

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL - 1918

**138. State Assayer and Inspector--Fees.**

The State Assayer and Inspector cannot charge less than 25 cents per ton on any shipment in cases of fifty tons under Stats. 1917, p. 450.

CARSON CITY, January 9, 1918.

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

Dear Mr. Lincoln: Your letter of the 5th instant duly received. You ask whether it is possible, in shipments in excess of eighty tons, shipped in two cars but sampled as one lot, to impose a definite maximum charge lower than 25 cents per ton.

The statute creating your office (Stats. 1917, p. 450) provides for a charge of 25 cents a ton for services rendered by you, except in cases where less than fifty tons of ore daily are received and sampled. In the latter event, the shipper is required to pay the actual costs of the inspection and sampling.

In view of these very definite provisions, it is our opinion that you cannot charge less than 25 cents per ton on any shipments in excess of fifty tons.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

**139. Public Schools--State Board of Vocational Education--State Director of Vocational Education.**

Under Stats. 1917, p. 398, the State Board of Vocational Education has the right to pay the salary and traveling expenses of the State Director of Vocational Education from the appropriation made in said Act.

CARSON CITY, January 9, 1918.

HON. JOHN EDWARDS BRAY, Secretary, State Board of Vocational Education, Carson City, Nevada.

Dear Mr. Bray: We are in receipt of your recent letter wherein you ask an opinion upon the following questions:

Has the State Board of Vocational Education the right to pay the salary of the State Director of Vocational Education under the Smith-Hughes Act from the \$30,000 appropriation made by the Legislature of Nevada in 1917?

Has the State Board of Vocational Education the right to provide traveling expenses and office expenses for said State Director of Vocational Education from appropriation of \$30,000 in said Act of the last Legislature?

The last Legislature (Stats. 1917, p. 398) appropriated the sum of \$30,000 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.

The State Director of Vocational Education will be engaged in supervising vocational work in this State and aiding as a teacher in such phases of the work as may be necessary. By joint agreement on the part of the Federal Board of Vocational Education and the State Board of Vocational Education, the salary and expenses of the State Director, who is a supervisor and a teacher, shall be paid from state funds.

The language of the Act in question is broad enough to include both the salary and expenses of such Director.

Both of the questions which you ask should, therefore, be answered affirmatively.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

#### **140. State Railroad Commission--Public Service Commission--Fees.**

The State Railroad Commission and Public Service Commission cannot increase the appropriations made for the support of the said Commissions by adding thereto the amount in money received by the Treasurer in payment for transcripts of proceedings.

CARSON CITY, January 9, 1918.

MISS E. E. STONE, Assistant Secretary, Railroad Commission and Public Service Commission, Carson City, Nevada.

Dear Miss Stone: We wish to acknowledge receipt of your letter of the 8th instant, in which you ask whether the appropriations made for the support of your Commission should be increased by the amount of any money received by the State Treasurer, in payment of transcripts of proceedings. The law providing for the sale of such transcripts (Stats. 1915, p. 450) reads as follows:

The amount so charged and collected shall be turned over by the Commission to the State Treasurer, and by him carried into the fund appropriated for the general expenses of the Commission.

There is nothing in this language indicating the intention on the part of the Legislature to have the Commission appropriations increased by such receipts. The statute, by the use of the word "fund," plainly indicates the lack of such intention. "Fund" and "appropriation" are not synonymous terms. A distinction is of necessity made between them in the statutes (Stats. 1915, p. 95; *Marshall v. Dunn*, 69 Cal. 223.)

The purpose of the Legislature was apparently to designate the fund into which the receipts should be apportioned. This purpose is plainly shown by the statute in question, and is further shown by the language used in the last general appropriation bill. (Stats. 1917, pp. 217-221.)

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

#### **141. Employer and Employee--Liens--Mines and Mining.**

Section 2221, Rev. Laws, was amended by Stats. 1917, p. 435, so as to require, in addition to posting the notice therein mentioned, the making of an affidavit of such posting and the recording of the same with the County Clerk.

If the labor performed or the material furnished for which a lien is claimed was performed or furnished after March 27, 1917, the date of said amendment, the posting of a notice alone would not be a sufficient compliance with the law. If such labor was performed or material furnished thereafter, and no copy of the notice was filed with the County Recorder, the property would be subject to a lien.

CARSON CITY, January 11, 1918.

HON. ROBT. F. COLE, Industrial Commissioner, Carson City, Nevada.

Dear Sir: I am in receipt of your favor of the 17th ultimo, enclosing copy of notice which was posted on certain mining claims belonging to Mr. Fred Toberg of Crescent, Nevada.

It seems that certain parties who leased the property from Mr. Toberg failed to pay for certain labor performed thereon, and for certain materials furnished.

You inquire whether or not the property can be held in payment for such labor and materials. You state that a notice was posted on the dump of the claim, in a box, and on the outside and inside of the building.

In my opinion, the mining claims on which this labor was performed, and for which the material was furnished, cannot be held for payment thereof, for the reason that the owner of the claims has complied fully with the provisions of section 9 of an Act entitled "An Act to secure liens to mechanics and others," etc., being Rev. Laws, 2221, if the work was performed and materials supplied prior to March 27, 1917.

On said date said section 9 was amended providing the following: "and also shall, within five days after such posting, file a duplicate copy of said posted notice with the Recorder of the county where such land or building is situated, together with an affidavit attached thereto, showing such posting and original posting. Such filing shall be *prima facie* evidence of such posting."

Therefore, if the labor was performed and material furnished after March 27, 1917, the posting of the notice alone would not be a sufficient compliance with the law. If this work was done thereafter, and no copy of the notice filed with the County Recorder, the property in question would be subject to a lien.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

#### **142. Mothers' Pension Law.**

The clause "or are dependent upon their own efforts for maintenance of their children" in the mothers' pension law (Stats. 1915, p. 151) is a part of the qualifications preceding which entitle the mother to partial support by the county.

The object and intent of such Act is to maintain the home and keep the mother with the children, and the mother is not obliged to go away from home to secure work under such law if such procedure would leave the children without a mother's

protection.

CARSON CITY, January 12, 1918.

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

Dear Mr. Carville: Since my last return from Elko Mr. Thatcher has been away so much that only today was I able to ask him for his interpretation of section 1 of the mothers' pension law (Stats. 1915, p. 151). He holds that the phrase, "or are dependent upon their own efforts for maintenance of their children," is a part of the qualifications preceding which entitles the mother to partial support by the county. He further holds that the object and intent of the Act is to maintain the home and keep the mother with the children, and that the mother is not obliged to go away from home to seek work, if such procedure would leave the children without the mother's protection.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By EDW. T. PATRICK, Deputy.

### **143. Public Schools--Evening or Night Schools.**

The appropriation of \$10,000 provided in section 4 of the Act to provide for the establishment of evening schools (Stats. 1917, p. 354) is to be taken from the General Fund of the State.

CARSON CITY, January 18, 1918.

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

Dear Sir: We are in receipt of your letter, in which you refer us to the law establishing night schools, which provides that a designated sum be appropriated from the "State School Fund." You state that no part of such fund can be used for educational purposes and ask--

What fund can the money be taken from for the purpose of night schools?

The law in question (Stats. 1917, p. 354) provides for the establishment of evening schools. The State is required to pay not to exceed a specified amount for the salary of each teacher, and for the purpose of paying such salaries--

The sum of ten thousand dollars is hereby appropriated from the State School Fund to carry out the provisions of this Act; and claims against said appropriation shall be paid as other claims against the State are paid upon certificate of the State

Superintendent of Public Instruction.

The Legislature having previously established and authorized the keeping of accounts with the "State Permanent School Fund" and the "State Distributive School Fund" (Rev. Laws, 3373, 3375; Stats. 1915, p. 95), there was not, at the time of the enactment of this statute, any fund known as "State School Fund." It is apparent, therefore, that the Act in question designated a wrong fund; or, rather, a fund that was not in existence.

But it does not follow that the appropriation is null and void, if it can otherwise be determined what fund the money appropriated is to be drawn from. (*State v. Westerfield*, 23 Nev. 468, 473.) In the cited case it was held that the salary of a teacher at the Orphans' Home should be paid from the General Fund, although the statute authorizing the expenditure designated the General School Fund. There the money could not be paid from the fund designated by the Legislature, because of constitutional restrictions; while here the money cannot be paid from the named fund, because there is no such fund.

It follows, in our opinion, that the appropriation for the salaries of teachers in evening schools may be paid from the General Fund.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

#### **144. County Clerk's Fees--State Orphans' Home.**

The County Clerk is not entitled to any fee in the proceeding leading to the commitment under section 4098, Rev. Laws, of half-orphans to the State Orphans' Home.

Carson City, January 18, 1918.

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

Dear Sir: Some time since you wrote for an opinion as to whether the Clerk of your court was entitled to any fee on a petition filed under the provisions of Rev. Laws, 4098.

Section 4098 is section 12 of the original Act for the government and maintenance of the State Orphans' Home.

Amendments thereto of 1913 and 1915 were for the purpose of enlarging the scope of the Home and permitting the admission therein of children who otherwise could not be received.

Section 7 of said Act (Rev. Laws, 4093) provides the procedure of admission to the Home and the last sentence of said section is as follows:

The expenses of proceedings herein provided for and of the transportation of orphans to the Home shall be a county charge.

There is nothing in section 12, or the amendments thereto, which changes this rule, and I am, therefore, of opinion that for the services rendered in such proceedings your Clerk is not entitled to any fee.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

**145. Revenue--Taxation--Patented Mines--Exemption.**

The affidavit contemplated for the exemption from taxation of patented mines in the Act of 1915, p. 316, requires the filing of such affidavit within the calendar year for which such exemption is claimed.

CARSON CITY, January 18, 1918.

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

Dear Sir: I am in receipt of your favor asking interpretation of chapter 206 of the Statutes of 1915, being the Act to provide for the assessment of patented mines.

It appears from your letter that on July 25, 1917, the owner of a certain patented mine sent your County Clerk an affidavit showing that between April 1, 1916, and June 30, 1916, the labor specified in said Act was performed and prayed that the assessment against his property be stricken from the roll.

In my opinion the County Board of Equalization could not act upon this petition, for the reason that the whole purport of the Act seems to contemplate that it can only strike from the rolls patented mines on which the \$100 worth of labor was performed during the calendar year. I am confirmed in this opinion by the provisions of section 5 of said Act, which provides for an affidavit from the owner of his intention to perform such labor before the expiration of the then current calendar year, and on filing a bond for the performance of such labor.

The law of 1913 was defective in that it did not allow credit for the performance of such annual labor as might have been done after the meeting of the Board of Equalization and before the expiration of the then calendar year. To meet this difficulty, the law of 1913 was repealed and the present Act was passed by the Legislature of 1915.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

**146. Criminal Practice--County Commissioners--Extradition--Misdemeanors.**

Under the amendment to section 7444, Rev. Laws (Stats. 1917, p. 25), County Commissioners are now authorized to bind the county for the expense of extradition in misdemeanors as well as in felonies.

CARSON CITY, January 24, 1918.

HON. ROBERT F. COLE, Commissioner of Labor, Carson City, Nevada.

Dear Sir: There has been pending in your office for some time the claims of Grainger, *et al.*, against one ..... for labor performed on behalf of said ..... on a mining claim, none of which claims were ever settled.

Your predecessor in office, Hon. W. E. Wallace, referred the matter to this office for an opinion as to whether or not ..... can be extradited and brought back to this State for trial on a misdemeanor charge.

At the time of his inquiry such action did not seem possible for the reason that Rev. Laws, 7444, as it stood at that time, authorized County Commissioners to provide for the payment by the county of the expense of extradition when the crime was of the grade of felony.

The charge against ..... under our laws could be nothing more than a misdemeanor, and therefore it does not seem possible that this man might be extradited.

At the last session of the Legislature, however, section 7444 was reenacted, omitting the words "of the grade of felony," and the County Commissioners are now authorized to bind the county for the expense of extradition in misdemeanors as well as felonies.

I am, therefore, of the opinion that if you desire to pursue this matter further, you may now legally apply to the Board of County Commissioners of Washoe County for the extradition of .....

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

**147. Revenue--Taxation--Bullion Tax--Federal Taxes.**

No reduction from the gross proceeds of mines in order to arrive at the net proceeds for the purpose of taxation in this State may be made except those provided for by section 3687,

Rev. Laws, and federal taxes are not within the deductions of such statutes and may not be deducted in arriving at the net proceeds as a basis of taxation.

CARSON CITY, January 25, 1918.

Nevada Tax Commission, Carson City, Nevada.

Gentlemen: I am in receipt of yours of January 21, together with the enclosed letter from Mr. C. B. Jenkins, Business Manager of the Nevada Consolidated Copper Company, relating to the legality of deducting federal taxes from the gross proceeds of mines in order to arrive at the net proceeds for the purpose of taxation.

Concretely, the question presented by the correspondence is: may a mining company deduct federal taxes from the gross proceeds of mines in arriving at the net proceeds, the basis of taxation?

Section 3687 of the Revised Laws provides as follows:

All proceeds of mines, including ores, tailings, borax, soda and mineral-bearing material, of whatever character, shall be assessed for purposes of taxation, for state and county purposes quarterly, in the manner following: From the gross yield returned, or value of all ores, tailings, borax, soda or mineral-bearing material of whatever character, there shall be deducted the actual cost of extracting said ores or mineral from the mine; the actual cost of extracting said ores or mineral from the mine; the actual cost of saving said tailings; the actual cost of transportation to the place of reduction or sale, and the actual cost of reduction or sale; *and the remainder shall be deemed the net proceeds*, and shall be assessed and taxed at the same rate, ad valorem, as other property is taxed, as provided in this Act.

The section referred to is section 75 of "An Act to provide revenue for the support of the Government of the State of Nevada and to repeal certain Acts relating thereto," which was approved March 23, 1891.

It will be observed from the section just referred to that it is the *net proceeds* of mines that should be assessed and taxed; and the term *net proceeds* is defined as "being the gross yield or value of the ore less the actual cost of extracting; the actual cost of transportation to the place of reduction or sale; and the actual cost of reduction or sale."

It will be further observed that it is *net proceeds* and not *net income* that is to be taxed under the provisions of this section.

This section was adopted under the provisions of section 1 of article 10 of the Constitution as it then existed, which provides:

The Legislature shall provide by law for a uniform and equal rate of assessment and

taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory, excepting mines and mining claims, the proceeds of which alone shall be taxed, and also excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious or charitable purposes.

It will be observed from the original section 1 of article 10 that it was left to the Legislature to tax the *proceeds of mines*, and they could tax either the gross or the net in the exercise of their legislative discretion. Section 1 of article 10 was later amended and, as amended and approved by the people at the general election of 1906, reads as follows:

The Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory, except mines and mining claims, when not patented, the proceeds alone of which shall be assessed and taxed, and, when patented, each patented mine shall be assessed at not less than five hundred dollars (\$500) except when one hundred dollars (\$100) in labor has been actually performed on such patented mine during the year, in addition to the tax upon *the net* proceeds; and also excepting such property as may be exempted by law for municipal, educational, literary, scientific or other charitable purposes.

It will be observed that there is some ambiguity with reference to the provisions of this section. "Mining claims when not patented, the proceeds of which shall be assessed and taxed," seems to conflict with "On such patented mines during the year in addition to the tax upon the *net proceeds*." Under the view that I take of the matter, however, this conflict is not material, for the Legislature has not attempted to differentiate between patented and unpatented mining claims, and taxes only the *net proceeds* in both classes of mines.

The question arises, however, as to the construction to be placed upon the words "net proceeds," as they appear in section 1 of article 10. The Constitution does not define *net proceeds*, but, as a matter of construction, I am of the opinion that the term *net proceeds*, as used in the Constitution, is identical with that defined by section 3687, for the Legislature evidently had in mind in adopting the amending resolution the law as it existed at that time, and this is always a guide for construction. The legal presumption will be indulged in that the revisers of the Constitution used the words intelligently, with full knowledge of the statutory definition of "net proceeds" then in effect. This rule of construction is supported by abundant authority: *State v. Glenn*, 18 Nev. 34; *State ex rel. v. Cole*, 38 Nev. 215; *State v. Parkinson*, 5 Nev. 15-34; *O'Brien v. Trousdale*, 41 Nev. 90, 167 Pac. 1007; 8 Cyc. 736, 740; 12 Corpus Juris. 706, 712.

As I have heretofore said, it is the *net proceeds* of mines and not the "net income" of mine owners and mining corporations that is the basis of assessment and taxation. I am of the opinion that no deductions may be made except those provided for by the statute and that federal taxes are not within the deductions provided for by the statute, and may not be deducted in arriving at the *net proceeds*, the basis of taxation.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

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

There is nothing in the Nepotism Act (Stats. 1915, p. 17) which prevents the Board of Government of the Nevada School of Industry from employing the son-in-law of one of its members as a physician at the school.

CARSON CITY, January 26, 1918.

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

Dear Sir: We are in receipt of your letter of recent date, wherein you ask an opinion upon the following question:

Can the Board of Government of the Nevada School of Industry legally employ the son-in-law of one of its members as a physician at the school?

There is nothing in the Nepotism Act (Stats. 1915, p. 17) which prevents the employment mentioned, and, as there is no other statute of this State applicable at all to such matter, it is our opinion that the contemplated employment can be legally made.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

**149. Pure Food.**

The decision in this matter found to depend upon a question of fact.

CARSON CITY, January 31, 1918.

MR. H. B. BULMER, Acting Commissioner, University of Nevada, Reno, Nevada.

Dear Sir: I am in receipt of your favor of recent date, asking information as to whether vinegar manufactured as the Fleischmann Company claim in paragraph 3 of their letter, complies with our law.

After examination of the question, it appears to me that a question of fact, rather than of law, is involved.

In the report of your analysis of December 31 you find "artificial coloring matter" present. In the letter of the Fleischmann Company, dated January 9, the writer thereof says:

The vinegar derives its color and flavor from the malt vinegar, and is quite extensively sold in the State of California where our laws concerning the manufacture of vinegar seem to be on a parallel with the laws of the State of Nevada. No artificial coloring matter is used in this vinegar.

Our law on the subject is found in Stats. 1913, p. 318, sec. 9, which provides:

Food, liquor and drugs shall be deemed mislabeled or misbranded within the meaning of this Act in any of the following cases: \* \* \*

Second--If it be labeled or colored or branded so as to deceive, mislead or tend to deceive or mislead the purchaser.

If you found that this vinegar contained artificial coloring matter, it is clearly prohibited from sale in this State under our law. If, however, it is not artificially colored, its sale is legal.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

**150. Department of Highways--Federal Government--State Highway Fund.**

The money of the State Highway Fund may be legally used in making reports to the Federal Government of military notes and economic resources of the State.

CARSON CITY, February 2, 1918.

MR. R. K. WEST, State Highway Engineer, Carson City, Nevada.

My Dear Mr. West: We wish to acknowledge receipt of your recent letter, in which you state that your department has been requested by the United States Army authorities to furnish certain military notes on all roads in Nevada, with reports of the economic resources of the State, and ask whether any part of the funds under the jurisdiction of the State Highway Department may be legally expended for such purpose.

Section 6 of the Act creating the Department of Highways (Stats. 1917, p. 310) provides that the State Highway Engineer--

shall cause to be made and kept by the Department of Highways a general plan of the State, and shall collect information and compile statistics relative to the mileage, character, and condition of the highways and bridges in the different counties of the State.

It is apparent that a great portion, if not all, of the matter desired by the War Department is that covered by the above-mentioned section.

We are therefore of the opinion that the money in the State Highway Fund may be legally used for the purpose mentioned.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

#### **151. Trademarks, Imitation of--Unfair Competition.**

It is illegal for any one to imitate the emblem used by another party in the same line of business, whether such emblem has been recorded or not.

CARSON CITY, February 16, 1918.

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

Dear Sir: I am in receipt from you of a letter from the District Auto Service, Incorporated, concerning the alleged infringement by other parties of an emblem which has been in use by said District Auto Service for over twenty-one months on its autos; also a letter from C. A. Eddy, attorney-at-law of Ely, Nevada, requesting two copies of the sign or trademark which he desires to have recorded in your office under sections 4335-4337 of the Revised Laws of Nevada, said trademark to be used in connection with automobile jitney service.

