JAS. GLYNN, *Attorney at Law, Reno, Nevada.*

DEAR SIR: I am in receipt of your favor of the 25th instant, asking opinion of this office on the amount which the County Clerk is allowed to charge for filing articles of incorporation under Senate Bill No. 38 amending several sections of the general incorporation law. This bill provides a radical change in the procedure heretofore enforced in this State concerning the filing and recording of these articles. Under section 3 as amended it is provided that after the articles are signed and acknowledged they must be filed and recorded in the office of the Secretary of State and a copy thereof certified by the Secretary of State is to be filed in this office of the Clerk of the county in which the principal place of business of the company is intended to be located. Formerly the articles were required to be filed and recorded with the County Clerk and a duly certified copy thereof filed in the office of the Secretary of State. It seems that your County Clerk insists that under the Statutes of 1909, p. 197, wherein he is authorized to charge \$10 "for filing, indexing and recording articles of incorporation," he is still entitled to charge that sum. He overlooks the provisions on the same page that he is entitled to charge 25 cents only "for filing and indexing all papers to be kept by him."

The law having made a complete reversal of the method of procedure in regard to these articles and providing only that a County Clerk shall file the certified copy received from the Secretary of State, I am of the opinion that he is not entitled to his fee of \$10 for filing, indexing and recording articles, but is entitled to 25 cents only for filing and indexing all papers to be kept by him.

Yours very truly,

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

BY EDW. T. PATRICK, *Deputy.*

**26. Budget Bill—Public Schools—Emergency School Warrants.**

The provision of section 16 of the budget bill, chap. 149, Stats. 1917, repealing the law for issuance of emergency school warrants, is suspended until January 1, 1919, and any school district may issue such warrants as heretofore until such time.

CARSON CITY, March 29, 1917.

MR. W. J. HUNTING, *Superintendent of Public Schools, Carson City, Nevada.*

DEAR SIR: I am in receipt of your verbal inquiry for the interpretation of Assembly Bill No. 134, which will appear a chapter 149 of the Statutes of 1917. This bill is generally known as the "Budget Bill."

Section 14½ thereof provides that it shall not apply to school districts until January 1, 1919, and section 16 repeals the provisions of section 14½, I am of the opinion that so much of the provisions of section 16 repealing the law for issuance of emergency school warrants is suspended until January 1, 1919, and that any school district may issue such warrants as heretofore until that time.

Yours very truly,

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

BY EDW. T. PATRICK, *Deputy.*

**27. Criminal Practice—Justice of the Peace—Witnesses.**

The provisions of section 7357, Rev. Laws, applies to a witness attending before a Justice Court on a trial for misdemeanor.

The Justice of the Peace by an order subscribed by him may direct the Treasurer of the count to pay a witness coming within the provisions of section 7357, Rev. Laws, a reasonable sum for his expenses.

CARSON CITY, March 30, 1917.

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

DEAR SIR: I am in receipt of your favor of the 23d instant, asking opinion on the following question:

Will you kindly give me an opinion on how you construe section 7357 of the Revised Laws of Nevada? Would you hold that a person who attends as a witness before a Justice Court on a trial for misdemeanor would come within the purview of this statute? if so, what would you consider the proper method to be followed under the statute to have the amount due paid to the witnesses?

Such section is as follows:

When a person shall attend before a magistrate, grand jury, or court, as a witness on behalf of the State, or defendant, upon a subpoena, or by virtue of a recognizance, and it shall appear that he has come from any place out of the county, or that he is poor, the court, if the attendance of the witness be upon a trial, by an order upon its minutes, or in any other case, the District Judge, by an order subscribed by him, may direct the Treasurer of the county to pay the witness a reasonable sum, to be specified in the order, for his expenses.

It is the opinion of this office that this section applies to a witness attending before a Justice Court on a trial for misdemeanor, for the reason that the statute mentions the "magistrate," and also because the magistrate has original jurisdiction in misdemeanors.

It is also the opinion of this office that the Justice of the Peace by order subscribed by him may direct the Treasurer of the county to pay the witness a reasonable sum for his expenses.

Yours very truly,

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

BY EDW. T. PATRICK, *Deputy.*

**28. Jurors—County Commissioners—Married Women.**

In the selection of a jury-list such must be selected without distinction from all the persons of the county qualified to serve as jurors.

Exemption from jury service is a personal privilege and may be claimed by the juror.

It is no objection to the regularity of a jury that persons were thereon who are exempt from service.

County Commissioners should not, in drawing a jury list, exempt the names of married women therefrom.

A jury-room may be partitioned so that the women jurors may stay in one part of the room and the men in the other.

A woman Deputy Sheriff may be appointed to take care of the women and a man to take care of the men.

If the jury-room is partitioned, such partition should be only partial and not run clear to the ceiling so as to make two separate rooms of the jury-room.

CARSON CITY, March 30, 1917.

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

DEAR SIR: Owing to press of business imposed on in this office by the recent session of the Legislature, answer to your favor of February 16 has been delayed until now.

I think your Commissioners are making a mistake in drawing the names of jurymen by omitting the names of married women therefrom, and if the practice is continued the panel is subject to challenge by reason of that fact. I base this opinion upon the following extract from 24 Cyc. 213:

The Commissioners in selecting the names to compose the jury-list have full power to decide as to who are fit to serve as jurors or whether certain persons possess the qualifications prescribed by the statutes, and in the absence of any showing of fraud or corruption their decision will not be interfered with; *but the list must be selected without distinction from all the persons of the county qualified to serve as jurors*, and where the statute specifically prescribes the class of persons from whom the list is to be selected, a failure to select the list from this class is a fatal irregularity.

Also from the fact that exemption from the jury is a personal privilege and may or may not be claimed by the juror.

It is no objection to the regularity of a jury that persons were thereon who are exempt from service.

I can see no objection to your jury-room being partitioned so that the women can stay in one room and the men in the other, nor to having a woman Deputy Sheriff to take care of the women and a man to take care of the men. If the jury-room is partitioned, it seems to me that the partition should be only partial and not run clear to the ceiling so as to make two separate rooms of the jury-room.

Yours very truly,

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

BY EDW. T. PATRICK, *Deputy.*

CARSON CITY, May 28, 1917.

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

DEAR SIR: In answer to your favor of April 1, in regard to the exemption from jury duty, let me say that it has been delayed until time could be found to thoroughly investigate the matter. I think that the previous opinion rendered on this question was too broad and that you are right in stating that, if the County Commissioners in drawing the jury-list make a habit of omitting therefrom married women, the only person that could raise objection to such list would be a married woman who was on trial in a criminal case or had a civil action pending for trial before the court.

Yours very truly,

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

Newspaper representatives are entitled to access to all papers filed with the Clerk of the District Court except such complaints as may have been sealed by order of the Court, at such and all times as will not seriously interfere with the operation of the duties of the Clerk.

CARSON CITY, April 3, 1917.

MR. GRAHAM SANFORD, *Manager Reno Evening Gazette, Reno, Nevada.*

DEAR SIR: This office is in receipt of your favor of the 27th ultimo, stating that your District Court Clerk declines to permit newspaper representatives to examine complaints after they have been filed in his office, including all complaints, whether sealed or unsealed. You inquire whether your County Clerk is within his rights in refusing this information to the newspapers.

This office is of the opinion that newspaper representatives are entitled to access to all complaints filed, except sealed complaints, at such and all times as will not seriously interfere with the operation of the duties of the Clerk.

Yours very truly,

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

BY EDW. T. PATRICK, *Deputy.*

**30. Corporations—Articles of Incorporation—Saving and Loan Associations.**

Suggestions as to what should be included within articles of incorporation of saving and loan associations.

CARSON CITY, April 12, 1917.

MR. R.C. KNIGHT, *Carson City, Nevada.*

DEAR SIR: Pursuant to request of yourself and the State Bank Examiner, I have examined the proposed articles of incorporation of the State Saving and Loan Association, and I make the following suggestions with reference to them:

In paragraph 2 after the words "shareholders, members," strike out the words "and others." Our statute evidently contemplated that the loans be made only among the members of the corporation. I also note that you have made no provision in your articles of incorporation giving the corporation power to hold any real estate, mortgages, notes, etc., and that the only thing the corporation can invest in is "stocks or bonds of other corporations."

I would suggest further that you be more definite as to the location of your principal office. The statute required that the street number be given if possible, or that it be so definitely located that it can be found. Your articles provide merely that the principal place of business shall be at Reno, Washoe County, State of Nevada.

I would suggest that paragraph 7 be amended to read somewhat as follows: "The governing board of the corporation shall be seven in number, and shall be styled directors." This will more fully comply with the exact wording of the statute.

Provision should also be made in your articles of incorporation stating whether or not your capital stock shall be assessable or nonassessable. This is essential.

I would further suggest that you divide your stock into general stock and permanent reserve-

fund stock, or some such designation, and provide that the permanent reserve-fund stock shall not be redeemable or withdrawable until all other stock shall have been redeemed and paid. This will mean that you will have a permanent stock always outstanding until you are ready to dissolve. I am of the opinion that this is permissible under our statute.

You have requested me to give you an opinion as to whether or not you can issue saving certificates or investment certificates. I think that you can make provision for the issuance of these certificates in your articles of incorporation. This character of investment, if decided upon, should by a provision of the by-laws make each investor therein a member of your society or association. you can also provide that these certificates can be paid in stated payments.

Yours very truly,

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

**31. Fish–Catfish.**

Under the provisions of section 63, Stats. 1917, p. 470, it is unlawful for any one to attempt to fish in any waters of the State during the closed season.

The fact that catfish are unprotected does not alter this rule, for the reason that in fishing for catfish the angler runs the risk of taking or catching some of the protected fish, and in case he does so he is liable to fine and imprisonment.

CARSON CITY, April 14, 1917.

HON. C.W. GROVER, *State Fish and Game Warden, Carson City, Nevada*.

DEAR SIR: I am in receipt of your favor of the 8th instant, asking interpretation of chapter 239, entitled "An Act to provide for the protection, and preservation of game, etc.," approved March 27, 1917, appearing on page 459 of the Statutes of 1917, so far as fishing for catfish is concerned.

Section 63 of said Act (Stats. 1917, p. 470) provides:

All license issued as herein provided shall authorize the person to whom issued \* \* \* to take or catch catfish during the open season fixed therefor by law until the day of expiration printed thereon.

Inasmuch as no one can fish for catfish in any waters wherein other fish are contained, it is the opinion of this office that it is unlawful for any one to attempt to fish in any such waters during the closed season, for the reason that section 63, above quoted, gives the holder of a license permission only "to take or catch fish during the open season fixed therefor by law."

The fact that catfish are unprotected does not alter this rule, for the reason that in fishing for catfish the angler runs the risk of catching or taking some of the protected fish, and in case he does so he is liable to fine and imprisonment.

Yours very truly,

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

BY EDW. T. PATRICK, *Deputy*.

**32. Elections–Initiative Measures, When Effective.**

An initiative measure becomes a law in case it receives a majority of the votes cast at a general election at which it was submitted to the vote of the people as soon as it has been determined to have received a majority of the votes cast by the official canvass

provided in Stats. 1917, 366.

CARSON CITY, April 18, 1917.

MR. N.H. CHAPIN, *Ely, Nevada.*

MY DEAR MR. CHAPIN: I am in receipt of yours of April 14, inquiring as to when the prohibition measure will become a law in case it receives a majority of the votes cast at the next general election.

Section 3 of article 19 of the Constitution provides:

If said initiative measure be rejected by the Legislature, or if no action be taken thereon within said forty days, the Secretary of State shall submit the same to the qualified electors for approval or rejection at the next ensuing general election; and if a majority of the qualified electors voting thereon shall approve of such measure, it shall become a law, and take effect from the date of the official declaration of the vote. (Stats. 1913, p. 65).

Section 26 of an Act relating to elections, approved March 34, 1917, Stats. 1917, p. 366, provides:

\* \* \* And on the third Monday of December succeeding such election the Chief Justice of the Supreme Court and the Associate Justices, or a majority thereof, shall meet at the office of the Secretary of State, and shall open and canvass the vote for United States Senator \* \* \* and for and against any questions submitted.

This constitutes the official declaration of the vote, and I am of the opinion that, in the event the prohibition measure receives a majority of the votes cast thereon, it will become a law on the third Monday of December, 1918.

Yours very truly,

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

**33. Fish—Fishing with Spawn, Eggs or Ova—Licenses for Market Fisherman—Aliens.**

Section 30, Stats. 1917, 464, absolutely prohibits fishing with spawn, eggs or ova of any species of fish for market fishermen.

A license for a market fisherman is provided in section 61, Stats. 1917, 470, at \$15. An alien who is a market fisherman must pay an additional \$15 for a fishing license.

The price of a license to an alien market fisherman is \$30.

CARSON CITY, April 21, 1917.

HON. C.W. GROVER, *State Fish and Game Warden, Carson City, Nevada.*

DEAR SIR: I am in receipt of your favor of this date, requesting interpretation of section 30, page 464, Statutes of 1917, and calling my attention to a similar enactment contained in section 3, page 61, of the Statutes of 1911, relative to fishing with the spawn of fish.

Said section 30 provides: "It shall be unlawful for any person or persons, firm, company, or corporation to take, catch, or kill, or to attempt to take, catch, or kill in or from any stream, lake, or river, or any waters of the State of Nevada, any trout, salmon, or white-fish, bass, perch, catfish, or any other fish of any species whatever \* \* \* with or by means of any bait constituted

or prepared in whole or in part from the spawn, eggs, or ova of trout, salmon, or any other species of fish whatever. \* \* \*

I am of the opinion that said section absolutely prohibits fishing with the spawn, eggs, or ova of any species of fish.

You further inquire what license is required of an alien market fisherman. Section 61 of said Act appearing on page 470 of the Statutes of 1917 provides prices for licenses as follows:

3. To any person, not a citizen of the United states, upon the payment of fifteen dollars (\$15) for a fishing license.

4. A license of fifteen dollars (\$15) shall be charged for any one engaged in market fishing.

From the foregoing I am of the opinion that the price of a license to an alien market fisherman is thirty dollars (\$30).

Yours very truly,

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

**34. Public Schools—School Bond Elections—Act Concerning.**

The provisions of chap. 199, Stats. 1915, p. 308, is the law covering the election of School Trustees and, as a bond election must comply as nearly as may be in accordance with the provisions of the law covering the election of School Trustees, such chapter applies to bond elections.

A registration of electors conducted under the provisions of such chapter 199 will be legal and valid for use in conducting a bond election.

CARSON CITY, May 1, 1917.

HON. B.D. BILLINGHURST, *Superintendent of Public Schools, Reno, Nevada.*

DEAR SIR: I am in receipt of your favor of the 27th instant, from which it appears that the city of Reno is authorized and empowered to grant, bargain, and sell certain parcels of real estate to Reno School District No. 10 by the terms of chapter 182, page 343, Statutes of 1917.

It further appears that in order to provide funds for purchasing said real estate the Trustees desire to call a bond election under the provisions of chapter 15 of an Act concerning public schools (rev. Laws 3431-3442). Under provisions of sec. 3433 such bond election must be held "in all respects as nearly as may be in accordance with the provisions of the law now covering the election of School Trustees."

You inquire under what law the registration for such bond election shall be conducted.

The Legislature as its last session (Stats. 1917, p. 425) passed an Act regulating the registration of electors for general, special, and primary elections, but by the terms of section 11 of said Act there will be no general registration of electors until the 1st day of June, 1918, and such Act does not provide any method for registration in case of special elections.

I am, therefore, of the opinion that the operation of such Act is suspended until June 30, 1918, and it, therefore, cannot be applied.

This office has heretofore rendered an opinion that the provisions of chapter 199, Statutes of 1915, p.308, is the law covering the election of School Trustees, and, as the bond election must comply as nearly as may be in accordance with the provisions of law covering the selection of School Trustees, such chapter applies to this case. It is, therefore, the opinion of this office that a

registration of electors conducted under the provisions of said chapter 199 will be legal and valid for use in conducting the election to determine the question of the issuance of bonds for the aforesaid purpose.

Yours very truly,

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

BY EDW. T. PATRICK, *Deputy*.

**35. Fish and Game—Deputy Fish and Game Warden.**

As the Fish and Game Warden appoints the Deputy Fish and Game Warden with the consent or recommendation of the County Commissioners, such deputy is in effect a county officer.

In case there is a deficiency in the fund provided for the payment of the salary and expense of the Deputy Fish and Game Warden, such deficiency may be taken from the general fund of the county under the provisions of Rev. Laws, 1508.

CARSON CITY, May 3, 1917.

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

DEAR SIR: I am in receipt of your favor of the 21st instant, calling my attention to section 64 of the Fish and Game Warden Act (Stats. 1917, p. 470), providing for the creation of county funds for the payment of Deputy Fish and Game Wardens' salaries and expenses.

You inquire: "In case there is a deficiency in this fund, can such a deficiency be paid out of the general fund of the county.?"

You call my attention to section 3 of the Act to provide Fish and Game Wardens (Stats. 1917, p. 473) and inquire by whom the salaries of the deputies shall be fixed and how the same shall be paid. Said section 64 provides as follows:

All money collected for licenses, as provided herein, shall be apportioned as follows: Two thirds \* \* \* shall be paid into the county treasury of the county where the license is collected, to be applied to the credit of the Game and Fish Preservation Fund, which fund is hereby created, and the money of said fund shall be applied to the payment of the expenses incurred in the prosecution of offenders and for the revenue to pay Fish and Game Warden, or Wardens, and for revenue to pay for the importation and propagation of wild birds.

Said section 3 provides as follows:

The State Fish and Game Warden may appoint a deputy or deputies for the different counties with the consent or recommendation of the County Commissioners. \* \* \* The salary of the said Deputy Fish and Game Warden shall be not more than one hundred dollars nor less than twenty dollars per month. Said Fish and Game Warden shall be allowed a sum not to exceed twenty-five dollars per month for expenses incurred by him in the performance of his duty.

From the fact that the Fish and Game Warden appoints the deputy with the consent or recommendation of the County Commissioners, it appears that he is in effect a county officer.

In case there is a deficiency in the fund provided for the payment of his salary and expenses, I see no reason why the deficiency cannot be taken from the general fund of the county under the provisions of section 1508, Rev. Laws.

Yours very truly,

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

**36. State Fish and Game Warden—County Fish and Game Wardens—Salary and Expenses Of.**

The moneys remaining in the Fish and Game Fund of the various counties should be used for the payment of the County Fish and Game Wardens.

CARSON CITY, May 3, 1917.

HON. C.W. GROVER, *State Fish and Game Warden, Carson City, Nevada*.

DEAR SIR: I am in receipt of your favor of the 24th ultimo, asking opinion of this office as to the distribution of the moneys that may be remaining in the fish and game fund of the various counties. You inquire: "May it be used in the payment of salaries of Deputy Wardens in the further protection of the fish and game, or is it at the disposal of the Fish and Game Commission?"

After careful consideration of the matter and taking into consideration the provisions of section 64, Statutes of 1917, p. 470, and section 3, p. 473, of the same statutes, I am of the opinion that moneys in the county funds should be used for the payment of the County Game Warden, appointed by yourself on recommendation of the County Commissioners.

Yours very truly,

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

BY EDW. T. PATRICK, *Deputy*.

**37. Employer and Employee—Hospital Fees—Illness.**

Under the provisions of section 1943, Rev. Laws, an employer of labor who collects hospital fees is liable for the care and attention of the employee during his illness whether such illness is caused by accident or otherwise.

CARSON CITY, May 3, 1917.

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

DEAR SIR: I am in receipt of your favor of the 25th ultimo, calling my attention to section 1943, Rev. Laws, and inquiring, under this section, "whether an employee who is compelled to contribute to a company or association for medical care or attention, is entitled to such care and attention for an illness other than that caused as a result of an accident; in other words, if an employee is taken ill with typhoid or pneumonia while in the employ of such company or association, is he entitled to medical attention?"

In response thereto, let me say that said section makes no exception whatever, and, I am, therefore, of the opinion that any employer of labor who collects such hospital fees is liable for the care and attention of the employee during his illness, whether such illness is caused by accident or otherwise.

Yours very truly,

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

**38. Automobiles—Automobile Licenses—Secretary of State—State Highway.**

Under the provisions of section 24 of the automobile license law, as amended by Stats. 1917, p. 342, all the moneys received by the Secretary of State for licenses on automobiles, except license fees collected from owners residing in any county not included in the State Highway System, shall be paid over by him to the State Treasurer for the benefit of the State Highway Fund.

Under the provisions of section 25 of said law, as amended, Stats. 1917, 343, the Secretary of State is authorized to retain from and after January 1, 1917, the sum of 50 cents from each payment for a motor-vehicle license to cover the expense incurred in the administration of said Act.

CARSON CITY, May 4, 1917.

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

DEAR SIR: In answer to your favor of the 7th ultimo, requesting the interpretation of certain amendments of the automobile license Act, appearing in chapter 181, pages 342 and 343 of Statutes of 1917, let me say: I am of the opinion that under section 24 of said Act, as amended, all of the moneys received by you for licenses on automobiles, except license fees collected from owners of automobiles residing in any county not included in the State Highway System, as defined by law, shall be paid over by you to the State Treasurer for the benefit of the State Highway Fund.

I am further of the opinion that under section 25, as amended, you are authorized to retain from and after January 1, 1917, the sum of 50 cents from each payment for motor-vehicle license to cover expense incurred in the administration of said Act.

Yours very truly,

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

BY EDW. T. PATRICK, *Deputy.*

**39. Public Schools—School Trustees—School Census Marshal.**

The acts of a Board of School Trustees in the appointment of a School Census Marshal are valid even though a majority of such board is superseded by a recall election.

The person so appointed is the legal School Census Marshal of the district, notwithstanding that the new board upon organization revoked his appointment and appointed another Census Marshal in his stead.

CARSON CITY, May 21, 1917.

HON. JOHN EDWARDS BRAY, *State Superintendent of Schools, Carson City, Nevada.*

DEAR SIR: I am in receipt of your favor of the 21st instant, setting forth the following statement of facts:

It appears that the regularly elected Board of School Trustees of the Virginia City School District, prior to the 1st day of March, 1917, appointed a School Census Marshal in accordance with provisions of section 122 of the School Code, as amended by Stats. 1913, p. 154, said section being section 3361, Rev. Laws.

It further appears that a few days later a Trustees' recall election was held in said district and two of the three members of said Board of School Trustees were recalled and in their stead two new School Trustees were elected. The new members qualified and a reorganization of the new

board ensued on or about February 23, 1917.

After such reorganization the new Board of School Trustees revoked the appointment of the Census Marshal appointed by the former board and appointed a different person as Census Marshal.

For convenience these Marshals will be known as Marshall No. 1 and Marshal No. 2.

It further appears that each appointee duly filed his oath of office with the Deputy Superintendent and each proceeded to take the school census in the month of April, 1917.

Census Marshal No. 1 on completing his report took it to the clerk of the Board of School Trustees for his approval and said clerk refused to receive or approve said report.

Said Marshal No. 1 then duly forwarded his report to the Deputy Superintendent for final correction and approval. About the same time said Marshal No. 2 completed her report and presented it to the clerk to the Deputy Superintendent for final correction and approval. Both reports are now in the hands of Deputy Superintendent, who refuses to recognize either of the reports pending the decision of this office as to who is the regularly appointed School Census Marshal for said district.

In answer to the questions contained in your letter, it is the opinion of this office that the first Board of School Trustees acted within its rights in making the appointment of Marshal No. 1 and the reorganized board had no right to revoke such appointment, except by preferring charges against Marshal No. 1 and permitting him an opportunity to be heard and refute any such charges.

The answer to your second question is contained in the foregoing.

In answer to your third question, let me say that, in the opinion of this office, Marshal No. 1 is the duly constituted School Census Marshal of the school district in question.

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

**40. Licenses—State Licenses—Intoxicating Liquors.**

Under the provisions of section 6 (Stats. 1915, 238) the question of the intoxicating or non-intoxicating effect of the spirituous, malt or vinous liquors is not taken into consideration.