The letter of the District Auto Service first referred to is a protest against the recordation by you of said proposed trademark.

In the letter of the District Auto Service it is stated that one of the emblems engraved on brass carried on the autos of said District Auto Service since April, 1916, has been forwarded to you by express. The law of this State in the question above referred to provides:

Every person or association or union or workman or others that has adopted or shall adopt any label or trademark or form of advertisement may file the same for record in the office of the Secretary of State by leaving two copies, counterparts or facsimiles thereof, with the Secretary of State. (Rev. Laws, 4635.)

The law of “unfair competition” is defined as follows:

Unfair competition consists in the passing off and attempting to pass off upon the public the goods or business of one person as and for the goods or business of another. (38 Cyc. 756.)

This is the law, whether the trademark has been recorded or not. If, therefore, upon comparison of the labels furnished by Mr. Eddy with that furnished by the District Auto Service it is apparent that the labels are so similar that the public may be deceived by reason of such similarity, it is your duty to reject the application for recordation of the letter, emblem, trademark, or advertisement.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

**152. Nevada Industrial Commission--Salaries--Governor--Veto Power.**

The Governor has no power to approve or fix the compensation of any person employed by the Nevada Industrial Commission to be paid from the Accident Benefit Fund.

CARSON CITY, February 18, 1918.

DR. DONALD MACLEAN, Chief Medical Adviser, Nevada Industrial Commission, Carson City, Nevada.

Dear Sir: We wish to acknowledge receipt of your letter of recent date, in which you ask whether or not the Governor has the power of approval and veto over the Accident Benefit Fund of the Industrial Insurance Commission.

Section 21 of the Act creating the Nevada Industrial Commission (Stats. 1913, p. 143; Stats. 1915, p. 283; Stats. 1917, p. 439) provides that every employer coming within the provision of the Act shall pay into the State Treasury, for the State Insurance Fund, certain specified sums, while section 40 (Stats. 1913, p. 151) provides that the State of Nevada shall not be liable for the payment of any compensation under the Act, save and except from the said insurance fund; and section 41 (Stats. 1913, p. 151) expressly limits all expenses of administration of the Insurance Commission to 10 per cent of the amount of premiums paid into the said State Insurance Fund.

Section 11 of the original Act (Stats. 1913, pp. 137, 142) provides that:

The Commission may employ a secretary, actuary, accountants, inspectors, examiners, clerks, stenographers and other assistants, and fix their compensation.

Such employments and compensation shall be first approved by the Governor, and shall be paid out of the State Treasury.

The purpose of section 11, when read in connection with the other provisions above mentioned, is plain. Undoubtedly, the Legislature deemed it wise to leave it to the Governor, and to charge that officer directly with the approval of the employment of various assistants, and the compensation to be paid them from the State Insurance Fund. The object, naturally, was to provide every conceivable means to insure keeping within the prescribed limit the expenses of administration to be paid from such fund.

The accomplishment of this object is all that the section contemplated and all that it was designed for. It was never intended to reach, and does not reach, the employment of any assistant or the compensation to be paid from any fund other than the State Insurance Fund.

As the last Legislature expressly provided that all accident benefits, which include medical, surgical, hospital, or other treatments, shall be furnished by the Nevada Industrial Commission to those accepting the amendment, and that the State Insurance Fund shall not be liable for any such benefits, but that the fund provided for said benefits shall be a separate and distinct fund, and shall be so kept (Stats. 1917, p. 440), it is at once apparent that the provisions of section 11 have no application to the employment of any one receiving compensation from such separate and distinct fund.

You are, therefore, advised that, in our opinion, the Governor has no power to approve or fix the compensation for any person employed by the Nevada Industrial Commission to be paid from the Accident Benefit Fund.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

### **153. Vocational Educational Fund--Appropriations, Lapsing of--Legislature.**

The Legislature by use of appropriate language has power to extend an appropriation beyond December 31 of the year following the session of the Legislature making the appropriation.

The Vocational Educational Fund appropriated by section 4, Stats. 1917, p. 398, is for two years beginning July 1, 1917, and ending June 30, 1919.

CARSON CITY, February 18, 1918.

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

Dear Sir: Your letter of recent date duly received. Therein you call our attention to section 4 of chapter 209 of the laws of last session (Stats. 1917, p. 398) and ask whether or not the appropriation therein made extends beyond December 31, 1918.

The section in question reads in part as follows:

That the sum of thirty thousand (\$30,000) dollars 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.

The law itself was passed for the purpose of accepting the Federal Act providing for the promotion of vocational education, and the appropriation in question was made to cover a similar appropriation by the National Government--the latter appropriation being made to extend from July 1, 1917, up to and including June 30, 1919.

The language of our statute is plain and unambiguous, and the intent of the Legislature is readily apparent therefrom. As the Legislature, by use of appropriate language, has power to extend an appropriation beyond December 31 of the year following the session of the Legislature making the appropriation, and as the language in section 4 can have no other meaning, we are of the opinion that the sum appropriated therein is for the two years beginning July 1, 1917, and ending June 30, 1919.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

**154. Public Schools--Budget Act--Revenue--Taxation--School Districts--High-School Districts.**

The "Act regulating the fiscal management of counties, towns, cities, school districts and other governmental agencies" (Stats. 1917, p. 249) does not apply to school districts and high-school districts until February 1, 1919.

It is unnecessary to publish the budgets of the school or high-school districts until that time.

The Act to authorize the issuance of interest-bearing school warrants in emergencies (Rev. Laws, 3473-3477) is unrepealed until said date.

CARSON CITY, February 21, 1918.

MR. H. E. FREUDENTHAL, Pioche, Nevada.

Mr. Dear Mr. Freudenthal: Your favor of the 16th instant, addressed to the Nevada Tax Commission, has been referred to this office for response. In answer thereto let me state as follows:

You are correct in assuming that the "Act regulating the fiscal management of counties, cities, town, school districts and other governmental agencies" (Stats. 1917, p. 249) does not apply to school districts and high-school districts until February 1, 1919.

The "Act to authorize the issuance of interest-bearing school warrants in emergencies," approved March 23, 1911 (Rev. Laws, 3473-3477), stands unrepealed until the said date.

Therefore it is unnecessary to publish the budget of school or high-school districts until that time, and any school or high-school district in need of money may issue interest-bearing school warrants until such time under the above-quoted Act.

It is immaterial whether the 3-mills levy for the teachers' pension fund under the Act of 1915, or the 5-mills levy to provide for civic and physical training and instruction under the Act of 1917, be levied by the County Commissioners or included in the state tax rate.

In any event, the moneys thus derived are state funds and must be transmitted to the State Treasurer when collected.

It is possible that the reason that these additional levies have been added to the state tax rate is because the same might be overlooked by the County Commissioners in making up a budget.

The State having acted in making such levies, the County Commissioners are deprived of the power of duplicating them by adding the same to the county rate.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

### **155. Revenue--Taxation--Widows' Exemption.**

In order to claim the widow's exemption provided by section 3621, Rev. Laws, it is necessary that the widow yearly make an affidavit or have one made in her behalf.

CARSON CITY, February 25, 1918.

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

Dear Mr. Kenny: Your recent letter, asking whether or not it is necessary for a bona-fide

and actual resident widow of the county to yearly make affidavit, or have one made in her behalf, in order to entitle her to an exemption from taxation, duly received.

Section 3621 of the Revised Laws reads in part as follows:

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.

It is seen that before an exemption can be allowed, an affidavit for the same must be made before the County Assessor, which affidavit must show the residence of the party and “that such exemption has been claimed in no other county in this State for that year.”

Clearly, the affidavit must annually be made as provided, because after the taxes are levied they become a lien, and when the Board of Equalization has acted an obligation immediately arises on the part of the party taxed to pay the amount due; and thereafter County Commissioners can neither release the property from the lien nor discharge the party from such obligation. (*State v. C. P. R. R. Co.*, 9 Nev. 79.)

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

### **156. Crimes and Punishments Act--Revised Laws.**

The explanation of the method of adoption of the Crimes and Punishments Act and why the same does not appear at large in the Statutes of 1911.

CARSON CITY, February 26, 1918.

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

Dear Mr. Atkinson: Your favor of the 23d instant, in regard to the Esser case, received.

When the petition for a writ of prohibition in this case was filed I noticed that Esser's

attorneys claimed that the “Crimes and Punishment Act” was never passed by the Legislature and could understand no reason, therefore, except misinformation on their part. Section 375 of the “Crimes and Punishment Act” (Rev. Laws, 6640) in the enrolled bill of this section is word for word as it appears in the Revised Laws.

At the session of 1911 the first application was made of the law permitting a printed copy of a bill to be submitted to the respective officers of the Senate and Assembly for their signatures and to the Governor for his approval (Stats. 1911, p. 61, sec. 5). Under this Act the Crimes and Punishments Act, the Civil Practice Act, the Criminal Practice Act, the Public School Act, and the Act for the incorporation of the town of Las Vegas were enrolled by substituting a printed copy of the Act as passed and the same were duly signed by the proper officers of the Senate and Assembly and approved by the Governor. At the same session a law was passed directing the Secretary of State not to include in the Statutes of 1911 any of these long Acts, for the reason that they would appear shortly in the Revised Laws, which was then under course of preparation (Stats. 1911, p. 100). For these reasons I presume that Esser’s attorneys contend that the “Crimes and Punishments Act” was not printed, published and approved as required by the Constitution. I think there is no merit whatever in this contention.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

### **157. School Teacher--State Board of Education.**

Under amended Rev. Laws, 3266, appearing in Stats. 1917, p. 175, any person who has been connected with the public schools for a period of sixty months in any educational capacity is entitled to a life diploma.

In granting such life diploma the State Board of Education has the right to county both the supervising and teaching experience of the teacher.

CARSON CITY, February 26, 1918.

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

Dear Sir: I am in receipt of your favor of the 19th instant, asking opinion of this office on the following matter:

Section 1, chapter 91, page 175, Statutes of Nevada, 1917 (School Code, 1917, sec. 28), provides that any resident of the State of Nevada who has taught in the public schools for a period of six months shall be entitled under this and the other conditions named in the section to be granted a life diploma. (Rev. Laws, 3266, amended.)

On the above statement of facts you ask the following question:

Has the State Board of Education the right in granting a life diploma to count both supervising and teaching experience of a teacher in the sixty months' requirement for such diploma?

You seem to be in doubt as to whether the word "taught" in the above-mentioned section would include a person who has spent some of the sixty months as a supervisor or principal. I see no reason for any such narrow construction of this word; the general rule is that in construing a statute a word should not be given a limited or specialized meaning unless such meaning is made by legislative enactment. (*Venable v. Schafer*, 28 Ohio Cir. Ct. Rep. 202; *Flanary v. Barret*, 146 Ky. 712.)

It is therefore the opinion of this office that any person who has been connected with the public schools for a period of sixty months in any educational capacity is entitled to a life diploma under said section and that the State Board of Education in granting such life diploma has the right to count both the supervising and teaching experience of a teacher.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

### **158. Public Schools--Emergency Loans--Budget Act.**

The Act "to authorize the issuance of interest-bearing school warrants in emergencies (Rev. Laws, 3473-3477) as amended by Stats. 1913, p. 54, stands unrepealed until February 1, 1919, and emergency loans until such time may be made by school districts under its provisions.

CARSON CITY, February 26, 1918.

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

Dear Mr. Powell: We are in receipt of your recent letter in which you refer us to the various laws relating to emergency loans for school districts and ask whether it is now possible for such an emergency to be provided for.

In 1911 the Legislature passed an Act entitled "An Act to authorize the issuance of interest-bearing school warrants in emergencies," etc., which Act is incorporated in the Revised Laws as sections 3473 to 3477. This Act was amended in certain particulars at the following session. (Stats. 1913, p. 54.)

In 1917 the Legislature passed an Act regulating the fiscal management of counties, towns, school district, and other governmental agencies, by the terms of which provision is made for making emergency loans. Section 14 ½ of said Act (Stats. 1917, p. 254) provides that the

provisions of the Act with reference to school districts and high-school districts shall not be effective until February 1, 1919, while the concluding paragraph expressly repeals the Act passed in 1913, as shown above.

Undoubtedly the intention of the Legislature was to continue the 1911 statute in force until February 1, 1919; otherwise there would be no method of providing for emergency loans in the meantime.

The intention of the Legislature controls the courts, not only in the construction of an Act, but also in determining whether a former law is repealed or not; and when such intention is manifest it is to be carried out, no matter how awkwardly expressed or indicated. (*Thorpe v. Schooling*, 7 Nev. 15.)

In our opinion, the law passed in 1911 (Rev. Laws, 3473-3477), as amended in 1913 (Stats. 1913, p. 54), stands unrepealed until February 1, 1919, and emergency loans may, until such time, be made under its provisions.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

### **159. County Board of Education--School Contracts.**

It is legal for a County Board of Education to enter into a contract with a corporation of which one of the members of its board is a stockholder.

CARSON CITY, February 27, 1918.

MR. JOHN H. CAZIER, Foreman Elko County Grand Jury, Wells, Nevada.

Dear Mr. Cazier: Pursuant to your request for an opinion from this office on the question as to whether or not it is legal for a County Board of Education to enter into a contract with a corporation of which one of the members of such board is a stockholder, we beg to reply as follows:

There is no direct provision in our laws relative to the matter, and it therefore becomes necessary to ascertain whether there be anything of an indirect nature. Unless the contract between the parties indicated is either directly or indirectly prohibited, the same is, of course, legal.

By referring to section 3309 of the Revised Laws it is seen that:

No trustee shall be pecuniarily interested in any contract made by the Board of Trustees of which he is a member.

In a former opinion from this office (Opinions Attorney-General, 1913-1914, p. 81) it was held that a contract of a school district in which one of the Trustees is pecuniarily interested, directly or indirectly, is void. If the same rule can be said to apply to members of a County Board of Education as well as to Trustees, then no legal contract can be entered into between the County Board of Education and a corporation of which one of the members of such board is a stockholder. The reason for the rule relative to Trustees is because of the positive provision of the statute above quoted, but there is no such statute covering contracts by the County Board of Education and the rule is not applicable.

The only provision that might be said to be sufficiently comprehensive to make the above-mentioned statute applicable to the County Board of Education is found in section 3423 of the Revised Laws, reading as follows:

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.

This statute makes the high school subject to the same laws as are other schools, but it contains nothing from which even an inference might be drawn that the members of the County Board of Education are subject to the same laws as are School Trustees. It certainly cannot be said that the County Board of Education is the county high school, yet this must be done in order to make the law relative to contracts with School Trustees applicable to County Boards of Education. Both sections are incorporated in the same general law, and the latter section expressly mentions county high schools, but does not mention County Boards of Education.

In accordance with the maxim "*expressio unius est exclusio alterius*," where a statute enumerates the things upon which it is to operate, it is to be construed as excluding from its effect all those not expressly mentioned. (36 Cyc. 1122.)

Thus the statute expressly mentioning *county high school* excludes from its operation *County Board of Education*. Had the Legislature intended to make the Board of Education subject to the same laws governing School Trustees, it would have used language indicating such intention.

In view of the foregoing we are of the opinion that it is legal for a County Board of Education to enter into a contract with a corporation of which one of the members of such board is a stockholder.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

**160. State Quarantine Officer--Public Health--Glanders--Horses.**

Horses which upon the test appear to be infected with glanders may be destroyed under the provisions of section 8, chapter 280, Stats. 1913, p. 459.

CARSON CITY, March 4, 1918.

HON. EDWARD RECORDS, State Quarantine Officer, Reno, Nevada.

Dear Sir: In answer to your favor of the 26th ultimo, asking procedure for destruction of horses which upon test appear to be infected with glanders, let me say that, in the opinion of this office, the provisions of section 8, chapter 280, Stats. 1913, seem to be the only provision contained in our laws for such destruction.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

**161. State Highway Department--Acquisition of Right of Way--Condemnation Proceedings--District Attorneys.**

Counties through which the state highway routes pass may authorize expenditures of moneys in excess of amounts of the state highway fund provided for in section 10 of the "Act to provide a general highway law for the State of Nevada." (Stats. 1917, p. 309.)

The County Commissioners may make such expenditures for the acquisition of rights of way for such portion of the state highway as lies within their respective counties.

District Attorneys have no authority to institute condemnation proceedings to acquire rights of way in the name of the State without authority from the office of Attorney-General, but such authority will readily be granted to any District Attorney.

CARSON CITY, March 4, 1918.

HON. C. C. COTTRELL, State Highway Engineer, Carson City, Nevada.

Dear Sir: I am in receipt of your favor of the 26th ultimo, asking certain in regard to "An Act to provide a general highway law for the State of Nevada." (Stats. 1917, p. 309.) It seems that certain counties of the State have, by resolution of their various Boards of County Commissioners, agreed to furnish in the name of the State certain pieces of right of way, and that there are many reasons why the various County Commissioners could better do this, chief among

which is that they are thoroughly acquainted with local conditions and the people from whom the right of way is to be secured. In view of this you ask the following questions:

1. Have the various Boards of County Commissioners the authority to expend county funds for the purpose of acquiring title in the name of the State to certain parcels of land needed for a right of way of the state highway system, and would the fact that they did that be a violation of section 21 of an Act to provide a general highway for the State of Nevada, approved March 23, 1917?

2. In case the County Commissioners of a county undertook to furnish a right of way for our purposes in that county, would the District Attorney have the authority to institute condemnation proceedings to acquire the right of way in the name of the State, or would authority need be secured by him from your office, and would you grant such authority?

The first question is apparently covered by section 21 of the highway Act, which reads as follows:

Sec. 21. In all cases of a highway constructed under the provisions of this Act, which is located or relocated over a new right of way, such right of way shall be acquired by the Department of Highways in the name of the State, either by donation by the owners of the land over which such highway shall pass, or by agreement between such owners and the Department of Highways or through the exercise by the Department of Highways in the name of and on behalf of the State of the power of eminent domain in the same manner as provided for acquiring property for other public uses, and the entire cost of such right of way shall be paid out of the State Highway Fund. Any damages that may be sustained by any person by the construction or alteration of any highway under the provisions of this Act shall be investigated and determined by the State Highway Engineer, the same to be approved by the Board of Highway Directors, and shall be paid as other claims against the State are paid.

It will be observed therefrom that in cases of highways to be constructed, which are located or relocated over a new right of way, such right of way shall be acquired by the Department of Highways in the name of the State, either by donation of the owners of the land over which such highway shall pass or by agreement between the owners and the Department of Highways or through the exercise by the Department of Highways in the name of and in behalf of the State of the power of eminent domain, and apparently the entire cost of such right of way must be paid out of the State Highway Fund.

It is stated above that apparently the entire cost of right of way must be paid out of the State Highway Fund, but on further examination of said Act it appears that said section 21 is modified by section 32 of said Act, which provides as follows:

Sec. 32. Counties through which the state highway routes pass may, through the

Board of County Commissioners, authorize the expenditures 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.

In accordance with the cardinal rule in the construction of statutes that later sections contrary to earlier sections in the same Act govern as being the latest expression of legislative will, the provisions of section 21 must be construed in connection with section 32.

It appears therefrom that the counties through which the state highways routes pass may authorize expenditures of moneys in excess of the amounts of the State Highway fund provided for in section 10 of the Act, and, there being no restriction as to the purpose for which such expenditures of moneys may be made, it is the opinion of this office that the County Commissioners may make such expenditures for the acquisition of rights of way for such portion of the state highway as lies within their respective counties.

In answer to your second question, let me say that the various District Attorneys have no authority to institute condemnation proceedings to acquire rights of way in the name of the State without authority so to do from this office, but such authority would readily be granted to any District Attorney desiring to institute such action upon application in the name of the State.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

**162. Public Health--County Health Officer--Physicians and Surgeons.**

A physician may forward his obstetrical reports directly to the county health officer.

CARSON CITY, March 7, 1918.

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

Dear Doctor: You have shown me a letter from a physician in the State complaining that a deputy did not forward his obstetrical reports promptly to the local health officer, and inquiring whether or not he might make such reports direct to the county health officer.

I am of opinion that, under section 13 of the State Board of Health Act, such reports may be made direct to the county health officer.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

**163. Revenue--Taxation--Central Pacific Railroad--Unapproved and Uncertified Land.**

Uncertified lands acquired by the Central Pacific Railroad Company are exempt from taxation.

CARSON CITY, March 7, 1918.

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

Dear Sir: Your oral request for an opinion as to whether or not the lands of the Central Pacific Railroad Company, which have been surveyed, but on which the surveys have not been officially approved, are subject to taxation, duly received.

This question seems to be thoroughly covered by the case of State v. Central Pacific R. R. Co., 21 Nev. 94, 25 Pac. 442, wherein it was held that the unsurveyed lands acquired by this company are exempt from taxation by the State. The court there took the position that none of the land granted to this company was subject to taxation until it had been located within the congressional township by an actual survey and establishment of the lines under the authority of the United States and the survey had been approved by the proper United States Surveyor-General.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

**164. County High Schools--Emergency Interest-Bearing Warrants.**

Emergency interest-bearing warrants may be issued for building the dormitory and gymnasium at Wells.

CARSON CITY, March 9, 1918.

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

Dear Mr. Carville: I am in receipt of your favor of the 8th instant, asking whether interest-bearing warrants to be used in connection with the fund now existing under Stats. 1915, p. 344, for building a dormitory and gymnasium at Wells, Nevada, could be issued.

It seems that there is now some \$15,000 in the fund, but this sum is insufficient for building the dormitory. It further appears that two advertisements had been made for the construction of such dormitory and gymnasium, but in each case the bids had been considerable

higher than the amount of money available.

On November 23, 1917, I gave you an opinion that interest-bearing warrants could be issued for the purpose of equipping the dormitory and high-school building at Elko.

I see no difference whatever between the two cases and am, therefore, of the opinion that interest-bearing warrants may be issued by the County Board of Education to make up the deficiency existing between the money now on hand under the above-mentioned Act and the amount necessary for the construction of a dormitory and gymnasium at Wells.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

### **165. Official Advertising--Newspapers.**

Under the provisions of section 9, Stats. 1915, p. 346, authorizing the issuance of certain bonds "to provide for construction, equipment, and furnishing of high-school dormitories in the towns of Elko and Wells," the County Board of Education is governed by the general law in reference to official advertising (Rev. Laws, 1530) which requires advertising for a period of thirty days.

CARSON CITY, March 11, 1918.

MR. GEORGE C. JENSEN, Secretary, County Board of Education, Elko, Nevada.

Dear Sir: Your letter of the 9th instant, with bill and letter from Mr. Triplett enclosed, just received. You ask for an opinion as to whether or not the bill is too large, and also whether the bill submitted by the Elko Independent is legal. This latter bill is not enclosed and it is, therefore, impossible to advise you with reference to the same. If it is for similar advertising as that covered in the bill for Mr. Triplett, then the law applicable to one would, of course, govern the other.

Mr. Triplett's bill covers the publication "Bids for Constructing Wells High-School Dormitory." A charge is made for four publications under the assumption that more would not be paid for, although the advertisement was actually run five times.

The law authorizing the publication is found in section 9 of the Act providing for the construction of certain buildings (Stats. 1915, p. 346) reading in part, as follows:

Said County Board of Education shall determine as to the character of said building, the materials to be used therefor, and the plans therefor, and when such determination is made, said board shall advertise for bids for the construction of said county high-school building, and let the construction thereof by contract to the lowest

and most responsible bidder. The laws in force governing contracts by Boards of County Commissioners are hereby made applicable to and the same shall govern the action of the County Board of Education in carrying out the provisions of this Act.

This section makes the laws in force governing contracts by County Commissioners applicable to contracts by the County Board of Education. County Commissioners in letting their contracts which in the aggregate exceed the sum of \$500 must advertise for bids for a period of thirty days. (Rev. Laws, 1530.)

As a publication in a weekly newspaper for a *period of thirty days* can be made only by an insertion once a week for five weeks, it follows that Mr. Triplett is legally entitled to receive pay for five insertions of the advertisement in question.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

#### **166. Corporations--Articles of Incorporation.**

Unless the articles of incorporation designate the place within the city or county in which the principal office or place of business is to be located with sufficient certainty as to be easily located the certificate is to be refused.

A corporation organized to engage in the oil-drilling business must designate in its articles the amount of subscribed capital with which it will commence business.

Section 1220, Rev. Laws, has no application to a corporation organized to engage in the oil-drilling business.

CARSON CITY, March 27, 1918.

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

Dear Sir: We are in receipt of your request for an opinion upon the following questions, which will be taken up in their order:

1. Should the certificate mentioned in subdivision 2 of section 4 of the Act providing a general corporation law (Rev. Laws. 1108) be refused if the articles designate the name of the city and county, but not the name of the place within such city or county wherein the principal office or place of business is to be located?

The subdivision in question reads as follows:

The name of the county and of the city or town and of the place within the county, city or town, in which its principal office or place of business is to be located in this State (giving street and number if practicable), and if not so described as to be easily located within the said county, city or town, the Secretary of State shall refuse to issue his certificate until such location is marked and established.

This language is clear; unless the place within the city or town and county in which the principal office of place of business is to be located is designated with sufficient certainty as to be easily located, the certificate should be refused.

2. Is it necessary that a corporation organized to engage in the oil-drilling business, with its entire stock consisting of property necessary to that business, to designate in its articles the amount of subscribed capital stock with which it will commence business?

Subdivision 4 of section 4 of the Act referred to above (Rev. Laws, 1108) provides that the amount of subscribed capital stock, if the corporation has capital stock, shall be shown. This subdivision, so far as concerns a corporation organized for the purpose mentioned, is not qualified by any other provision in the corporation law, and it is necessary that the amount of subscribed capital stock shall be shown.

3. In what manner does section 1220 of the Revised Laws apply to a corporation organized to engage in the oil-drilling business?

Such section, as to such a corporation, has no application whatever, as it is superseded by the later corporation law.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

### **167. Revenue--Taxation--Live Stock.**

The situs of cattle for the purpose of taxation is in the county of the residence of the owner thereof.

CARSON CITY, March 30, 1918.

MR. A. C. TRIELOFF, Carson City, Nevada.

Dear Sir: WE are in receipt of your recent letter, from which it appears that you reside in and own considerable land and personal property, including cattle, in Washoe County; that you

own no real estate in Douglas County, but that during the winter months you range and feed your cattle therein; that in the spring of each year you drive such cattle back to Washoe County, in which county is situate your home ranch and where you care for your cattle and conduct your business. You ask whether the cattle should be assessed in Douglas County or in Washoe County.

From the foregoing statement of facts, it is our opinion that the situs of your cattle, for the purpose of taxation, is in Washoe County and that said cattle are assessable only in such county. (Barnes v. Woodbury, 17 Nev. 383; 30 Pac. 1068; Ford v. McGregor, 20 Nev. 446; 23 Pac. 505; Whitmore v. McGregor, 20 Nev. 451, 23 Pac. 510; State v. Shaw, 21 Nev. 222; 29 Pac. 322.)

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

#### **168. Carson City--Elections--Registration of Electors--Municipal Elections.**

On account of the provisions of the registration law (Stats. 1917, p. 435) there are no qualified electors at the present time within the City of Carson, and without qualified electors there can, of course, be no election, and no municipal election can be held in Carson City this year.

CARSON CITY, April 1, 1918.

HON. W. E. BALDY, District Attorney Ormsby County, Carson City, Nevada.

Dear Mr. Baldy: We desire to acknowledge receipt of your letter of the 26th instant, in which you request an opinion upon the following question:

Can an election be held in Carson City in May of this year as prescribed by the city charter?

The city charter (Stats. 1875, p. 88) provides in section 5 that annually on the first Monday in May there shall be elected three Trustees, and in section 6 that:

All provisions of the law which now are or hereafter may be in force regulating elections and providing for the registration of electors, so far as the same may be consistent with the provisions of this Act, shall apply to the election of the Trustees.

As the charter contains no other provisions bearing upon this matter, it is necessary to refer to other laws. The last Legislature passed a new registration statute (Stats. 1917, p. 435) the

material portions of which provide as follows:

Sec. 11. Registration offices shall open for registration of voters for any election from and after the first day of June in any general election year up to the twentieth day preceding such election.

Sec. 19. The County Clerk shall at least five days before the ensuing election prepare for each precinct a poll-book or precinct register containing the names of all electors which shall be delivered to the judges of election prior to the opening of the polls.

Sec. 26-27. No person shall be entitled to vote at any election mentioned in this Act unless his name shall, on the day of election, except at school elections in school districts of the second and third class, appear in the copy of the official precinct register furnished by the County Clerk to the judges of the election, except where his name has been erroneously omitted from the precinct poll-book and he secures from the Clerk a certificate of such error.

Sec. 30. The word "election" as used in this Act, where not otherwise qualified, shall be taken to apply to municipal elections.

It is noticed that the city charter provides that three Trustees shall be elected in May of each year and that all laws providing for the registration of electors, so far as the same may be consistent with the charter provisions, shall apply to such elections. The charter contains no provision for the registration of electors, so it must be said that the registration law of 1917, above referred to, is consistent therewith.

However, as this law distinctly provides that the registration offices shall be open only from and after June 1 of this year, and that no person can vote at a municipal election unless he has registered in accordance with its provisions, it is readily apparent that there can be no qualified electors to vote at a city election held in May.

Without qualified electors there can, of course, be no election, for which reason it naturally follows that no municipal election can be held in Carson City this year.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

### **169. State Board of Stock Commissioners--Rewards.**

The State Board of Stock Commissioners has no authority to offer reward for the arrest

and conviction of persons feloniously branding or stealing any stock.

Section 3 of the Act creating the State Board of Stock Commissioners (Stats. 1915, pp. 396-492) does not require the board to publish its orders, rules or regulations in one newspaper in each county, but the same must be published in the newspaper which has a general circulation in every county in the State.

The members of the board may not act by resolution signed individually without a meeting of the board.

CARSON CITY, April 2, 1918.

STATE BOARD OF STOCK COMMISSIONERS, Reno, Nevada.

Gentlemen: I am in receipt of your request for an opinion as to whether or not your board may offer a standing reward for the arrest and conviction of any person feloniously branding or stealing any stock or for the conviction of other crimes or misdemeanors, for the protection of the rights and interests of stock owners.

Section 19 of the Act creating the State Board of Stock Commissioners and defining its powers and duties (Stats. 1915, pp. 396-402), provides:

Sec. 19. The board may take all necessary and lawful steps, procure all necessary and lawful process for attendance of witnesses, and employ counsel to assist in the prosecution of any person guilty of any offense against the laws of this State in feloniously branding or stealing any stock, or any other crime, or misdemeanor, under the laws of the State for the protection of the rights and interests of stock owners, and it is the duty of the board to make rules and regulations governing the recording and use of livestock brands.

I am of the opinion that this section, which is the only one that could possibly give you any authority to offer a reward, is not broad enough to authorize you to offer any reward at all. This section authorizes you to take lawful steps necessary for the production and attendance of witnesses. It also authorizes you to employ counsel to assist you in the prosecution of persons violating any of the laws for protection of stock owners, but it does not authorize you to offer rewards in these or in any other cases.

With reference to your request for an interpretation of the following language of section 3 of the same Act:

All orders, rules, or regulations made as herein provided must be published at least twice in some newspaper having general circulation in each county in the state-- I am of the opinion that this provision requires you to publish in some newspaper which has a general circulation in every county in the State, but does not require you to publish in one newspaper in each county, although it would be permissible to so

publish, especially as the quarantine regulations are legislative Acts and are in the nature of laws of which notice should be given.

Replying to your further request for an interpretation of the Act as to whether or not the members of the board may act by written resolution signed individually without a meeting of the board. I am of the opinion that they cannot. The State Board of Stock Commissioners is a board created by law, and individually they have no power; they can only act as a board. They can make rules and regulations for the government of the board, but this would not authorize them to act in any other way than as a board.

Yours very truly,

GEO. B. THATCHER, Attorney-  
General.

### **170. Employer and Employee--Eight-Hour Law--Mines and Mining.**

The provisions of the eight-hour law (Rev. Laws, 1941, 6554) shall not be suspended except in "case of emergency where life or property is in imminent danger."

CARSON CITY, April 2, 1918.

HON. ROBERT F. COLE, Labor Commissioner, Carson City, Nevada.

Dear Sir: We wish to acknowledge receipt of a letter written to you by a mining company, with your request for an opinion upon the question therein asked, namely:

1. In the case of minor accidents to machinery, requiring two or three hours' time to repair, which otherwise would lay off the entire shift, it is permissible to have the engineer make the repairs as overtime, after putting in his eight-hour shift?
2. In the event of one shift requiring, say, an extra hour, to complete drilling a round of holes, which if not blasted would compel the next shift to finish the round and blast at the beginning of the shift and they lay off a considerable time waiting for the smoke and gas to clear, thereby causing them to lose perhaps a half-day and materially delaying the progress of the work, it is permissible to allow the first shift to put in the necessary overtime and complete their "round"?
3. In case one man is unexpectedly unable to go to work, it is permissible to allow a man who has already put in one shift to take his place and put in sixteen hours, rather than cause most or all of the force on that shift to lay off?

Rev. Laws, 1941, reads as follows:

The number of hours of work or labor of mechanics, engineers, blacksmiths, carpenters, topmen, and all workmen employed or working on or about the surface or surface workings of any underground mine workings, shall not exceed eight (8) hours in any period of twenty-four (24) hours, except in cases of emergency where life or property is in imminent danger.

Rev. Laws, 6554, reads as follows:

The period of employment of working men in all underground mines or workings shall be eight hours per day, except in cases of emergency where life or property is in imminent danger.

Penalties for the violation of the above-mentioned statutes are also provided for in sections immediately therein following.

None of the questions submitted contain any facts in any way showing "*cases of emergency where life or property is in imminent danger.*" Unless such cases exist the period of employment in and around mine shall not exceed eight hours per day.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

**171. Public Schools--County High Schools--Dormitory--Gymnasium.**

Constructing a building for a high school is not an expense of conducting such high school, and therefore the cost of construction, unless provided for by a special tax levy, cannot be paid from the county high-school fund.

Under an Act for the construction of a dormitory, a gymnasium cannot be constructed with money raised under the provisions of said Act.

CARSON CITY, April 2, 1918.

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

Dear Mr. Carville: We wish to acknowledge receipt of your recent letter, wherein you enclose a request from the County Board of Education for an opinion on the following questions:

1. Can the County Board of Education use the general funds for the purpose or purposes of construction? The proposition is this: The board desires to provide for construction through emergency warrants or otherwise, but such warrants cannot be issued until the general fund is exhausted. In that event it will of course be necessary to pay for such construction out of the general fund and to reestablish that fund again through the proposed emergency loan.

2. The bond issue which provides for the dormitory at Wells says nothing about a gymnasium. Wells desires to construct a dormitory and gymnasium in conjunction. Can this be done?

We presume that the words "general funds," used in question 1, mean county high-school fund. If this be true, it is but necessary, in order to secure an answer to such question, to refer to section 3420 of the Revised Laws. This section provides that the Commissioners shall include in their annual tax levy the amount estimated as needed to pay the *expense of conducting* the high school and that such amount, when collected, shall be paid into the county high-school fund, and may be drawn therefrom for the purpose of defraying the *expense of conducting* the county high school.

Constructing a building for a high school is not an expense of conducting such high school, for which reason it is clear that the cost of construction, unless provided for by a special levy (Rev. Laws, 3415-3416) cannot be paid from the county high-school fund.

Relative to the second question, will say that a dormitory is a room or a building used for sleeping quarters, and does not include a gymnasium. (*Hillsdale College v. Rideout*, 82 Mich. 94, 46 N. W. 373.)

The Act providing for a dormitory at Wells (Stats. 1915, p. 394) contains nothing with reference to a gymnasium. This omission clearly shows that no gymnasium was intended. Besides, section 8 of the Act in question distinctly provides that any money remaining, after the building, equipment, and furnishing of the dormitory, shall be used for running and maintaining the high school.

Under such circumstances, a gymnasium, either in conjunction with or separate from the dormitory, cannot be constructed with money raised under the provisions of the aforesaid Act.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

**172. State Highway Department--Highway Engineer--Maintenance.**

An engineer in charge of a survey party is not entitled to expenses while temporarily in Carson City.

CARSON CITY, April 2, 1918.

MR. C. C. COTTRELL, State Highway Engineer, Carson City, Nevada.

Dear Sir: We are in receipt of your letter of the St. instant, in which you give details, with reference to the employment of an engineer for the position of chief of survey party, and ask whether or not he is entitled to expenses while temporarily in Carson City and after you had given him notice that no such expenses would be paid.

From the facts submitted, it is our opinion that the party is not legally entitled to the expenses in question.

Yours very truly,

GEO. D. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

**173. Public Schools--County High Schools--Interest-Bearing Warrants, Elko County.**

Interest-bearing warrants of a county high school are not such "bonds" as the State Board of Investment is authorized to buy.

CARSON CITY, April 3, 1918.

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

Dear Mr. Chervil: I am in receipt of yours of March 20, with reference to the power of the State Board of Investment or the Nevada Industrial Commission to invest in interest-bearing warrants for the Elko County High School in Elko. The State Board of Investment and the Nevada Industrial Commission are authorized to buy or invest in bonds of any State of the United States, the State of Nevada, or any county of the State of Nevada. You will observe the word "bond." Bonds have been repeatedly construed to be emergency instruments. Elko County has no authority to issue negotiable commercial paper either in form of notes or bonds under Act of March 25, 1911, authorizing the issuance of interest-bearing school warrants in emergencies, etc.

A county cannot make or issue negotiable commercial paper unless the power is specifically conferred upon it, and the power to borrow money does not carry with it or necessarily imply the power to issue negotiable commercial paper. (First National Bank of San Francisco v. Nye County, 38 Nev. 123.) The State Board of Investment and the Nevada

Industrial Commission must necessarily keep strictly within the letter of the statute. I take it that they are in a different position than a private individual who may take a chance.

I disagree with Mr. Caine's opinion, first, because section 14 ½ specifically provides that the budget law shall not taken effect, with reference to school districts and high-school districts, until February 1, 1919, and I think that section controls the repealing provisions of section 16. Again, in the decision of *First National Bank v. Nye County*, just referred to, the Supreme Court of this State held that, when a county has had the benefit of money obtained by the Board of County Commissioners, it is liable for money had and received, and there are innumerable decisions to this effect. I don't believe that the bank would be taking any chance in making the loan.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

#### **174. Rabies Commission--Appropriation.**

The appropriation for the Rabies Commission made in 1917 is not available for the payment of a claim incurred in 1916.

CARSON CITY, April 10, 1918.

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

Dear Governor: We wish to acknowledge receipt of your letter of the 9th instant, in which you request an opinion as to whether or not the appropriation made in 1917 for the support of the Rabies Commission is available to pay a bill for services and expenses of a member of the predatory animal extermination board incurred in 1916.

Section 2 of the Act creating the Rabies Commission (Stats. 1917, p. 54) reads in part as follows:

For the cooperative support of the work of control and eradication of rabies and noxious animals as aforesaid there is hereby appropriated thirty-five thousand (\$35,000) dollars annually for each of the fiscal years 1917 and 1918, from any moneys in the State Treasury not otherwise appropriated.

By this section the Legislature intended to, and did, provide an appropriation to meet, within the years 1917 and 1918, liabilities incurred during those years.

As a liability incurred during prior fiscal years cannot be settled from funds appropriated

for future years (*State v. Hallock*, [20 Nev. 73](#), 74, 15 Pac. 472), we are of the opinion that the appropriation for the Rabies Commission made in 1917 is not available for the payment of any claim incurred in 1916.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

### **175. Dates Prescribed by the Primary and General Election Laws Settled.**

CARSON CITY, April 13, 1918.