Any preparation of spirituous liquors or vinous liquors which includes alcohol in any degree is within the statutes, and would require the procuring of a state liquor license.

CARSON CITY, May 23, 1917.

MR. GEORGE L. SANFORD, *Attorney at Law, Carson City, Nevada.*

DEAR SIR: I am in receipt of your favor of the 25th instant, asking whether it is necessary for dealers in malts, spirituous or vinous liquors to secure a state liquor license. You particularly desire a ruling as to liquors which are commonly termed nonintoxicating, but which come under the general classification of malt, vinous and spirituous. considerable time has been required for the investigation of this question which accounts for the delay in answering your inquiry. After careful consideration, I have come to the conclusion that the matter in questions is regulated entirely by Stats. 1915, sec. 6, p. 238, which provide:

Every person, firm, company, or corporation manufacturing or selling, either at retail or wholesale, any spirituous, malt, or vinous liquors, shall, in addition to

other licenses provided by law, take out a state liquor license as hereinafter provided, which license shall not be transferable by sale, assignment, or otherwise.

It will be observed from the foregoing that the question of the intoxicating or nonintoxicating effect of the spirituous, malt or vinous liquors is not taken into consideration in the statute in question.

Any preparation of spirituous liquor or vinous liquor which would include alcohol in any degree would be within the statute and would require the procuring of a state liquor license.

Yours very truly,

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

**41. Weights and Measures—Bread.**

Under the provisions of section 4803, Rev. Laws, a baker is privileged to make loaves of bread of any weight he desires, but if such loaf weighs more or less than a pound, exact weight thereof must be labeled thereon, in plain intelligible English words and figures.

CARSON CITY, May 29, 1917.

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

DEAR SIR: I am in receipt of your favor of the 28th instant, in regard to weight of loaves of bread. This matter is regarded by Rev. Laws, 4803, which provides:

A standard loaf of bread sold or offered for sale in this state shall weigh one pound, and a standard loaf of bread need not be labeled with a statement of its weight. Whenever a loaf of bread sold or offered for sale weighs less than a pound, it shall be labeled in plain, intelligible English words and figures with its correct weight, together with the name of its manufacturer.

The law contemplates that the baker shall sell a standard loaf to weigh 16 ounces. They are not confined to this size loaf, however, but may offer for sale loaves containing more or less than 16 ounces.

In order that the purchaser may know exactly how much bread is being bought, if a standard loaf is not offered for sale by the bakers, the law requires that its correct weight shall be labeled thereon.

I cannot at all see how the affixing of such label on a nonstandard loaf of bread would vary materially and increase expense. Indeed, it is customary in a number of bakeries for such label to be affixed so that the customer may know by whom the bread was made, and I never heard of extra charges being made for such label.

Section 4803, above quoted, is the legislative statement of the law in this State defining a standard loaf of bread, and there is no power in your office to set aside or suspend temporarily a portion of this law. If the bakers in question persist in selling unlabeled loaves of bread that are short of 16 ounces as required by the statute, they are liable to the penalties prescribed in Rev. Laws, 4812.

Yours very truly,

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

**42. Public Schools—County High Schools—County Board of Education.**

Under the provisions of Stats. 1917, the County Board of Education has absolute control of the materials and plans to be used in the erection of county high schools, without regard to any action on the part of the deputy Superintendent of Public Instruction.

CARSON CITY, June 1, 1917.

MR. C. LEWIS WILSON, *Las Vegas, Nevada*.

DEAR SIR: In response to inquiries for an interpretation of that portion of section 5 of chapter 15 of the Statutes of 1917 (p. 19), reading as follows:

Said County Board of Education shall determine as to the character and location, within the town or city as advertised, of said building or improvements and the materials and plans to be used therefor;

let me say that, in my opinion, said section gives the County Board of Education absolute control of the materials and plans to be used in the erection of a county high school without regard to any action on the part of the Deputy Superintendent of Public Instruction.

Yours very truly,

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

**43. Water–Water Courses–State Engineer–Extension of Time Given.**

It is within the province of the State Engineer to extend the time in which proofs may be filed.

The State Engineer can and should accept proofs at any time up to the assembling of proofs and the publication thereof provided in section 28 of the water law (Stats. 1913, 199).

CARSON CITY, June 2, 1917.

HON. J.G. SCRUGHAM, *State Engineer, Carson City, Nevada*

DEAR SIR: I am in receipt of your of May 29, inquiring whether proofs may yet be received upon the Humboldt River in the Humboldt River adjudication. Mr. Kearney was enjoined by the action in the Federal Court in the case of *Bergman et al. v. Kearney*, from receiving proofs, etc., *pendente lite*. That injunction has, however, been dissolved and there is no injunction against the state Engineer's office in that case at the present time. However, a somewhat similar restraining order has been issued out of the state court in the Sixth Judicial District by Judge Ducker in the case of *Anker v. Kearney et. al.*

However, if you will examine the files of your office, I am satisfied that you will find that Mr. Kearney made a general order extending the time indefinitely for the filing of proofs upon the Humboldt River, stating in that order that he would fix the time limit later when the injunction proceedings had been determined. I am further of the opinion, however, that it was within province of the State Engineer to extend the time in which proofs may be filed, and this especially so in view of the provisions of the statute wherein it is provided that any person failing to make proofs within the time provided, the State Engineer shall make a determination of his rights upon such data, maps, evidence, etc., as he may have on file in his office. "An exception to such determination may be filed in court as hereinafter provided." (See sec. 25.) Having this

provision of the statute in mind, it seems to me that the State Engineer can and should accept proofs any time up to the assembling of proofs and the publication thereof provided for by Stats. 1913, sec. 38, p. 199. In other words, to receive at any time, provided they do not interfere with the due and orderly administration and execution of your duties under the Act.

Yours very truly,

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

**44. Water–Water Courses–State Engineer–Permits of State Engineer–Appropriation of Water.**

It is not the duty of the State Engineer upon the granting of a permit to compel all the parties to give the permit holder the amount of water set forth in the permit.

The State Engineer merely gives an appropriator the right to use the water.

If other parties or persons interfere with that use or with his rights under the permit under the permit his remedy is in court and there is no authority vested in the State Engineer to insure to him the amount of water granted in the permit.

The State Engineer has no authority to regulate as between a permit holder and other appropriators upon the stream until there has been adjudication under the provisions of sections 18-39 of the water law. (Stats. 1913, 192.)

CARSON CITY, June 2, 1917.

HON. J.G. SCRUGHAM, *State Engineer, Carson City, Nevada*.

DEAR SIR: I am in receipt of your request for an opinion of this office to your duties with reference to permit 3690 to Omer V. Cole to appropriate the waters of Wright Creek claimed by John G. Taylor and the Town of Lovelock. Mr. Cole complains that he is not receiving his share of water granted to him under the permit and asks action by your office.

I am of the opinion that it is not the duty of the State Engineer, upon the granting of a permit, to compel all of the parties to give the permit holder the amount of water set forth in the permit. The State Engineer, merely acting on behalf of the State, gives to an appropriator the right to use the water. If other parties or persons interfere with that use or with his rights under the permit, his remedy is in court and there is no authority vested in the State Engineer to insure to him the amount of water granted in the permit. Neither has the State Engineer any authority to regulate as between a permit holder and other appropriators upon the stream until there has been adjudication under the provisions of sections 18 to 39 of the water law. (Stats. 1913, 192.)

Mr. Cole's remedy, if he is being unlawfully deprived of any rights granted to him under the permit, is in the courts.

Yours very truly,

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

**45. State Board of Health–Quarantine–Contagious Diseases–Disinfection.**

Under rule 5 of the rules and regulation of the State Board of Health, it is the duty of the attending physician to attend to disinfection after quarantine.

CARSON CITY, June 4, 1917.

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

DEAR SIR: In response to your request for an opinion of this office as to whose duty it is to disinfect or superintend the disinfection after quarantine, let me say that it is my opinion that t his question is fully covered by rule 5 of the Rules and Regulations of the State Board of Health, and the duty above mentioned is fully thrown upon the attending physician.

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

**46. Public Schools–School Districts–Consolidation of School Districts.**

A person who has signed a petition for the consolidation of school districts may thereafter withdraw his name from the petition up to the time petition has been acted upon by the Board of County Commissioners.

CARSON CITY, June 4, 1917.

MR. H.R. SCHWAKE, *Gardnerville, Nevada.*

DEAR SIR: I am in receipt of your request for an opinion as to whether or not persons who have signed a petition for the consolidation of school districts may thereafter withdraw their names from the petition.

I am of the opinion that they can at any time up to the time that the petition has been acted upon by the Board of County Commissioners. The reason for this obvious. The purpose of the statute is to require a certain number or percentage of residents or taxpayers to petition, in order to set in motion action by the Board of County Commissioners. If they have the right to petition, certainly they have the right to change their mind and withdraw their names from the petition at any time before it is acted upon.

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

**47. Public Officers–Bonds–Surety Bonds at Public Expense.**

Under the provisions of Stats. 1917, 340, the premium for an official surety bond must be paid by the State, district, county or city, as the case may be, concerning the official's employment.

From and after the approval of said act any officer who has given a surety bond can cancel the same and obtain a refund of his premium for the unexpired term as his own personal property, and the State, county, district or city, as the case may be, would be required to pay the premium on a new surety bond which he may take out.

CARSON CITY, June 4, 1917.

HON. H.H. ATKINSON, *District Attorney, Tonopah, Nevada.*

DEAR SIR: I am in receipt of your favor of the 24th ultimo, asking an interpretation of chapter 180 of the Statutes of 1917, p. 340, providing for surety bonds for public officers at public expense. Section 2 of said Act provides that the premium for an official surety bond shall be paid by the State, district, county or city, as the case may be, concerning the official's employment.

I am informed that many officials have heretofore given such surety bonds and paid the premium thereon themselves. your inquiry is whether such officers are entitled to a refund of such premium for the unexpired portion of their term.

It is my opinion that from and after the approval of said Act any officer who has given a surety bond could cancel the same and obtain a property, and the State, county, district or city, as the case may be, would be required to pay the premium on a new surety bond which he may take out.

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

**48. Nevada Industrial Insurance Commission—Monthly Payments in Case of Death.**

Under the provisions of section 25, subdivision 1, of the Industrial Insurance Act as amended by Stats. 1915, 286, compensation should be paid upon the basis of 40 per cent of average monthly earnings of the deceased, such 40 percent is the measure of compensation.

CARSON CITY, June 6, 1917.

MR. GEO. D. SMITH, *Chairman Nevada Industrial Commission, Carson City, Nevada.*

DEAR SIR: I am in receipt of yours of May 15, requesting an opinion of this office on paragraph 1, subdivision a of section 25 of the Nevada Industrial Insurance Act of 1913, as amended in 1915, 286. Paragraph 1 of subdivision a of section 25 reads as follows:

To the dependent widow or widower, if there be no dependent children, forty per cent of the average monthly wage, but not less than twenty dollars nor more than sixty dollars per month for a period of one hundred months, but in no case to exceed the sum of four thousand dollars.

I am of the opinion that compensation should be paid upon the basis of 40 per cent of the average monthly earnings of the deceased. In other words, that 40 per cent of the average monthly earnings of the deceased is the measure of compensation, and the other words are words of limitation fixing the maximum amount per month, the maximum period of time and the maximum gross amount which shall be paid. I am of the opinion that the ruling heretofore made by the Commission, based upon 100 months divided into the total award, is erroneous, and that the monthly compensation that should be paid is 40 per cent of the average monthly earnings of the deceased.

Were this not true, it was an idle thing for the Legislature to fix a maximum of \$60 per month, for if we use 100 months as the factor and divide that into the award, we would have a maximum of \$40 per month. It was clearly the intention of the Legislature to provide otherwise.

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

**49. Public Schools—School Districts—Consolidation of School Districts.**

Under the provisions concerning the consolidation of school districts (Stats. 1915, 27) any signer of a petition for the consolidation of school districts may withdraw his name at any time up to the time when the consolidation has been actually affected and he may

withdraw his name even though notice has been published as provided in the statute.

CARSON CITY, June 7, 1917.

HON. F.E. BROCKLISS, *District Attorney, Minden, Nevada.*

DEAR SIR: I am in receipt of your of June 6, requesting an opinion of this office as to whether or not signers on a petition for the consolidation of school districts may withdraw their signatures from such petition after the publication of notice, under the statute. The statute concerning consolidation of school districts and pertinent to the question presented is section 2 of "An Act to provide for the consolidation of school districts, for the transportation of children to and from school and other matters relating thereto," approved February 26, 1915, (Stats. 1915, p. 27.) Said section 2 reads as follows:

The process of uniting two or more school districts into a consolidated district shall be as follows: Upon receipt of a petition signed by a majority of the voters who are entitled to a vote at school elections, from each of the districts to be affected by the consolidation, the county commissioners of the county in which such districts are located shall cause a notice to be published for three consecutive weeks in a newspaper having general circulation throughout the county, which notice shall state fully the names of the districts proposing to consolidate, the boundaries of the proposed consolidated districts, and shall set forth a day and hour at the next regular meeting of the Board of County Commissioners when the said board will canvass the signatures on each petition and hear statements that any of the residents of any of the districts to be affected by the consolidation may wish to make either for or against the proposition of consolidation. AT the time set forth in the *notice* the county commissioners *shall proceed to canvass the signatures on each petition*, and if a majority of said board are satisfied that the petitions presented represent the will of a majority of the voters of each of the districts affected, they shall unite such districts into a single consolidated district, shall designate the said district as Consolidated School District No. ...., and shall designate a place at which the School Trustees of the several districts united shall meet to hold an election. If three or more school districts are proposing to consolidate and a majority of the voters of any district are opposed to such consolidation, such district shall not be made a part of the consolidated district, but the county commissioners may consolidate such other districts as are affected by the consolidation without requiring new petitions.

You will observe that the section quoted provides that the county commissioners shall at the time set forth in the notice "*proceed to canvass the signatures on each petition, and if a majority of said board are satisfied that the petitions presented represent the will of a majority of the voters of each of the districts affected, they shall unite such districts into a single consolidated district,*" etc. Manifestly this provision of the statute is made for the purpose of ascertaining whether or not it is the will of a majority of the voters in *each* district to affect the consolidation. Most certainly, under the statute, such as this, it is both proper and right that a voter signing such petition may withdraw his signature and his request for such consolidation. Any other construction of the statute would distort the real intent of the Legislature.

I am of the opinion that a signer of a petition for consolidation of school districts may withdraw his name from such petitions at any time up to the time when the consolidation has been actually effected, and that they may withdraw their names even though notice has been

published as provided in the statute.

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

**50. Nevada State Agricultural Society—Appropriation.**

The appropriation provided in Stats. 1917, 348, may not be used for the purpose of paying a balance on premiums awarded for the year 1916.

The moneys appropriated by such act may not be used except for the purposes of aiding the State Agricultural Society for the years 1917 and 1918.

CARSON CITY, June 8, 1917.

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

MY DEAR GOVERNOR: I am in receipt of your of the 7th instant, requesting an opinion of this office as to whether or not the appropriation of \$6,000 for the years 1917 and 1918 for the Nevada State Agricultural Society, provided for by "an Act granting aid to the Nevada State Agricultural Society for the purpose of holding State Fairs during the years 1917 and 1918, and to erect, maintain and improve the buildings and grounds of the Society," approved March 24, 1917 (Stats. 1917, 348), may be used for the purpose of paying a balance of approximately \$1,200 on premiums awarded by the Society in the year 1916. You will observe from the title of the Act that the aid is granted to the Society for the years 1917 and 1918. Section 1 of the Act also provides that the sum of \$6,000 for each of the years 1917 and 1918 is appropriated to aid the Society in holding annual fairs in *each of aid years*.

I am of the opinion that the moneys appropriated by this Act may not be used except for the purpose of aiding the State Agricultural Society for the years 1917 and 1918, and that no part of this appropriation may be used for the purpose of paying back bills or premiums incurred in 1916.

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

**51. Foreign Corporation—Appointment of Resident Agents—Secretary of State.**

The Secretary of State is required to file a certificate of appointment of resident agent and is not justified in requiring a corporation to produce evidence of its compliance with the provisions of the law prior to the passage of the Act of 1907 (Rev. Laws, 1348-1350) or with such Act.

The Secretary of State is required to file all certificates of appointment of resident agent whether or not any other filings have been made in his office.

Failure to make any other filings required makes such corporation liable for the penalty provided in the respective Acts, but will not justify the Secretary of State in imposing an additional penalty by refusing to file such certificate.

CARSON CITY, June 9, 1917.

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

DEAR SIR: The Nevada Land and Livestock Company, a corporation organized under the

laws of Utah, which prior to the passage of the Act of 1907, requiring corporations thereafter coming into this State to file a copy of its articles of incorporation with the Secretary of State, had not therefore complied with all the provisions of law relative to foreign corporations and particularly sections 1347 and 1348, Revised Laws of Nevada, 1912, has tendered to your office, for filing, appointment of resident agent upon whom process may be served, together with the required fee.

I am of the opinion that your office is required to file this certificate of appointment, and that you are not justified in requiring the corporation to produce evidence of its compliance with the provisions of law prior to the passage of the Act of 1907 or with the Act of 1907. I am of the opinion that you are required to file all certificates of appointment of resident agent regardless of whether or not any other filings have been made in your office. Failure to make any other filings required makes such corporation liable for the penalty provided in the respective Acts, but will not justify your office in imposing an additional penalty for refusing to file such certificate.

Yours very truly,

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

**52. Assessment and Taxation—Assessors.**

It is the duty of the Assessor to assess all property within his county between the first Monday in March and the third Monday of August of each year, and all property within the county between these two dates is subject to assessment, and all property which comes into existence either as additions or otherwise, between the first Monday in March and the third Monday in August is liable for taxation for that year.

A man who bought an automobile after having listed his personal property with the Assessor may be compelled to pay another personal property tax on such automobile.

If such person owns real estate the tax on subsequently acquired personal property may be added to and placed on his tax statement.

CARSON CITY, June 16, 1917.

HON. G.J. KENNY, *District Attorney of Churchill County, Fallon, Nevada*.

DEAR SIR: Yours of June 13, addressed to the Nevada Tax Commission, was referred to this office for an opinion upon two questions which you state as follows:

(a) A man, in absolute good faith, listed his personal property with the Assessor on May 11, 1917, and paid the personal property tax thereon, May 12, 1917; a short time later he bought an automobile; now the question: As he possesses no realty on which to levy and thereby include this recently acquired automobile, may the Assessor compel him to pay another personal property tax on his new car?

(b) Where a man, owning real estate, has been assessed and duly signed his statement, but subsequently acquires personal property, may this newly acquired personal property be added to and placed on his tax statement?

The questions may be answered together. Section 3618 of the Revised Laws of Nevada provides that the Board of County Commissioners shall fix the rate of county taxes for the year on or before the first Monday in March. Section 3624 of the Revised Laws of Nevada, as amended Stats. 1915, p. 178, provides:

Between the rate of the levy of taxes and the second Monday of July of each year the County Assessor \* \* \* shall ascertain by diligent inquiry and

examination the property in his county, real and personal, subject to taxation.

Section 6 of the Act creating the Nevada Tax Commission, Stats. 1917, pp. 328-332, provides:

Beginning on the third Monday of August, the said Commission shall, together with the County Assessors of the several counties in this State, sit in Carson City as a State Board of Equalization.

I am of the opinion that, under the provisions of the sections above referred to, it is the duty of the Assessor to assess all property within his county between the first Monday in March and the third Monday of August of each year, and that all property within the county between these two dates is subject to assessment, and that all property which comes into existence, either as additions or otherwise, between the first Monday in March and the third Monday in August is liable for taxation for that year. (*State of Nevada v. C. & C. Railroad Company*, [29 Nev. 487.](#))

I am of the opinion, therefore, that both of your questions should be answered in the affirmative.

Yours very truly,

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

**53. Nevada School of Industry—Salary of Secretary.**

Under the provisions of section 9 of the Act providing Nevada School of Industry (Stats. 1913, p. 385) the Board of Government of such institution may provide a small salary for the secretary, not as compensation to him as a member of the board, but as a necessary and reasonable expense incurred by the board in the performance of its duties.

CARSON CITY, June 25, 1917.

MR. W. W. BOOHER, *Secretary Board of Government, Nevada School of Industry, Elko, Nevada.*

DEAR SIR: Yours of recent date, stating "that at a meeting of the Board of Government of the Nevada School of Industry, held June 16, 1917, it was ordered "That the member of the board acting as secretary of the board be allowed the sum of fifty dollars a year for his services as secretary, and that the secretary be instructed to submit this action to the Attorney-General of the State for his opinion as to its legality under the Act creating said board," duly received.

Section 9 of the Act in question (Stats. 1913, p. 385) provides:

The members of said board shall serve without compensation, but necessary and reasonable expenses incurred by him in the performance of their duties as members of said board shall be paid out of the appropriations made for the maintenance of said school, when approved by the board.

The sum of \$50 authorized by the board to be paid the member acting as secretary is not in the nature of compensation to that member, but is a necessary and reasonable expense incurred by the board in the performance of its duties. It is, therefore, a valid claim against the State.

Yours very truly,

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

BY WM. McKNIGHT, *Deputy*.

**54. Women's Eight-Hour Law—Eight-Hour Law for Women.**

It is the manifest purpose of the eight-hour law for women (Stats. 1917, p. 16) that women should labor but that specified time. They are not allowed to receive pay for overtime, and if the employer's business requires extra work, in order to comply with such law it will be necessary for him to hire extra employees.

CARSON CITY, June 27, 1917.

MR. WM. C. GOODMAN, *Care of McGill Mercantile Co., McGill, Nevada.*

DEAR SIR: I am in receipt of your favor of the 25th instant, asking for an opinion on the eight-hour law for women (Stats. 1917, p. 16). It appears that you employ two girls at your store and they are now working but eight hours a day, but on Saturdays and nights preceding holidays you keep open until 8 o'clock, which would make the hours of labor for your employees nine and one-half hours. You inquire whether such practice is legal.

It is the manifest purpose of the eight-hour law for women that they should labor but that specified time. They are not allowed to receive pay for overtime, and if your business requires extra work, in order to comply with the law, it will be necessary for you to hire extra employees, for the reason that the Legislature, in its wisdom, has determined that an eight-hour shift is all that a woman can stand and retain her health.

Yours very truly,

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

**55. Assessment and Taxation—Inheritance Tax Law.**

Under the provisions of subdivision 2, section 2, chapter 266, Stats. 1913, no inheritance tax is due the State where the only heir is a brother and the total value of the estate does not exceed the sum of \$10,000, exempted by subdivision 2, section 4, of the same Act.

CARSON CITY, June 29, 1917.

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

MY DEAR SIR: Yours of the 21st instant, *in re* Estate of Wm. McKay, to George A. Cole, State Controller, was referred to this office. It appears from your letter that Wm. McKay died on the 28th day of September, 1916, and at the time of his death was a resident of Reno, Washoe County, Nevada. He left an estate, the clear valuation of which, after the payment of all debts and claims is \$9,174.55, which will be distributed to the only heir, John McKay, a brother, a resident of Novat, Pictou County, Nova Scotia.

Subdivision 2 of section 2 of chapter 266 (Stats. 1913, p. 411) of the inheritance tax law provides:

Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister, or a descendant of a brother or sister of the decedent, a wife or widow of a son, or the husband of a daughter of the decedent, at the rate of two per centum of the clear valuation of such interest in such property.

Subdivision 2 of section 4 of the same Act, which sets forth the exemptions, provides as follows:

Property of the clear value of \$10,000 transferred to any or of all the persons,

described in the second subdivision of section two, shall be exempt.

In view of the foregoing provisions of the inheritance tax law, I am of the opinion that there is no inheritance tax due under the facts given against the estate of Wm. McKay, or the transfer to his only heir, John McKay.

Will you kindly let me know whether or not you agree with this opinion?

Yours very truly,

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

**56. Governor--Fish and Game--Mammals.**

The Governor may legally grant a permit "for taking or killing any bird or fowl, or collecting the nest and eggs of the same for strictly scientific purposes," under provision of Stats. 1917, p. 468, but cannot grant a permit for the taking of mammals.