A. CARLISLE & CO. OF NEVADA, 131 North Virginia St., Reno, Nevada.

Gentlemen: We are in receipt of your recent letter, in which you request an opinion upon various phases of the present election laws. We have attempted to arrange the several matters presented into questions, and shall take such questions up in their order, as follows:

1. By what date must County Clerks commence the publication of notice of close of registration?

Section 11 of the registration laws (Stats. 1917, p. 428) provides as follows:

Registration offices shall be open for registration of voters for any election, Sundays and legal holidays excepted, from and after the first day of June in any general election year, except as otherwise provided in this Act up to the twentieth day next preceding such election;

and section 17 of the same Act (Stats. 1917, p. 430) reads in part thus:

The County Clerk shall close all registration for the full period of twenty days prior to any election. \* \* \* The County Clerk of each county must cause to be published, in newspapers published within his county and having a general circulation therein, a notice signed by him to the effect that such registration will be closed on the day provided by law, specifying such day in such notice, and stating that electors may register for the ensuing election by appearing before the County Clerk at his office or by appearing before a deputy registrar in the manner provided by law. The publication of such notice must continue for a *full period of thirty days next preceding the close of registration* for any election.

The word "election," as used in the registration law, where not otherwise qualified, applies to general, special, primary nominations and municipal elections, and to elections in

school districts of the first class. (Stats. 1917, p. 434, sec. 30.)

For the present year the primary election will be held on September 3 (Stats. 1917, p. 277, sec. 3), and the general election will be held on November 5 (Stats. 1917, p. 276, sec. 1; Stats. 1917, p. 358, sec. 1). As the County Clerk shall close all registration *for the full period of twenty days prior to any election*, the registration offices must close on the night of August 13 for the primary election and on the night of October 15 for the general election, beyond which dates no one can register for the respective elections.

The statute requires that the publication of the notice by the Clerk must continue for a full period of thirty days next preceding the close of registration. This makes it necessary to commence such publication on or before July 13 for the primary election, and on or before September 14 for the general election.

2. Should the Secretary of State transmit the certified list of candidates on the 3d or 5th of August?

Section 10 of the direct primary law (Stats. 1917, p. 279) reads in part as follows:

At least thirty days before any September primary preceding a November election the Secretary of State shall transmit to each County Clerk of any county a certified list containing the name and postoffice address of each person for whom nomination papers have been filed.

As hereinbefore stated, the primary election in 1918 will be held on Tuesday, September 3. The statute requires that the lists shall be transmitted at least thirty days prior to that date. In order to comply with the statute, the lists must be transmitted “without” the thirty days’ period next preceding the election, and not “within” it, because if transmitted within such period they certainly cannot be transmitted at least thirty days prior to the commencement thereof. (*Seawell v. Gifford*, 22 Idaho. 295, 125 Pac. 182; Ann Cas. 1914A, 1132.) The Secretary of State should, therefore, transmit the lists in question on or before August 3.

3. What is the last day on which an elector can, for the purpose of changing his politics, have his registry card canceled?

It is provided in subdivision 6 of section 21 of the registration law (Stats. 1917, p. 432) that the County Clerk must cancel any registry card upon the request of any elector who desires to change his politics, provided said change is made thirty days before any primary election.

The authorities are uniform that where an act is required to be done a certain number of days “before” a certain other day, upon which another act is to be done, the whole number of days must intervene before the day fixed for doing the second act. (*Ward v. Wolters*, 63 Wis. 39, 22 N. W. 844.) Consequently, thirty days must intervene between the cancellation in question and the primary election. As the primary election will be held on September 3, the last day on which an elector can have his registry card canceled, for the purpose of changing his politics, will

be August 3.

4. Does the term “any general election,” as used in section 64 of the Act relating to elections, mean primary election also?

It does not. The Act in question, in section 1 thereof (Stats. 1917, p. 358) provides when a general election shall be held and by its language clearly shows that the term “any general election” means any November election.

5. What is the last day on which a candidate for nomination can file his declaration of candidacy?

Section 5a of the direct primary law (Stats. 1917, p. 278) provides that:

Every candidate for nomination for any elective office not less than thirty days prior to the primary shall file a declaration or acceptance of candidacy.

We have seen that the coming primary election will be held the 3d of September. The statute provides that not less than thirty days prior to September 3 every candidate shall file his declaration or acceptance of candidacy. It is plain that at least thirty days must intervene between the date of the filing and the day of the primary election. (State v. Brodigan, 37 Nev. 458, 142 Pac. 520; Seawell v. Gifford, 22 Idaho. 295, 125 Pac. 182; Ann Cas. 1914A. 1132; Griffin v. Dingley, 114 Cal. 481, 46 Pac. 457; Anderson v. Falley, 9 N. D. 464, 83 N. W. 913.)

Therefore, the last day on which a candidate may file his declaration or acceptance of candidacy will be August 3.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

#### **176. Fish and Game--Game Warden--Deputy Game Warden.**

Appointment of a Deputy Fish and Game Warden can be made by State Fish and Game Warden only after the County Commissioners have consented to or recommended such appointment. When appointment is thus made the deputy can be removed by State Fish and Game Warden only.

A Deputy Fish and Game Warden legally appointed, who has not resigned nor been removed, but continues to exercise the functions and perform the duties of his position, is entitled to receive from the County Fish and Game Preservation Fund a salary agreed upon, provided it is within the limits allowed by law.

CARSON CITY, April 18, 1918.

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

Dear Sir: We wish to acknowledge receipt of your letter of recent date, in which you request an opinion upon the following question:

Can a Deputy Fish and Game Warden, who was appointed upon the recommendation of a Board of County Commissioners at a stated salary, and who has not been asked for or tendered his resignation, still hold the position and collect that salary agreed upon?

Section 3 of the Act creating the position of State Fish and Game Warden (Stats. 1917, p. 473) reads in part as follows:

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. The salary of said Deputy Fish and Game Warden shall be not more than one hundred dollars nor less than twenty dollars per month.

This language admits of but one meaning. The appointment of a Deputy Fish and Game Warden can be made only by the State Fish and Game Warden after the County Commissioners have consented to or recommended such appointment. When an appointment is thus once made the deputy can be removed only by the State Fish and Game Warden.

County Commissioners are entirely powerless to remove such deputy, but a new one cannot be appointed to take the place of the one removed by the State Fish and Game Warden except upon their recommendation.

The section quoted fixes the monthly salary of the Deputy Fish and Game Warden at not less than twenty dollars nor more than one hundred dollars, but is silent as to how or in what manner or from whom such salary shall be paid.

However, by referring to section 64 of the Act providing for the protection and preservation of fish and game (Stats. 1917, p. 470) it is seen that all money collected for fishing and hunting licenses shall be apportioned as follows: Two-thirds, or sixty-six and two-thirds per cent, of the money collected, 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 Wardens and deputies, when necessary to hire Deputy Fish and Game Warden, or Wardens, and for revenue to

pay for the importation and propagation of wild birds; one-third, or thirty-three and one-third per cent, of the money collected, shall be paid into the State Treasury to be applied to the credit of the State Fish and Game Warden Fund, which fund is hereby created, and the money of said fund shall be applied for the revenue of the salary to be paid to the State Fish and Game Warden and for his necessary expenses.

It is, therefore, the opinion of this office that a Deputy Fish and Game Warden appointed by you upon recommendation of the County Commissioners and who has not resigned nor been removed by you, but continues to exercise the functions and to perform the duties of his position, is entitled to receive from the county game and fish preservation fund the salary agreed upon, providing such salary is not less than twenty dollars nor more than one hundred dollars per month.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

#### **177. Commissioner of Deeds--Governor.**

It is not necessary that a Commissioner of Deeds in a foreign country be a citizen of the United States in order to be appointed to such office by the Governor.

CARSON CITY, April 23, 1918.

MR. HOMER MOONEY, Secretary of the Governor, Carson City, Nevada.

Dear Sir: We are in receipt of your letter of the 19th instant, in which you request an opinion upon the question:

A citizen of Canada has made application for appointment as Commissioner of Deeds for the State of Nevada, residing in the Province of Quebec. Is it necessary that he be a citizen of the United States?

The statute providing for the appointment of a Commissioner of Deeds (Rev. Laws, 1000) reads as follows:

The Governor may, when in his judgment it may be necessary, appoint in each of the United States, and in each of the Territories and districts thereof, and in each foreign state, kingdom, province, territory, and colony, one or more Commissioners of Deeds, to continue in office four years, unless sooner removed by him. Every Commissioner of Deeds so appointed shall have the power to administer oaths, and to take and certify depositions and affidavits to be used in this State, and also to take

the acknowledgment or proof of any deed or other instrument, to be recorded in this State, and duly certify the same under his hand and official seal.

The Commissioners of Deeds in a foreign country must necessarily exercise jurisdiction outside of the territorial limits of the State and Nation; and, in the absence of express statutory requirements, citizenship is not an absolutely essential qualification for the position. (29 Cyc. 1377.)

As the statute is silent with reference to the question of citizenship, it is not necessary that a Commissioner of Deeds in a foreign country be a citizen of the United States.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

#### **178. Inspector of Mines--Mines and Mining--Blacksmith Shops.**

The Inspector of Mines has the power to prevent installation of underground blacksmith shops in mines.

CARSON CITY, April 24, 1918.

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

Dear Sir: We wish to acknowledge receipt of your recent request, asking for an opinion as to whether or not you have power to prevent the installation of underground blacksmith shops in the mines of this State.

Replying thereto, will say that by the law creating your office (Rev. Laws, 4198-4238) you are given wide powers, and your question should, therefore, be answered affirmatively.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

#### **179. Civic and Physical Training--Counties.**

Any county which has failed to collect the 5-mill tax for civic and physical training imposed by Stats. 1917, p. 245, is liable for the payment thereof.

CARSON CITY, April 29, 1918.

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

My Dear Mr. Cole: I have gone over the correspondence between yourself and Mr. Greathouse, Recorder and Auditor of Elko County, and the correspondence between yourself and Major Miller, County Treasurer of Elko County. I have likewise gone over the statement that Elko County made to your office for the half-year ending January 17, 1918. It appears from these statements that Elko County neglected to collect a state tax of 5 mills for civic and physical-training instructors' fund, and that the county failed to account to the State for this amount.

The failure of Elko County officers to collect this tax does not relieve Elko County from the liability to pay it, and until Elko County does account to your office for the amount of the tax, which I understand is \$960.73. I would advise that you withhold Elko County's apportionment out of this fund until an adjustment can be made.

I am of the opinion that Elko County, through its Board of County Commissioners, can pay this amount out of its general fund and that Elko County should do so upon a showing of the Elko County officers to the Board of County Commissioners.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

**180. Electors--Nomination by Petition of Electors--Registration.**

It is not necessary that a person be registered to qualify him or her as a signer of a nomination certificate of an independent candidate.

The same elector cannot sign two independent petitions for the nomination to the same office.

CARSON CITY, April 30, 1918.

MISS ANN MARTIN, 157 Mill Street, Reno, Nevada.

Dear Miss Martin: I am in receipt of yours of April 27, requesting an opinion upon three questions with reference to the Nevada election laws.

The first question is as follows:

The paragraph regarding the petitions of independents states that such petitions must

be signed by 10 per cent of the number of electors voting for the same office in the last election. It does not even state “qualified electors.” Do electors have to be registered to make legal their signatures on an independent petition?

The nomination of independent candidates is governed by the provisions of section 31 of the Statutes of Nevada, 1917, pp. 276-289. “An Act regulating the nomination of candidates for public office in the State of Nevada,” approved March 23, 1917.

Under the provisions of section 31 the certificate of nomination is required to be signed by electors. An elector, within the provisions of the Constitution of Nevada and of the Nevada Statutes, is “every citizen of the United States (not laboring under the disabilities named in the Constitution) of the age of twenty-one years and upward, who shall have actually and not constructively resided in the State six months and in the district or county thirty days preceding any election.” Registration is not a qualification of an elector, but is merely a condition imposed by the Legislature. I am of the opinion, therefore, that it is not necessary that a person be registered in order to qualify him or her as a signer of a nomination certificate of an independent candidate. This answer to your first question answers your second also.

Your third question is as follows:

Can the same elector sign two independent petitions for the same office, in your opinion?

There is no direct prohibition in the primary law, or in section 31 thereof, which prohibits an elector from signing more than one certificate of nomination for the same office for independent candidates. However, sections 4 and 6 of “An Act relating to elections and to more fully secure the secrecy of the ballot,” approved March 13, 1891 (Australian Ballot Law), prohibits any person from in any manner joining the nomination of more than one person for the same office. It is very doubtful whether or no these provisions have been repealed.

I hope this letter gives you the information that you desire. Should you desire any further information, I will be glad to give it.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

### **181. State Labor Commissioner--District Attorney--Attorney-General.**

The State Labor Commissioner is charged with the duty of enforcing labor laws relative to hours of employment in accordance with the hours of service for women. Upon the discovery of violation thereof the facts in connection therewith should be presented by the Labor Commissioner to the District Attorney of the county or to the Attorney-General, and thereupon it becomes the duty of either or both such officers to prosecute such violation.

CARSON CITY, May 3, 1918.

HON. ROBT. F. COLE, Labor Commissioner, Carson City, Nevada.

Dear Sir: Your recent letter, with reference to the enforcement of the law relative to the hours of labor for females, duly received. You call our attention to various statutes and request to be advised--

whether or not the authority for enforcing the hours-of-service law for females is a dual authority, whether it is joint authority, or whether the Attorney-General has exclusive jurisdiction in the enforcement of this law.

Section 3 of the law in question (Stats. 1917, p. 71) reads as follows:

The District Attorneys of the respective counties of this State and the Attorney-General of this State shall enforce the provisions of this Act, and said District Attorneys and said Attorney-General and their deputies and agents shall have all powers and authority of Sheriffs or other peace officers to make arrests for violations of the provisions of this Act, and to serve all processes and notices thereunder throughout the State.

By section 4 of the Act creating the office of Labor Commissioner (Stats. 1915, p. 312) it is provided that such officer--

shall inform himself of all laws of the State \* \* \* regulating the hours of labor, \* \* \* 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 present the facts to the District Attorney of any county in which such violation occurred, it shall be the duty of such attorney to prosecute the same.

These two sections should be read and construed together and effect should be given to each, conformably to the apparent legislative intent.

The Labor Commissioner is charged with the duty of enforcing all labor laws relative to hours of employment, including the hours-of-service law for women. The facts in connection with the violation of the latter law should be presented by you to the District Attorney of the county wherein the violation occurred, or to the Attorney-General, when it becomes the duty of either or both of such officers to prosecute such violation.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

**182. State Highway Department--State Highway Law--Convict Labor.**

The Department of Highways is authorized to employ convicts in the construction of roads, even though the cost of construction shall exceed \$2,000 in amount.

CARSON CITY, May 15, 1918.

HON. C. C. COTTRELL, State Highway Engineer, Carson City, Nevada.

Dear Sir: I am in receipt of your favor of the 14th instant, asking opinion of this office in regard to certain sections of the State Highway Law.

You call my attention to section 14, which provides that for improvements costing less than \$2,000 it is within the discretion of the State Highway Engineer to execute the same himself or let the same by contract, but where the cost of the proposed improvement exceeds said sum advertisement for bids for such work must be made. You also call attention to section 27 of the same Act providing for work to be performed by the use of convict labor.

You inquire whether, in a case where the total estimated cost of construction of a certain section of road is several times \$2,000 in amount, will it be in accordance with law for the Department of Highways to construct such section with convict labor.

It is a cardinal rule of construction of statutes that latter provisions control former provisions, and the section authorizing the Department of Highways to employ convict labor appearing later in the Act than that requiring advertising for bids for improvements exceeding \$2,000, it is the opinion of this office that the later section will prevail.

You are therefore advised that, in the opinion of this office, the Department of Highways is authorized to employ convicts in the construction of roads, even though the cost of such construction shall exceed \$2,000 in amount.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

**183. Elections--Registration.**

The County Clerk is the registrar of his county.

Justices of the Peace are the registrars for the respective townships.

Deputy registrars are to be appointed by the Clerk in precincts where no Justice of the

Peace resides and are distant five miles from the county courthouse.

Any person residing within the county may register by appearing before the County Clerk.

CARSON CITY, May 16, 1918.

HON. L. E. GLASS, County Clerk, Tonopah, Nevada.

Dear Mr. Glass: I am in receipt of your favor of the 7th instant, asking certain questions concerning "An Act regulating the registration of electors" (Stats. 1917, p. 425), and will respond to your questions as follows:

The County Clerk is the registrar of the county of Nye. He receives no compensation for registrations made by him except those provided under the provisions of section 22 of the Act, wherein he is entitled to receive for the use and benefit of the county, the sum of 5 cents for each and every name for poll-lists furnished by him in municipal or school-district elections.

The Justices of the Peace of the county are the deputy registrars for their respective townships and for the whole territory covered by their Justices' precincts. They receive compensation at the rate of 15 cents per name for each registration made.

Deputy registrars are to be appointed by the Clerk in precincts where no Justice of the Peace resides and which are distant five miles from the county courthouse. Under section 12 of this Act any person residing within the county may register by appearing before the County Clerk.

By section 34 of the Act it is made the duty of the County Commissioners of each county to furnish the County Clerk thereof with sufficient help to enable him to properly perform the duties imposed upon him by the registration Act.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

**184. Fish and Game--Deputy Fish and Game Warden--Expenses.**

The twenty-five dollars per month for expenses mentioned in section 3 (Stats. 1917, p. 473) is not a fixed sum additional to his salary, but states a maximum for expenses which may be allowed a Deputy Fish and Game Warden.

All Deputy Fish and Game Wardens should render itemized accounts of expenses, and the County Commissioners cannot legally allow more than twenty-five dollars a month therefor.

CARSON CITY, May 16, 1918.

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

Dear Sir: This office is in receipt of your request for an opinion upon the following question:

Can a Deputy Fish and Game Warden, duly appointed and commissioned in accordance with law, demand and collect the \$25 per month mentioned in section 3, page 473, Statutes of 1917, a portion of which reads as follows: "Said Warden shall be allowed a sum not to exceed twenty-five dollars per month for expenses incurred by him in the performance of his duties"?

In our opinion the \$25 per month mentioned in the section referred to is not a fixed sum additional to his salary, but only states a maximum for expenses which may be allowed the Deputy Fish and Game Warden. Whether the Deputy Fish and Game Warden is regarded as a state officer or as a county officer, existing laws regulating state and county officers compel him to render an itemized account of his expenses, and such deputy can receive payment of his claim for expenses only by submitting an itemized account thereof, and the law expressly provides a limit of \$25 to the amount of his expenses in any one month.

It is therefore the opinion of this office that all Deputy Fish and Game Wardens should render an itemized account of their expenses and that the County Commissioners cannot legally allow more than \$25 a month therefor.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

**185. Corrupt Practice Act--Independent Candidates--Expenses--Primary Elections.**

It is not necessary for an independent candidate to file any statement of expenses before or after the primary election, but such statement must be filed for the general election.

CARSON CITY, May 28, 1918.

MISS ANNE MARTIN, Reno, Nevada.

My Dear Miss Martin: I am in receipt of your favor of the 22d instant wherein you ask the opinion of this office regarding certain features of the Corrupt Practices Act. You inquire:

1. Is it necessary for an independent candidate to file an account of expenses at the time of the primary election?

You also inquire:

2. Is it necessary to file a statement of expenses as an independent candidate with the Secretary of State five days before and fifteen days after the election.

The answer to both of your questions is contained in section 8 of the Corrupt Practices Act (Stats. 1913, p. 478). Said section provides:

Every candidate for nomination or election to public office, including candidates for the office of Senator of the United States, and Representative in Congress, shall, five days before and fifteen days after the election *at which he was a candidate*, file with the Secretary of State, etc.

As an independent candidate you will be nominated by petition of electors and you will not come before the electors of the State for consideration at the primary election and your name will not appear upon the ballot at such election. If you secure the requisite number of signatures to your petition for nomination, your name will be certified by the Secretary of State to the various County Clerks as the independent candidate for the office of United States Senator in order that your name may appear upon the ballot to be used at the general election as a candidate for such position. You are not, therefore, within the provisions of said section 8 because you are not a candidate for nomination or election to public office at the primary election, and section 8 therefore does not apply to you, so far as the primary election is concerned. Should you receive the requisite number of signatures to your petition for nomination and your name therefore certified by the Secretary of State to the various County Clerks, you will then be within the purview of section 8, for you will then be a candidate for election to public office, and the balance of said section which requires a statement of expenses to be filed five days before and fifteen days after election "at which he was a candidate" will apply.