CARSON CITY, June 30, 1917.

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

DEAR SIR: Your oral request for an opinion as to whether or not you may legally grant a permit for the taking of birds and mammals for scientific purposes, received.

Section 50 of "An Act to provide for the protection and preservation of fish and game, providing penalties for the violation thereof, and repealing all Acts or parts of Acts in conflict therewith," approved March 27, 1917 (Stats. 1917, p. 468) contains the provision:

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

This language, although negative, was no doubt intended to authorize the granting of permit for the purposes mentioned, but not for the securing of mammals. Upon this latter point an opinion was heretofore rendered (Atty.-Gen. Opin. 1915-1916, No. 80, p. 71), which correctly states the law.

You are therefore advised that, in the opinion of this office, you may legally grant a permit for 'taking or killing any bird or fowl, or collecting the nest and eggs of the same for strictly scientific purposes," but cannot legally grant a permit for the taking of mammals.

Yours very truly,

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

BY WM. McKNIGHT, *Deputy*

**57. Nepotism--Nevada School of Industry.**

The Superintendent of the Nevada School of Industry may employ, as an assistant manager, the son of a member of the Board of Control of said institution.

Such employment would not be in conflict with the Nepotism Act (Stats. 1915, p. 17) for the reason that the Board of Control appoints the Superintendent and the Superintendent appoints his assistants.

CARSON CITY, July 2, 1917.

HON. EMMET D. BOYLE, Carson City, Nevada.

Dear Sir: In some way answer to your favor of march 29 has been overlooked until now.

You inquire whether it would be legal for the Superintendent of the Nevada School of Industry to employ, as an assistant manager, the son of a member of the Board of Control of said institution.

In my opinion such employment would not be in conflict with the Nepotism Act (Stats. 1915, p. 17), for the reason that the Board of Control appoints the Superintendent and the Superintendent appoints his assistants. Such Act provides:

It shall be unlawful for any state, township, municipal, or county official, elected or appointed, to employ or keep in his employment on behalf of the State of Nevada, or any county thereof, in any capacity, his wife, son, daughter, or any person or persons related to him (by blood or marriage) within the third degree of affinity or consanguinity.

By a reading of the above, it will be seen that it in no way applies to the present circumstances.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

58. Governor--State Assayer and Inspector--University of Nevada.

The Governor may appoint a Professor of the University of Nevada as State Assayer and Inspector, provided that the party appointed possesses the qualifications specified in section 3 of the Act creating such office (Stats. 1917, p. 449).

CARSON CITY, July 11, 1917.

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

Dear Governor: Your letter, asking whether or not you might legally appoint a Professor connected with the University as State Assayer and Inspector, duly received. Section 3 of the Act creating the position in question (Stats. 1917, p. 449) provides as follows:

The State Assayer and Inspector shall not at the time of his appointment, or at any time during his term of office, be an owner, officer, director, or employee of any mining corporation, smelter, sampler, or mill which purchases ore or does custom work, and he shall not hold stock or bonds of or in any smelter, sampler, or mill

purchasing ore or doing custom work. He shall further be a practical mining man and have had at least five years actual and immediate experience in the mining business and shall be a qualified assayer and metallurgical chemist of at least three years actual experience.

If the party whom you desire to appoint possesses the qualifications necessary, there is no legal reason why you cannot make the appointment.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

59. Assessment and Taxation--Revenue--Refund of Taxes.

Four things are essential before a refund of taxes can be made under the provisions of Stats. 1917, p. 174: First, that the property has been assessed to two or more persons. Second, that the taxes have been paid two or more times. Third, that the assessment and payment have been made in the same year. Fourth, that competent evidence exists of all of such facts, and has been furnished to the Board of Examiners and the State Controller.

CARSON CITY, July 16, 1917.

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

Dear Sir: Your letter of the 11th instant, enclosing list of claims sent in from Elko County relating to refund of taxes, and asking an opinion from this office as to whether or not there is any appropriation available out of which such claims can be paid, duly received.

The only statutes providing an appropriation for the refund of state taxes is contained in an Act passed at the last session of the Legislature entitled "An Act regulating the manner of procedure for obtaining refund of state, county and other taxes which have been twice paid, and making an appropriation therefor."

Section 3 of such Act (Stats. 1917, p. 174) reads as follows:

Whenever it shall appear to the State Board of Examiners of the State of Nevada, by competent evidence, that through mistake or inadvertence the state tax for any one tax year has, by reason of the assessment of the same piece or pieces of property to two or more persons, been paid twice or more times, said Board of Examiners, by its unanimous resolution, may direct the State Controller to draw his warrant for refund of such excess payment in favor of the assignee of all claims for such overpayment.

By this section four things are essential before a refund can be made: First, that the property has been assessed to two or more persons; second, that the tax has been paid two or

more times; third, that the assessment and payment have been made in the same year: fourth, that competent evidence exists of all such facts and has been furnished to the Board of Examiners and to the State Controller.

The claims submitted do not show that the property was assessed to more than one person or that the taxes levied thereon were paid more than once during the same year. We, therefore, are of the opinion that there is no appropriation available out of which such claims can be paid.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

60. Nevada Industrial Commission--Claim for Compensation--Filing.

Claim for compensation must be filed within one year after death.

CARSON CITY, July 17, 1917.

MR. GEO. D. SMITH, Chairman, Nevada Industrial Commission, Carson City, Nevada.

Dear Mr. Smith: This office has received your letter of recent date, asking an opinion upon the following matter:

With reference to sections 34 and 34 ½--where, because of the discontinuance of mail service due to the European war, applications for compensation from dependents residing in Austria-Hungary and the Balkan States cannot be filed or completed within a year after the death of a workman within the purview of the Nevada Industrial Act--would an application be valid--

- a. If received within a reasonable time after the resumption of the mail service;
- b. If notice of intent to file application has been received within the time limit of one year, but the application received after the time limit upon the resumption of the mail service?

Section 34 (Stats. 1913, p. 150) provides:

No application shall be valid or claim thereunder enforceable unless filed within one year after the day upon which the injury occurred or the right thereto accrued.

Section 34 ½ (Stats. 1917, p. 448) provides:

Notice of the injury for which compensation is payable under this Act shall be given to the Commission as soon as practicable, but within thirty days after the happening

of the accident. In case of the death of the employee resulting from such injury, notice shall be given to the Commission as soon as practicable, but within sixty days after such death. The notice shall be in writing and contain the name and address of the injured employee and state in ordinary language the time, place, nature, and cause of the injury and be signed by said injured employee, or by a person in his behalf, or in case of death, by one or more of his dependents or by a person on their behalf. No proceeding under this Act for compensation for an injury shall be maintained unless the injured employee, or some one in his behalf, files with the Commission a claim for compensation with respect to said injury within ninety days after the happening of the accident, or, in case of death, within one year after such death. The notice required by this section shall be served upon the Commission, either by delivery to and leaving with it a copy of such notice, or by mailing to it by registered mail a copy thereof in a sealed, postpaid envelope addressed to the Commission at its office, and such mailing shall constitute complete service; the failure to give such notice or to file such claim for compensation within the time limit specified in this section shall be a bar to any claim for compensation under this Act, but such failure may be excused by the Commission on one or more of the following grounds: (1) That notice for some sufficient reason could not have been made. (2) That failure to give such notice will not result in an unwarrantable charge against the State Insurance Fund. (3) That the employer had actual knowledge of the occurrence of the accident resulting in such injury. (4) That failure to give notice was due to employee's or beneficiary's mistake or ignorance of fact or of law, or of his physical or mental inability, or to fraud, misrepresentation, or deceit.

Treating the word "application" as used in the earlier section, and the phrase "claim for compensation," as used in the latter section, as meaning the same thing, it is at once seen that the two sections, in cases where death does not occur, cannot be reconciled. As no other meaning but the same could possibly be given to such word or phrase, it necessarily follows that the later section supersedes the earlier section as to all injuries occurring after July 17, 1917, the date the later section became effective.

The section provides that notice of the injury shall be given within thirty days after the accident; that notice of death shall be given within sixty days after such death; that the claim for compensation for accident only shall be given within ninety days after the accident; and that the claim for compensation for death shall be given within one year after such death. A failure to give the notice or to file the claim for compensation within the time limit specified shall be a bar to any claim for compensation under the Act, but the Commission may excuse such failure upon one or more of the grounds specified in the section.

These grounds, it is noticed, all refer to the *notice*; they have no application to the claim for *compensation*. The Commission may excuse the failure to file the notice, but cannot excuse the failure to file the claim for compensation. Under the statute, the claim for compensation must be filed within one year after death.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

61. Public Schools--School Districts--Creation of School Districts.

The word "guardian," as used in section 77 of the School Code (Rev. Laws 3316), as amended by Statutes of 1917, p. 389 means "one who has been duly appointed by the Court."

Children residing with an aunt, who is not their guardian in such legal sense, would not justify the County Commissioners in considering them as a part of the five school-census children required in such section 3316.

CARSON CITY, July 20, 1917.

HON. G. J. KENNY, District Attorney, Fallon, Nevada.

Dear Sir: I am in receipt of your favor of the 17th instant, calling my attention to chapter 200, Stats. 1917, p. 380, and inquiring: "Whether the expression 'guardian' as used in said chapter, means one who has been duly appointed by the court, or one merely having the custody of children as distinguished from a parent."

The said chapter 200 is an amendment of section 77 of the school law which authorizes Boards of County Commissioners, when there shall have been presented to them from the parents or guardians of five school-census children, to create new school districts.

It appears that such a petition has been presented to your County Commissioners asking for the establishment of a new district in which there are eight children, four of whom reside with an aunt, the father of these four children residing with his wife and other children in another school district. A guardian is defined as one who is entitled to the custody of an infant.

In the calculation of the number of children involved in this proposed new school district, it seems to me that these four children should be excluded from the computation, as under the provisions of section 124 of the school law (Rev. Laws, 3363), as amended by Stats. 1913, p. 155, it seems to me that these children are not school-census children of the district in which they have been residing with their aunt, for subdivision 2 of the section abovementioned includes in the school census "children temporarily residing out of said district for the purpose of attending institutions of learning." It is probable, therefore, that these children were included in the census of the district in which the father and mother reside.

It is the opinion of this office that the word "guardian" in said section 77 is used in a legal sense as above defined, and the fact that these children are residing with an aunt, who is not their guardian in such legal sense, would not justify the County Commissioners in considering them in

the five school-census children required in said section 77.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

62. Nevada Industrial Commission--Death Benefits Amendment.

An amendment increasing death benefits passed subsequent to injury but prior to death does not authorize the payment for death under the amendment.

CARSON CITY, July 20, 1917.

HON. GEORGE D. SMITH, Chairman, Nevada Industrial Commission, Carson City, Nevada.

Dear Sir: We wish to acknowledge receipt of your letter of the 18th instant, requesting an opinion as to the amount of compensation payable to a dependent widow under the following statement of facts:

The deceased received injuries March 20, 1915, from which he died on March 15, 1916. On March 22, 1915, three days subsequent to the injury, amendments to the original Nevada Industrial Insurance Act increased death benefits to a widow, with more than two children, from \$5,000 to \$6,000. In making the award to the widow and children, we are in doubt whether to pay compensation under the 1913 or the 1915 Act.

In *State ex rel. Carlson v. District Court of Hennepin County*, 154 N.W. 661, 11 Neg. And Com. Cas. 630, a similar state of facts existed. Upon an action the trial court held that the plaintiff, the widow of the deceased workman, who sued in her own behalf and as mother of her minor children, was entitled to recover under the law in force on the day her husband died, although the State had contended that the law in force on the day the deceased was injured governed. The Supreme Court held that:

The trial court was right. The claim of plaintiff for compensation does not arise from the injury to her husband, but is a new and distinct right of action created by his death. (*Anderson v. Fielding*, 92 Minn. 42 Am. St. Rep. 665; *Michigan Central R. Co. v. Vreeland*, 227 U.S. 59, 33 Sup. Ct. 192, 57 L. Ed. 417, Ann. Cas. 1914 176; *American R. Co. v. Didricksen*, 227 U.S. 145, 33 Sup. Ct. 224, 57 L. Ed. 456.)

It is seen that because the death of the workman creates a new and distinct right of action, upon which point there can be, of course, no question, the Minnesota court held that the law in force at the time of such death governed. The court apparently entirely lost sight of the proposition that the new action is a right dependent upon the existence of a right in the decedent immediately before his death to have maintained an action for his wrongful injury. (*Michigan Central R. Co. v. Vreeland*, 227 U.S. 59, 33 Sup. Ct. 192, 57 L. Ed. 417, Ann. Cas. 1914, 176,

and cases there cited.)

Can it be said that the decedent in the present case could have maintained an action for compensation for his injury under the 1915 amendment? Certainly not, because he was injured previously to the time that such amendment took effect. His cause of action for the injury had accrued and could not be affected by the subsequent change in the law. (Tiffany, Deach by Wrongful Act, sec. 31-1). It therefore naturally follows that the Minnesota case, the only case directly in point that we have been able to locate, does not advance, so far as the important point is concerned, a correct doctrine.

In *Quinn v. Chicago, M. & St. P. Ry. Co.*, 124 N. W. 653, the court held that an amendment adding collateral relatives to the classes of persons for whose benefit action might be brought did not give such persons a right of action for death from an injury occurring before the amendment went into effect. It was there said "that all rights of action for the death of a person, as in this case, must depend upon the status as regards the law at the time of the injury, for it is then that the remedial right, as against the wrongdoer, must exist and its violation commence, in contemplation of the statute, in order that the final event terminating the possibility of pecuniary benefits accruing to the statutory beneficiary by a continuance of the life may constitute a remediable wrong. The result is that the law of 1907, passed subsequent to the wrong, adding collateral relations to the class of person for whose benefit such an action as this may be brought, did not give such persons a right of action, because not having a remedial right at the time of the injury which could then form the basis of a right of action contingent upon the death of the injured party."

In view of the foregoing, you are advised that, in our opinion, compensation should be paid under the 1913 Act.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

63. Nevada Industrial Commission--Rejection by Employee-Action for Damages.

The Commission is not liable for any part of a judgment recovered at law by a rejecting employee.

CARSON CITY, July 21, 1917.

HON. GEORGE D. SMITH, Chairman, Nevada Industrial Commission, Carson City, Nevada.

Dear Sir: We wish to acknowledge receipt of yours of recent date, wherein you ask the following question:

Where the employer accepts the terms and conditions of the Nevada Industrial Insurance Act, and one or more of his employees reject the Act (the employer paying compensation premium on the rejecting employee's salary), is the State Insurance Fund liable to the employer for any part of a judgment recovered at law by a rejecting employee, who has been injured?

Section 3b (Stats. 1913, p. 139) provides:

In the event that such employee elects to reject the terms, conditions, and provisions of this Act, the rights and remedies thereof shall not apply where an employee brings an action or takes proceedings to recover damages or compensation for injuries received growing out of and in the course of his employment, except as otherwise provided by this Act.

No other provisions in the Act nor any amendments thereto express a contrary meaning, and in the absence thereof it is plain that the Act has no application whatever to an injured employee who has previously rejected it and has commenced an action for damages.

In our opinion, the Commission is not liable for any part of a judgment recovered at law by the rejecting employee.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

64. Nevada Industrial Commission--Compensation--Suspension.

The Commission should not send compensation payments to dependents residing in Austria-Hungary during the war.

CARSON CITY, July 21, 1917.

HON. GEORGE D. SMITH, Chairman, Nevada Industrial Commission, Carson City, Nevada.

Dear Sir: We wish to acknowledge receipt of your recent letter wherein you ask the following question:

Is the Commission precluded by federal statutes from sending compensation payments to dependents residing in Austria-Hungary during the European war, on account of the severance of diplomatic relations with that country?

When a war is commenced between nations, it arrests, *eo instanti*, all commercial

intercourse and voluntary communications with the enemy, without the permission of the government; and the citizens or subjects of one belligerent become the enemies of the other, and of all its citizens or subjects. (*Griswold v. Waddington*, 16 John. 438; *The Rapid*, 8 Cranch, 161; *The Julia*, 8 Cranch, 193; *Harden v. Boyce*, 59 Barb. 425.)

The Government of the United States is at present at war with the Imperial German Government. With Germany is aligned Austria-Hungary. Diplomatic relations have been severed with Austria-Hungary, although a state of war has not been declared. This country is, therefore, at war with Austria-Hungary in a material, although not in a legal sense.

In our opinion, you would not be justified, although possibly not legally precluded, from sending compensation payments to dependents residing in Austria-Hungary during the present war.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

65. State Assayer and Inspector--Deputy State Assayer and Inspector.

Under the provisions of the law creating the office of State Assayer and Inspector (Stats. 1917, p. 449) it is contemplated that all expenses in connection with such office except deputy hire should be paid from the appropriation made in section 11 of the Act, and that such deputy hire should be paid from the State Assayer and Inspector Fund.

The State Assayer and Inspector can hire no deputy or incur any expenses until there is money in such fund.

The funds of the office of State Assayer and Inspector cannot be handled by the Controller of the University, as the Act itself makes direct provision for the handling of such funds by the State Treasurer.

CARSON CITY, July 21, 1917.

MR. FRANCIS CHURCH LINCOLN, State Assayer and Inspector, Reno, Nevada.

Dear Sir: Answer to your recent letter, with reference to the law creating the office of State Assayer and Inspector (Stats. 1917, p. 449), has been delayed by absence.

Section 2 of the Act provides that the State Assayer and Inspector shall receive a specified salary and "his necessary traveling expenses when traveling in the discharge of his official duties, and necessary expenses for deputy hire, postage, stationery, printing, and other

expenses.”

Section 6 provides that:

It shall be the duty of the State Assayer and Inspector to take charge at the destination thereof of all ores consigned to samplers, custom mills, or other ore purchasers located in this State, whenever requested so to do by the owner or forwarder of such shipments.

It further provides that the sum of 25 cents per ton shall be paid by the shipper or owner to the State Treasurer, to be placed in a fund to be known as the “Assayer and Inspector Fund.”

Section 7 also provides for such fund and for the disposition of the receipts making up the same.

Section 8 provides:

The State Assayer and Inspector may appoint deputies as necessary, at a wage of not to exceed five (\$5) dollars the day and traveling expenses; provided, said deputies shall be paid out of the fund known as the “Assayer and Inspector Fund,” in the State Treasury, and no deputy hire shall be incurred unless there are sufficient funds on hand to pay the per diem and expenses in said fund.

From the above it seems plain that the Legislature intended that all expenses in connection with your position, except deputy hire, should be paid from the appropriation made in section 11 of the Act, and that such deputy hire, and that only, should be paid from the State Assayer and Inspector Fund. As the Act distinctly specifies that no deputy hire shall be incurred unless there are sufficient funds on hand to pay the same, it is readily seen that you can hire no deputies nor incur any such expense until there is such money in such fund. In order to get money available for such purpose, it will unquestionably be necessary for you yourself to take charge of the first shipment of ores.

Under no circumstances can the funds of your office be handled by the Controller of the University, as the Act itself makes direct provision for the handling of such funds by the State Treasurer.

Owing to your position with the University requiring your presence there, I think the provisions of section 4 of said Act may be disregarded and the records may be kept at the University.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-

General.

66. Elections--Nomination by Petition--Political Parties--Registration.

Any party which goes on the ballot by petition cannot use the name of any party already officially recognized, or take such name as would be liable to be misleading or confusing with any other existing parties.

An old party already officially recognized in this State on change of its name could get its candidates on the ballot by petition only.

Said change of name could be made by the state committee or state convention or by petition filed with the Secretary of State.

The law (Stats. 1917, p. 438) allows three months within which members of a new party may register their party affiliations for the primary election.

No person would be allowed to vote at a primary election unless registered and party affiliation designated.

The organization of a new party includes the necessity of registration of voters as members of such new party, if they wish to participate in the primary election.

Two parties cannot nominate by primary the same man for the same office.

A fusion cannot be effected in this State by nominating the same man for the same office, because a nomination by petition of electors must be filed at least ten days before the primary election is held.

CARSON CITY, July 21, 1917.

MR. LEONARD D. FLACKER, Office Secretary, National Prohibition Committee, 326 W. Madison Street, Chicago, Ill.

Dear Sir: Owing to the absence of the writer from the city, answer to your favor of the 5th instant, asking further information in regard to the election laws of Nevada, has been delayed until now. You are correct in assuming that any party which goes on the ballot by petition cannot use the name of any party already officially recognized, or take such name as would be liable to be misleading or confusing with any other parties named. You inquire:

Suppose an old party, as the Democrat or Republican, should desire to change its name, could it do so in Nevada without losing its present status, or would it have to become a new party and get on the ballot by petition?

In my opinion, any old party already officially recognized in this State, on change of its

name, could get its candidates on the ballot by petition only.

The change of name could be made by the state committee or state convention or by petition filed with the Secretary of State. You further inquire:

Assuming that the Prohibition Party would be organized in Nevada, file the proper petition sixty days before the primary with the required number of signatures and have a place upon the primary ballot. But as no one had a chance to register as a Prohibitionist in the previous registration period, who would be allowed to vote the Prohibition Party at such a primary? In other words, could a party organize and have its supporters vote its ticket in the primary without so registering as being of that party affiliation? Does the organization of a new party include of necessity the registration of voters as members of a new party which may at that time (the time of registering) be unorganized?

In response to that inquiry, I would point out to you that the registration in this State opens on the 1st day of June in any general election years (Stats 1917, p. 428), while the primary election is held on the first Tuesday in September (Stats. 1917, p. 277). This would allow a period of three months within which members of the Prohibition Party could register and designate their affiliation with such party. At the primary election no person would be allowed to vote the Prohibition Party ticket unless registered and affiliation designated. The organization of a new party does include the necessity of registration of voters as members of such new party, if they wish to participate in the primary.

In answer to your third inquiry, let me say that, in my opinion, two parties cannot nominate by primary the same man for the same office. The objection to this procedure lies in that portion of section 5 of the Act regulating the nomination of candidates, appearing on pages 277 and 278 of Statutes of 1917. The statement required in such section of any prospective nominee for any elective office must recite that: "I am a member of the ..... Party; that I believe in and intend to support the principles and policies of such political party in the coming election; that I affiliated with such party at the last general election of this State, and I voted for a majority of the candidates of such party at the last general election; that I intend to vote for a majority of the candidates of such party at the ensuing election for which I seek to be a candidate."

From the above you will see that it is impossible for two parties to nominate by a primary the same man for the same office, and, therefore, no fusion could be had in such manner. Further answering your third inquiry, I think it would be almost impossible to effect a fusion in this State, for the reason that section 31 of the Act above mentioned provides:

In the case of nomination by petition of electors, such certificate of nomination shall be filed at least ten days before the primary election.

The nomination by petition of electors must, therefore, be made before the primary election is held.

Trusting this will answer your inquiries in full, I am,  
Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General

67. Water--Watercourses--State Engineer--Water Permit.

Under the provisions of section 65 of the water law (Stats. 1913, p. 212), the State Engineer has no authority to set the time prior to which actual construction work shall begin at more than one year from the date of approval.

The extension of time further provided for is entirely within the discretion of the State Engineer.

If good cause is shown therefor, the State Engineer may extend the time of such period as he wishes.

CARSON CITY, July 21, 1917.

HON. J. G. SCRUGHAM, State Engineer, Carson City, Nevada.

Dear Sir: I am in receipt of your favor of the 19th instant, asking an interpretation of section 65 of the water law (Stats. 1913, p. 212). Such section provides:

The State Engineer shall set a time prior to which actual construction work shall begin.

And, also,

The State Engineer shall have authority, for good cause shown, to extend the time within which construction work shall begin.

I am of the opinion that, under the section first above quoted, you have no authority to set the time prior to which actual construction work shall begin at more than one year from the date of approval. The extension of time further provided for is entirely within your discretion, and, if good cause is shown therefor, you may extend the same for such period as you wish.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

68. Public School Districts--School Funds--Corporations.

A corporation has no power outside of that granted to it by law.

School districts are not authorized to use school funds to dig a well and sell the water therefrom.

The provisions of section 3381, Rev. Laws, limit the uses for which school funds may be expended.

CARSON CITY, July 20, 1917.

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

Dear Sir: You have referred to this office a letter from Hon. J. H. White, District Attorney of Mineral County, dated July 16, in which inquiry is made:

Is there any objection to a certain school district digging a well and putting in windmill and tank and selling water from the well, using funds so gained for the improvement of the school grounds?

In my opinion such use of school funds would be entirely illegal, for the reason that Rev. Laws, 3278 (School Code, sec. 40), makes the Trustees of each school district a body corporate. Rev. Laws, 3305, prescribes the powers and duties of the Trustees. It is a familiar rule of law that a corporation has no power outside of that especially granted to it by law. Among such powers and duties, which are defined at great length in said section, I find no authority for the use of school funds for digging a well and selling the water therefrom.

Rev. Laws, 3381, provides specifically that the Board of Trustees may use the moneys from the county school funds to purchase sites, build or rent schoolhouses, to purchase libraries, and to pay teachers or contingent expenses, and for the transportation of pupils.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

69. License--State License--Motion-Picture Theaters.

Under the provisions of the second paragraph of section 1, Stats. 1915, p. 236, it is the intention of the Legislature that all licenses shall expire at the end of the quarter or at the end of a calendar year.

In case of an application for a motion-picture theater license on July 27 the Sheriff may issue the license at the \$40 rate for the months of August and September, being the unexpired portion of the third quarter of the year, and also issue licenses at \$40 for the fourth quarter of the year. At the beginning of the next year the Sheriff may issue license for the full year at \$75.

CARSON CITY, July 30, 1917.

HON. GEO. A. WHITELEY, District Attorney, White Pine County, Ely, Nevada.

Dear Sir: I am in receipt of your favor of the 27th instant, asking construction of the second paragraph of section 7, chapter 178, page 236, Statues of Nevada, 1915, as applied to the following state of facts:

It appears that a party in your town desires to open a motion-picture theater. He asks for his license and wants to take out an annual license and to pay therefor approximately five-twelfths of \$75, on the supposition that he can take out an annual license and be given credit for the time in the year already elapsed, or he wishes to pay \$75 for a year's license, the year to run from July 27, 1917, to July 27, 1918.

Section 1 provides a license of \$20 per month, or \$40 per quarter-years, or \$75 for the whole year.

Section 27 of said Act provides said licenses shall be granted from one, two, three, or four quarters at the option of the person applying for such licenses. The term "quarter" whenever used in the Act with reference to time, is to be construed to mean a quarter of a year, and said quarter shall begin in the months of January, April, July, and October of each and every year. Said section further provides:

Whenever any person, firm, association, or corporation shall apply for a license to conduct business in the middle of any quarter, or any part of a quarter, then said person, firm, association, or corporation shall be required to pay only for the unexpired portion of the quarter, and said licenses shall be so arranged as to have said license or licenses fall and become due on the beginning of a quarter, and the Sheriff and Auditor shall have the right to issue a license for a fractional quarter so as to have the licenses fall due at the beginning of a quarter as herein provided.

It appears from a reading of this section that it was the intention of the Legislature that all licenses should expire at the end of a quarter, or at the end of a calendar year.

It would, therefore, be impossible for your Sheriff to issue a license to the party in question for one year from July 27. He may, however, issue a license at the \$40 rate for the months of August and September, being the unexpired portion of the third quarter of this year, and also issue a license at \$40 for the fourth quarter of this year, such license expiring December 31, 1917. At the beginning of the next year, if the party so desires, a license for the full year at \$75 may be issued to him.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

70. Nevada Industrial Commission--Regular Course of Employment--(Horse Play).

An employee who is injured while indulging in horse play did not sustain an accident arising out of the employment, and a claim presenting such state of facts should be rejected.

CARSON CITY, July 31, 1917.

MR. GEO. D. SMITH, Chairman, Nevada Industrial Commission, Carson City, Nevada.

Dear Sir: Replying to yours of May 15, requesting an opinion of this office upon the following state of facts:

An employee in the regular course of his duties while bringing a bucket of coal into the office occupied by him met a friend and, putting down the bucket of coal, in a spirit of pleasantry "squared off," as if sparring. The friend, in the same spirit, swung his arm out at the employee, who quickly stepped back and in so doing tripped over an obstacle and sustained a fractured thigh, which later resulted in his death.

I am of the opinion that under the facts stated the accident did not arise out of the employment, neither did it arise in the course of employment, and that a claim presenting any such state of facts should be rejected.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

71. Nevada Industrial Commission--Public Employers--Accident Premiums.

The State and its political subdivisions are not obliged to pay premiums to the Commission for accident benefits.

CARSON CITY, August 2, 1917.

MR. GEO. D. SMITH, Chairman, Nevada Industrial Commission, Carson City, Nevada.

Dear Sir: We wish to acknowledge receipt of your letter, asking whether or not it is obligatory upon the part of the State, county, municipal corporations, school districts, or cities under special charter and commission form of government to pay premiums for accident benefits in accordance with section 23b, of the Industrial Insurance Act. Section 1b (Stats. 1917, p. 436), provides:

Where a State, county, municipal corporation, school district, cities under special charter and commission form of government, is the employer, the terms, conditions, and provisions of this Act, for the payment of premiums to the State Insurance Fund

for the payment of compensation and amount thereof for such injury sustained by an employee of such employer, shall be conclusive, compulsory, and obligatory upon both employer and employee.

Section 23b (Stats. 1917, p. 440), provides:

For the purpose of providing a fund to take care of said accident benefits as in this Act provided the Nevada Industrial Commission is authorized and directed to collect a premium upon the total pay-roll of every employer except as hereinafter provided in such a percentage as the Commission shall by order fix; every employer paying such premium shall be relieved from furnishing accident benefits, and the same shall be provided by the Nevada Industrial Commission. Every employer paying such premium for accident benefits may collect one-half thereof, not to exceed one dollar per month, from each employee, and may deduct the same from the wages of such employee. \* \* \* The State Insurance Fund provided for in this Act shall not be liable for any accident benefits provided by this section, but the fund, provided for accident benefits, shall be a separate and distinct fund, and shall be so kept.

Section 23d (Stats. 1917, p. 440), provides:

Every employer operating under this Act alone or together with other employers may make arrangements for the purpose of providing accident benefits as defined in this Act for injured employees, and such employer may collect one-half of the cost of such accident benefits from their collective employees, not to exceed one dollar per month from any one employee, and may deduct the same from the wages of each employee. Employers electing to make such arrangements for providing accident benefits shall notify the Nevada Industrial Commission of such election, and in the event of failure to so notify said Nevada Industrial Commission of such election they shall be liable for premiums for accident benefits as heretofore provided by subdivision (b) of this section.

It is noticed that section 1b refers only to the State Insurance Fund. This fund is not liable for any accident benefits, and must be kept entirely separate and distinct from the fund provided for such purpose. As there are two funds, and as but one is mentioned in section 1b, it is the presumption that the other is excluded. (V. & T. R. R. Co. V. Elliott, 5 Nev. 358.)

It is the opinion of this office that the employers named in such section are not obliged to pay premiums to the Commission for accident benefits, but may make arrangements for the purpose of providing such benefits pursuant to section 23d of the Act.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

72. Public Schools--School Teachers--Public School Teachers' Retirement Salary Fund Act--School Trustees.

Under the provisions of section 4 Public School Teachers' Retirement Salary Fund Act (Stats. 1915, p. 304), in case of failure to pay the \$9 provided for each school year, the School Trustees are liable for such sum, if they fail to collect the same from the teacher's salary.

The teachers, also, are liable for such dues.

CARSON CITY, August 3, 1917.

HON. J. E. BRAY, Carson City, Nevada.

Dear Sir: I am in receipt of your favor of the 23d ultimo, inquiring with reference to section 4 of the Public School Teachers' Retirement Salary Fund Act (Stats. 1915, p. 304), in case of failure to pay the \$9 provided each school year, is the school board or the school teacher liable for the payment of such dues, and, also, if the school board, is its liability at all affected by its neglect to deduct the dues from the teacher's salary, prior to final payment for the term or year?

Said section 4 provides for the deduction by "every official whose duty it is to pay said teacher's salary."

As the salaries of public-school teachers are paid by the Board of School Trustees, or County Board of Education, it follows that they are the officials whose duty it is to pay the teacher's salary. In case of failure to perform such duty, they are clearly liable for the amount of these dues, and the teacher is also liable for such dues. Such liability of the School Trustees arises from their failure to follow out the plain provisions of this Act.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

73. Public Schools--School Districts--Consolidation of Public School Districts--Teachers' Contracts.

In case a consolidation of school districts is effected under the provisions of Stats. 1915, pp. 27-30, and before such consolidation the trustees of one of the districts consolidated had entered into a contract with a teacher for the ensuing year, her contract survives and she may enforce the same.

In such case it will be necessary for the Trustees of the consolidated districts to give the

legal notice provided in the contract for the termination thereof.

CARSON CITY, August 3, 1917.

HON. J. E. BRAY, Carson City, Nevada.

Dear Sir: I am in receipt of yours of the 21st ultimo, asking the interpretation of the school consolidation Act, on page 27-30 of the Statutes of 1915.

It appears that one such consolidation has been effected and another is now pending, and the teacher has been reemployed in one of the consolidated districts in each case, and given a written contract for the ensuing school year.

Under the provisions of subdivision 11, Rev. Laws, 3305, you inquire: "Has the new organization through its School Trustees the right to ignore a prior contract for teaching on the part of one of the districts, or must the Trustees of the consolidated district give the reemployed teacher a thirty-day notice of discharge required by her contract?"

I am clearly of the opinion that, notwithstanding the district for which the teacher has been employed has been eliminated by the amalgamation of such districts into a consolidated district, her contract survives, and she may enforce the same, and it will be necessary for the Trustees of the consolidated district to give the legal notice for termination of contract provided therein.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

74. Nevada Industrial Commission--Compensation--Widow.

Section 25 supersedes section 30 and controls as to payment of compensation thereunder.

CARSON CITY, August 3, 1917.

MR. GEO. D. SMITH, Chairman, Nevada Industrial Commission, Carson City, Nevada.

Dear Sir: We wish to acknowledge the receipt of your recent letter, asking the following question:

Is section 30, providing for compensation to children under 16 years of age and for lump-sum settlements, not to exceed \$300 upon the remarriage of a widow, repealed by implication by clauses 2 and 4 of section 25a. "Death Benefits"?

Section 25a of the original Act (Stats. 1913, p. 146), which makes provision for the amount of compensation, was amended in 1915 and again in 1917. Clauses 2 and 4 thereof, as at

present reading (Stats. 1917, p. 441), provide:

2. To the widow, if there is no child, thirty per centum of the average wage of the deceased. This compensation shall be paid until her death or remarriage with two years' compensation in one sum upon remarriage.

4. To the widow or widower, if there is a child or children, the compensation payable under \* \* \* clause 2, and in addition the additional amount of ten per centum of such wage for each such child until the age of 18 years, not to exceed a total of 66 2/3 per cent for such widow or widower and the children. If the children have a guardian other than the surviving widow or widower, the compensation on account of such children may be paid to such guardian. The compensation payable on account of any child shall cease when he dies, marries, or reaches the age of 18 years, or if over 18 years, and incapable of self-support, becomes capable of self-support.

Section 30 of the same Act (Stats. 1913, p. 148), still standing as originally enacted,  
reads:

Upon the marriage of a widow, she shall receive, once and for all, a lump sum equal to twelve times her monthly allowance, not to exceed, however, the sum of \$300; *provided, however*, that allowance shall be made by the Commission for the support of minor children under the age of 16 years; the total amount thereof to be not less than \$10, nor more than \$35 per month, to be fixed by the Commission.

There is a conflict in the two sections. They are repugnant to each other and cannot be reconciled. Upon the theory that effect should always be given to the latest, rather than to an earlier, expression of the legislative will, it has been held that a section last amended prevails over one in conflict therewith, even though preceding it in order of arrangement (*People v. Dobbins*, 73 Cal. 257, 14 Pac. 860).

It is our opinion that section 25a, being the latest expression of the legislative will, controls as to the payment of compensation thereunder.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

75. License--Auctioneer--Revenue.

The words "every auctioneer" used in section 123 of the Revenue Act, as amended by Stats. 1915, p. 90, apply to a man permanently residing in his locality and who, for the accommodation of farmers, carries on auction sales at various ranches.

CARSON CITY, August 3, 1917.

HON. G. J. KENNY, District Attorney, Fallon, Nevada.

Dear Sir: I am in receipt of your favor of the 28th ultimo, asking interpretation of chapter 74, Statutes of 1917, providing as follows:

Every traveling merchant, hawker, or peddler, and every auctioneer, shall, before, bending any goods, wares, or merchandise, or acting as auctioneer in any county of this State, procure from the Sheriff of such county a license authorizing such business in such county, and shall pay for such license the sum of \$50 per month.

You wish to know whether the expression "every auctioneer," using in the above, applies to a man permanently residing in this locality, and who for the accommodation of farmers carries on auction sales at various ranches; or, is this expression to be considered as applied to the "traveling" type of auctioneer?

If the word "and" before every auctioneer had been "or," I should be of the opinion that under the principle of *ejusden generis* this statute would not apply to an auctioneer of the class to which you refer, and that such auctioneer to be liable for license would have to conduct his business in a manner similar to traveling merchants, hawkers, and peddlers.

But, under the plain reading of the statute, it applies to a man permanently residing in your locality who, for the accommodation of farmers, carries on auction sales at various ranches.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

76. Nevada Industrial Commission--Acceptance of Act--Payment of Premiums.

The fund is not liable for the payment of compensation for any accident occurring previous to the receipt of notice to accept the Act and previous to the receipt of premiums except in case where employer is the State or one of its political subdivisions.

CARSON CITY, August 8, 1917.

MR. GEO. D. SMITH, Chairman, Nevada Industrial Commission, Carson City, Nevada.

Dear Mr. Smith: We wish to acknowledge receipt of your recent letter wherein you ask whether or not the State Insurance Fund is liable for compensation for injuries sustained by employees subsequent to July 1, 1917, but prior to receipt of a notice to accept the Act and prior to receipt of premiums.

Previous to the taking effect of the 1917 amendment, every employer was conclusively presumed to have accepted the Act unless and until he gave notice to the contrary. Sections 1e and 1d of the amendatory Act (Stats. 1917, pp. 436, 437), which became effective July 1, 1917, provides that every employer having the right to accept the Act shall be conclusively presumed *not* to have accepted it unless and until notice in writing of an election to accept, substantially in the form prescribed, shall have been given to the Commission.

All employers have the right to accept the Act, except such as are mentioned in section 1b (Stats. 1917, p. 436), which reads as follows:

Where a State, county, municipal corporation, school district, cities under special charter and commission form of government, is the employer, the terms, conditions and provisions of this Act, for the payment of premiums to the State Insurance Fund for the payment of compensation and amount thereof for such injury sustained by an employee of such employer, shall be conclusive, compulsory, and obligatory upon employer and employee.

This section enumerates certain employers who have no option in the matter of accepting or rejecting the Act. Such employers cannot, therefore, be said to have a right to accept the Act, and do not come within the provisions requiring notice in writing of an election to accept the Act must be given to the Commission. The fact that a certain employer was a contributor to the fund previous to the amendment is immaterial, for he was then governed by the old law. When the amendment became effective it was incumbent upon him, if he desired to accept the law, to give the required notice. Such notice is not given until the Commission is in actual receipt of the same. (*O'Neill v. Dickson*, 11 Ind. 253, 254.)

The payment of the premiums is provided for in section 1f, 1g, and 21a (Stats. 1917, pp. 438, 439). The first-mentioned section states that every employer electing to be governed by the provisions of the Act, before becoming entitled to the benefits of the Act in the providing, securing, and paying of compensation to be employees shall on or before July 1, 1917, and thereafter during the period of his election, pay all premiums in the manner hereinafter prescribed; section 1g is to the effect that failure to pay the premiums as required shall operate as a rejection of the Act; and section 21a provides:

Every employer electing to be governed by the provisions of this Act shall, on or before the 1st day of July, A. D. 1917, and monthly thereafter, pay to the Nevada Industrial Commission for a State Insurance Fund premiums in such a percentage of his estimated total pay-roll as shall be fixed by order of the Nevada Industrial Commission; and the Commission may require all premiums required by this Act to be paid for three months in advance upon the estimated pay-roll of the employer, unless the Commission be satisfied of the financial responsibility of the employer, or unless a good and sufficient surety bond for the payment of premiums be given to the Nevada Industrial Commission.

It is noticed that every employer electing to be governed by the Act shall on or before July

1, 1917, and monthly thereafter, pay premiums in such a percentage of his estimated pay-roll as shall be fixed by the Commission; and that the Commission may require all premiums to be paid for three months in advance.

The words "monthly thereafter," used in this section, must mean on or before the first day of each succeeding month after the month of July, 1917. Undoubtedly, the intention of the Legislature was to make the premiums from all employers electing to be governed by the Act, payable one month, and at the option of the Commission payable three months, in advance. Otherwise, the total pay-roll could have been figured exactly, and the words "estimated total pay-roll" would not have been inserted.

However, the employers mentioned in section 1b, by the terms of that section, cannot elect to be governed by the Act and cannot reject its provisions. As such employers are absolutely required to pay premiums to the fund, no reason exists for the payment of premiums on an estimated pay-roll; and certainly the failure by such employers to pay premiums in advance cannot operate as a rejection of the Act.

It is, therefore, the opinion of this office that the fund is not legally liable for the payment of compensation, for any accident occurring previous to the receipt of notice to accept the Act and previous to the receipt of premiums, except in cases where the employer is one mentioned in section 1b.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

#### 77. Stationary Engineers--Licenses.

Although the provisions of section 39 in regard to licenses of stationary engineers is in the alternative, it is the intention of the Legislature that if his knowledge and experience is such as to qualify him to operate a particular kind of hoist upon which he is to be engaged, he may procure the necessary license irrespective of whether or not he has actually had the one year's experience.

CARSON CITY, August 9, 1917.

HON. A. J. STINSON, State Mining Inspector, Carson City, Nevada.

Dear Sir: I wish to acknowledge receipt of your oral request for an opinion as to whether or not it is necessary that an applicant for a license to operate a hoist must have had at least one year's experience before such license can be granted by the Board of County Commissioners.

Section 3900, Revised Laws, reads as follows:

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

It is noticed that this section provides for the making of an affidavit to the effect that the applicant has had at least one year's experience, or, instead thereof, that his knowledge and experience is *not* such as to justify the board before whom such application is made in the belief that he is competent. Although the language of this section is in the alternative, it was undoubtedly the intention of the Legislature that any applicant, whose knowledge and experience is such as to qualify him to operate the particular kind of hoist upon which he is to be engaged, may procure the necessary license, irrespective of whether or not he actually has had the one year's experience.

In the case you mention the applicant is willing to stand an examination; and, if this be true, it will be a very easy matter for him to undergo such examination before parties competent to examine one in that particular kind of work and then make affidavit of such fact to the Commissioners. He can also supplement his own affidavit by affidavits of those before whom he is examined. If he proves himself to be competent, the board will be fully justified to issue the license in question.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

78. Nevada Industrial Commission--Acceptance of Act--Payment of Premiums.

Accepting employer is not entitled to the benefits of the Act, even though he has not filed a notice of rejection, unless he pays the premium in advance on or before the St. day of each month, on the estimated pay-roll for that month.

CARSON CITY, August 10, 1917.

MR. GEO. D. SMITH, Chairman, Nevada Industrial Commission, Carson City, Nevada.

Dear Mr. Smith: We wish to acknowledge receipt of your letter of the 8th instant, wherein you ask the following questions:

Supplementing our inquiry of the St. of August, relative to the failure of employers to pay premiums in accordance with the terms of sections 1g and 21a of the Nevada Industrial Insurance Act amended to take effect July 1, 1917, your opinion is respectfully requested on the status of an employer who, on or before July 1, 1917, had filed a written acceptance of the Act and had paid premium on an estimated July pay-roll, but who did not pay premiums on or before August 1 on an estimated pay-roll, but paid premiums on the estimated pay-roll for August on the 3d day of August at 10 a.m., two hours after two fatalities had occurred in the employer's property?

Do the provisions of sections 4a and 4b require notice of rejection on the part of the employer, before he is considered a rejector under the provisions of section 1g?

Is the employer, under the above statement of facts, a rejector of the provisions of the Act under section 1g and, therefore, subject to an action at law by the dependents of the deceased; or is the fund liable for compensation for injuries sustained by employees on the day of the payment of premium by the employer, if the injury was sustained at a time prior to the hour of payment?

Section 21a of the old Act (Stats. 1915, p. 283) provided that the employer, on or before the 15th day of each and every month, pay to the Commission premiums on his total pay-roll for the preceding month. In 1917 such section was amended (Stats. 1917, p. 439) and it now distinctly specifies that all employers electing to be governed by the Act shall, on or before July 1, 1917, and monthly thereafter, pay to the Commission premiums on an estimated pay-roll; and further provides that the Commission may require all premiums to be paid for three months in advance. In a former opinion we stated:

The words "monthly thereafter," as used in this section, must mean on or before the first day of each succeeding month after the month of July, 1917. Undoubtedly, the intention of the Legislature was to make the premiums from all employers electing to be governed by the Act, payable one month, and at the option of the Commission payable three months, in advance. Otherwise, the total pay-roll could have been figured exactly, and the words "estimated pay-roll" would not have been inserted.

A payment of August premiums made on August 3 is not a payment in advance, because, in order to make a payment of premiums in advance for any given month, such payment must be made on or before, not after, the first day of that month.

Section 4a and 4b (Stats. 1917, pp. 438, 439) reads as follows:

(a) When the employer has accepted the terms of this Act. \* \* \* in compliance with the provisions of this Act, such election shall continue and be in force until such employer shall thereafter reject the provisions of this Act, \* \* \* as provided in subsection (b) of this section.

(b) When an employer accepts \* \* \* the provisions of this Act, such party may at any time thereafter elect to waive such acceptance \* \* \* by giving notice in writing in the same manner required by the employer in accepting \* \* \* the provisions of this Act, and which shall become effective when filed with the Nevada Industrial Commission.

While section 1f (Stats. 1917, p. 438) is to the effect that an employer electing to be governed by the Act, before becoming entitled to its benefits, shall pay the premiums as required; and section 1g (Stats. 1917, p. 438) provides that failure on the part of any such employer to pay the premiums as by the provisions of this Act required shall operate as a rejection of the Act.

It is a cardinal rule in the construction of statutes that effect is to be given, if possible, to every word, clause, and sentence. The court, so far as practicable, will reconcile the different provisions, so as to make them consistent and harmonious, and to give a sensible and intelligent effect to each. (36 Cyc. 1128; *Ex Parte Prosole*, 32 Nev. 378, 108 Pac. 630.) Again, no part of a statute should be rendered nugatory, nor any language turned to mere surplusage, if such consequences can properly be avoided. (*Torreyson v. Board of Examiners*, 7 Nev. 19.)

The accepting employer is not entitled to the benefits of the Act, even though he has not actually filed a notice to reject its provisions, unless he pays the premiums as required. As previously stated, such premiums must be paid in advance on or before the first day of each month on an estimated pay-roll for that month. Although an employer's election to accept the Act continues in force until he files a notice of rejection, a failure to pay the premiums operates as a rejection. In other words, the Act is rejected by the employer when he files his notice to reject, but his failure to pay the premiums as required has the effect of a rejection and subjects the employer to an action for damages.

Under such interpretation the various sections of the statute applicable to the present case can be reconciled and given force and effect; any other interpretation would render certain sections ineffective and nugatory.

We are, therefore, of the opinion that upon the facts stated the State Insurance Fund is not liable for the payment of compensation.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

79. Licenses--Liquor Licenses--State Liquor Licenses--County Liquor Licenses--Liquor Board.

The provisions of section 3, Stats. 1915, p. 237, requiring persons desiring to dispose of

liquors in quantities less than one quart, do not refer to incorporated cities or towns.