It is, therefore, the opinion of this office that it is unnecessary for you to file any statements whatever before or after the primary election, but that you will be required to file a statement of expenses five days before and fifteen days after the general election in November.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

**186. Industrial Insurance Commission--Jockeys.**

A jockey riding at a race meet is in the employment of the person whose horse he rides, and cannot be considered in the employment of the State.

CARSON CITY, May 29, 1918.

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

Dear Sir: We wish to acknowledge receipt of your recent letter in which you request an opinion upon the question:

Does the Industrial Commission Law figure that a jockey riding in the next race-meet at Reno is in the employ of the State or in the employ of the man whose horse he rides in the race?

A jockey riding regularly in the race-meet is usually hired and paid by the person whose horse he rides, and is considered to be in the employ of such person. Under no circumstances can such a jockey be considered as in the employ of the State.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

**187. Labor Commissioner--District Attorneys.**

It is the duty of the District Attorneys of the several counties, upon complaint of the Labor Commissioner, to prosecute all violations of section 1, chapter 276, Stats. 1913, which may be brought to their attention by him.

CARSON CITY, May 31, 1918.

HON. ROBERT F. COLE, Labor Commissioner, Carson City, Nevada.

Dear Sir: I am in receipt of your recent letter in which you state that you have had several complaints alleging violation of section 1, chapter 276, Statutes of 1913, p. 448.

You also call my attention to section 13, chapter 253, Statutes of 1915, p. 314, as follows:

It shall be the duty of the District Attorneys of the several counties, upon the complaint of the Labor Commissioner, to prosecute all violations of law which may be reported to said District Attorney by the Labor Commissioner.

You inquire whether or not the Labor Commissioner has the power to invoke the services of the District Attorneys of the several counties of this State in an attempt to enforce the provisions of section 1, chapter 275 (above mentioned), in such cases which may have been referred to him by employees who have wages due them.

It is the opinion of this office that under the provisions of section 13, it is the duty of the District Attorneys of the several counties upon your complaint to prosecute all violations of section 1, chapter 276, Statutes of 1913, which may be brought to their attention by you.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

**188. Labor Commissioner--Eight-Hour Law--Watchmen.**

Section 1941, Rev. Laws, does not apply to watchmen employed on or about the surface working of a mine.

CARSON CITY, May 31, 1918.

HON. ROBERT F. COLE, Labor Commissioner, Carson City, Nevada.

Dear Sir: I am in receipt of your recent favor requesting construction of Rev. Laws, 1941, which provides:

The number of hours of work or labor of mechanics, engineers, blacksmiths, carpenters, top men, and all workmen employed or working on or about the surface or surface workings of any underground mine workings, shall not exceed eight (8) hours in any period of twenty-four (24) hours except in cases of emergency where life or property is in imminent danger.

You inquire: "Is the above law applicable to watchmen employed on or about the surface workings of a mine whether or not the men are employed underground or about the surface of the mine?"

In the opinion of this office such law does not apply to watchmen.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

**189. Industrial Insurance Commission--Accident Benefit Fund.**

The Industrial Insurance Commission has authority to charge the Accident Benefit Fund, created by section 23 of the amended Industrial Insurance Act, with a percentage of expenses including salaries of the Commission.

CARSON CITY, June 1, 1918.

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

Dear Mr. Smith: With reference to your request for an opinion as to whether or not your Commission has authority to charge the accident benefit fund created by section 23 of the amended Nevada Insurance Act of 1917 with a percentage of expenses, including salaries of the Commission, we beg to reply that you have such authority.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

### **190. Industrial Insurance Commission--Contractors.**

The present Industrial Insurance Act is not compulsory for a contractor under the State, a county, municipal corporation, school district or city under special charter or commission form of government.

CARSON CITY, June 1, 1918.

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

Dear Sir: We beg to acknowledge receipt of your recent letter, wherein you request for an opinion upon the following question:

Are the terms, conditions and provisions of the Nevada Industrial Insurance Act compulsory under subdivision b of section 1 of the Nevada Industrial Insurance Act, as amended to take effect July 1, 1917, where a contractor under the State, a county, municipal corporation, school district, cities under special charter and commission form of government, is the employer?

Section 1b of the Industrial Insurance Act as amended in 1915 (Stats. 1915, p. 279), read as follows:

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

At the next session (Stats. 1917, p. 137) this section was amended by eliminating therefrom the portion which reads:

or contractors under the State, county, municipal corporation, school district, or cities under special charter or commission form of government.

As this last-mentioned clause was not incorporated in the amendment of the last session, it is plain that the Legislature intended to make the Act compulsory only to such employers as therein particularly enumerated. By affirmatively naming those employers to whom the Act shall be exclusive, compulsory and obligatory naturally implies a negative of all employers not so specifically named.

It is, therefore, the opinion of this office that the present Industrial Insurance Act is not compulsory for a contractor under the State, a county, municipal corporation, school district or city under special charter or commission form of government.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

**191. Industrial Insurance Commission--Claims--Notice.**

The Commission may excuse the failure to file a notice of injury but cannot excuse the failure to file a claim for compensation. Under the statute the claim for compensation must be filed within one year after death.

CARSON CITY, June 7, 1918.

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

Dear Mr. Smith: We wish to acknowledge receipt of your letter of recent date, in which you refer to a particular claim, and ask:

Can this Commission legally consider a claim for compensation filed later than one year after a fatal injury?

Section 34 of the Nevada Industrial Commission Act (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.

In an opinion from this office given on July 17, 1917, you were advised that "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." That opinion is clearly applicable here and is decisive of the question you ask.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

**192. Fish and Game--Licenses--Minors.**

Under provisions of section 68 (Stats. 1917, p. 471), a person under the age of 15 years is not required to purchase a market fisherman's license in order to be entitled to sell fish in the market.

CARSON CITY, June 8, 1918.

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

Dear Sir: I am in receipt of your recent favor asking opinion on the question:

Would any person, under the age of 14 years, be required to purchase a market fisherman's license in order to be entitled to sell fish in the market?

Section 61 of the Act for the protection and preservation of fish and game (Stats. 1917, p. 470) provides:

A license of \$15 shall be charged to any one engaged in market fishing.

Section 68 of the same Act (p. 471) states:

The provisions of this Act shall not apply to any \* \* \* girls or boys under 14 years of age.

The language of said section 68 seems to wipe out completely all requirements of section 61 in regard to licenses, including a market fisherman's license.

It is, therefore, the opinion of this office that a person under the age of 14 years is not required to purchase a market fisherman's license in order to be entitled to sell fish in the market.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

**193. Elections--Registration.**

The County Clerk is ex officio registrar of all voters in the respective counties of the State.

The Justices of the Peace are Deputy Registrars for the purpose of carrying out the provisions of the Act.

Additional registrars shall be appointed by the County Clerk for all precincts which are five miles distant from the county courthouse in which no Justice of the Peace resides.

Any voter may register with the County Clerk.

Justices of the Peace who live within five miles of the county courthouse shall register all voters within such district although any voter may register direct with the County Clerk.

A Justice of the Peace whose precinct is more than five miles distant from the courthouse shall register all voters within his precinct.

County Registrars (other than Justices of the Peace) shall be appointed by the County Clerk to register all electors living in precincts in which there is no Justice of the Peace and which is more than five miles distant from the county courthouse.

No person's right to vote will be jeopardized by the fact that his registration was taken before the wrong officer when it could actually have been taken by the County Clerk, Justice of the Peace, or Deputy Registrar duly qualified.

CARSON CITY, June 10, 1918.

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

My Dear Mr. Atkinson: I am in receipt of yours of recent date, requesting the opinion of this office upon the construction to be given to chapter 231, Statutes of 1917, "An Act regulating the registration of electors of general, special and primary elections," approved March 27, 1917, and particularly requesting the opinion of this office as to the respective jurisdictions of the County Clerks, the Justices of the Peace and the deputy registrars in registering voters for elections.

The particular section to be construed in section 10, which reads as follows:

All Justices of the Peace are hereby designated as deputy registrars for the purpose of carrying out the provision of this Act. The County Clerk of each county shall appoint deputy registrars, who shall have the power to administer oaths, in each precinct for such county distant more than five miles from the county courthouse and wherein no Justice of the Peace resides. It shall be the duty of the deputy registrar to register all electors within his precinct applying for registration, and for this purpose he or she shall have authority to demand of the elector all information, and to

administer all oaths required by this Act. The deputy registrar shall be a resident elector within the precinct for which he is appointed, and shall receive as compensation for all services the sum of not more than fifteen cents for each elector registered, to be paid by the county after being approved by the County Clerk. Said registry agent shall forward, within two days after the filling out of any registry cards, all such cards so filled out to the County Clerk. Any deputy registrar violating any of the provisions of section 11 of this Act shall be guilty of a misdemeanor and be subject to a fine of not less than \$25 nor more than \$100, for each offense.

I am of the opinion that the Act is to be construed as follows:

First--The County Clerk is ex officio registrar of all voters in the respective counties of the State.

Second--The Justices of the Peace are deputy registrars for the purpose of carrying out the provisions of this Act.

Third--Additional registrars shall be appointed by the County Clerk for all precincts which are five miles distant from the county courthouse and in which no Justice of the Peace resides.

Fourth--Any voter may register direct with the County Clerk as ex officio registrar.

Fifth-- Justices of the Peace who live within five miles of the county courthouse shall register all voters within such district, although any voter may register direct with the County Clerk as above indicated.

Sixth--Justices of the Peace whose precincts are more than five miles distant from the county courthouse shall register all voters within their respective precincts.

Seventh--Deputy registrars (other than Justices of the Peace) shall be appointed by the County Clerk to register all electors living in precincts in which there is no Justice of the Peace and which is more than five miles distant from the county courthouse.

I am further of the opinion that no person's right to vote will be jeopardized by the fact that his registration was taken before the wrong officer if it actually be taken by either the County Clerk, the Justice of the Peace or a deputy registrar duly qualified.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

**194. State Board of Stock Commissioners--Rewards.**

The State Board of Stock Commissioners has no authority to use its funds for rewards.

CARSON CITY, June 10, 1918.

STATE BOARD OF STOCK COMMISSIONERS, Reno, Nevada.

Gentlemen: Mr. Fred Dangberg of your Commission and Dr. Edwards Records have again taken up with me the question as to whether or not your board is authorized to offer rewards for the arrest and conviction of persons violating the laws of this State against felonious branding or stealing of stock, etc.

After careful consideration I am unable to modify my former opinion given to you in this matter. I am still of the opinion that the board has no authority to use its funds for rewards, and that the remedy lies with the Legislature. I would suggest that if you feel such action advisable you make recommendation to the next Legislature in your report that the Act be so amended as to permit you to offer rewards in proper cases.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

**195. Industrial Insurance Commission--Employees--Compensation.**

An employee within the purview of the old Industrial Insurance Act cannot receive in excess of \$5,000 from the Commission for the loss of sight of both eyes.

CARSON CITY, June 11, 1918.

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

Dear Sir: We desire to acknowledge receipt of your recent letter in which you ask for an opinion upon the following question:

Where an employee, within the purview of the Nevada Industrial Insurance Act, chapter 111, Statutes of 1913, as amended by chapter 190, Statutes of 1915, received an injury to his left eye for which he was awarded compensation, as provided in section 25 of said statute, of \$342 for temporary total disability (duration 5 21/30 months) and \$1,500 as permanent partial disability due to the loss of sight of the injured eye (being compensation of \$60 per month for 25 months); and where subsequently the sight of the other eye failed from sympathetic ophthalmia, due entirely to the original injury, thereby producing permanent total disability, is

claimant entitled to compensation for permanent total disability of 50 per cent of his average monthly wage, but not more than \$60 a month, for a period not to exceed 100 months, total amount not to exceed \$5,000 (deducting \$1,500 previously paid for the loss of the left eye), in addition to compensation paid for temporary total disability, or is \$5,000 the maximum amount an injured employee can receive for all disabilities following a single injury?

The provision of law applicable to this particular question are found in section 25 of the amended Industrial Act (Stats. 1915, p. 286), and read as follows:

Every employee or workman coming within the provisions of this Act, who shall be injured by accident arising out of or in the course of employment, or his dependents, as hereinafter named, shall be entitled to receive the following compensation: \* \* \*

For temporary total disability, compensation of fifty per cent of the average monthly wage, but not more than sixty dollars nor less than twenty dollars a month, but not exceeding one hundred months during the period of such disability, total amount not to exceed five thousand dollars. \* \* \*

For temporary partial disability, one-half of the difference between the wages earned before injury and wages which the injured is able to earn thereafter, but not more than forty dollars a month for a period not to exceed sixty months during the period of such disability. \* \* \*

In the case of any of the following specified injuries, the disability caused thereby shall be deemed a permanent partial disability and the amounts named shall be paid in addition to compensation paid for temporary total disability: \* \* \*

For the loss of an eye, fifty per cent of the average monthly wages during twenty-five months.

For permanent total disability, compensation of fifty per cent of the average monthly wage, but not more than sixty dollars nor less than twenty dollars a month, for a period not to exceed one hundred months, total amount not to exceed five thousand dollars.

In case of the following specified injuries, the disability caused thereby shall be deemed total and permanent:

1. The total and permanent loss of sight in both eyes. \* \* \*

Where there has been a previous disability, as the loss of one eye, one hand, one foot, or any other previous permanent disability, the percentage of disability for a subsequent injury shall be determined by computing the percentage of the entire disability and deducting therefrom the percentage of the previous disability, as it

existed at the time of the subsequent injury.

In view of these positive provisions, we are of the opinion that an employee within the purview of the old Act cannot receive in excess of \$5,000 from the Commission for the loss of sight of both eyes.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

**196. Industrial Insurance Commission--Jockeys--Employment.**

A jockey cannot be said to be an employee of a particular horseman if his services can be procured by other horsemen. Under such circumstances he would be classed as an independent contractor and not entitled to the benefits of the Industrial Insurance Act.

CARSON CITY, June 13, 1918.

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

Dear Mr. Smith: We wish to acknowledge receipt of your letter in which you ask the following question:

Should a jockey, whose services can be had by any horseman entering horses in a race, be considered an employee of each horseman for whom he rides and, therefore, within the purview of the Nevada Industrial Insurance Act, or does he have the status of an independent contractor and, therefore, not entitled to the benefits of the Act?

Replying thereto, will say that a jockey cannot be said to be an employee of a particular horseman if his services can be procured by any horseman. Under such circumstances he would be classed as an independent contractor and not entitled to the benefits of the Industrial Insurance Act.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

**197. Public Schools--Peace Officers--Policemen.**

A policeman of the city of Sparks is a peace officer and is, therefor, authorized to arrest during school hours without a warrant any truant child between the age of 8 and 16 years under the provisions of section 3447, Rev. Laws.

CARSON CITY, June 13, 1918.

MR. C. H. MEEKER, City Superintendent of Schools, Sparks, Nevada.

Dear Sir: In some way answer to your favor of the 24th ultimo has been overlooked until now.

You call my attention to section 207 of the School Code (Rev. Laws, 3447), which provides that: "It shall be the duty of the attendance officer or any peace officer or other school officer to arrest." etc. You inquire whether or not the words "any police officer" would apply to a Sparks policeman.

There can be no doubt but that the Chief of Police of Sparks is a peace officer and that the law applies to him and that it is his duty to act under said law whenever requested.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

### **198. Grand Jury.**

A legally impaneled grand juror is entitled to act during the entire year in which he is appointed and all of the succeeding year, except so much thereof as may be necessarily used in the summoning of another grand jury.

CARSON CITY, June 20, 1918.

MR. JOHN H. CAZIER, Wells, Nevada.

Dear Mr. Cazier: I am in receipt of your favor of the 17th instant, wherein it is stated that the grand jury of Elko County, of which you are foreman, was called for July 9 of last year but did not convene until the early part of September.

You wish advice as to whether or not any action taken by such grand jury after July 9 would be legal. The provisions of the statute in regard to the summoning of a grand jury are contained in Rev. Laws, 4931, which provides:

It shall be the duty of the District Judge and any one of the County Commissioners of a county at least once in each year, and as much oftener as the public interest may require, to select from the jury list, twenty-four persons who shall be summoned to

appear as grand jurors at such time as the judge may order.

This section was amended by Stats. 1915, p. 168, but such amendment in no way effects the above-quoted portion of this section. It has been frequently decided that when the word "year" is used in a statute, it is to be construed to mean a calendar year unless a different intent may be gathered from the context or otherwise. Nothing in the context indicating other than the calendar year, we must presume that the Legislature in the enactment of this section means that a grand jury must be summoned at least once in each calendar year. The statute does not designate in what part of the year such grant jury must be summoned, therefore a grant jury summoned in January of 1917 and another grand jury summoned in December, 1918, would be a compliance with the statute.

For this reason, I am of opinion that the grand jury of which you are foreman is a legal body and will be such as to any acts performed by them after July 9 of this year, and it is entitled to act as a grand jury of Elko County the balance of this year, except so much thereof as may be necessarily used in the summoning of another grand jury for the year 1918.

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

### **199. Elections--Registrations--Transfers.**

There is no provisions in the registration law allowing a transfer from one county to another other than the transfer given to transportation employees.

A person cannot vote at the primary election who will not have been in the State six months at the time of such election, but who will have been in the State six months prior to the general election.

CARSON CITY, June 21, 1918.

MR. AUSTIN JACKSON, Reno, Nevada.

Dear Sir: I am in receipt of your favor of the 18th instant, asking advice on the following questions concerning the registration law (Stats. 1917, p. 425):

1. Will you kindly advise if there is any provision in the new registration law allowing a voter to get a transfer from one county to another, other than the transfer given to transportation employees?

There is no provision in the registration law allowing a voter to transfer from one county to another other than the transfer given to transportation employees, and your question must be answered in the negative.

2. Can a person vote at the primary election who will not have been in the State six months at the time of the primary election, but who will have been in the State six months prior to the general election?

This section is answered by the provisions of section 15 of the primary election law (Stats. 1917, p. 283):

3. The qualifications and regulations of voters at primary elections shall be subject to the same tests and governed by the same provisions of law and rules and regulations as are now prescribed by law for other elections.

And by section 1 of the registration law (Stats. 1917, p. 425):

Every citizen of the United States, twenty-one years of age or over, who will have continuously resided in this State six months and in the county thirty days and in the precinct ten days next preceding the day of the next ensuing election, shall be entitled to vote at such election.

And by section 30 of the same Act (Stats. 1917, p. 434):

The word "election," as used in this Act, where not otherwise qualified, shall be taken to apply to general, special, primary nomination and municipal elections, and to elections in school district of the first class.

In consideration of the foregoing provisions of our statutes, it is the opinion of this office that a person cannot vote at a primary election who will not have been in the State six months at the time of the primary election, but who will have been in the State six months prior to the general election.

As a form for nonpartisan declaration of candidacy, I would recommend the following modification of the form set forth in Stats. 1917, p. 278:

For the purpose of having my name placed on the official primary ballot as a candidate for nomination for the office of ....., I, the undersigned, ....., do solemnly swear (or affirm) that I reside at No. ...., ..... street, in the city (or town) of ....., County of ....., State of Nevada, and that I am a qualified elector of the election precinct in which I reside; that if nominated as a candidate for said office at said ensuing election, I will accept such nomination and not withdraw; that I will not knowingly violate any election law or any law defining and prohibiting corrupt and fraudulent practice in campaigns and elections in this State; and that I will qualify for said office if elected thereto.

.....

Subscribed and sworn to before me, this .... day of ....., 19....

....., Notary Public.

(or other officer authorized to administer an oath.)

Yours very truly,

EDW. T. PATRICK, Deputy Attorney-General.

### **200. Elections--Primary Election--Election Board, Appointment Of.**

The County Commissioners at their first regular meeting in August should appoint inspectors and clerks for the various election precincts within their county for the primary election to be held in September.

CARSON CITY, June 21, 1918.

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

Dear Mr. Powell: We are in receipt of your letter of the 18th instant, in which you request an opinion upon the following question:

When should the election officers for the coming primary election be appointed?

The primary election law is silent with reference to the appointment of inspectors and clerks for the primary election, but in section 14 of that Act (Stats. 1917, p. 283) it is provided that: "The officers of primary elections shall be the same as provided by law for general elections."