The provisions of section 4 of the same Act, Stats. 1915, p. 237, relate only to unincorporated cities and towns.

The provisions of section 4 of said Act mean that any person outside of any incorporated city or town wishing to engage in the liquor business and sell any quantity whatsoever must procure a county license from the liquor board.

CARSON CITY, August 10, 1917.

HON. THOS. E. POWELL, District Attorney, Winnemucca, Nevada.

Dear Sir: I am in receipt of your favor of the 7th instant, asking an interpretation of certain sections of the license Act contained in chapter 178 of the Statutes of 1915. You inquire:

1. Do the provisions of section 3 of the above-named Act, requiring persons desiring to dispose of liquors in quantities less than one quart refer only to *incorporated cities and towns*? If this be so, it would still be possible for the city government to regulate and control the traffic.

In answer thereto let me say that incorporated cities and towns have full control over liquor traffic by virtue of their charter if incorporated by special Act, or by the provisions of section 794, subdivision 10, Rev. Laws, if incorporated under such Act.

In the opinion of this office, therefore, section 3 does not refer to incorporated cities and towns.

You further inquire:

2. Do the provisions of section 4 of said Act requiring "any person outside of any *incorporated city or town* wishing to engage in the liquor traffic in any county in the State of Nevada" include licenses to be granted in *unincorporated towns*?

The incorporated cities and towns having control of the liquor traffic within their confines, section 4 of said Act relates only to unincorporated cities and towns.

You further inquire:

3. Do the provisions of section 4, requiring "any person outside of any incorporated city or town wishing to engage in the liquor traffic," mean that a person wishing to engage in the liquor traffic," mean that a person wishing to engage in the traffic outside of an incorporated city or town and sell in any quantities whatsoever must procure a county license from the liquor board?

This section means that any person outside of any unincorporated city or town wishing to engage in the liquor business and sell any quantity must procure a county license from the liquor board.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

80. Revenue and Taxation--Public Land--Government Lands.

Lands selected by railroad company, which selection has not yet been approved by the Land Department of the United States, are not subject to assessment and taxation.

CARSON CITY, August 13, 1917.

HON. F. N. FLETCHER, Secretary, Nevada Tax Commission, Carson City, Nevada.

Dear Sir: I am in receipt of your favor of the 10th instant, enclosing letter from Hon. D. V. Cowden, Tax Attorney of the Central Pacific Railway, which is herewith returned.

Mr. Cowden is entirely correct in his statement that lands selected by the railroad company, which selection has not yet been approved by the United States Land Department, are not subject to assessment and taxation.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

81. Eight-Hour Law--Females.

It is unlawful to require female employees in certain employments to work more than eight hours during any one day of twenty-four hours.

CARSON CITY, August 17, 1917.

MR. WM. E. WALLACE, Commissioner of Labor, Carson City, Nevada.

Dear Sir: We wish to acknowledge receipt of your letter of the 17th instant, asking whether or not an employer may work his female employees more than eight hours during the twenty-four hours of one day, if he so arranges that they will not work more than fifty-six hours during any one week.

The provisions of law applicable to this particular matter are found in an Act limiting the hours of labor of females, etc. (Stats. 1917, p. 16.) Section 1 of said Act reads as follows:

No female shall be employed in any manufacturing, mechanical, or mercantile establishment, laundry, hotel, public lodging-house, apartment house, place of amusement, or restaurant, or by any express or transportation company in this State, more than eight hours during any one day, or more than fifty-six hours in one week. The hours of work may be so arranged as to permit the employment of females at any time so that they shall not work more than eight hours during the twenty-four hours of one day, or fifty-six hours during any one week; *provided, however*, that the provisions of this section in relation to hours of employment shall not apply to nor affect the harvesting, curing, canning, or drying of any variety of perishable fruit or vegetables, nor to nurses, nor to nurses in training in hospitals.

It is provided in section 4 that:

Any employer who shall permit or require any female to work in any of the places mentioned in section one more than the number of hours provided for in this Act during any day of twenty-four hours, or who shall fail, neglect, or refuse to so arrange the work of females in his employ so that they shall not work more than the number of hours provided for in this Act during any day of twenty-four hours, shall be guilty of a misdemeanor.

When these two sections are read together it is plain that the Legislature intended that no employee mentioned in section 1 should work more than eight hours during any one day of twenty-four hours.

The question which you ask should, therefore, be answered in the negative.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

82. Public Health--Local Health Officers--Deputies.

The wife of a local health officer cannot keep the records and sign the reports as subregistrar under a regularly appointed deputy.

CARSON CITY, August 17, 1917.

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

Dear Sir: We wish to acknowledge receipt of your request for an opinion upon the following state of facts:

A local health officer having requested and been granted a leave of absence from the County Commissioners, with permission to have a deputy act in his place as County Physician and health officer, desires to know if there will be any objection to his wife keeping the records under this deputy, and signing the records as subregistrar.

In section 6 of an Act creating the State Board of Health, etc. (Stats. 1913, p. 126), it is provided:

The Board of County Commissioners shall appoint a local health officer for a period of not less than one year who shall only be removed for incompetency, and who shall act as a collector of vital statistics and is empowered to appoint such deputy or deputies as may be necessary, with the approval of the Board of County Commissioners. For collecting and compiling the vital statistics of the county he shall receive from the county a sum of not less than \$25 per month, and the Board of County Commissioners are directed to allow a claim for this or for such greater sum as they may deem proper for the work performed; the deputies appointed by the local health officer, with the approval of the County Commissioners, shall be paid, in the same manner, a sum not to exceed \$25 per month for registering and compiling the data prescribed by the State Board of Health and by this Act. The deputy health officer shall file with the local health officer monthly reports not later than the fifth day of each month which said report shall be compiled by the local health officer and forwarded to the secretary of the State Board of Health not later than the 10th day of each month. In counties where deputy registrars are appointed, the County Commissioners shall allow them a monthly salary or the sum of one dollar (\$1) for each birth and death certificate executed by them.

The statute contemplates when necessary the appointment of deputy health officers, who may also act as registrars; but there is no provision authorizing one who is not a regularly appointed deputy to perform the duties of such registrar. We are, therefore, of the opinion that the wife of a local health officer cannot keep the records and sign the reports as a subregistrar under a regularly appointed deputy.

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

By WM. McKNIGHT, Deputy.

### 83. Inheritance Tax Law Exemptions.

Under section 4, subdivision 1 of inheritance tax law (Stats. 1913, p.412), one exemption of \$20,000 is allowed. If there is no widow, but a minor child, such child is allowed this sum. If there is more than one minor child, the exemption is allowed for all such minor children.

CARSON CITY, August 25, 1917.

HON. C. B. HENDERSON, Elko, Nevada.

Dear Sir: This office is in receipt of your favor of the 22d instant, asking an interpretation of subdivision 1, section 4, of inheritance tax law (Stats. 1913, p. 412).

The portion of said section 4 material to this inquiry reads as follows:

The following exemptions from the tax are hereby allowed:

(1) Property of the clear value of twenty thousand dollars transferred to the widow or to a minor child of the decedent, and of ten thousand dollars transferred to each of the other persons described in the first subdivision of section 2 shall be exempt.

In the opinion of this office one exemption of twenty thousand dollars is allowed under this subdivision. If there is no widow, but a minor child, such child is allowed this sum. If there is more than one minor child, twenty thousand dollars exemption is allowed for all such minor children.

84. State Officers--State Employees--Vacation.

Section 4109, Rev. Laws, limits the leave of absence, or vacation, with full pay, to fifteen days in each calendar year.

An employee who defers taking his regular vacation in any given year cannot legally extend such vacation by fifteen days in the subsequent year.

CARSON CITY, August 28, 1917.

MR. R.H. MULLIN, Director, State Hygienic Laboratory, Reno, Nevada.

Dear Sir: Your letter of the 27th instant, wherein you ask whether or not you are entitled, as a matter of law, to one month's vacation in each year, duly received.

The statute applicable thereto (Rev. Laws, 4109) reads as follows:

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

The language of this section is plain. It limits the leave of absence, or vacation, with full

pay, to fifteen days in each calendar year; and applies to each and every state employee. One in the employ of the State who defers taking his regular vacation in any given year cannot legally extend his vacation by fifteen days in a subsequent years.

As you are unquestionably a state employee, you naturally come within the provisions of the statute.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

85. Clerk's Fees--Change of Venue.

Under the provision of the Act regulating the fees of the County Clerk of Humboldt County (Stats. 1915, p. 173), the Clerk is authorized to exact a fee in every civil case which includes a case transferred from another county as well as an action originally commenced.

CARSON CITY, August 30, 1917.

MR. J. W. DAVEY, County Clerk, Winnemucca, Nevada.

Dear Sir: Your letter of recent date, asking whether or not you are entitled to a fee for filing papers in a civil action originally commenced by an individual in Washoe County, but in which the venue was later changed to Humboldt County, duly received.

At the time of filing the papers in question your fees were regulated by the provisions of the 1915 Act (Stats. 1915, p. 173), which reads as follows:

The County Clerk of Humboldt County, State of Nevada, as County Clerk and ex officio Clerk of the District Court of the Sixth Judicial District of the State of Nevada, in and for Humboldt County, shall from and after the passage of this Act, charge and collect the following fees in civil, probate, and guardianship proceedings; *provided*, that said Clerk shall neither charge nor collect, any fees for services by him rendered to the State of Nevada, or to the county of Humboldt:

On the commencement of any action or proceedings in the District Court, except probate proceedings, to be paid by the party commencing such action or proceeding, seven dollars; said fee to be paid in addition to the court fee of three dollars now provided by law. \* \* \* No fee shall be charged by the Clerk for any services rendered in any criminal case.

The court fee of three dollars, mentioned above, is provided for in Rev. Laws, 2030, reading thus:

At the time of the commencement of every civil action or other proceeding in the several District Courts of this State, the plaintiff shall pay the Clerk of the court in which said action shall be commenced the sum of three dollars.

This latter section was undoubtedly passed in pursuance of the constitutional provision (sec. 16, art. 6) requiring the Legislature to provide by law for the payment of a special court fee upon the institution of each civil action and other proceeding.

Your fees were thus fixed at the flat sum of \$10 for each action or proceeding. In this respect you are situated somewhat differently than is the Clerk who is working under the general fee bill prescribing a fixed fee for each paper filed and each entry made, etc. There is no question as to the right of the other Clerk to exact fees for filing papers in a case transferred, because the statute distinctly prescribes a fee for filing each paper. The question arises in your case only because of the fact that you are operating under a special statute authorizing a flat fee in each action or proceeding.

However, by the passage of the special fee Act, the Legislature manifested an intent to exact a fee in every civil case, except for services rendered to the county or to the State. By the use of the language "on the commencement of any action or proceeding in the District Court," the Legislature intended to include a case transferred from another county as well as an action originally commenced. Although it is well settled that an officer can only demand such fees as the law has fixed and authorized for the performance of his official duties (Washoe County v. Humboldt County, 14 Nev. 123, 131), the plain intention of the Legislature cannot be ignored simply because different language might have been used.

It is our opinion that you are entitled to the fee in question.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

86. County Clerk's Fee--Change of Venue.

Upon transfer of an action from one county to another the prescribed fees must be paid by the party filing the papers.

CARSON CITY, August 30, 1917.

MR. CHAS. A. McLEOD, County Clerk, Yerington, Nevada.

Dear Sir: We wish to acknowledge receipt of your letter of the 28th instant, wherein you submit the following proposition:

Where a suit is filed in Washoe County and on proper showing is transferred to this county for trial, the plaintiff paying the Clerk's filing fees in said Washoe County, and on removal to this county, my contention is that the regular fees for filing, etc., should be paid me here, by the plaintiff for filing his papers and the defendant for his papers, but the attorney for the plaintiff claims that after paying the filing fees in Washoe County he should not pay the fees here, but that the party removing the case should pay all the said fees. Please let me know your opinion at the earliest possible time, as there is a case transferred here, and I have refused to file the same until I get my fees.

There is no merit whatever in the contention of the attorney "that the party removing the case should pay all the said fees," although this is the law in many other jurisdictions. In those jurisdictions the statutes expressly direct that the party causing the removal shall pay the fees. We have no such statutes in Nevada, and the statutory law of other States is of course not applicable.

As you undoubtedly are entitled to fees for filing papers in a case transferred from another county, and as the statute is silent as to who should pay them, it must be presumed that the prescribed fees are to be paid by the party filing the papers.

In our opinion you have the right to refuse to file the papers unless the statutory fees are paid. (Rose v. Richmond M. Co., [17 Nev. 55.](#))

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

87. Licenses--Engineers--Stationary Engineers.

The provisions of section 3904, Rev. Laws, prohibits one from operating a stationary hoisting engine without a license where he is working for himself.

CARSON CITY, September 5, 1917.

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

Dear Sir: We wish to acknowledge receipt of your request for an opinion upon the following question:

Does the law prohibit one from operating a stationary hoisting engine without a license where he is working for himself?

This point seems to be covered fully in section 7 of an Act for licensing engineers (Rev. Laws, 3904), which reads as follows:

Any persons operating any stationary engine, steam boiler, hoist or other stationary machinery or apparatus or hoisting machinery used for the purpose of hoisting or lowering men or material from a shaft or mine, where the lives, health or limbs of men may be involved, who has not first procured the license herein provided for, shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction, shall be fined in a sum not less than fifty (\$50) dollars nor more than two hundred and fifty (\$250) dollars, or by imprisonment in the county jail not less than thirty nor more than one hundred and twenty days, or by both such fine and imprisonment, in the discretion of the court; *provided*, that nothing in this Act contained shall be held to apply to those operating in person their own private apparatus nor to persons operating any stationary engine, steam boiler or other apparatus or machinery for town or city purposes.

It is our opinion that your question should be answered in the affirmative.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

88. Revenue Taxation--Patented Mines.

In order to exempt a patented mine from taxation, under the provisions of Stats. 1915, p. 317, the work performed thereon must be performed during the calendar year for which it was taxed.

CARSON CITY, September 6, 1917.

MR. F. N. FLETCHER, Secretary, Nevada Tax Commission, Carson City, Nevada.

Dear Sir: We wish to acknowledge receipt of your request for an opinion upon the following question:

The owner of certain patented mining claims submitted an affidavit duly signed and sworn to on August 15, 1917, which, after giving the names and location of said claims and stating that they lie together and form one contiguous group, reads as follows: "That an amount equal to \$100 per claim has been done upon the said group during the year next preceding the making of this affidavit; that such labor was done at the expense of the owner of said patented claims, and consisted of general work

performed on the surface, watchman's services, services of laborers in moving machinery and supplies, all at a cost far exceeding a sum equal to one hundred dollars for each of the claims mentioned." Should the board strike from the roll the assessment against the patented mines named in said affidavit?

No patented mine should be exempted from taxation, nor the assessment thereof stricken from the roll, where the labor has already been completed, unless it appears by affidavit that at least \$100 in labor has been actually performed upon said patented mine during the calendar year for which assessment is levied. (Stats. 1915, p. 317). The affidavit in question does not show that any labor was performed upon the particular mines during the present year. Instead, it specifies that "during the year next preceding the making of this affidavit" certain work was done. The affidavit was made in 1917; consequently the labor must have been performed during 1916. This is certainly not a sufficient showing.

Further, the affidavit must particularly describe the work performed, and upon what portion of the mine, and when and by whom done (Stats. 1917, p. 318). None of these essentials are stated in the affidavit in question.

In addition, the character of the labor alleged to have been performed upon the particular claims is not sufficient to authorize their exemption from taxation.

The present affidavit does not show, nor can it be presumed, that the services of a watchman are necessary; that the property is but temporarily idle; that there are any buildings or structures upon the ground, or that the owner ever again intends to resume operations. A case applicable to this particular phase of the matter is that of *Hough v. Hunt*, 138 Cal. 142, 70 Pac. 1059, 94 Am. St. Rep. 17, wherein the court said:

There may be cases where work has been temporarily suspended, and there are structures which are likely to be lost if not cared for, and it appears that the structures will be required when work is resumed, and that the parties do intend to resume work, in which money expended to preserve the structures will be on the same basis as money expended to create them anew. But this could not go on indefinitely. As soon as it should appear that this was done merely to comply with the law and to hold the property without any intent to make use of such structures within a reasonable period, such expenditure could not be said to have been made in work upon the mine. Much less could the mine-owner bring picks, shovels, and things of that kind, upon the mine, and have some one to watch them to prevent their being stolen, and have such cost of watching considered as work upon the mine.

It is, therefore, our opinion that the board should not strike from the roll the assessment against the patented mining claims named in said affidavit.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

89. Revenue Taxation--Real Property--Personal Property.

The assessment rolls should be completed on or before the third Monday of July. When completed they leave the Assessor's hands, and that officer has no legal authority to place either real or personal property thereon except under the direction of the Tax Commission (Stats. 1917, p. 331).

CARSON CITY, September 11, 1917.

HON. F. N. FLETCHER, Secretary, Nevada Tax Commission, Carson City, Nevada.

Dear Sir: We wish to acknowledge receipt of your letter of the 10th instant, wherein you ask the following questions:

Under existing laws, up to what date should County Assessors place taxable property on the real rolls?

Up to what date should County Assessors place taxable property on the personal rolls?

Rev. Laws, 3625, as amended Stats. 1915, p. 178, provides:

Between the first day of January and the second Monday of July of each year, the County Assessor \* \* \* shall ascertain, by diligent inquiry and examination, all property in his county, real or personal, subject to taxation, and also the names of all persons, corporations, associations, companies, or firms, owning the same; and he shall then determine the true cash value of all such property, and he shall then list and assess the same to the person, firm, corporation, association, or company owning it.

Rev. Laws, 3632, as amended Stats. 1915, p. 328, makes it the duty of the Assessor, on or before the third Monday of July in each year, to prepare a printed list of all taxpayers and the total valuation on which they severally pay tax, and to deliver or mail a copy thereof to each and every taxpayer in the county.

Rev. Laws, 3638, as amended States. 1915, p. 329, provides that the County Board of Equalization shall meet on the fourth Monday of July in each year and shall continue in session from time to time until the business of equalization presented is disposed of; provided, however, that it shall not sit after the second Monday in August.

Section 6 of the Tax Commission Act (Stats. 1917, p. 332) provides that the Tax Commission, together with the County Assessors of the several counties, shall, beginning on the

third Monday of August, sit in Carson City as a State Board of Equalization.

When all of these sections are read and construed together it seems plain that the Legislature intended that the assessment rolls should be completed on or before the third Monday of July. However, a taxpayer cannot complain if they are not so completed, unless he is injured thereby. (*State v. Northern Belle M. Co.*, [15 Nev. 385.](#)) When completed, the assessment rolls leave the Assessor's hand, and that officer then has no legal authority to place either real or personal property thereon (*State v. Manhattan S. M. Co.*, [4 Nev. 318](#)), except under direction of the Tax Commission (Stats. 1917, p. 331).

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

90. Revenue Taxation--Personal Property.

If personal property came into the State between the first day of January and the second Monday in July, it is subject to taxation; if it came into the State after the second Monday in July, it is not taxable for that year.

CARSON CITY, September 11, 1917.

HON. F. N. FLETCHER, Secretary, Nevada Tax Commission, Carson City, Nevada.

Dear Sir: We wish to acknowledge receipt of your letter of the 10th instant, wherein you request an opinion upon the following question:

The owner of an automobile, already assessed, turns it in as a part payment on a new machine; should the new machine be assessed to him, if it has not already been assessed?

All property should be taxed once, and once only, during each year. (*State v. Earl*, [1 Nev. 397](#); *State v. C. & C. Ry. Co.*, [29 Nev. 487](#), 500).

The assessment of the old automobile imposed a duty or obligation on the owner to pay the taxes thereon, notwithstanding the fact that the property was later removed from the State. (*State v. Eastabrook*, [3 Nev. 173.](#))

All property in the State of Nevada not exempt from taxation which is in this State on the 1st day of January, and all property coming into the State not exempt from taxation after the 1st day of January to and including the second Monday in July, is subject to taxation for that year, and a lien attaches to all taxable property which is in the State on the 1st day of January, and also

attached immediately to all taxable property coming into the State after the 1st day of January to and including the second Monday in July. (Rev. Laws, 3619; Stats. 1915, p. 178; State v. C. & C. Ry. Co., 29 Nev. 487, 503.)

If the new automobile came into the State between the 1st day of January and the second Monday of July, it is subject to taxation; if it came into the State after the second Monday in July, it is not taxable for this year.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

91. Inspector of Mines--Miners--Natural Deaths.

Section 4207, Rev. Laws, requires that reports be made of serious and fatal accidents occurring in mines to the Inspector of Mines, and it is unnecessary for the owner, in the case of a miner dying suddenly while working in a mining property, to report the circumstances of such case.

CARSON CITY, September 11, 1917.

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

Dear Sir: I am in receipt of your favor of the 8th instant, asking what action should be taken in a case of a man dying suddenly while working in a mining property and no report thereof made you under Rev. Laws, 4207.

It seems that the death of this person was not result of accident, but that the man was suddenly overcome while working in the property, and died before reaching the surface.

Said section 4207 seems to require only that reports be made of serious or fatal accidents occurring in mines, and I am, therefore, of opinion that it was unnecessary for the owner under said section to report the circumstances of this particular case.

Rev. Laws, 4238, provides heavy penalties for failure to comply with any of the provisions of the mine inspector act, but, in my opinion, there is no violation of section 4207.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

92. State Library--State Library Fund--American Library Association.

No money can legally be drawn from the State Library Fund as this State's proportion of the sum proposed to be raised to finance the War Service of the American Liberty Association to provide books for the soldiers in the various camps and training stations.

CARSON CITY, September 13, 1917.

HON. FRANK J. PYNE, State Librarian, Carson City, Nevada.

Dear Sir: We wish to acknowledge receipt of your letter of the 13th instant, wherein you ask whether or not the sum of \$1,000 can be legally drawn from the State Library Fund as Nevada's proportion of the sum to be raised to finance the War Service of the American Library Association to provide books to the soldiers in the various camps and training stations.

Money may be drawn from the State Library Fund and expended in the purchase of books, etc., for the State Library (Rev. Laws, 3956). The librarian shall keep a register of all books, etc., added to the library and shall be responsible for the safe-keeping of all the property thereof (Rev. Laws, 3955; Stats. 1915, p. 310). He shall also keep a register of all the books issued and returned; and no books, except those taken by members of the Legislature or by the Judges of the Supreme Court, shall be retained more than two weeks (Rev. Laws, 3949). Any person who materially injures any book or who fails to return the same within the time prescribed shall be subject to a penalty (Rev. Laws, 3950); and it is the duty of the librarian to carry the provisions of this Act into execution and to bring suit for all penalties (Rev. Laws, 3951).

In view of the foregoing provisions, it is our opinion that no money can legally be drawn from the State Library Fund for the purposes mentioned in your letter.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

93. State Superintendent of Public Instruction--Vocational Education.

The Superintendent of Public Instruction may lawfully use a portion of the appropriation from the vocational educational fund provided by Stats. 1917, p. 398, for the purpose of defraying the expenses of a trip to Washington for conference with the federal authorities.

CARSON CITY, September 13, 1917.

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

Dear Sir: We wish to acknowledge receipt of yours of recent date, enclosing therein a letter to you from the Director of the Federal Board for Vocational Education, stating that the first quarterly allotment of money to the State will be made by the Secretary of the Treasury on the 1st day of October, only on the submission and approval of its plans by the 20th day of this month, and requesting that you go to Washington for a conference with the federal authorities.

You ask whether or not the expense of such a trip may be paid from the money appropriated as a vocational educational fund.

Section 4 of the Act accepting the federal law in regard to vocational education (Stats. 1917, p. 398) provides:

That the sum of thirty thousand dollars (\$30,000) is hereby appropriated, out of any moneys in the State Treasury not otherwise appropriated, as a vocational educational fund, to be available in the biennial period beginning July 1, 1917, for the preparation of teachers, supervisors, and directors of agricultural subjects and teachers of trade and industrial and home economics subjects; for the salary of teachers of trade and industrial and home economics subjects, and for the salary of teachers, supervisors, and directors of agricultural subjects, so as to receive the full benefit of the said Act of Congress.

Inasmuch as this State will secure no money from the Federal Government unless you or some other representative go to Washington, the necessity of this trip is plain.

I believe that said section 4 of the Act in question authorizes such expenditure and is sufficient, in itself, as an appropriation for that purpose.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

94. Fish and Game Laws--Duck Season.

The opening date for hunting of ducks commences in this State October 1 and extends to January 1.

CARSON CITY, September 13, 1917.

MR. C. W. GROVER, State Game Warden, Carson City, Nevada.

Dear Mr. Grover: I am in receipt of your request for an opinion as to when the season opens in Nevada for shooting ducks.

Section 37 of the fish and game Act of 1917 (Stats. 1917, chap. 239, pp. 459-466)  
provides:

It shall be unlawful for any person or persons, firm, company, corporation, or association, at any time from January 16 and before October 1 of each and every year, to kill, catch, net, cage, pound, weir, trap, or pursue with attempt to catch, capture, injure, or destroy any wild duck, sandhill crane, plover, curlew, snipe, woodcock, geese, brant, prairie chicken within this State; *provided, however*, that the open season on the migratory game birds named in this section shall always automatically change so as to conform to the "Regulations for the Protection of Migratory Birds," as they shall hereafter be prescribed by the U.S. Department of Agriculture, Bureau of Biological Survey.

You will observe that the opening of the season is October 1, provided that the same may automatically change to conform to the regulations for the protection of migratory birds, prescribed by the United States Department of Agriculture, Bureau of Biological Survey.

Under the regulations aforesaid, Nevada comes in zone 7, under the provisions of which the opening of the season is October 1 and which extends to January 16, identically the same as a state law. An amendment to these regulations has been proposed by the Secretary of Agriculture, of date July 6, 1917, but this amendment which would open the season on September 16 has not become effective, for the reason that a period of three months must elapse before it can be finally adopted and approved by the President. K These regulations, therefore, will not become effective until October 15, 1917. These regulations should have the effect of closing our season on January 1, but it will not be retroactive so as to open it upon September 16.

I am of the opinion that the opening season for ducks commences October 1, 1917, and will extend to January 1, 1918.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

95. Water and Watercourses--Water Commissioners--Salaries and Expenses.

Under the provisions of section 52 of Stats. 1915, p. 382, Water Commissioners are limited to \$5 per day.

The words "including all expenses" should be so construed that it is not a part of the salary.

It is doubtful whether, under the provisions of section 52, the Board of County Commissioners has any power to pay a salary to the Water Commissioners until after the stream

has been adjudicated in conformity with the provisions of sections 18 to 39 of the Water Law.

CARSON CITY, September 13, 1917.

MR. CLARK J. GUILD, District Attorney, Yerington, Nevada.

Dear Sir: I am in receipt of yours of September 10, asking opinion as to the construction of section 52, page 382, Statutes of 1915 (the Water Law), and whether or not the Board of County Commissioners are limited to \$5 per day for a Water Commissioner's salary.

I am of the opinion that the words "including all expenses" should be so construed that it is not a part of the salary; in other words, that the intent of the Legislature was to provide a salary of \$5 a day including all expenses and that expenses are allowable if properly vouched for and within a reasonable amount in addition to the \$5 per day salary.

I am very doubtful, however, as to whether or not under the provisions of section 52 the Board of County Commissioners has any power to pay a salary to the Water Commissioners until after the stream has been adjudicated in conformity with the provisions of sections 18 to 39, both inclusive. In that regard permit me to refer you to the following cases: *Baker County v. Wattles*, 117 Pac. 417; see, also, 156 Pac. 1122-1125; 143 Pac. 303.

If the latter construction be correct, any Water Commissioner appointed in your county would not be appointed by virtue of the provisions of section 52, but by reason of some resolution of the Board of County Commissioners, and if he were so appointed, the board could fix his salary and allow him traveling expenses.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

96. University of Nevada--Emeritus Professor.

The provisions of chapter 204, Stats. 1915, p. 314, are purely personal and cease with the death of the beneficiary. Such statute, however, would apply to any professor of the University hereafter possessing the qualifications expressed therein.

CARSON CITY, September 17, 1917.

MRS. LOUISE F. BLANEY, Secretary Board of Regents, University of Nevada, Reno, Nevada.

Dear Madam: I am in receipt of your favor of the 15th instant, with reference to the salary heretofore paid Mr. Richard Brown as Emeritus Professor of the University of Nevada. You inquire:

1. Would the University be authorized to put his widow on the pay-roll if it should be made to appear that he left her insufficient support?
2. Can the Board of Regents use the money heretofore paid to Richard Brown for the support and education of his minor children instead of giving it to the widow?
3. If the board put the widow upon the salary roll would it have any power to rescind that action prior to her death?

In the opinion of this office, chapter 204 of the Statutes of 1915, p. 314, was enacted for the purpose of relieving Mr. Brown or some other professor of the institution should he leave a widow with insufficient support; that the application of such statute was purely personal and ceased with the death of the beneficiary, and that the University has no power in any way to compensate Mrs. Brown nor her children under this statute. The statute, however, would apply to any professor hereafter possessing qualifications expressed therein.

Under these circumstances, all of your questions must be answered in the negative.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

97. State Assayer and Inspector's Fees--"Day."

As used in section 8 of the Act creating the office of State Assayer and Inspector (Stats. 1917, p. 450), the word "day" means the ordinary working day and not twenty-four hours.

CARSON CITY, September 25, 1917.

HON. F. C. LINCOLN, State Assayer and Inspector, University of Nevada, Reno, Nevada.

Dear Mr. Lincoln: We wish to acknowledge receipt of your letter of the 22d instant, wherein you state that a question has arisen with regard to your charges. You ask whether the day in section 6 and that in section 8 of the Act creating your office are the same, and if so, whether they are of 8 or 24 hours length.

The portion of section 6 of the law under which you are operating (Stats. 1917, p. 450), applicable to this question, provides:

The shipper or owner of such ore shall pay the State of Nevada the sum of twenty-five (25) cents the ton for the services as rendered in taking charge of, sampling and assaying the said ores; \* \* \* *provided*, that \* \* \* where less than fifty (50) tons of ore daily are received and sampled by the State Assayer and Inspector, the consignor shall be required to pay the actual costs of such inspection and sampling, including

traveling expenses and deputy hire.

The Legislature undoubtedly intended that a definite and fixed charge of 25 cents a ton should be made for taking charge of, sampling and assaying all ores, except where less than fifty tons daily are received and sampled by the State Assayer and Inspector from any one consignor; in which latter event the consignor shall pay the actual costs thereof.

The *prima facie* meaning of the word "daily" is "every day." The word "day" ordinarily means the entire twenty-four hours, which commence at 12 o'clock p.m. and end at 12 o'clock p.m. running from midnight to midnight. (*Sexton v. Goodwine*, 68 N. E. 929; 2 Words and Phrases, 1834.) Therefore, if less than fifty tons of ore are received within every twenty-four hours from any one owner or shipper you should charge him "the actual costs" of your inspection and sampling, including traveling expenses and deputy hire.

To provide for deputies, the Legislature incorporated section 8 in the Act, which states that:

The State Assayer and Inspector may appoint deputies as necessary, at a wage of not to exceed five (\$5) dollars the day and traveling expenses.

As used in section 8, the word "day" means the ordinary working day, and not twenty-four hours (2 Words and Phrases, 1836,1837). It is quite generally recognized in this State that the ordinary working day, even in the absence of statute, is eight hours.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

98. Fish and Game Laws--State Fish and Game Warden--Deputy Wardens.

The County Commissioners have not the power to discharge a Deputy Warden, regularly and duly appointed by the State Fish and Game Warden, under the provisions of section 3, Stats. 1917, p. 473.

CARSON CITY, September 28, 1917.

HON. C. W. GROVER, State Fish and Game Warden, Carson City, Nevada.

Dear Sir: We wish to acknowledge receipt of your oral request for an opinion on the following question:

Have the County Commissioners power to discharge a deputy regularly and duly appointed by the State Fish and Game Warden?

Section 3 of the Act providing for a State Fish and Game Warden and deputies (Stats. 1917, p., 473) provides:

The State Fish and Game Warden may appoint a deputy or deputies of the different counties with the consent or recommendation of the County Commissioners. The State Fish and Game Warden can, at any time, ask for the resignation of the deputy or deputies so appointed if, in his judgment, the duties of the office in that particular county are not being properly attended to, and may, with recommendation of the County Commissioners, appoint another deputy to fill the office of the one just removed.

This statute is plain and its meaning readily understood. It distinctly specifies how and in what manner a Deputy Fish and Game Warden may be appointed and removed. The original appointment can be made only with the consent or recommendation of the County Commissioners; the request for the resignation of the deputy thus appointed can only come from the State Fish and Game Warden.

Therefore, in our opinion, your question should be answered in the negative.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

99. Fish and Game Laws--Gun Clubs--Hunting Licenses.

Sections 60 and 61 of the Fish and Game Act (Stats. 1917, p. 471) do not apply to members of a gun club who have leased a portion of ground for shooting purposes.

All male members of such gun club, over 14 years of age, who lease land for hunting privileges and are not the actual owners thereof, must procure a license before they can legally hunt thereon.

The statutes are silent as to the number of feet allowed on each side of a lake or stream for hunting and fishing purposes.

CARSON CITY, September 28, 1917.

MR. C. W. GROVER, State Fish and Game Warden, Carson City, Nevada.

Dear Sir: Your letter of the 28th instant duly received. Therein you request an opinion upon the following questions:

1. Can all the members of a gun club, who have leased a portion of ground for shooting purposes, claim such land as their own, and are each and every one of said members privileged to hunt thereon without first procuring a license?

2. How many feet of land, if any, is allowed by law on each side of lake or stream, that may be used by anglers or hunters, the said lake or stream lying wholly or in part within or upon the land owned by an individual?

Section 59 of the Act providing for the protection and preservation of fish and game (Stats. 1917, p. 169) reads as follows:

Every person in the State of Nevada who hunts or kills any of the wild birds or animals, or who takes or catches any of the fishes that are protected by the laws of this State without first procuring a license therefor, as provided in this Act, is guilty of a misdemeanor.

Sections 60 and 61 of the same Act provide for the issuance of licenses to hunt or fish, while section 68 (Stats. 1917, p. 471) reads:

The provisions of this Act shall not apply to any person, who, on his own land, during the open season, hunts, pursues or kills any of the wild birds or animals, or takes or catches any of the fish protected by the laws of this State, nor to girls or to boys under fourteen years of age.

This latter section is the only provision exempting any person from procuring a license that we have been able to find. It does so exempt those who hunt or fish on their own land, also girls, and also boys under 14 years of age.

The words "on his own land" were undoubtedly used in this statute in their ordinary sense, calling for proprietorship of the title in the property and not a mere right or privilege to use it. True, the word "owner" has often been construed so as to be satisfied by less than possession of the legal title. Such lesser significance is doubtless within its reasonable meaning, and may be adopted in a proper case. But in a license-exemption statute, such as this, the words cannot be bent from their ordinary meaning to favor the exemption, in the absence of a legislative intent clearly manifest pointing that way. (*Douglas County Agricultural Soc. v. Douglas County*, 104 Wis. 429, 80 N.W. 740.)

We are therefore of the opinion that all male members of a gun club over 14 years of age, who lease land for hunting privileges and are not the actual owners thereof, must procure a license before they can legally hunt thereon.

Relative to your second question will say that the statutes are silent as to the number of feet allowed on each side of a lake or stream for hunting or fishing purposes.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

100. Fish and Game Laws--Aliens--Hunting Licenses.

Under the provisions of subdivision 3 of section 61 of the Act providing for the protection and preservation of fish (Stats. 1917, p. 470), a hunting license cannot be issued to a person who has declared his intention to become a citizen of the United States, but has not secured his final certificate of naturalization.

CARSON CITY, September 29, 1917.

MR. DANIEL E. MORTON, County Clerk, Ormsby County, Carson City, Nevada.

Dear Sir: We wish to acknowledge receipt of your oral request for an opinion upon the following question:

Can a hunting license be issued to a person who has declared his intention to become a citizen of the United States, but has not secured his final certificate of naturalization?

Subdivision 3 of section 61 of the Act providing for the protection and preservation of fish and game, etc. (Stats. 1917, p. 470), provides that--

In no case shall a hunting license be issued to any such person not a citizen of the United States.

The rule is cardinal and universal that, if a law is plain and unambiguous, there is no room for construction or interpretation. It would indeed be difficult to conceive what language the Legislature could have used indicating its intention more plainly than by use of the words of the above-mentioned statute. A person who has declared his intention to become a citizen is not a citizen of the United States and does not become such until he secures his final certificate of naturalization.

We are, therefore, of the opinion that your question should be answered in the negative.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

101. Fish and Game Laws--Deer--County Commissioners.

All preceding fish and game laws were wiped out by the enactment of section 279, Stats. 1917, p. 459, to “provide for the protection and preservation of game.”

Said last-mentioned Act repeals by implication the amendment of section 14, appearing in the Statutes of 1913. Therefore, the County Commissioners have no authority in any way to interfere with the closed season on deer.

CARSON CITY, October 1, 1917.

HON. C. W. GROVER, State Fish and Game Warden, Carson City, Nevada.

Dear Sir: I am in receipt of certain papers handed to me by you this date, concerning the state fish and game law, and asking information on the same. The first was your letter of September 28 to Hon. Lawrence E. Glass, County Clerk of Nye County, in which you said: “There is a report to the effect that the County Commissioners of Nye County passed and put into effect an ordinance shortening the closed season for deer, and that deer had been killed in your county from September 15, that date having been the one fixed by the Commissioners.”

In response thereto, Mr. Glass wrote under date of September 29 as follows: “The County Commissioners did change the open season on deer by a petition of fifty taxpayers of Nye County, and did it in accordance with law. (Section 14, an Act entitled an Act ‘for the protection of any animals’ when so petitioned by fifty taxpayers of the county.)” Mr. Glass further states that under said Act “the season was changed from October 15 to September 15 and to run from September 15 to October 15 and to close at that time.”

I am of the opinion that the County Commissioners acted under a misconception of the law in passing this ordinance. On page 409 of the Statutes of 1913 appears an Act entitled “An Act providing for the protection and preservation of game,” etc., approved March 26, 1913. September 3 of said Act amends section 14 of the Act to which reference is made as follows:

It shall be the duty of the Board of County Commissioners of any county within this State, when petitioned by fifty taxpayers within their county, for the protection of any variety of birds, fowls or animals, to draw and pass an ordinance protecting such birds, fowls or animals for the length of time prayed for in the petition, or to change or shift the open season on said birds, fowls or animals, but not to increase the length of said open season, and to fix a penalty for the violation of said ordinance; said penalty to be in conformity with section 13 of this Act. When said ordinance is properly drawn and signed by the chairman of the Board of County Commissioners it shall be published in the county for a period of four issues, and posted in three public places in the county, one of which shall be in front of the courthouse, and thereafter it shall be in full force and effect.

The County Commissioners of Nye County were entitled to act under said law, but it has been generally considered that the Legislature at the 1917 session intended to wipe out all fish and game laws by the enactment of chapter 239 (Stats. 1917, p. 459), being an Act entitled "An Act to provide for the protection and preservation of fish and game," approved march 27, 1917. Section 50 of said Act provides as follows:

Should it be deemed advisable by a Board of County Commissioners for any county within this State to lengthen or extend the time of the close season for any specie of game mentioned in this Act, the said Board of County Commissioners acting for their respective county, may, after first making application for and receiving written authority of the State Fish and Game Warden, by special ordinance extend such close season; *provided, however,* that in no event shall the County Commissioners or any organization of men within this State extend the open season or shorten the closed season for any specie of game whatsoever.

Section 70 of the last-mentioned Act expressly repeals all Acts and parts of Acts "in conflict" with any of the provisions of this Act.

It is the opinion of this office that said last-mentioned Act repeals by implication the amendment to section 14 appearing in Stats. 1913 above mentioned. Therefore, the County Commissioners have no authority in any way to interfere with the closed season for deer.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

102. Live Stock.

The Act "to regulate the herding, grazing and driving of live stock" (Stats. 1917, p. 124) is not a criminal act and merely provides an additional remedy to the person injured for trespass.

CARSON CITY, October 9, 1917.

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

Dear Sir: I am in receipt of your favor of the 6th instant, asking construction of an Act entitled "An Act to regulate the herding, grazing and driving of live stock" approved March 14, 1917 (Stats. 1917, p. 124.) Said Act makes it unlawful for any person owning, or having charge of any live stock, to drive or herd or permit the same to be herded or driven on the lands or possessory claims of other persons, or at any spring or springs, well or wells, belonging to another, to the damage thereof, or to herd the same or to permit them to be herded within one mile of a bona-fide home or a bona-fide ranch house.

Section 2 of the Act creates a liability of the owner or agent of such live stock to the person injured for actual and exemplary damages. It is the opinion of this office that said act is not a criminal Act, and merely provides an additional remedy to the person injured for trespass.

This Act was, however, at the last session of the Legislature, originally introduced with criminal features, but, after many modifications, it was passed in its present form.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

103. Revenue and Taxation--Exemption--Widow's Exemption.

Under the provisions of section 3621, Rev. Laws, a widow cannot be granted an exemption in more than one county in the same year, even though the aggregate of all her claims does not exceed the total sum of one thousand dollars.

CARSON CITY, October 13, 1917.

NEVADA TAX COMMISSION, Carson City, Nevada.

Gentlemen: We wish to acknowledge receipt of your letter of the 11th instant, asking an opinion on the following question:

Can a widow who has already been allowed an exemption of \$50 in one county be granted an exemption of \$950 in another county for the same year?

Section 3621, Revised Laws, provides:

All property of every kind and nature whatsoever, within this State, shall be subject to taxation except:

Sixth--The property of widows and orphan children, not to exceed the amount of one thousand dollars to any one family; *provided*, that no such exemption shall be allowed to any but actual bona-fide residents of this State, and shall be allowed in but one county in this State to the same family, and the party or parties claiming such exemption, or some one in their behalf, shall make an affidavit before the County Assessor of such residence, and that such exemption has been claimed in no other county in this State for that year.

This provision permits the allowance of an exemption in but one county during any one year "not to exceed the amount of one thousand dollars." A widow cannot be granted an exemption in more than one county in the same year, even though the aggregate of all her claims does not exceed the total sum of \$1,000.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

104. Industrial Insurance--Industrial Insurance Commission.

Under the provisions of Stats. 1915, p. 281, every employer was conclusively presumed to have elected to accept the Industrial Insurance Act unless a notice to the contrary has been given. Any company not rejecting the Act is legally liable for the premiums on its employees' wages.

CARSON CITY, October 15, 1917.

HON. GEO. D. SMITH, Chairman Nevada Industrial Commission, Carson City, Nevada.

Dear Sir: We wish to acknowledge receipt of your letter of the 15th instant, asking for an opinion upon the liability of the Queen Regent Merger Mines Company for premiums accrued during the years 1915 and 1916, it appearing from the correspondence that this company did not reject the terms of the Act.

Under the terms of the statute then in force (Stats. 1915, p., 281) every employer was conclusively presumed to have elected to provide, secure and pay compensation to employees, according to the provisions of the Act, unless and until notice in writing to the contrary shall have been given; further provision being made that all premiums might be recovered in an action at law (Stats. 1913, p. 140).

In view of these provisions, it is our opinion that the company is legally liable for the premiums in question and that an action can be maintained therefor.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

105. Industrial Insurance--Industrial Insurance Commission--Injured Employee--Prevailing Expenses.

Under the provisions of section 23c of Stats. 1917, p. 440, it is not incumbent upon the Commission to pay the cost of transportation of an injured employee from the place of treatment

back to the place of injury.

CARSON CITY, October 15, 1917.

HON. GEO. D. SMITH, Chairman Nevada Industrial Commission, Carson City, Nevada.

Dear Sir: In response to your verbal request for an opinion as to whether or not it is incumbent upon the Commission to pay the cost of transportation of an injured employee from the place of treatment back to the place of injury, will say that the Commission should not pay such costs.

Section 23c of the Act (Stats. 1917, p. 440) provides that the employer shall render all necessary first aid, including cost of transportation of the injured employee from the place of injury to the nearest place of proper treatment in certain cases, but contains no provision with reference to return transportation. Neither is there any other provision, anywhere, which authorizes the payment of such expenses; and, in the absence thereof, it must be presumed that the Legislature intended that they be paid by the injured employee.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

106. License--Auto License--Auto Dealers.

A private license for a dealer's car is not required under section 15, Stats. 1915, p. 350, until the car is sold or let for hire.

A dealer who has procured a general distinguishing number may use the car on which the same is displayed for any purpose he wishes, except to let it for hire, until the car is sold. If he lets it for hire, a regular license must be procured.

CARSON CITY, October 25, 1917.

HON. H. H. ATKINSON, District Attorney, Tonopah, Nevada.

Dear Sir: We wish to acknowledge receipt of your recent letter, in which you ask this question:

Will you advise me if under the automobile law which provides for the issuance of a dealer's auto license, when the dealers use their cars for private purposes as well as mercantile purposes, will they be required to obtain a private license as well?

Section 15 of the Act relative to the licensing of automobiles (Stats. 1915, p. 350) provides that dealers may obtain general distinguishing number, while section 16 of the same Act reads as follows:

All automobiles, motorcycles, or other motor vehicles owned or controlled by such manufacturer or dealer, except those for his own private use, shall, until sold or let for hire, be regarded as registered under such general distinguishing number, which must be displayed at all times upon such automobiles, motorcycles, or other motor vehicles, while being operated on public highways of this State in the manner herein provided.

It is our opinion that a private license for a dealer's car is not required until the car is sold or let for hire. A dealer who has procured a general distinguishing number may use the car on which the same is displayed for any purpose he wishes, except to let it for hire, until the car is sold. If he lets it for hire, a regular license must be procured.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

107. Industrial Insurance--Industrial Insurance Commission--Files.

All premiums paid in advance by contributors, under section 21a of the Industrial Insurance Act (Stats. 1917, p. 439), except those paid exclusively to take care of accident benefits, must be considered as part of the State Insurance Fund.

CARSON CITY, October 25, 1917.

HON. GEO. D. SMITH, Chairman, Nevada Industrial Insurance Commission, Carson City, Nevada.

Dear Sir: We wish to acknowledge receipt of your letter of the 24th instant, wherein you ask the following question:

Should premiums paid in advance by contributors be considered as part of the State Insurance Fund?

Section 21a of the Industrial Insurance Act (Stats. 1917, p. 439) reads in part as follows:

Every employer electing to be governed by the provisions of this Act shall, on or before the first day of July, A.D. 1917, and monthly thereafter, pay to the Nevada Industrial Commission for a state insurance fund premiums in such a percentage of

his estimated total pay-roll as shall be fixed.

This section contemplates that all premiums shall be paid in advance; it distinctly specifies that they are “for a State Insurance Fund.” The premiums so paid in advance certainly cannot be paid *for* the State Insurance Fund unless they are considered as *part* of such fund.

However, it is unnecessary to rely entirely upon the section quoted for the conclusion reached, because in section 40a of the same Act (Stats. 1915, p. 292) it is provided that:

The premiums, contributions, penalties, properties, or securities paid, collected, or acquired by operation of this Act shall constitute a fund to be known as the “State Insurance Fund.”

The fact that premiums are paid in advance does not change their character; because premiums are premiums, whether paid in advance or otherwise. They are paid by the insured and collected by the Commission by operation of the Act; and, under the terms of the Act, they constitute the State Insurance Fund.

This latter section is modified, only so far as accident premiums and benefits are concerned, by section 23b (Stats. 1917, p. 440), which provides that:

The State Insurance Fund provided for in this Act shall not be liable for any accident benefits provided by this section, but the fund provided for accident benefits shall be a separate and distinct fund, and shall be so kept.