By referring to the general election law (Stats. 1917, p. 359) it is seen that section 1 reads in part as follows:

It shall be the duty of said Boards of County Commissioners, at their first regular meetings in September preceding each general election (and fifteen days preceding each special election), to appoint three capable and discreet persons possessing the qualifications of electors (who shall not be of the same political party), to act as inspectors of election at each election precinct, and two clerks of election, who shall have charge of the ballots on election day and shall furnish them to the voters in the manner hereinafter provided for, and the Clerk of said board shall forthwith make and deliver to said inspectors personally notice thereof in writing, or deposit the same in the postoffice registered, and postage prepaid, directed to the registry agent of the precinct for which each of said inspectors and clerks are appointed, and it shall be the

duty of said registry agent, within ten days after the receipt thereof, to serve the same upon each of said inspectors and clerks of election.

The primary election for the present year will be held September 3 (Stats. 1917, p. 277, sec. 3), but it is not a special election (Stats. 1917, p. 277, sec. 2). The first regular meeting of the County Commissioners for that month will not be held until two days later, or September 5 (Rev. Laws, 1503, as amended Stats. 1917, p. 1). Therefore, an exact compliance with the quoted section, so far as concerns the appointment of election officers for the primary, is impossible. But, as a primary election must be held and as none can be held without inspectors and clerks, previously duly appointed and qualified, such construction must be placed upon the section as will provide for such election officers. Besides, it is elementary that:

When a statute specifies the time at or within which an act is to be done, it is usually held to be directory, unless time is of the essence of the thing to be done, or the language of the Act contains negative words or shows that the designation of the time was intended as a limitation of power, authority or right. (*People v. Lake County*, 33 Cal. 287; 36 Cyc. 1160.)

We are, therefore, clearly of the opinion that the County Commissioners, at their first regular meeting in August, should appoint inspectors and clerks for the various election precincts within their county for the primary election to be held in September.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

By WM. McKNIGHT, Deputy.

### **201. Employers--Employees--Eight-Hour Law--Open-Cut Mines.**

Section 6557, Rev. Laws, regulating the employment of workmen in open-cut or open-pit mines is constitutional.

CARSON CITY, June 25, 1918.

HON. ROBERT F. COLE, Labor Commissioner, Carson City, Nevada.

Dear Sir: I am in receipt of your favor of the 15th instant, requesting my opinion relative to the constitutionality of the eight-hour law applying to workers employed in open-cut mines, being section 6557, Revised Laws of Nevada, 1912. Said section is as follows:

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

This section has had several interpretations by this office, and I am entirely satisfied of the constitutionality of this Act. You are hereby referred to interpretations of the same section appearing in the report of the Attorney-General for 1915 and 1916, Opinion No. 26 ½ on page 25 of said report, and Opinion No. 67 on page 57 of said report, wherein the same section was under consideration and its constitutionality upheld as to workers in open-pit or open-cut mines.

Yours very truly,

GEO. B. THATCHER, Attorney-General.

### **202. Elections—Registration—Women.**

All that the registrar can require of any person applying for registration is satisfactory

answers to such questions as will satisfy him that the applicant is 21 years of age and upwards, and has actually resided in the State six months and in the district or county thirty days next preceding the election. A woman is not required to give her exact age.

CARSON CITY, July 2, 1918.

MR. AUSTIN JACKSON, *Reno, Nevada.*

DEAR MR. JACKSON: I am in receipt of your favor of the 24th ult., asking information concerning the registration law of this State.

You inquire whether or not a woman, upon application for registration, will have to give her exact age, or whether a mere stating of the fact that she is over 21 years of age will comply with the registration law.

Section 12, Stats. 1917, p. 428, of the registration Act provides as follows:

Any elector residing within the county may register by appearing before the County Clerk or deputy registrar and making satisfactory answers to all questions propounded by the County Clerk touching the items of information called for by such registry card and by signing and verifying the affidavit or affidavits on such card.

The qualification of electors prescribed by the Constitution of this State is found in article 2, section 1, of the Constitution, as amended, approved and ratified by the people at the general election in 1914. Such amendment appears in the Statutes of 1913, at page 581 and such section as so amended reads as follows:

All citizens of the United States (not laboring under the disabilities named in the Constitution) of the age of twenty-one years and upwards who shall have actually and not constructively resided in the State six months, and in the district or county thirty days next preceding any election, are entitled to vote for all officers that now are or hereafter may be elected by the people, and upon all questions submitted to the electors at such election.

Therefore, all that the registrar can inquire of any person applying for registration is satisfactory answers to such questions as will satisfy him that the applicant is 21 years of age and upwards and has actually resided in the State six months, and in the district or county thirty days next preceding any election.

The age of the applicant is 21 years of age, and, upon making "satisfactory answer to all questions" which the registrar is entitled to propound the applicant touching his or her qualifications for registration, such applicant must be registered by him and the applicant must be registered by him and the applicant for registration need not state his or her exact age, but merely qualifies himself or herself by stating that he or she is over 21 years of age.

Yours very truly,

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

**203. Public Schools—County High Schools—County Boards of Education.**

The County Board of Education cannot undertake the construction of a proposed building on a day-labor basis or by letting several contracts of less than \$500 each.

CARSON CITY, July 3, 1918.

MR. J.H. WHITE, *District Attorney, Hawthorne, Nevada.*

DEAR SIR: We wish to acknowledge receipt of your letter of the 1st instant, wherein you quote from a letter received from the County Board of Education as follows:

Having advertised twice for bids for the construction of the Mineral County High-School building, and having received no satisfactory bids, the board would like your opinion and that of the Attorney-General as to our right to undertake this construction on a day-labor basis, or by letting several contracts of less than \$500 each.

Section 6 of the Act authorizing the issue of bonds to provide for the erection of the county high-school building at Hawthorne (Stats. 1917, p. 306) reads as follows:

All moneys derived from the sale of said bonds shall be paid to the County Treasurer of said county, and the said Treasurer is hereby required to receive and safely keep the same in a fund known as "County High-School Fund," and to pay out said moneys only in the manner now provided by law and for the purposes for which the same were received.

By restricting the Treasure to pay out the money "only in the manner now provided by law," the Legislature undoubtedly had in mind the provision incorporated in section 5 of the general Act relating to bonding counties for building high schools (Stats. 1917, p. 19) reading thus:

Said County Board of Education \* \* \* shall advertise for bids for the construction thereof and let the construction thereof by contract to the lowest responsible bidder, said board to have authority to reject any and all bids and to readvertise until a satisfactory bid is obtained;

and to section 3423 of the Revised Laws, which provides that:

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;

and the law governing the other schools, so far as concerns the particular question here involved, found on page 375 of the Statutes of 1915, which reads:

Whenever the Trustees of any school district shall decide to erect any new school building that is to cost more than five hundred dollars, \* \* \* they shall advertise for bids for the contract to erect the said new building. \* \* \* In all cases where more than five hundred dollars is to be expended upon the erection of any school building, \* \* \* the Trustees shall award the contract for such work to the lowest and best bidder for the contract.

The jurisdiction of School Trustees is limited to the legislative authority conferred upon them (*State v. McBride*, [31 Nev. 57](#), 99 Pac. 705), and the same rule is applicable to the members of the County Board of Education (*Waitz v. Ormsby County*, [1 Nev. 370](#))

As the laws referred to have prescribed the manner in which the Board of Education shall contract for the erection of a high-school building, they exclude all other modes of procedure. (*State v. Washoe County*, [6 Nev. 104](#); *Sadler v. Eureka County*, [15 Nev. 30](#).)

We are, therefore, of the opinion that the County Board of Education cannot undertake the construction of the proposed building on a day-labor basis or by letting several contracts of less than \$500 each.

Yours very truly,

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

BY WM. McKNIGHT, *Deputy*.

**204. Elections—Registration—Deputy Registrar.**

A Deputy Registrar cannot appoint his wife to serve for him during his absence from his post of duty.

CARSON CITY, July 3, 1918.

MR. HARRY DUNSEATH, *Justice of the Peace, Tonopah, Nevada.*

MY DEAR SIR: Your letter of the 30th ultimo, wherein you state that you shall likely be called away from Tonopah for a few days and desire to know whether or not your wife can be appointed a deputy registrar during your absence, duly received.

The law applicable to this matter is found in section 10 of the Act regulating the registration of electors (Stats. 1917, p. 428), which reads as follows:

All Justices of the Peace are hereby designated as deputy registrars for the purpose of carrying out the provisions of this Act. The County Clerk of each county shall appoint deputy registrars, who shall have the power to administer oaths, in each precinct of such county distant more than five miles from the county courthouse and wherein no Justice of the Peace resides.

No deputy registrar can be appointed in any precinct in which a Justice of the Peace resides nor in any precinct which is within five miles of the county courthouse.

In view of this statute, it is our opinion that your wife cannot be appointed a deputy registrar during your absence.

Yours very truly,

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

BY WM. McKNIGHT, *Deputy.*

**205. Elections—Sample Ballots—Independent Candidates.**

The sample ballot required in Stats. 1917, p. 282, need not contain the names of independent candidates as the ballot must contain the names only of all party candidates who have opposition for the party nomination.

CARSON CITY, July 6, 1918.

MR. H.L. COX, *Deputy District Attorney, Austin, Nevada.*

DEAR MR. COX: We wish to acknowledge the receipt of your recent letter, in which you ask:

Can the names of persons nominated as independent candidates be placed on the sample ballots to be prepared by the County Clerk and mailed as provided in section 13 of the primary election law of 1917?

The portion of the section in question (Stats. 1917, p. 282) applicable to this matter reads as follows:

Not less than twenty-five days before the September primary each County Clerk shall prepare sample ballots for such primary, which sample ballots may be smaller in dimensions, but shall be otherwise exact copies of the official ballot to be used at the primary.

Independent candidates are not nominated at the primary, but secure their nominations by filing the necessary certificate of nomination and by paying the prescribed fees. (Stats. 1917, p. 287, sec. 31.)

The primary election law contemplates the nomination at the primary of party candidates where there is a party contest and the nomination of nonpartisan candidates.

The official party ballot shall contain the names of all party candidates only who have opposition for the party nomination (Stats. 1917, p. 282, sec. 12h). The official nonpartisan ballot shall contain the names of all nonpartisan candidates.

As the sample ballot must be an exact copy of the official ballot, it naturally follows that the names of no independent candidates should be placed thereon.

Yours very truly,

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

BY WM. McKNIGHT, *Deputy*.

## 206. Mothers' Pension Act—Divorced Women.

A woman who has children under 15 years of age not supported by their father is within the provisions of the Mothers' Pension Act (Stats. 1915, p. 151), even though she is divorced from her husband.

CARSON CITY, July 16, 1918.

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

DEAR MR. POWELL: I am in receipt of your favor of the 10th instant, asking what is the status of a mother of children under the age of 15 years who has been divorced from her husband on the grounds of cruelty and who is dependent upon her own efforts for the support and maintenance of her children, with reference to receiving an allowance for the partial support of her children under the provision of chapter 131, Stats. 1915, p. 151.

It seems that in this case a divorce was granted and alimony allowed the wife, but never paid by her divorced husband. You inquire whether the woman is, for the purposes of the above-mentioned Act, "abandoned" when a decree of divorce is entered.

The first section of the Act in question provides:

It shall be the duty of the County Commissioners of each county in this State, and they are hereby empowered and authorized, to provide funds in an amount sufficient to meet the purposes and requirements of this law, for the support of women whose husbands are dead or are inmates of a penal institution or an insane asylum, or who are abandoned by their husbands, and such abandonment has continued for more than one year, or because of the total disability of their husbands, and who are unable to support their children, when such women are destitute or are dependent upon their own efforts for the maintenance of their children and are mothers of children under the age of 15 years, and such mothers and children reside in such counties in the State.

It will be necessary in the determination of this matter to define the word "abandon." In the case of *Pidge v. Pidge*, 44 Mass. 257, it is said "to abandon is wholly to withdraw; to lay aside all care of it; to leave it altogether to itself."

In the case of *Gay v. State*, 105 Ga. 599, the court said: "'Abandon,' in its ordinary sense, means to forsake entirely." When referring to a desertion of a wife by her husband, it has been defined to mean the act of the husband in voluntarily leaving his wife with the intention to

forsake entirely and never return to her. Such neglect either leaves the wife without the common necessities of life or would leave her destitute but for the charity of friends.

It has been decided by this office that the statute in question is highly remedial and should be liberally construed. It has further been decided that the purpose of this statute is to keep the family intact and that the mother shall not be compelled to go away from home to seek work, for the support of her family, which would keep her away from her children. It seems to me that under the definitions above quoted, she has been abandoned by her husband within the meaning of the statute and is, therefore, entitled to the relief provided by the provisions of the above-mentioned chapter.

Yours very truly,

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

**207. Industrial Insurance Commission.**

Amount of compensation to be paid under these particular circumstances calculated.

CARSON CITY, June 17, 1918.

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

DEAR SIR: We are in receipt of your letter of the 13th instant, wherein you ask an opinion upon the following question:

Should the amount of a deceased employee's actual wages be used in the denominator of the proportion, or should the denominator be \$120 where the actual wages exceeded \$120 per month; in other words, where a deceased workman sent an average of \$25 per month of his wages of \$168 to his partially dependent father, should the monthly compensation to be paid equal  $25 \frac{168}{120}$  times 25% of \$120 or \$4.46, or  $25 \frac{120}{168}$  times 25% of \$120, or \$6.25 for one hundred months?

By subdivision 6 of section 25 of the Industrial Insurance Act (Stats. 1917, p. 442) it is provided:

If there is no surviving wife (or dependent husband) or child under the age of eighteen years, there shall be paid to the parent or parents, if wholly dependent for support upon the deceased employee at the time of his death, twenty-five per centum of the average monthly wage of the deceased during dependency—  
while subdivision 6 of the same section (Stats. 1917, p. 443) provides that:

Any excess of wages over one hundred and twenty (\$120) dollars a month shall not be taken into account in computing compensation for death benefits.

Under these statutory provisions, the parents who are wholly dependent for support upon a deceased employee receiving wages of \$120 or more per month and leaving no surviving wife or minor child, are entitled to receive as compensation 25 per cent \$120, or \$30 a month during dependency. If the parents are but partially dependent for support upon such an employee, the amount of compensation payable to them is fixed by subdivision 7 of the same section (Stats. 1917, p. 442) which reads in part as follows:

If the deceased employee leaves dependents only partially dependent upon his earnings for support at the time of the injury causing his death, the monthly compensation to be paid shall be equal to the same proportion of the monthly payments for the benefit of persons totally dependent as to the amount contributed by the employee to such partial dependents bears to the average wage of deceased

at the time of the injury resulting in his death. The duration of such compensation to partial dependents shall be fixed by the commission in accordance with the facts shown, but in no case shall exceed compensation for one hundred months.

The amount contributed monthly by the deceased to his father was \$25; the amount of the average wage of deceased at the time of the injury resulting in his death, although actually \$168, was fixed by statute at \$120; and the amount of monthly payments for the benefit of persons totally dependent in similar cases is \$30.

Therefore, the amount of compensation to be paid in this particular case is <sup>25</sup>/<sub>120</sub> of \$30, or \$6.25 per month.

Yours very truly,

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

BY WM. McKNIGHT, *Deputy*.

## **208. Elections—Registration.**

Citizens of the State of Nevada who are compelled to live in Washington by reason of their connection with the United States Government are entitled to demand and receive from the registrar registration cards which, when properly filled, must be accepted by him and the applicant registered.

CARSON CITY, July 17, 1918.

HON. DANIEL E. MORTON, *County Registrar, Carson City, Nevada*.

DEAR MR. MORTON: It seems that a number of Nevadans, who are compelled to live in Washington City, on account of their connection with the United States Government, desire you to send them registration cards. You wish to know whether you are authorized to comply with their wishes in view of the provisions of section 12 of the Act relating to registrations of electors (Stats. 1917, p. 428) which provides: "any elector residing within the county may register by appearing before the County Clerk or deputy registrar," etc.

Section 2 of same Act is applicable to those residing in the city of Washington, while in the service of the United States. It states: "No person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the naval, military or civil service of the United States."

It may be argued that by the use of the words "appearing before," in the said section 12, the Legislature intended that every elector of the State, was required to appear personally in order to register. Such may be the strict technical meaning of the word "appear," but, as is well known, every summons issued by any court requires the defendant to appear within the time specified, and in a vast majority of the cases the appearance has never been questioned. One of the meanings of "appear" is "to present one's self." If an elector of Nevada, living in a foreign State, should deliver to the registrar by mail or otherwise the registration card with the blanks properly filled and as required by said section 12, "making satisfactory answers to all questions propounded by the County Clerk touching the items of information called for by such registration card," he certainly presents himself to the registrar as an applicant for election and gives such registrar the information necessary, in his judgment, as to whether or not the applicant is an elector of the State of Nevada and entitled to registration. Having enacted the provisions of section 2, above quoted, it would be a manifest distortion of the law to assume from the language of section 12 that the Legislature intended that every such elector living outside the State of Nevada is required to present himself *in person* before the registrar for the purpose of

registration.

It is the opinion of this office that it is your duty to mail registry blanks to any person living outside the State applying for them, and, upon receipt of the same with blanks properly filled and the cards signed and verified by the applicant for registration, it is your duty to treat the applicant as properly registered if you are satisfied with the information therein contained.

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

**209. Elections—Ballots.**

A candidate's name cannot appear more than once on the ballot, even though he is named by two different parties.

CARSON CITY, July 29, 1918.

F.E. NICHOLS, M.D., *Fallon, Nevada*.

DEAR SIR: In answer to your favor of the 27th instant, let me say that a candidate's name cannot appear more than once on the ballot, even though he is nominated by two different parties. His name must appear once only and after his name is a designation of the party or parties by which he is nominated.

Trusting this will give you the information desired, I am

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

BY EDW. T. PATRICK, *Deputy*.

**210. Nevada Industrial Commission—Candidates.**

An employee of the Nevada Industrial Commission may legally be a candidate for and may be elected to any public office.

CARSON CITY, July 31, 1918.

HON. W.P. HARRINGTON, *Carson City, Nevada*.

DEAR SIR: We are in receipt of your oral request for an opinion as to whether or not an employee of the Nevada Industrial Commission may legally be a candidate for public office. The Nevada Industrial Insurance Act (Stats. 1915, p. 283) provides that:

A member of the Commission or an employee of the Commission shall not serve on any committee of any political party. A political party is defined by statute (Stats. 1917, 276) to be—an organization of voters qualified to participate in the primary election.

The candidates of the respective political parties elect a county central committee and a state central committee and each of these committees has power to select an executive committee (Stats. 1917, p. 285), and, therefore, the only committees on which an employee of the Commission is prohibited from serving.

As the law expressly prohibits employees of the commission from serving on committees of political parties, it is presumed that no other prohibitions were intended. Had it been the intention of the Legislature to prohibit an employee of the Commission from becoming a

candidate for public office, language at least indicating such intention would have been used.

It is our opinion that an employee of the Nevada Industrial Insurance Commission may legally be a candidate for and may be elected to any public office.

Yours very truly,

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

BY WM. McKNIGHT, *Deputy*.

**211. District Judge—Federal Position.**

A District Judge cannot accept an appointment as a United States Commissioner.

CARSON CITY, July 31, 1918.

HON. MARK R. AVERILL, *Tonopah, Nevada*.

DEAR JUDGE: I am in receipt of your of June 22, with reference to your eligibility for appointment as United States Commissioner for Tonopah during the continuance of the war. Mr. Woodburn has, I think, written you as to what my idea is, but I presume you want a more formal opinion from this office.

Section 9 of article 4 of the Constitution 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; *provided*, that postmasters whose compensation does not exceed five hundred dollars per annum or commissioners of deeds shall not be deemed as holding a lucrative office.

The office of United States Commissioners carries with its fees under the law and the waiver of relinquishment of these fees by the individual who might be appointed would not, in my opinion, change the fact that the office is a lucrative office.

I am of the opinion that you may not, as District Judge, hold the office of United States Commissioner. I respectfully call your attention to the decisions under Rev. Laws, 267 ([Const. art. 4, sec. 9](#)).