You are, therefore, advised that, in our opinion, all premiums paid in advance by contributors, except those paid exclusively to take care of accident benefits, must be considered as part of the State Insurance Fund.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

108. Industrial Insurance--Industrial Insurance Commission--Records--Files.

The records and files of the Industrial Insurance Commission are not open to any person to examine all the papers and files in any particular case.

CARSON CITY, October 26, 1917.

HON. GEO. D. SMITH, Chairman, Nevada Industrial Commission, Carson City, Nevada.

Dear Sir: Your oral request for an opinion as to whether or not a person is legally entitled to examine all papers and files in any particular case, duly received.

Section 9 of the Industrial Insurance Act (Stats. 1913, p. 141) provides that:

All proceedings of the Commission shall be shown on its record of proceedings, which shall be a public record and shall contain a record of each case considered, etc.

The word "proceedings," as used herein, means minutes of the Commission (*Hughston v. Cornish*, 59 Miss. 372, 374). The record of such minutes, under the terms of the statute, is open to the public.

Section 19 of the same Act (Stats. 1913, p. 143) provides that a copy of any transcript of the testimony on an investigation made by a stenographer appointed by the Commission shall be furnished to any party on demand and on payment of the fee therefor.

Aside from the two sections noted, we have not found any provision authorizing either an inspection or the furnishing of a copy of any of the records of the Commission. By these sections the Legislature has provided that the minutes are public and that any party may procure a copy of the stenographer's transcript. The Legislature thus manifested an intent to restrict the public to an examination of the minutes and to the designated transcript. Otherwise, these particular provisions would be superfluous. If one might examine any paper on file, or procure a copy thereof, a provision which expressly permits an examination of the minutes and the securing of a copy of the stenographer's transcript would be of no avail.

You are therefore advised that, in our opinion, your question should be answered in the negative.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

109. Industrial Insurance--Industrial Insurance Commission--Union Schools--Liability.

Under facts stated the State Insurance Fund is not liable for compensation to an injured workman.

CARSON CITY, October 27, 1917.

HON. GEO. D. SMITH, Chairman, Nevada Industrial Commission, Carson City, Nevada.

Dear Sir: We wish to acknowledge receipt of your letter, wherein you ask if the State

Insurance Fund is liable for compensation to a workman injured under the following state of facts:

The resident taxpayers of two school districts met to consider the construction of a union schoolhouse. Each was assessed a specified amount to pay for materials and the services of a carpenter. This money was turned over to the trustees of the two districts, and they held the same and paid all bills in cash. The first carpenter employed slipped from the roof and sustained an injury. Not until several months later did the union district offer to pay to the Commission premiums covering the work in question, which offer was refused.

Section 1b of the Industrial Act (Stats. 1917, p. 436) provides:

Where a \* \* \* school district \* \* \* is the employer, the terms, conditions and provisions of this Act, for the payment of premiums to the State Insurance Fund for the payment of compensation and amount thereof for such injury sustained by an employee of such employer, shall be conclusive, compulsory, and obligatory upon both employer and employee.

It cannot be said that the injured man was an employee of a school district, as there is a recognized distinction between a school district and a union school (Rev. Laws, 3314-3328). Neither can it be seriously contended that he was an employee of the union school because it is admitted that the inhabitants raised the funds and built the house, and the carpenter was hired by them and paid in cash for his labor. Had the carpenter been employed by the union school, it is but natural to assume that he would have been paid by voucher as required by statute (Rev. Laws, 3324).

In view of the foregoing, we are of the opinion that the claim should be rejected.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

110. Public Schools--Deputy Superintendent of Public Instruction--School Trustees--Vacancies.

The Deputy Superintendent of Public Instruction has the right to appoint a School Trustee in case of vacancy if no election is held on the fourth Saturday after such vacancy occurs. Before such right exists the office must be found to be vacant under the terms of the sixth and seventh clause of section 2799, Rev. Laws.

Such vacancy can be established only at the suit of the Attorney-General in the nature of a

*quo warranto* establishing by judicial decision that a vacancy in office exists.

Such suit may be brought under the terms of the Attorney-General by the District Attorney in his name.

CARSON CITY, November 1, 1917.

MISS BERTHA KNEMEYER, Deputy Superintendent of Public Instruction, Elko, Nevada.

Dear Miss Knemeyer: I am in receipt of your verbal request for an opinion as to your method of procedure in case of vacancies occurring in Boards of School Trustees.

It appears that instances have arisen where Trustees have left the State and are absent five or six months, and upon their return again take up the duties of their office.

Section 2799 of the Revised Laws provides:

Every office shall become vacant upon the occurring of either of the following events before the expiration of the term of such office: \* \* \* Sixth--The ceasing of the incumbent to be a resident of the State, district, county, city, or precinct in which the duties of his office are to be exercised, or for which he shall have been elected or appointed. Seventh--The ceasing of the incumbent to discharge the duties of his office for the period of three months, except when prevented by sickness, or by absence from the State, upon leave, as provided by law. Eighth--The decision of a competent tribunal declaring the election or appointment void or the office vacant.

Section 63 of the School Code, being section 3301, Rev. Laws, provides:

That on the fourth Saturday after the occurrence of any vacancy or vacancies in any Board of School Trustees, an election may be held to elect a Trustee or Trustees for the remainder of the unexpired term or terms.

The following section provides that:

In case the voters fail to elect, or in case no election is held, the Deputy Superintendent shall fill all vacancies occurring in said Board of Trustees.

Upon the reading of these two statutes, it would appear that you have a right to appoint a Trustee in case of vacancy if no election is held on the fourth Saturday after such vacancy occurs.

But, before your right to appoint exists, the office must be found to be vacant under the terms of the sixth and seventh clauses of section 2799 hereinbefore recited.

Such vacancy can be established only at the suit of the attorney-general in the nature of a *quo warranto* establishing by judicial decision that a vacancy in office exists.

Such suit, however, could be brought under permission of the Attorney-General by your District Attorney in his name.

Where the conditions imposed by said sixth and seventh clauses exist, your District Attorney, upon application to the Attorney General, will receive his permission to bring an action to declare the office vacant, and upon a determination to that effect, an election could be held on the fourth Saturday after such decision is rendered under the provision of Rev. Laws, 3301, and if no such election is held, or the voters fail to elect some person to fill the vacancy, you could appoint under the provisions of Rev. Laws, 3302.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

111. Industrial Insurance--Industrial Insurance Commission--Agricultural Labor.

Agricultural laborers could not come within the provisions of the Industrial Insurance Act.

CARSON CITY, November 2, 1917.

HON. GEO. D. SMITH, Chairman, Nevada Industrial Commission, Carson City, Nevada.

Dear Sir: We wish to acknowledge receipt of your request for an opinion on the following question:

A person clearing land for a farm employs two men to operate tractor engines and two helpers on tractor plows or implements pulled by the tractors. Do such employees come within the provisions of the Nevada Industrial Insurance Act?

Section 43 of the Act in question (Stats. 1915, p. 293) reads in part as follows:

This Act shall apply to all employers of labor in the State of Nevada and their employees and dependents of their employees, but excludes any employee engaged in farm or agricultural labor, stock or poultry raising, or household domestic service.

It is apparent that the Act was not intended to confer its advantages on those "engaged in farm or agricultural labor," or to impose its burdens on their employers. (*In Re Keaney*, 217 Mass. 5, 104 N.E. 438). The employees mentioned are certainly engaged in such labor. (Honnold, *Workmen's Compensation*, p. 194.)

Therefore, in our opinion, they did not come within the provisions of the Act.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

112. Corporations--Foreign Corporations.

It is necessary for a foreign corporation which has complied with the laws of this State by filing in the office of the Secretary of State a certified copy of its original articles of incorporation, to also file in the same office a proper certificate of any increase of its capital stock.

CARSON CITY, November 2, 1917.

MR. J. W. LEGATE, Deputy Secretary of State, Carson City, Nevada.

Dear Sir: We are in receipt of your request for an opinion on the question:

A Maine corporation which filed in this office a certified copy of its original articles of incorporation has recently increased its capital stock from \$750,000 to \$1,000,000. Is it necessary for this corporation now to file a certificate of such increase?

Rev. Laws, 1348, reads as follows:

Every corporation organized under the laws of another State, Territory, the District of Columbia, a dependency of the United States or foreign country, which shall hereafter enter this State for the purpose of doing business therein, must, before commencing or doing any business in this State, file in the office of the Secretary of State of the State of Nevada a certified copy of said articles of incorporation, or of its charter, or of the statute or statutes, or legislative, or executive, or governmental Acts, or other instrument or authority by which it was created, and a certified copy thereof, duly certified by the Secretary of State of this State, in the office of the County Clerk of the county where its principal place of business in this State is located.

It is noticed that this statute is silent as to the manner in which an amendment to the original articles of a foreign corporation shall be made. This being true, the same formalities are required with reference to the execution and filing of an amendment as are required with reference to the original articles of incorporation. (*Palmer v. Bank of Zumbrota*, 72 Minn. 266, 75 N.W. 380.)

An increase in the capital stock of a corporation is necessarily fundamental in character; it reforms, alters and changes something in the original charter. Naturally and properly it is an amendment. (*In Re Pennsylvania Tel. Co.*, 2 Chest. Co. Rep. 129, 131; *Chicago City Railway*

*Co. V. Allerton*, 18 Wall 233, 21 L. Ed. 902; *Wood v. Union Gospel Church Bldg. Association*, 63 Wis. 9, 22 N. W. 756; Nevada Stats. 1913, p. 277.)

In view of the foregoing, we are of the opinion that it is necessary for the company in question to file in your office a proper certificate of its increase of capital stock.

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

By WM. McKNIGHT, Deputy.

113. Cities--Towns--Counties--Contagious Diseases.

Under the provisions of section 3, article 12, Constitution of Nevada, the respective counties of the State must provide for the care and maintenance of the indigent sick.

When a person is taken sick with a contagious disease and lacks funds to pay for medicine and medical attention, the duty rests upon the county, and not upon the city, to care for him.

CARSON CITY, November 5, 1917.

MR. L. D. SUMMERFIELD, City Attorney, Reno, Nevada.

Dear Sir: We wish to acknowledge receipt of your letter of recent date, wherein you ask the following question:

When a person is taken sick with a contagious disease and lacks the funds to pay for medicine and medical attention, upon which body--the city or the county--does the duty rest to provide the same?

We have carefully considered all matters cited in your letter and are of the opinion that you are entirely correct in your conclusion. Section 3, article 13, of the Constitution (Rev. Laws 367) provides:

The respective counties of the State shall provide as may be prescribed by law for those inhabitants who, by reason of age and infirmity or misfortune, may have claim upon the sympathy and aid of society.

According to this constitutional provision the respective counties of the State shall provide by law for the care and maintenance of indigent sick. Under and by virtue of this provision the Legislature of this State has so provided.

We are, therefore, of the opinion that when a person is taken sick with a contagious

disease and lacks the funds to pay for medicine and medical attention, the duty rests upon the county and not upon the city to provide the same.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

114. Transportation--War Tax--Exemption.

State employees are entitled to exemption imposed on transportation by the war tax upon making proper certificate therefor.

CARSON CITY, November 5, 1917.

MR. C. C. COTTRELL, Deputy State Highway Engineer, Carson City, Nevada.

Dear Sir: In answer to your inquiry concerning the war tax imposed upon transportation, let me say that section 500 of the War Revenue Act provides for a tax of 3 per cent on freight and 1 cent for each 20 cents on express packages; 8 per cent of the cost of railroad tickets; 10 per cent of the cost of seats, berths, and state-rooms in parlor cars, sleeping-cars, and on all vessels.

Section 502 of said Act provides an exemption to state officers and employees in the following terms:

No tax shall be imposed under section 500 upon any payment received for services rendered to the United States, or any State, Territory, or District of Columbia. The right to exemption under this section shall be evidenced in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation prescribe.

Such exemption may be claimed by filling out a special blank furnished by the railroad, express, sleeping-car, or steamboat companies.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

115. Public Highways--Highways Over Public Lands.

The right of way for the construction of highways over public lands is granted by U. S. Comp. Stats. 1916, sec. 2477.

CARSON CITY, November 7, 1917.

MR. R. K. WEST, State Highway Engineer, Carson City, Nevada.

Dear Sir: Your oral request for an opinion on the question: "How can a right of way for a state highway over public land be secured?" duly received.

By federal statute (U. S. Comp. Stats. 1916, sec. 4919, Rev. Laws, 2477) it is provided that:

The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted.

The purpose of the congressional grant or dedication is to enable the public to acquire a roadway over public lands. The method by which the roadway is to be established is not specified; and it has been held, therefore, that Congress intended that any act by which the public might acquire a public roadway over private property, other than by purchase, is sufficient to constitute an acceptance of this grant or dedication. It is a rule recognized by the Land Department and by the Supreme Court of the United States that, whenever a grant or dedication is accepted, and any one who takes the land after the acceptance of the donation does so subject to the right which the public has acquired. (*City of Butte v. Mekosowitz*, 102 Pac. 593.)

In *Wallowa County v. Wade*, 72 Pac. 793, the court reviewed various cases showing what acts constitute an acceptance of the statute in question, and then said:

The Act of Congress is more than a mere general offer to the public, being in effect a dedication of the land, which becomes operative and relates back to the date of the Act whenever the public, either by user or by some appropriate act of highway authorities, affirmatively manifests an intention to use a certain definite portion of the public land as a highway. The right is necessarily indefinite, and, in a sense, floating and liable to be extinguished by a sale or disposition of the land until the highway is surveyed and marked on the ground, or in some other way identified or designated; but when the public authorities lay out and locate a road over public land of the United States by surveying and marking it on the ground, or by some legislative Act, or when it is shown by user, the right becomes complete, and an intention to accept the dedication is manifested, and subsequent settlers on the land take subject to the easement.

It is probable that the mere construction of the highway over public lands, under and by virtue of the Act creating the Department of Highways (Stats. 1917, p. 309), would be deemed a sufficient acceptance of the Act. However, in order to avoid any possible question that might hereafter arise, we would suggest that you file with the County Recorder of the county through or into which the road passes, and also in the land offices, a formal acceptance of the dedication, together with a carefully prepared map showing the identical land over which the highway

crosses.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

116. State Department of Highways--County Fund--State Fund.

No part of the county tax for highway purposes levied under Stats. 1917, p. 313 can be paid into the State Treasury for the State Highway Fund, nor can a portion thereof be used to reimburse any county fund from which the county has authorized an expenditure for state highway purposes.

CARSON CITY, November 10, 1917.

MR. R. K. WEST, State Highway Engineer, Carson City, Nevada.

Dear Sir: We wish to acknowledge receipt of your recent letter, in which you state that the estimated cost of proposed work during the coming year will exceed the funds to be derived by the 7-cent state tax and the 7-cent county tax to be collected in 1917. You ask, first, whether the county may advance its share of the cost from other funds and then reimburse the fund from which the advance was made from the 10-cent tax to be levied next year; and, second, whether the county can collect and pay into the State Treasury for deposit to the State Highway Fund the 10-cent tax levy to be collected during next year to reimburse the State Highway Fund for the money advanced to permit the earlier completion of the project.

By section 10 of the Act creating the Department of Highways (Stats. 1917, p. 313) it is provided that the county shall levy and collect a tax, and that the proceeds thereof shall be set aside in a separate fund in the county treasury and shall be used only for the purpose of assisting the State in constructing so much of the state highway as may run through the county.

All of such money so collected by the county is available for state highway purposes, and shall be expended under the direction of the State Highway Engineer. (Stats. 1917, p. 314.)

Counties through which the state highway routes pass may, through the Board of County Commissioners, authorize the expenditure of moneys in excess of the amount of the county-state highway fund provided for by section 10 of this Act upon the state highway within their respective counties. (Stats. 1917, p. 320.)

It is seen that by direct provision of the Highway Act, the county tax collected shall be kept in the county treasury in a special fund, and shall be expended for a specific purpose in a designated manner, but the county may authorize the expenditure of more money than that raised

by the highway tax.

We are, therefore, of the opinion that no part of the county tax can be paid into the State Treasury for the State Highway Fund, nor can a portion thereof be used to reimburse any county fund from which the county has authorized an expenditure for state highway purposes.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

117. State Treasurer--State Moneys.

Under no circumstances can the State pay the cost of transferring money from the State Treasurer's office to the county treasury.

CARSON CITY, November 10, 1917.

HON. ED. MALLEY, State Treasurer, Carson City, Nevada.

Dear Sir: We are in receipt of your request for an opinion on the following question:

Is the State supposed to return the money due a county, free of charge, when the warrant of the State Controller for school apportionment is presented for payment?

Section 3385 of the Revised Laws provides:

All school moneys due each county in the State shall be paid over by the State Treasurer to the County Treasurers on the tenth day of January and the tenth day of July of each year or as soon thereafter as the County Treasurer may apply for the same upon the warrant of the State Controller drawn in conformity with the apportionment of the Superintendent of Public Instruction.

You can pay only the face of the warrant (Rev. Laws, 4372) when such warrant is presented to you (Rev. Laws, 4370).

When you pay to the party presenting a warrant the amount called for therein, the duty of the State ends. Under no circumstances, can the State pay the cost of transferring the money from your office to the County Treasurer.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

118. Revenue Taxation--Redemption from Tax Sale.

A taxpayer whose property is sold for second installment of taxes has one year from the date of sale in which to make the redemption.

CARSON CITY, November 13, 1917.

HON. G. J. KENNY, District Attorney, Fallon, Nevada.

Dear Sir: We wish to acknowledge receipt of your request for an opinion on the question:

What period is allowed by law for the redemption of property which is assessed for taxes in 1916 and is sold for the nonpayment of the second installment of such taxes in 1917.

Section 39 of the Revenue Act (Rev. Laws, 3651), which was passed in 1891, contemplated but one sale in each year, pursuant to the then existing law that compelled the payment of taxes at one time. It provided that a notice of sale should be given, specifying "that such sale is subject to redemption within six months after the date of sale."

In 1897 the Legislature passed the Act allowing the payment of taxes in two installments (Rev. Laws, 3864-4865). It provides that immediately after the second installment becomes delinquent, the Treasurer shall advertise the delinquent property "for sale in all cases, in the same manner as he is now required by law to advertise the same."

By an amendment of the last Legislature (Stats. 1917, p. 35) the words "six months" were stricken from the original section, and the words "one year" inserted therefor; and the amendatory Act further provided that the amendment "shall not apply to redemptions from tax sale hereafter held, but only to property sold after the passage of this Act."

No change whatever was made in the Act permitting the payment of taxes in two installments, but it has been held that a statute which is amended is thereafter and as to all Acts subsequently done to be construed as if the amendment had always been there. (*Holbrook v. Nichol*, 36 Ill. 161; *People v. Sweetser*, 1 Dak. 308; *Kamerick v. Castleman*, 21 Mo. App. 587.)

Therefore, we are of the opinion that a taxpayer whose property is sold for the second installment of taxes has one year from the date of sale in which to make redemption.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

119. Public Schools--Emergency Interest-Bearing Warrants.

Section 3473-7 relating to the issuance of interest-bearing school warrants in emergencies has not been repealed by section 16 of the Budget Act (Stats. 1917, p. 249).

CARSON CITY, November 14, 1917.

MISS BERTHA KNEMEYER, Deputy Superintendent Public Instruction, Elko, Nevada.

Dear Miss Knemeyer: Your favor of the 10th instant, asking opinion of this office on a certain question, received.

You inquire whether the act to authorize the issuance of interest-bearing school warrants in emergencies (Rev. Laws, 3473-3477) has been repealed by section 16 of the Budget Act, Stats. 1917, p. 249.

In my opinion, the first-mentioned Act is not repealed because section 14 ½ of the Budget Act expressly provides: "The provisions of this Act, with reference to school districts and high school districts, shall not be effective until February 1, 1919."

This section was incorporated in the Budget Act expressly for the purpose of allowing schools to issue interest-bearing emergency warrants until the date specified--February 1, 1919.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

120. Mines and Minerals--Location Placer Claims.

A deposit of gravel containing no minerals cannot be located under the placer mining laws.

CARSON CITY, November 17, 1917.

MR. R. K. WEST, State Highway Engineer, Carson City, Nevada.

Dear Sir: Your request for an opinion duly received. Therein you ask the following question:

Are deposits of gravel, situate within a short distance of Elko, Nevada, which proximity makes them valuable for road-building purposes, subject to entry as placer

claims under the mineral laws of the United States?

It is elementary that only mineral lands are subject to disposition under the mining laws. When the question of the character of land is raised it must be tried out, and until patent has been issued the question as to the character of land at the date of entry is an open one, subject to investigation and determination by the Land Department. (*In Re American Smelting and Refining Co.*, 39 L. D. 299; Lindley on Mines, 3d ed. secs. 108, 424.)

In *Zimmerman v. Brunson*, 39 L. D. 310, the Land Department held that:

Deposits of gravel and sand, suitable for mixing with cement for concrete construction, but having no peculiar property or characteristic giving them special value, and deriving their chief value from proximity to a town, do not render the land in which they are found mineral in character within the meaning of the mining laws, or bar entry under the homestead laws, notwithstanding the land may be more valuable on account of such deposits than for agricultural purposes.

This ruling was approved in *Hughes v. Florida*, 42 L. D. 401, wherein it was held that a deposit of shell rock, used for building purposes, construction of roads and streets and the foundation of houses, was not a mineral within the meaning of the general mining laws.

We are, therefore, of the opinion that title to the land in question cannot be acquired under the placer mining laws.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

121. Carson City Paving Bonds.

Under the Act "supplementary to the Act to incorporate Carson City" (Stats. 1917, p. 226), the City Treasurer of Carson City cannot accept the State, county or regular city taxes from a taxpayer unless such taxpayer also pays his street-paving tax.

CARSON CITY, November 17, 1917.

MR. DANIEL E. MORTON, County Treasurer and Ex Officio City Treasurer, Carson City, Nevada.

Dear Sir: We are in receipt of your request for an opinion on the following question:

A taxpayer offers to pay the state, county and regular city taxes levied against his

property, but refuses to pay the installment for street paving. Should I accept the former without the latter?

The Act supplementary to the Act to incorporate Carson City (Stats. 1917, p. 226) authorizes the issuance of bonds for the paving of Carson Street, and provides for the levying of special assessments to pay a portion of the cost thereof. Section 26 of said Act reads as follows:

The special assessment, mentioned in the next preceding section, may be paid to the City Treasurer at the time the first installment of taxes for state and county purposes for the year 1917 are payable, or if not so paid shall be paid in equal annual installments extending over a period of ten years, together with interest on all unpaid installments at the rate of five per cent per annum, interest payable semiannually. Said installments and interest shall be payable and collected at the times and in the manner other city taxes are collected; *provided*, the balance due upon such unpaid payment may be paid to the City Treasurer at any time.

This section gives to the taxpayer the option of paying his entire special assessment at one time or in installments. If the latter method is chosen--

Said installments and interest shall be payable and collected at the times and in the manner other city taxes are collected.

How are *other* city taxes collected? By referring to the original Act (Stats. 1875, p. 87) it is seen that provision is made for the levying of a city tax--

and the tax so levied shall be collected at the same time and in the same manner and by the same officers, exercising the same functions (acting ex officio as city officers) as prescribed and provided in the revenue laws of this State for the collection of state and county taxes; and said city tax so levied shall be assessed and collected with the state and county taxes of each year; and the revenue laws of this State shall, in every respect not inconsistent with the provisions of this Act, be deemed applicable, and so held, to the levying, assessing, and collection of the city taxes.

A taxpayer can pay the tax on subdivisions of his property without paying on all (*State v. Central Pacific R. R. Co.*, 21 Nev. 94), but he cannot arbitrarily select a given sum out of the total amount of taxes the rolls show he owes, and expect the tax collector to receive it as a partial payment. (*Liquidating Commissioners v. Tax Collector*, 106 La. 130.)

In our opinion, you should not accept the state, county and regular city taxes due from any taxpayer unless that taxpayer also pays his street-paving tax.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

122. Fish and Game Laws--Jack Rabbits--Indians--Licenses.

There is no law prohibiting hunting of jack-rabbits by Indians and no license is required therefor.