You will observe that in *State v. McMillan*, [25 Nev. 132](#), the Supreme Court held that a State Senator, by accepting appointment as a paymaster in the army, became incapable of legally holding the office of State Senator and such acceptance operated as a resignation of the state office and created a vacancy therein.

Some time ago Judge McCarran was requested to accept a dollar a year position under the Government of the United States, but he declined, so I am informed, on account of the provisions of the Constitution to which I have referred.

I regret very much that you may not accept this position, for it would be a splendid thing for a man of your capabilities and experience to hold the office.

Yours very truly,

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

**212. Water—Watercourses.**

Under section 65 of the Water Law (Stats. 1913, pp. 192-212) the provisions fixing the time of five years for the completion of construction work and ten years for the application of a beneficial use are subject to the latter provision of the section, that the State Engineer may for good cause extend the periods.

CARSON CITY, August 1, 1918.

SEYMOUR CASE, ESQ., *State Engineer, Carson City, Nevada.*

DEAR SIR: Replying to your request for an opinion upon the construction to be given to section 65 of the water law, Stats. 1913, pp. 192-212, I beg to advise as follows:

Section 65 provides as follows:

In his endorsement of approval upon any application the State Engineer shall set a time prior to which actual construction work shall begin, which shall not be more than one year from the date of such approval; and that work shall be prosecuted diligently and uninterruptedly to completion unless temporarily interrupted by the elements; a time prior to which the construction of said works must be completed, which shall be within five years of the date of such approval, and a time prior to which the complete application of water to a beneficial use must be made, which time shall not exceed ten years from the date of the said approval. He may limit the applicant to a less amount of water than that applied for, to a less period of time for the completion of work, and a less period of time for the perfecting of the application than named in the application. The State Engineer shall have authority, for good cause shown, to extend the time within which construction work shall begin, within which construction work shall be completed, or water applied to a beneficial use, under any permit therefor issued by said State Engineer; *provided, however*, that application for such extension must in all cases be made prior to the time set in the application limiting the period which it is desired to extend.

You will observe that in the first part of the section of the State Engineer in his endorsement of approval is required to state a time prior to which actual construction work shall begin, and a time prior to which the construction work must be completed, which shall not be more than five years from the date of such approval; and a time prior to which the complete application of the water to a beneficial use must be made, which shall not exceed ten years from the date of the approval. Subsequent provisions of the section, however, provide that the State Engineer shall have authority, for good cause shown, to extend the time in which the construction work shall begin—in which construction work shall be completed—and in which water shall be applied to a beneficial use. These are subject only to the proviso that applications shall in all cases be made before the time limit shall have expired. I am of the opinion that the provisions fixing the time of five years for the completion of construction work and ten years for the application to a beneficial use are subject to the latter provision of the section, providing that the State Engineer may for good cause extend the periods. To otherwise hold would be to give too strict a construction to the statute and would be giving a construction which would favor forfeitures instead of discouraging them.

In addition to that which I have already stated, It is a well-settled rule of statutory construction that, where there are conflicting provisions in a statute or in a section of a statute, the last expression of the Legislature controls and that the last in point of position controls in cases of conflict in the statute or in a section of a statute. (36 Cyc. 1130; *Ex Parte Hewlett*, [22 Nev. 333](#), 40 Pac. 96; *United States v. Jackson*, 143 Fed. 783.)

Yours very truly,

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

**213. Elections—Ballots—Nonpartisan Ballot.**

No elector can be denied to vote a nonpartisan ballot for judicial and school offices.

If an elector who has registered his political party and in that political party there is no contest, and, therefore, no ballot printed, he is not thereby deprived of the right to vote a nonpartisan ballot.

CARSON CITY, August 2, 1918.

MR. AUSTIN JACKSON, *Reno, Nevada*.

DEAR SIR: I am in receipt of your request for an opinion upon the following questions:

(a) In the event that there is no contest in any particular party (referring particularly to the Socialist Party) is it necessary to print ballots for the Socialist Party Containing only the name of the nonpartisan nominees?

(b) In the event that no such ballots are printed, may a person registered as a member of a political party vote a nonpartisan ballot?

Subdivision h of section 12 of the Primary Act of 1917 (Stats. 1917, p. 282) provides:

(h) Where there is no party contest for any office the name of the candidate for party nomination shall be omitted from the ballot and shall be certified by the proper officer as a nominee of his party for such office.

The manifest intention of this provision was to save the expense of preparing, printing and distributing ballots and counting and returning the same where there is no primary contest, and I am of opinion that where there is no contest of the party at all no ballots for that particular party shall be printed and the candidate of such party stands nominated immediately upon the closing of the last day for filing nomination papers.

The last paragraph of section 16 of the Primary Act above referred to provides:

No elector shall be entitled to vote a party ballot at the primary election unless he has theretofore designated to the registry agents his politics or political party to which he belongs and has caused the same to be entered upon the register by such registry agents; *provided, however, that no elector shall be denied the right to a vote a nonpartisan ballot for judicial and school offices at such primaries.*

The provision of the foregoing is clear and conclusive. No elector shall be denied the right to vote a nonpartisan ballot for judicial and school offices. If an elector who has registered his political party, and in that political party there is no contest and, therefore, no ballot printed, he is not thereby deprived of the right to vote a nonpartisan ballot. On the contrary, this right is specifically reserved and, regardless of the registrant declaring his political party, he may demand and vote a nonpartisan primary ballot at the primary election.

Yours very truly,

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

**214. Elections—Candidates—Secretary of State.**

It is not necessary for the Secretary of State to certify to the various County Clerks the names of the applicants for the nomination in a case where only two candidates file nomination papers for the same nonpartisan office. Such persons stand as the nonpartisan nominees at the general election and at the proper time their names should be certified to the various County Clerks to be placed upon the ballot for such general elections.

CARSON CITY, August 3, 1918.

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

DEAR SIR: I am in receipt of your favor of the 2d instant, requesting opinion “as to whether in the case wherein two candidates file nomination papers for a nonpartisan office, to which only one person can be elected, the names of such candidates should be certified by your office to the various County Clerks.”

The purpose of the primary election is to select candidates whose names will appear upon the general election ballot. Efforts have constantly been made to lessen the expense of this election as much as possible. Such is the provision that where there is no party contest for an office the name of the applicant for the nomination shall not be printed upon the primary ballot.

At present Hon. P.A. McCarran and Hon. Edward A. Ducker are the only ones who have filed as nonpartisan candidates for Justice of the Supreme Court, and Hon. John Edwards Bray and W.J. Hunting are the only persons who have filed as nonpartisan candidates for Superintendent of Public Instruction. Between these two sets of candidates there is no contest at present, and it would be an unnecessary expense to place their names upon the ballot at the primary election.

It is, therefore, the opinion of this office that it is not necessary for your office to certify to the various County Clerks the names of the applicants for nomination in a case where only two candidates file nomination papers for the same nonpartisan office. Such persons stand as the nonpartisan nominees at the general election and at the proper time their names should be certified to the various County Clerks to be placed upon the ballot for the general election.

Yours very truly,

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

BY EDW. T. PATRICK, *Deputy.*

**215. Elections—Nomination by Petition of Electors—Judicial Officers—Justices of the Peace.**

The prohibition in section 31, Stats. 1917, p. 288, against incorporating in the same petition more than one nomination for the same office does not prevent other candidates from being nominated for the same office by petition.

Any number of persons may be nominated for the same office by separate and distinct petitions.

Justices of the Peace are judicial officers.

Candidates for Justice of the Peace can be nominated only in the primary election and may not be nominated by petition.

CARSON CITY, August 5, 1918.

MR. W.H. FRYE, *Attorney at Law, Lovelock, Nevada.*

MY DEAR MR. FRYE: I am in receipt of yours of August 4th, requesting my opinion upon several questions.

As to your first question, the prohibition in Stats. 1917, p. 288, sec. 31, is against incorporating in the same petition more than one nomination for the same office. This does not prevent other candidates from being nominated for the same office by petition. Any number of persons can be nominated for the same office by separate and distinct petitions.

As to your second question, I am of the opinion that Justices of the Peace are judicial officers and within the meaning of subdivision 3 of section 1 of the Primary Act. (Stats. 1917, p. 276.)

I am therefore of the opinion that candidates for Justice of the Peace can only be nominated in the primary election and may not be nominated petition.

Hoping this answers your questions and thanking you for your kindly expressions of goodwill, I am

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

**216. Practice—Justice of the Peace—New Trials.**

It is not within the power of a Justice of the Peace to reopen a case or grant a new trial.

CARSON CITY, August 5, 1918.

HON. E.A. BLANCHARD, *Justice of the Peace, Yerington, Nevada*.

MY DEAR JUDGE: I am in receipt of yours of the 3d instant, with reference to the powers of a Justice Court to grant a new trial after a judgment has been entered. I agree with your opinion that sections 5321-5324 of the civil code on new trials are not applicable to proceedings in the Justice court.

New trials and appeals in the Justice Court are governed by chapter 83, section 3788, *et. seq.*, of the Civil Practice Act. Appeals are provided for in these sections, but there is no provision either in this chapter or at any other place authorizing the Justice of the Peace to grant new trials of actions in his court. I call your attention also to the provisions of Rev. Laws, 5815, which provides as follows:

Justice's Courts, being courts of peculiar and limited jurisdiction, only those provisions of this Act which are in their nature applicable to the organization, powers and course of proceedings in Justice's Courts or which have been made applicable by special provisions in this title, are applicable to Justice's Courts and the proceedings therein.

You will observe that the Legislature, by the provisions of this section, specifically stated that the Justice Courts are of limited jurisdiction and that the provisions of the code do not apply unless in their very nature they are made applicable to the proceedings in the court or are specially referred to in this Act. New trials are not necessarily applicable to the powers and proceedings in the Justice Courts, and there is no provision specifically adopting as part of the procedure in the Justice Court the provisions of sections 5321-5324. The very fact that the District Court provides that upon appeals the cases shall be tried *de novo* shows that the new trials were to be granted in the District Court itself.

I quite agree with you in your decision that it was not within your power to reopen the case or grant a new trial.

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

**217. Elections—Registration—Transfers.**

All of the provisions of the old registration law relating to transfers after close of

registration have been repealed by Stats. 1917, p. 425.

CARSON CITY, August 13, 1918.

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

DEAR MR. BALLARD: I am in receipt of your favor of the 5th instant, asking certain questions in regard to the registration law. In my opinion of all the provisions of the old law relating to transfers after close of registration have been repealed by the new Act (Stats. 1917, p. 425). You state:

I have read your opinion in regard to a person canceling his original registration, in cases where a transfer is not permitted, and registering in another county. You will see that the logic of this opinion would prevent him registering in another county after registration closes, and hence his cancelation of his registration after that time would only disfranchise him.

I do not think your conclusion logically follows, for the reason that our Constitution requires an elector to be a resident of the State six months and of the county thirty days. As no transfers are allowed except upon cancelation of the original registration and reregistration in another county, in order to be a qualified elector it is absolutely necessary that the person applying for registration should be a resident of the new county thirty days or he will be barred by the Constitution.

Yours very truly,

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

**218. Criminal Practice—Appeal—Dismissal of Action.**

A dismissal in an action by a District Judge on appeal for a conviction of a misdemeanor does not constitute a bar to subsequent prosecution for the same offense.

CARSON CITY, August 16, 1918.

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

DEAR MR. KENNY: I am in receipt of your favor of the 10th instant, asking construction of Rev. Laws, 7517. It appears that a man had been tried and convicted in the Justice Court for a misdemeanor and, upon appeal to the District Court, the court dismissed the action under the above-entitled section, on the ground that the facts stated in the complaint did not constitute a public offense.

You inquire whether this dismissal constitutes a bar to a subsequent prosecution for the same offense.

In Cyc. 261, it is said:

The accused is placed in jeopardy where he has pleaded and has been put on trial before a court of competent jurisdiction upon an indictment valid and sufficient in form and substance to sustain a conviction, and the jury has been sworn and impaneled and charged with the case.

It would follow, therefore, that if the indictment is not valid and sufficient in form and substance to sustain a conviction, the accused has not been put in jeopardy, and such is the case now before us.

If the facts stated in the complaint did not constitute a public offense, the court had no jurisdiction of the case and the conviction was a nullity. On page 265 of the same volume of Cyc. it is said:

In like manner a plea of former jeopardy cannot be maintained where a former conviction of the defendant for the same offense was based upon an indictment which has been set aside as insufficient. (Supported by a number of cases cited in note 52.)

We are, therefore, of the opinion that the dismissal in question does not constitute a bar to a subsequent prosecution for the same offense.

Yours very truly,

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

**219. Elections—Registration.**

Certain features of the registration law explained.

CARSON CITY, August 16, 1918.

HON. J.H. WHITE, *District Attorney, Hawthorne, Nevada.*

DEAR MR. WHITE: I am in receipt of your favor of the 14th instant, asking certain questions in regard to the registration law, and would answer the same as follows:

1. Citizens registered by a deputy registrar, who is an alien, are legally registered and entitled to vote at the ensuing primary election.
2. A registration is legal, whether made by the County clerk, Deputy County Clerk or deputy registrar, if the registration card fails to give answer to each of the queries or statements set forth on the registration.
3. Authority from a deputy registrar is equal to that of the County Clerk, except that ordinarily he can register those only within his precinct.
4. Under the circumstances stated in this question the deputy registrar may register a resident of another precinct.
5. The County Clerk has no authority to reject such registration, but may assign the person so registered to the proper precinct.
6. The County Clerk has authority to accept incomplete registrations as noted in this question, but he should have the defects corrected by the registration.
7. The requirements for production of certificate of naturalization is directory only; and, if its production is not required by the registrar who registered the applicant, the County Clerk must accept such registration.
8. Answered in response to No. 7.
9. If the County Clerk or deputy registrar is satisfied that a Mexican Indian is a citizen of the United States, he should be registered.
10. The County Clerk has no authority to cancel a registry card upon any other ground or for any other cause than is set forth in section 21 of the registration law.

My opinion on the above inquiries is based upon the following quotation from 15 Cyc. pp. 307, 308:

Statutes prescribing the mode of proceeding of public officers are regarded as directory only unless there is something in the statute which shows a different intent. Hence as a general rule a statute prescribing the powers and duties of

registration officers should not be so construed as to make the right to vote by registered voters depend upon a strict observance by the registrars of all the minute directions of the statute in preparing the voting list, and thus render the constitutional right of suffrage liable to be defeated, without the fault of the elector, by the fraud, caprice, ignorance, or negligence of the registrars; for if an exact compliance by these officers with all statutory directions should be deemed essential to the right of an elector to vote, elections would often fail, and electors would be deprived without their fault of an opportunity to vote.

Trusting this will answer your inquiries, I am

Yours very truly,

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

**220. Election—Registration—County Clerk.**

When the registration cards in the office of the County Clerk show that an elector has registered in more than one precinct in his county, it is the duty of the County Clerk to cancel the registration from the precinct within which the elector does not reside and let his true registration card stand.

CARSON CITY, August 20, 1918.

HON. S.T. KELSO, *County Clerk, Hawthorne, Nevada.*

DEAR SIR: I am in receipt of your favor of the 10th instant, wherein you inquire:

What is the duty of the County Clerk when the registration cards in his office show that an elector has registered in more than one precinct in the county?

In answer, thereto, let me say that if you are satisfied such duplicate registration has happened, it is your duty to cancel the registration from the precinct in which the elector does not reside and let his true registration card stand.

Yours very truly,

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

**221. Highways—Highway Law.**

The Highway Act does not prohibit the Department of Highways from taking over the whole or any portion of the various routes in their present condition for maintenance or expending for that purpose moneys now in the State Highway Fund and in the various county-state highway funds.

Section 14 of said Act providing for bids on improvements exceeding the sum of \$2,000 applies to construction only and not to maintenance.

CARSON CITY, August 22, 1918.

HON. C.C. COTTRELL, *State Highway Engineer, Carson City, Nevada.*

DEAR SIR: Your favor of the 12th instant, asking opinion upon certain points of the highway law, received. In answer thereto, let me reply as follows:

1. There is nothing in the Highway Act (Stats. 1917, p. 309), or in any other law which would prevent your department from taking over either the whole or any portion of the various

routes in their present condition for maintenance and expending for that purpose moneys now in the State Highway Fund and in the various county-state highway funds.

2. I am of opinion that section 14 of the Highway Act, providing for bids on improvements exceeding the sum of \$2,000, applies to construction only and not to maintenance. It is impossible from the Act in question to determine what is the unit of improvement and your Commission will have to be governed in that regard by the experience of other States.

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

**222. Corrupt Practice Act—Candidates—Statement of Expenses.**

A candidate who has not contest at the primary election is not required to file the statement of expenses specified in section 8 of the Corrupt Practice Act (Stats. 1913, p. 478).

CARSON CITY, August 28, 1918.

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

DEAR MR. BALLARD: I am in receipt of your favor of the 26th instant, asking construction of section 8 of the Corrupt Practices Act (Stats. 1913, p. 478).

You inquire whether every person who is a candidate for nomination at the primary election, whether his name is on the official ballot or not, is required to file the statement of expenses therein specified five days before and fifteen days after election at which he is a candidate.

If there is no primary contest for an office, the names of the respective candidates of the different parties do not appear upon the primary ballot; but, in case of the nomination for state office, they are retained by the Secretary of State and certified by him at the proper time before the general election to the various County Clerks. In case of a county office, the County Clerk retains these names and places them upon the ballot for the general election, together with those certified to him by the Secretary of State.

Section 8, before mentioned, provides:

Every candidate for nomination or election to public office, including candidates for the office of Senator of the United States and Representative in Congress shall, five days before and fifteen days after the election *at which he was a candidate, file, etc.*

If the persons' name does not appear on the primary ballot, it cannot be held that he was a candidate for nomination at the election. His nomination is automatic and he does not appear before the people for acceptance or rejection as a candidate. It is, therefore, the opinion of this office that said section 8 does not apply to him and it is unnecessary for him to file the statement of expenses provided in said section 8 for the primary election, but must do so five days before and fifteen days after the general election.

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

**223. Officers—Elections—County Board of Education.**

If no person files as a candidate for membership of the County Board of Education, the incumbent holds the office until the general election in 1920.

CARSON CITY, August 29, 1918.

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

DEAR SIR: I am in receipt of your favor of the 26th instant, wherein you state that there are no candidates for members of the County Board of Education in Clark County for the coming election, although one long-term and one short-term member should be elected. You inquire as to the status of the members of the board whose terms are about to expire.

This matter was settled by the provisions of Rev. Laws, 3418, which states:

Each person elected as herein provided shall enter upon the duties of his office on the first Monday in January next following his election, and shall hold office until his successor is elected and qualified.

The statute points out but one way in which the successor can be selected—namely, by election, and, as there are no candidates for these offices, there can be no successors elected at the coming election, and these persons will hold their positions, unless they resign, until the general election in 1920.

Yours very truly,

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

BY EDW. T. PATRICK, *Deputy.*

**224. Elections—Nomination—Nomination by Petition of Electors—Time—Nonpartisan Officers.**

A nomination by petition of electors filed on August 24, 1918, complies with section 31 of the primary election law (Stats. 1917, p. 287) requiring the filing of such petition at least ten days before the primary election.

A nomination to a nonpartisan office cannot be made by petition of electors.

CARSON CITY, August 29, 1918.

MRS. EDNA COVERT PLUMMER, *District Attorney, Eureka, Nevada.*

DEAR MRS. PLUMMER: In response to your favor of the 26th instant, concerning election laws, let me advise you as follows:

1. It appears that the nomination by petition of electors for the office of Constable was presented to your clerk on the afternoon of the 24th and your County Clerk wants to know if he shall file the same, contending that it should have been filed with him on the 23d.

Section 31 of the primary laws (Stats. 1917, p. 287) provides for the filing of such petition at least ten days before the primary election. Such election this year is to be held on the 3d day of September. By applying the familiar rule in computation of time that the first day is to be excluded and the last to be included, it would appear that this petition was filed ten days before the primary election and, therefore, should be received by the Clerk.

2. It appears that two nonpartisan petitions for the office of Justice of the Peace were received by your County Clerk. These, you properly advised the Clerk, should not be received by him, for the last paragraph of section 31, above quoted, (p. 288) expressly provides that no nomination for a judicial or school office shall be made by petition of electors, but candidates for all such offices shall be nominated at the primary election.