CARSON CITY, November 17, 1917.

MR. DICK BENDER, Stewart, Nevada.

Dear Sir: In answer to your inquiry, let me say that there is no law prohibiting the hunting of jack-rabbits by Indians, and no license is required for such hunting.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

123. Revenue--Taxation--Exemption--Veterans.

Under Stats. 1917, p. 65, a veteran is exempt from taxation from and after the time such act became effective, but is not entitled to an exemption for taxes levied and assessed previous to the passage of such law.

CARSON CITY, November 19, 1917.

MR. F. N. FLETCHER, Secretary, Nevada Tax Commission, Carson City, Nevada.

Dear Sir: We are in receipt of your request for an opinion on the question:

Is a legal resident of Nevada, who served in and was honorably discharged from the Union Army, and who has property valued at \$1,325 and an income of but \$800 per annum, entitled to an exemption for taxes levied in 1916?

The Act exempting the property of veterans from taxation was approved March 10, 1917 (Stats. 1917, p. 65), and reads as follows:

The property to the amount of one thousand dollars of every resident in this State who has served in the Army, Navy, Marine Corps, or Revenue Marine Service of the United States in time of war, and received an honorable discharge therefrom, and not having an income to exceed \$900 per annum, shall be exempt from taxation; *provided*, that this exemption shall not apply to any person named herein owning property of the value of three thousand dollars (\$3,000) or more. No exemption shall be made under the provisions of this Act of the property of a person who is not a

legal resident of this State.

It is well settled that words in a statute ought not to have a retrospective operation unless they are so clear, strong, and imperative that no other meaning can be annexed to them, or unless the intention of the Legislature cannot be otherwise satisfied. (*Chew Heong v. United States*, 112 U. S. 536, 28 . Ed. 770; *Gage v. Nichols*, 135 Ill. 128, 25 N. E. 672; *People v. Thatcher*, 95 Ill. 109; *Fitch v. Elko County*, [8 Nev. 271](#).)

The party in question comes within the meaning of the word “veteran,” as used in the Act. He is exempt from taxation on a property valuation of one thousand dollars from and after the time the Act became effective, but is not entitled to an exemption for taxes levied and assessed previous to the passage of the law.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

124. Public Schools--County High Schools--Elko High School.

The County High School Board is authorized under the provisions of [sections 3473-7, Rev. Laws](#), to issue emergency interest-bearing school warrants for the purpose of equipping the Elko County High School.

CARSON CITY, November 23, 1917.

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

Dear Mr. Carville: I am in receipt of your favor of the 20th instant, asking opinion of the right of your county board of education to issue emergency interest-bearing school warrants. It seems that under the provisions of [Stats. 1915, p. 344](#), \$55,000 was borrowed for the purpose of constructing a dormitory at Elko, and one at Wells. Of this amount, \$40,000 was allowed for the Elko dormitory and \$15,000 for the Wells dormitory.

It further appears that under the provisions of [Stats. 1913, p. 368](#), an election was had for the construction of a high-school building at Elko; that the question submitted to electors was carried at such election and that a bond issue in the sum of \$100,000 was authorized. It further appears that both bond issues were made with the intention of building and equipping both the dormitory and high-school building, but the Board of Education now finds that they will not have enough money with which to equip either the dormitory or the high-school building.

The Board of Education desires to know whether there is any law under which it can borrow approximately \$12,000 for the purpose of equipping both such dormitory and high-school building.

The Act of 1915, above mentioned, authorizes the Board of County Commissioners of Elko County to issue bonds for an amount not to exceed the sum of \$55,000 for the purpose of providing funds for the *construction* and *equipment* of high-school dormitories in the towns of Elko and Wells.

The Act of 1913, above referred to, is a general Act providing for bonding counties for building and equipping county high schools and dormitories.

Rev. Laws, 3423, provides: "The county high school shall be under the same general supervision and shall be subject to the same laws, rules and regulations governing the other schools of the state school system."

Section 3473-3477 is an Act authorizing the issuance of interest-bearing school warrants in emergencies.

Section 3473, being section 1 of said Act, provides:

Whenever the county school fund of any school district is exhausted and there is not available money to meet the necessary expenses involved in *maintaining* the public schools of the district, the Board of Trustees of such district may, by unanimous vote, by resolution setting forth the character of the emergency, authorize the Clerk of the board to issue orders, for the payment of current bills of the schools of the district, to the County Auditor, and said County Auditor shall draw warrants for the same on the County Treasurer in the usual manner. Such orders shall be in the hands of the County Auditor as valid vouchers for warrants so drawn.

It seems to me that this section furnishes ample authority for the issuance of interest-bearing school warrants in emergencies, providing that the word "*maintaining*" in the above section authorizes the issuance of such warrants for equipment purposes.

The word "*maintain*" is defined as meaning "to support; to sustain; to uphold; to keep up; to bear the expense of." (5 Words and Phrases, 4277.) It is also defined as "to bear the expense of; to support; to keep up; *to supply with what is needed.*" (Id. 4281.)

These definitions bring the word "*maintain*" squarely within the meaning of providing equipment for a high school and dormitory, especially so as, without the necessary furniture, such high school and dormitory could not be used, but would stand idle until the money necessary for equipment was raised.

It is, therefore, the opinion of this office that an emergency exists, and that, under the provisions of section 3423 and sections 3473-3477, Rev. Laws, the County Board of Education is authorized to issue interest-bearing school warrants to meet the same.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

125. Nevada School of Industry--Permanent Board of Government.

The employment of Mr. C. B. Hoag and his wife as manager and school teacher at the Nevada School of Industry by the permanent Board of Government of said institution approved.

Carson City, November 26, 1917.

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

My Dear Governor Boyle: I am in receipt of yours of November 26, asking an opinion of this office as to the legality of the employment of Mr. C. B. Hoag and his wife, Mr. Hoag acting as manager of the institution and his wife as school teacher.

The facts with reference to the employment as appear from the minutes of the permanent Board of Government of the Nevada School of Industry are as follows:

On July 31 the Board of Government decided upon a plan of reorganization of the school. This plan contemplated that for a period of one year a trained and experienced specialist should have the entire direction, charge and control of the education and discipline of the inmates of the institution.

Immediately upon this determination by the board, Mr. Mathew Kyle, superintendent, tendered his resignation, giving no reason therefor, merely stating that it was for what he considered "good and sufficient reasons." This resignation was tendered, to be effective at the pleasure of the board. At the same meeting the board took under consideration the resignation of Superintendent Kyle and adopted the following resolution:

Whereas, The Honorable Mathew Kyle has this day tendered his resignation as superintendent of the Nevada School of Industry for acceptance at the pleasure of the board; and

Whereas, This resignation comes, not at the request of the board, but is the result of the refusal of Mr. Kyle to agree to a temporary reorganization of the plan of school management whereunder the board proposes employing for the period of one year a trained and experienced specialist in industrial training and the management of boys, who shall have entire charge and direction of the education and discipline of the inmates of the institution during such period and be responsible to the board, while Superintendent Kyle shall have only supervision of buildings, grounds, the financial management and the discharge of certain duties directly imposed on him by the law and to be held responsible only for the discharge of said enumerated duties;

therefore, be it

Resolved, That this board accepts the resignation of Superintendent Kyle, to take effect September 1, 1917, with the provision that this acceptance be automatically withdrawn if, on or before August 5, the said Superintendent Kyle sees fit to withdraw his resignation and agree to the plan of reorganization suggested.

It appears that thereafter Mr. Kyle withdrew his resignation, accepted Mr. Hoag and his wife in the school in the capacities outlined in the resolution and action of the board, and Mr. Kyle specifically approved bills for their compensation, which were thereafter approved by the State Board of Examiners and the warrant drawn thereafter by the State Controller.

Section 11 of chapter 254 of the Statutes of 1913, defining the duties of the superintendent, provides in part:

He shall appoint, subject to the approval of the board, all teachers, officers, and employees who shall hold office during his pleasure.

This provision was sufficiently complied with when Mr. Kyle withdrew his resignation, accepted Mr. Hoag and his wife in the capacities designated by the board, and approved their bills for compensation. Moreover, this provision is not an absolute limitation upon the powers of the board, but is to be considered in relation to the subsequent section of the same act which provides:

Sec. 13. This Act shall be construed in conformity with the intent as well as the express provisions thereof and shall confer upon the board authority to do all those lawful acts which it deems necessary to promote the prosperity of the school and the well-being and education of its inmates, including the organization of trades schools, purchase of materials for the use therein, and the doing of all other things not prohibited which are required to carry out the purposes of this Act.

This provision is a later provision, and, under the well-known rule of statutory construction, it controls.

It is entirely within the province of the board to lay out such plans for the well-being and education of the inmates as it deems proper and necessary, and, having that power, can carry it into effect.

I am of the opinion that the board acted well within its rights in the employment of Mr. Hoag and his wife as shown by the resolution of July 31, 1917.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

126. Industrial Insurance--Nevada Industrial Commission--Public Schools--School Districts.

The school districts of this State are required to contribute to the State Insurance Fund.

Carson City, November 27, 1917.

HON. GEO. D. SMITH, Chairman, Nevada Industrial Commission, Carson City, Nevada.

Dear Sir: We wish to acknowledge receipt of your request for an opinion upon the question: "Are the school districts of this State required to contribute to the State Insurance Fund?"

Section 1b of the Act relative to industrial insurance (Stats. 1917, p. 436), reads as follows:

Where a State, county, municipal corporation, school district, cities under special charter and commission form of government, is the employer, the terms, conditions and provisions of this Act, for the payment of premiums to the State Insurance Fund for the payment of compensation and amount thereof for such injury sustained by an employee of such employer, shall be conclusive, compulsory, and obligatory upon both employer and employee.

The language of this section is plain and it can be construed in no way except as therein indicated. It is, therefore, our opinion that your question should be answered affirmatively.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

127. Rewards.

A claim for the reward provided in section 3905, Rev. Laws, is legal and should be paid out of the fund provided for such purpose.

CARSON CITY, November 30, 1917.

STATE BOARD OF EXAMINERS, Carson City, Nevada.

Gentlemen: With reference to the claim of Alexander Forsyth for \$250, for reward in the matter of the arrest of Jack Bagley, will say that in our opinion the claim is legal. (Rev. Laws,

3905; *Silas v. Hallock*, 14 Nev. 332; *State ex rel. Wilkins v. Hallock*, 20 Nev. 73, 15 Pac. 472.)

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By EDW. T. PATRICK, Deputy.

128. Industrial Insurance--Nevada Industrial Commission--School Teachers--Salaries.

Premiums on the salaries of all school teachers employed in the public schools within this State must be paid to the Nevada Industrial Insurance Commission.

CARSON CITY, December 4, 1917.

HON. GEORGE D. SMITH, Chairman, Nevada Industrial Commission, Carson City, Nevada.

Dear Sir: We wish to acknowledge receipt of your recent letter wherein you ask whether or not premiums should be paid to the Commission on the salaries of school teachers.

We recently advised you that the Industrial Insurance Act is obligatory upon school districts. It naturally follows that it is equally binding upon school teachers, unless it can be said that they are not employees.

No citation of authorities is required on the point that school teachers are employees and have always been so regarded in this State. (*State ex rel. Kendall v. Cole*, 38 Nev. 215, 237, 148 Pac. 551; *Farley v. Board of Education*, 162 Pac. 797.)

We are, therefore, of the opinion that premiums on the salaries of all school teachers within this State must be paid to the Nevada Industrial Insurance Commission.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

129. Conveyances--County Recorders--Recording.

County Recorders may accept for recordation any instrument tendered them whether or not the same has been properly acknowledged and notwithstanding the character of the instrument.

CARSON CITY, December 5, 1917.

HON. G. J. KENNY, District Attorney, Churchill County, Fallon, Nevada.

Dear Mr. Kenny: I am in receipt of your favor of the 4th instant, asking construction of Rev. Laws, 1035, concerning recording of conveyances. Said section reads as follows:

A certificate of the acknowledgment of any conveyance or other instrument in any way affecting the title to real or personal property, or the proof of the execution thereof, as provided in this Act, signed by the officer taking the same, and under the seal of such officer, shall entitle such conveyance or instrument, with the certificate or certificates aforesaid, to be recorded in the office of the Recorder of any county in this State; *provided, however*, that any state or United States contract or patent for land may be recorded without any such acknowledgment or proof.

You inquire: Does the word "entitle," as herein used, prevent the Recorder from accepting, for record, instruments that are not acknowledged?

The word "entitle" is defined as "to furnish with grounds for securing a claim with success." If a deed is acknowledged according to law, any properly recorded, every person is bound to take notice of the contents thereof. Therefore the acknowledgment of such a deed furnishes it with grounds for securing a claim with success, in accordance with said definition.

This is as far as the rights conferred by Rev. Laws, 1035, go. There is nothing in the statutes concerning Recorders, or in the chapter on conveyances, which prohibits the County Recorder from accepting for record any instrument which may be tendered him for such purpose. He has no judicial powers and cannot refuse to record any instrument of any character whatsoever which is tendered him for that purpose if his legal fees are paid.

The question of the effect of such recording as to notice to the world of the contents of such instruments is entirely outside of this inquiry.

It is, therefore, the opinion of this office that County Recorders may accept, for recording, any instruments tendered for that purpose, whether or not the same have been properly acknowledged, and notwithstanding the character of the instrument.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

130. Employer and Employee--Wages--Liens.

Law in this State in reference to liens of employees of corporations stated.

CARSON CITY, December 5, 1917.

HON. ROBERT F. COLE, Labor Commissioner, Carson City, Nevada.

Dear Sir: I am in receipt of your favor of the 3d instant, relative to nonpayment of wages due an employee of the Nevada Short Line Railroad Company, for labor performed prior to date of receivership. Therein you ask certain questions on points of law in connection with the matter, as follows:

(1) Does the law expressly prohibit the payment of wage claims contracted before the date of receivership until such time as the earnings of the road create a surplus sufficient to warrant the court in ordering them to be paid?

There is no express enactment on this subject. As a usual rule, property in the hands of a receiver is subject to the order of the court. If the property warrants it, upon application of the court an order would undoubtedly be entered authorizing the receiver to borrow money with which to pay off claims of this character.

(2) Is there a time limit within which wage claims must be presented; if so, what is the limit and to whom should such claims be presented?

We have two enactments on this subject. Rev. Laws, 1187, being section 6 of the general law concerning corporations, provides a lien for not exceeding two months wages to employees doing labor, or services of whatever character, in the regular employ of such corporation.

By the terms of such section, this lien is limited to employees of corporations formed under the General Corporation Act.

I apprehend that the railroad in question was incorporated under our railroad corporation Act, and this section would, therefore, not apply.

Rev. Laws, 5493, provides a lien:

In all assignments of property, whether real or personal, which shall hereafter be made by any person or chartered company or corporation, or by any person or persons, owning or leasing real or personal property, to trustees or assignees on account of inability at the time of the assignment to pay his, her, or their debts, the wages of \* \* \* laborers employed by such person or persons, or chartered company or corporation, shall be held and deemed preferred claims, and paid by such trustees or assignees, before any other creditor or creditors of the assignor; *provided*, that the claims of each \* \* \* laborer thus preferred shall not exceed in value \$200, and the services shall have been rendered, or labor performed, within ninety days next preceding said assignment.

I understand that in the case of the railroad in question judgment was obtained against the railroad company, and under such judgment a receiver was appointed to take charge of the assets of the company. As this was not an assignment of the property, such section would not apply.

If the property in question had been sold out under execution sale, the provisions of Rev. Laws, 5494, would apply, and such preferred claims would have been paid out of the proceeds of the sale.

As these are all the enactments on the subject, it would appear there is no time limit within which wage claims must be presented. Under section 5494 the laborer having a preferred claim must present the same to the officer executing the writ.

In answer to your third question, let me say there is no provision for recording wage claims in the court in case a receiver has been appointed.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

131. Labor Commissioners--Employer and Employee--Wages.

There is nothing in the Act "creating the office of Labor Commissioner" (Stats. 1915, 311) specifically conferring upon the Commissioner the power to enforce laws relative to the payment of wages.

CARSON CITY, December 5, 1917.

HON. ROBERT F. COLE, Labor Commissioner, Carson City, Nevada.

Dear Sir: I am in receipt of your favor of the 4th instant, asking whether the Act creating the office of Labor Commissioner (Stats. 1915, p. 311) gives you authority to enforce the laws relative to the payment of wages. Section 4 of said Act provides:

Said Commissioner shall inform himself of all laws of the State for the protection of life and limb in any of the industries in this State, all laws regulating the hours of labor, the employment of minors, and all other laws enacted for the safety of the public and for the protection of employees; and it shall be the duty of said Labor Commissioner to enforce all such laws in the State, and whenever after due inquiry he shall be satisfied that any such law has been violated he shall present the facts to the District Attorney of any county in which such violation occurred, and it shall be the duty of such District Attorney to prosecute the same.

This section governs laws for the protection of life and limb; laws regulating the hours of labor; laws regulating the employment of minors; laws enacted for the safety of the public, and laws enacted for the protection of employees.

I find nothing in the Act which specifically confers upon the Commissioner the power to

enforce laws relative to the payment of wages.

Applying the familiar rule, "the inclusion of one is the exclusion of the other," I am of the opinion that the laws which the Commissioner is required to enforce by the section above quoted are hereinbefore enumerated, and, therefore, he has no jurisdiction over the enforcement of laws relating to the payment of wages of labor.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

132. Fish and Game Laws--Beaver.

All beaver in this State are protected under Stats. 1917, p. 468, to and including January 1, 1920.

Carson City, December 8, 1917.

MR. C. W. GROVER, State Fish and Game Warden, Carson City, Nevada.

Dear Sir: We wish to acknowledge receipt of your recent communication, wherein you state that beaver are causing considerable damage to certain property in Elko County, and asking whether it is possible, for the preservation of such property, to kill said beaver.

By the provisions of section 51 of an Act providing for the protection and preservation of fish and game (Stats. 1917, p. 468) it is provided:

It shall be unlawful for any person or persons, firm, company, corporation, or association to catch, kill, destroy, trap, net, weir, or cage any beaver in this State on or before the first day of January, 1920.

The intention of the Legislature in enacting this statute is plainly indicated by the language used. It was intended to protect, and does protect, all beaver in this State to and including January 1, 1920.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

133. Revenue--Taxation.

The county in which sheep should be assessed is that of the residence of the owner.

CARSON CITY, December 8, 1917.

HON. FRANK CURRAN, District Attorney of Lander County, Austin, Nevada.

Dear Sir: We wish to acknowledge receipt of your letter of the 5th instant, in which you state that a citizen of Lander County, who drives his sheep into Nye County, is there assessed on such sheep and pays the taxes thereon, and later is assessed on the same sheep in Lander County, and you desire to know whether or not he is thus relieved from paying the taxes in Lander County. From your letter we assume that the owner of the sheep has real property in Lander County, but has none in Nye County, and that the sheep were bred, born, and raised in Lander County, and were driven into Nye County for the purpose of grazing.

If these be the facts, it necessarily follows that the home or habitat of the sheep was in Lander County; that they properly belong to said Lander County, and that they were subject to taxation in that county and nowhere else. (Barnes v. Woodbury, 17 Nev. 383, 30 Pac. 1086; Ford v. McGregor, 20 Nev. 446, 23 Pac. 508; Whitmore v. McGregor, 20 Nev. 451, 23 Pac. 510; State v. Shaw, 21 Nev. 22, 29 Pac. 321.)

We are, therefore, of the opinion that the taxes must be paid in Lander County.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

134. Revenue--Taxation--Patented Mining Claims--Exemption.

The affidavit authorizing exemption of taxes assessed on patented mining claims (Stats. 1915, p. 316) should be filed within the year for which exemption is claimed.

CARSON CITY, December 8, 1917.

HON. FRANK CURRAN, District Attorney of Lander County, Austin, Nevada.

Dear Sir: We are in receipt of your letter of the 5th instant, wherein you ask this question:

Local parties, who are conducting extensive mining operations, neglected to file the necessary affidavit to receive exemption of taxes on patented mining claims, and are assessed therefor. Is it possible for them to now secure exemption for this year?

An Act authorizing the assessment of patented mines (Stats. 1915, p. 316) provides that

where at least \$100 in labor has been actually performed upon the patented mine, during the calendar year for which assessment is levied, the owner thereof may have the same stricken from the roll by filing with the County Board of Equalization, or with the State Board of Equalization, an affidavit in the form prescribed by the statute. In case the required amount of labor has not been performed at the time of the meeting of either of said boards, the owner may file an affidavit of intention of performing said labor before the expiration of the then current calendar year.

It is noticed that the statute requires the filing of the affidavit of intention to perform the labor, or the affidavit of the performance of such labor with the County or State Board of Equalization. Clearly the exemption can be had only in the manner defined. As was said in *District Township v. City of Dubuque*, 7 Iowa. 262, 284; cited and approved in *Nevada-California Power Co. V. Hamilton*, 235 Fed. 317, 336:

The expression of one thing is frequently the exclusion of another; and if, by a law or Constitution, a thing is to be done in a particular manner or form, this, as we have seen, includes a negative, that it shall not be done otherwise. \* \* \* This rule, it is also said, is further modified by another that where the means for the exercise of a granted power are given, no other or different means can be implied, as being more effectual or convenient.

As the parties in question have not filed the necessary affidavits, it is not now possible for them to secure the exemption for this year.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

135. Public Highways--Counties--County Commissioners.

The Board of County Highway Commissioners, created by chapter 157 of the Statutes of 1913, has the right to lay out and improve roads in its county and to pledge the credit of the county for the expense thereof.

Such board has the entire administration of road matters in its county.

CARSON CITY, December 14, 1917.

HON. R. K. WEST, State Highway Engineer, Carson City, Nevada.

Dear Sir: In response to your verbal inquiry as to the force and effect of that certain Act entitled "An Act to provide for the establishment of a uniform system of road government and administration in each of the several counties of the State of Nevada," etc., chapter 257 of the Statutes of 1913, let me say that, in my opinion, the Board of County Highway Commissioners therein created has the right to lay out and improve roads in any county in which the said Act has

been adopted and to pledge the credit of the county for the expense thereof.

The county of Elko, in the State of Nevada, has fully adopted the terms and provisions of said Act, and, therefore, the entire administration of road matters in said county is within the province of the said Board of County Highway Commissioners of Elko County.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

136. Clerk of the Supreme Court--Fees.

The Clerk of the Supreme Court is required under section 2034, Rev. Laws, to make monthly settlements with the State Treasurer of the fees collected by him.

CARSON CITY, December 24, 1917.

HON. WM. KENNETT, Clerk of the Supreme Court, Carson City, Nevada.

Dear Mr. Kennett: We are in receipt of your letter of the 22d instant, in which you ask whether, in making settlement of your fees, you should follow section 2034 or section 4894 of the Revised Laws.

Section 4894, which was approved February 24, 1875, provides that all fees collected by you shall be paid into the State Treasury *at the end of every quarter*.

This section is in conflict with section 2034, which provides that *on the first Monday of each month* you shall pay all fees to the State Treasurer. The section last mentioned was approved February 27, 1883, or eight years later than the contrary provision.

It is well settled that where two statutes are inconsistent with each other the later repeals the earlier.

You are therefore advised that, in our opinion, you should make monthly settlements as provided by section 2034 of the Revised Laws.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

137. Carson City--Paving Fund.

The fund derived through payments of assessments by property owners under chapter 131, Statutes of 1917, abutting on Carson Street, may lawfully be used in the payment of expenses for paving said street.

CARSON CITY, December 28, 1917.

HON. DANIEL E. MORTON, County Clerk and ex officio City Clerk, Carson City, Nevada.

Dear Sir: After careful examination of chapter 131, Statutes of 1917, providing for the paving of a portion of Carson Street in Carson City, etc., I am of the opinion that the fund derived through payments of assessments by property owners abutting on said Carson Street may lawfully be used in the payment of expenses for paving said street.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.