Your Clerk could not receive these petitions, not only because the time for filing had expired, but because such nominations could not be made by petition of electors. I think, however, that your Clerk should retain these petitions and put the names of those thus nominated upon the ballot for the general election if these petitions represent 5 per cent of the total vote cast for Representative in Congress at the last preceding general election in the county. Under the provisions of section 25, page 286, of the primary election law, if they do not contain such requisite 5 per cent, then no one is nominated for the office, and no one could be voted on for such office at the general election and the position will have to be filled by your County Commissioners.

Trusting this will give you the information desired, I am

Yours very truly,

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

**225. Water and Watercourses—Water Commissioners.**

Section 52 of the Water Law, providing for the appointment of Water Commissioners (Stats. 1913, p. 205) applies to adjudicated streams only.

Upon the appointment of Water commissioner it is the duty of the County Commissioners to draw warrants from month to month for the salary and expenses of the Commissioner. At the close of the season it is the duty of the State Engineer to prepare and certify a list of the owners and areas of land served by such Water Commissioner and transmit the same to the Board of County Commissioners.

CARSON CITY, September 9, 1918.

HON. GEORGE A. WHITELEY, *District Attorney, Ely, Nevada.*

DEAR SIR: Your favor of the 6th instant in relation to section 52, (Stats. 1913, p. 205) of the water law received.

Mr. Thatcher has several times held that this section does not apply except to a stream in which the rights of the various owners have been adjudicated. Assuming that your inquiry applies to such a stream and that a Commissioner has been appointed therefor, I am of the opinion that it is the duty of the County Commissioners to draw warrants from month to month for the payment of the salary and expenses of the Commissioner and at the close of the season it is the duty of the State Engineer to comply with the other portion of the section, namely, to prepare and certify a list of the owners and areas of land served by such Water Commissioners. Such board shall thereupon proceed to collect the money expended by the Water Commissioner and make the amount unpaid a lien upon the property served.

Yours very truly,

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

**226. Elections—Independent Candidates—Nonpartisan Candidates—Nomination by Petition of Election—Justices of the Peace.**

A nomination to a nonpartisan office cannot be made by petition of electors but candidates therefor should be nominated at the primary election.

CARSON CITY, September 9, 1918.

MR. W.A. WILSON, *Lovelock, Nevada.*

DEAR SIR: I am in receipt of your favor of the 4th instant, stating that your petition for independent candidate for Justice of the Peace of Lake Township, which was signed by 10 per cent of the voters of your township, has been rejected by your County Clerk. You inquire whether such rejection of your petition by the County Clerk was in accordance with law.

This matter is governed by the provisions of the Act regulating the nomination of candidates for public office (Stats. 1917, p. 276), section 4 of which provides that "All judicial offices and school offices are hereby designated as nonpartisan offices." Section 31 provides for the nomination of candidates other than party candidates by petition of electors. The last paragraph of section 31 on page 288 provides that "No nomination for judicial or school offices shall be nominated at the primary election."

A Justice of the Peace is a judicial office and is therefore governed by the provision of law last above quoted, such provision expressly excluding nomination for judicial or school offices by petition of electors. It is the opinion of this office that your County Clerk acted in accordance with law in rejecting your petition for nomination as Justice of the Peace.

Yours very truly,

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

**227. Elections—Registration—County Clerks.**

The various County Clerks are entitled to charge and receive the fee of ten cents per name provided by Stats. 1917, p. 283.

CARSON CITY, September 14, 1918.

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

DEAR MR. KENNY: I am in receipt of your favor of the 10th instant, asking certain questions in regard to the primary election law. You inquire:

1. Is the Clerk of Churchill County entitled to 10 cents a name for certified copies of list of papers used in election under section 15, chapter 155, Statutes of 1917, p. 283?
2. Do candidates for State Senate and Assembly meet with candidates at the county convention provided under section 23 of the same chapter, page 285?

The law in regard to fees of the County Clerk is found in section 3 of chapter 99, page 122, Statutes of 1913. Section 1 of said Act provides that the officer named "shall receive the following salary and fees in full compensation for the services." Said section 3 provides "the County Clerk and ex officio Clerk of the County Commissioners and ex officio Clerk of the Board of Equalization shall receive a salary of \$1,800 per annum, \* \* \* and all fees authorized by law shall be collected on the first Monday of each month and every month."

In my opinion, the fees herein mentioned are those which the County Clerk collects from litigants and others having business with him as Clerk, and do not refer to the fees which he, as ex officio registrar of voters, is authorized to charge.

The primary law of this State was enacted in 1917 (Stats. 1917, p. 276). Section 15 of said Act (p. 283) requires the proper officers to furnish a certified copy of the register for use at primary elections, which said register shall show the names of all voters entitled to vote at said election. Said registry agent shall be paid 10 cents per name for certified copies of the register for use at the primary election.

It is evident that by use of the words "registry agent," the county registrar is intended, for he

alone, as shown by the body of the Act, has control of and possesses the means of making up such certified copies.

The act fixing the compensation of your County Clerk (Stats. 1913, p. 122) above mentioned, provides in its terms, compensation for his services only as County Clerk and ex officio Clerk of the Count Commissioners and ex officio Clerk of the Board of Equalization, but does not provide for his services as county registrar.

The Primary Election Act having been passed later and providing for a fee of 10 cents per name for such certified copies of the register, I must conclude that the law of 1913 was intended by the Legislature to be amended to this extend and to provide the compensation mentioned in the section 15 thereof for all County Clerks as ex officio county registrars.

I am, therefore, of opinion that your County Clerk is entitled to charge and receive his fee of 10 cents per name for such certified copies.

Answering your second question, this office has decided that by sections 23 and 24 of the Primary Act, candidates for the Assembly and Senate ore entitled to participate both in the county and state conventions.

Yours very truly,

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

**228. Elections—Assembly Districts—Washoe County.**

The Act to establish Assembly Districts of the County of Washoe (Stats. 1917, p. 9), provides that the election of Assemblymen by the electors of each respective district therein specified.

CARSON CITY, September 16, 1918.

HON. E.D. MACK, *Reno, Nevada.*

DEAR SIR: I am in receipt of your favor of the 14th instant, asking interpretation of chapter 8, Statutes of 1917, entitled "An Act to establish Assembly Districts in the county of Washoe and providing for the election therefrom of members of the Assembly for the State of Nevada." (Stats. 1917, p. 9.)

Said Act establishes three districts, the third of which consists "of all that portion of the county of Washoe south of the city of Reno." Section 2 of said Act provides for the election of five Assemblymen from District No. 3. Section 3 of the Act requires the County Commissioners to establish the polling-places within Washoe County in such manner that each and every polling-place at all elections at which any Assembly men are to be elected or nominated for election shall be wholly within one of such Assembly Districts.

From the entire context of the Act I am of the opinion that it was the intention of the Legislature that the electors in District No. 1 should elect one Assemblyman; in District No. 2, one Assemblyman; in District No. 3, five Assemblymen.

This means that only voters living in District No. 3 can vote for the five Assemblymen at large from such district and that the voters of the other districts have no concern in and cannot vote for such five Assemblymen from the Third District.

Trusting this will give you the information desired, I am

Yours very truly,

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

**229. Elections—Candidates—Withdrawal—Vacancies.**

One who has become the nominee for political office through the primary election or through having no opposition in the primary cannot have his name omitted from the general election ballot.

The provisions of section 25 of the registration law (Stats. 1917, p. 286) in regard to filling a vacancy applies only to vacancy occurring by the death or loss of reason of the nominee.

CARSON CITY, September 16, 1918.

HON. J.H. WHITE, *District Attorney, Hawthorne, Nevada.*

DEAR SIR: I am in receipt of your favor of the 13th instant, asking the following questions in regard to the primary law:

1. What is the duty of the County Clerk, when a candidate whose name has been regularly filed as a nominee of a political party for a certain office, asks that his name be withdrawn from the list of nominees, stating that he does so by direction of the Federal Administrator (Director-General) of the Railroads, the said nominee being a federal railroad employee?

2. If the name of a candidate for such office (assuming that there is a vacancy) is offered for filing by the county central committee, is the County Clerk required to accept such filing and certify such nominee as being the candidate of his party for such office?

1. As the candidate in question has regularly filed as a nominee of a political party for a certain office his nomination paper must have been similar to that set forth on page 278, Statutes of 1917, being part of section 5 of the primary election law. This declaration states "that if nominated as a candidate of said ..... party at said ensuing election, I will accept such nomination and not withdraw; \* \* \* and that I will qualify for said office if elected thereto." This language is exactly similar to that passed upon by the Supreme Court in the case of *State v. Hamilton*, [33 Nev. 418](#), in which it was held:

One nominated at a primary election as a candidate of a political party for a public office cannot have his name omitted from the general election ballot, even though he has since the primary become incapacitated from making an active campaign.

The only kind of incapacity stated by the candidate in your letter as a reason for withdrawing is that he does so by direction of the Federal Administrator of Railroads because he is a federal railroad employee.

This reason can have no bearing upon the question whatsoever, as the United States Government has no right to interfere with state laws in a matter of this kind. The person in question is the nominee of his party for the office, and, in accordance with the decision in the case above mentioned, he cannot withdraw therefrom. It is therefore the duty of your County Clerk to refuse his request for withdrawal.

2. In my opinion there can be no vacancy for such office except that occurring by death or loss of reason of the nominee. Whether the office in question is a partisan or nonpartisan office you do not state, but in either event if a vacancy occurs in such manner it can be filled by following the provisions of section 25 (Stats. 1917, p. 286) of the primary law.

Yours very truly,

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

**230. Cities—Towns—Amendment to Charter—City of Elko—County Clerks.**

The County Clerk is not required to place on the ballot for a general state election an amendment to the charter of the city of Elko.

The “general election” mentioned in section 29 of the charter of the city of Elko (Stats. 1917, p. 145), means the general city election.

CARSON CITY, September 19, 1918.

HON. M.J. KEITH, *County Clerk, Elko, Nevada.*

DEAR MISS KEITH: I am in receipt of your favor of the 17th instant, enclosing a copy of letter from the City Clerk of the city of Elko, also copy of resolution initiating charter amendment to be submitted to the voters of the city of Elko.

You state that you have been requested to place the question of the adoption of such charter amendment on the ballot for the general election to be held this year and request the advice of this office as to whether or not the law provides for such resolution to be placed on the ballot, and if so, if the resolution is in proper form.

The Act incorporating the city of Elko is found in Stats. 1917, p. 127. Section 79 of said Act (p. 171) permits amendment of the charter in the following language: “This charter may be amended in the following manner: Proposed amendments may be initiated either by the board or by the initiative petition as provided in section 29. Any proposal thereby submitted to the electors for approval shall take the regular course in this charter prescribed, and, if approved by the majority, this charter shall be considered so amended.”

Upon referring to said section 29 of the charter (p. 145) I find that any proposed ordinance, resolution or amendment may be submitted to the board “and if such petition shall contain a request that the said ordinance, resolution or amendment be submitted to a vote of the people \* \* \* the board shall \* \* \* call a special election *unless a general city election* os to be held within ninety days thereafter.”

Section 3 of said Act provides for an election to be held on the first Tuesday after the first Monday in May, 1919, and at each successive interval of two years thereafter. This is the “general city election” mentioned in section 29.

A general election of state or county officers is to be held on November 5, 1918, in this State, but such election can in no sense be considered a general city election, and I know of no provision whereby this attempted amendment of the charter of the city of Elko may be placed upon the ballot of such general state election.

The statute is specific that the Board of Supervisors must call a special election unless a general city election is to be held within ninety days, and there is no reason to doubt that such state election is not the general city election mentioned in its charter.

The statute requires this amendment to be submitted to the electors of Elko at a special election when a general city election is to be held within ninety days. Submitting this question at a general state election will not comply with the requirements of this statute, and, therefore, I am of opinion that it is not your duty to place such proposed amendment to the charter upon the ballot to be used at the next general state election.

Yours very truly,

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

**231. Elections—Justices of the Peace—Nomination by Petition of Electors—  
Holdovers.**

A Justice of the Peace may not be nominated by petition of electors.

Candidates for the office of Justice of the Peace should be nominated at the primary election.

If no such nomination is made at the primary election no one is contesting for the office, and the incumbent is entitled to hold office without further election for two years from the expiration of the term of office to which he was elected.

CARSON CITY, September 21, 1918.

MR. W.S. RAINE, *Palisade, Nevada.*

DEAR SIR: Your favor of the 18th instant, in reference to matter of Justice of the Peace of your township, received. Your explanation was what was needed and I now can advise you on the law.

As it appears to me at present the facts are as follows: Mr. Daniel Downing is the incumbent of this office and no one filed for the office in the primary election. You and another person are circulating petitions for the office with the expectation of having them filed by the County Clerk, and your names appear on the ballot to be used at the general election as aspirants for the office, and that the one receiving the highest vote at such election will be declared the candidate elected. I am sorry to say that such is not the law.

The provision for nomination by petition of electors is found in section 31 of the Primary Act, Statutes of 1917, p. 287. This applies to any office not a judicial office. A Justice of the Peace holds a judicial office. The last paragraph of said section 31 provides that:

No nomination for a judicial or school office shall be under the provisions of this section, but all such candidates shall be nominated at the primary election.

In vie of this provision it is apparent that your petition of electors would be invalid and your County Clerk should disregard the same.

There is a further matter to be considered in connection with this situation. Rev. Laws. 2782, provides for the election of Justices of the Peace and Constables, and this section states that such officers hold their office "until their successors are elected and qualified." As there was no nomination for this office made at the primary election and there will be no one contesting for the office at the general election, it is my opinion that Mr. Downing is entitled to hold this office without further election for two years from the 1st of January, 1919, and, there being no vacancy in the office, the County Commissioners are powerless to fill the same by appointment.

Yours very truly,

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

**232. Corporation—General Corporation Law.**

The amendment to section 89 of the general corporation law, as bearing on Stats. 1917, p. 193, is effective and said amended section is now a portion of the general corporation law.

CARSON CITY, September 27, 1918.

MR. R.M. HARDY, *Attorney-at-Law, Lovelock, Nevada.*

DEAR SIR: I am in receipt of your favor of the 25th instant, asking opinion on chapter 106 of the Statutes of 1917 (p. 193), of an Act to amend an Act entitled "An Act providing a General Corporation Law." You call my attention to the fact that sections 3, 6, 19 and 70 of the General Corporation Act are properly amended, and ask my opinion as to whether section 89 has been properly amended by that portion of chapter 106, appearing on page 195. That portion says: "1190. Section 89. A corporation may be dissolved as follows," and then goes on to provide for such dissolution.

The only provision of our Constitution as to amendments is section 17 of article 4 thereof, which states, "No law shall be revised or amended by reference to its title only; but, in such case, the Act as revised or section as amended shall be reenacted and published at length."

It is the evident intention of the Legislature to amend section 89 of the corporation law by substituting therefor a new method of dissolving corporations. This intention is manifested by the figures "1190," which evidently referred to the section of the Revised Laws to be amended by the words "Section 89," which refers to the particular section of the General Corporation Law to be amended and by the fact that the new matter as introduced in said section by the amendment on page 195 is within the general scope of the old section 89.

Such intention being manifest, and the constitutional provision above mentioned having been fully complied with, it is the opinion of this office that the amendment of section 89, appearing on said page 195, is effective and that said amended section is now a portion of the General Corporation Law.

Yours very truly,

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

**233. Elections—Justices of the Peace.**

Nomination of candidates for the office of Justice of the Peace must be made at the primary election.

CARSON CITY, October 8, 1918.

MR. HARRY G. PRAY, *Attorney at Law, Room 4, Byington Building, Reno, Nevada.*

DEAR SIR: I am in receipt of your of the 2d, requesting an opinion as to whether or not a man can be a candidate for the office of Justice of the Peace after the close of the primary and without being a candidate for nomination at the primary.

I am of the opinion that he may not. Nomination of candidates for all public offices is governed by chapter 155, Stats. 1917, p. 276. The Primary Act provides by section 4 that all judicial and school offices shall be nonpartisan and the names of nonpartisan officers shall appear alike on all ballots of every political party without party designation.

The last paragraph of section 31 of the same Act provides as follows: "No nomination for judicial or school office shall be under the provisions of this section, but all such candidates shall be nominated at the primary election."

I hope this fully answers your question.

Yours very truly,

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

**234. Employer and Employee—Eight-Hour Law—Janitors.**

The provisions of section 6778, Rev. Laws, applies to janitors employed by the counties of this State.

CARSON CITY, October 16, 1918.

HON. ROBT. F. COLE, *Labor Commissioner, Carson City, Nevada.*

DEAR SIR: I am in receipt of your favor of the 11th instant, directing my attention to Rev. Laws, 6778, which provides:

On public works, all works or undertakings carried on or aided by the county, state, or municipal governments, eight hours shall constitute a day's labor.

You state that from personal observation you know that the janitor work carried on by the county of Washoe at the courthouse is being conducted on a twelve-hour basis, and you ask a ruling as to whether or not the above-mentioned section is applicable to janitor service in the various counties of the State.

In response thereto, let me say that, in the opinion of this office, such action is a clear violation of Rev. Laws, 6778.

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

**235. State Labor Commissioner—Appropriation.**

The unused portion of the appropriation made by the Legislature of 1917, for the salary of the Labor Commissioner and support of the labor commission, may lawfully be used for the support of the Commission.

CARSON CITY, October 22, 1918.

HON. ROBT. F. COLE, *Labor Commissioner, Carson City, Nevada.*

DEAR SIR: I am in receipt of your favor of the 20th instant, wherein it appears that the Legislature for 1917 made an appropriation—

For salary of Labor Commissioner; support of Labor Commission, \$5,000.

It further appears that the sum of \$125 still remains in this fund representing the unpaid portion of the Commissioner's salary during the year 1917 caused by a vacancy in the office.

You inquire whether this unpaid portion of the salary may be used in the support of the Commission.

According to the terms of the appropriation the \$5,000 is liable both for salary and support, and it is, therefore, the opinion of this office that the \$125 referred to may lawfully be used for the support of the Commission.

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

**236. Officers—Disqualification of—Removal of—Malfeasance in Office—Crimes and Punishment.**

The provisions of section 6287, Rev. Laws, do not apply to an officer removed from office under the provisions of sections 2851-2854. The former section applies to officers

removed after trial on indictment or accusation by grand jury or information by District Attorney. Section 6287 is a penal statute and is to be strictly construed. A removal under the last-named sections does not disqualify an officer from being a candidate for election nor will it disqualify him from holding office if elected.

[COPY OF WESTERN UNION TELEGRAM]

RENO, NEVADA, October 28, 1918.

JAMES W. WOODARD, SR., *Las Vegas, Nevada.*

Patrick's telegraphic opinion to you of October 22 in response to your telegram of October 21 just called to my attention. I cannot agree with Patrick's Opinion. I am of the opinion after a careful examination of the complaint that Gay was removed from office for nonfeasance in office. Rev. Laws, 6287, disqualifies a public officer from afterward holding public office when there is a conviction of a felony or malfeasance in office. The statute under which Gay was removed was one providing for summary removal. There was no conviction of Gay of any felony or malfeasance in office. Such a conviction could only be had after an indictment or accusation by grand jury or by an information by District Attorney and a jury trial. Section 6287 in my opinion is a penal statute and is to be strictly construed and no person can be construed as coming within its provisions unless it is clear beyond a reasonable doubt that the facts bring him within it. I call your attention to *Ex Parte Davis*, [33 Nev. 309](#). I am of the opinion that Gay's removal, as shown in the transcript to the Supreme Court, does not prevent him from either being a candidate for election to the office of Sheriff nor will it disqualify him from holding such office if he be elected. In justice to Mr. Gay, I am wiring him a copy of this opinion.

Yours very truly,

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

**237. Officers—Term of Office.**

Any person elected to office at the general election does not take possession of such office until the first Monday of January succeeding the general election.

CARSON CITY, November 9, 1918.

MR. C.E. KIBLINGER, *County Commissioner, Gold Hill, Nevada.*

DEAR SIR: I am in receipt of your favor of the 8th instant, asking information in regard to the status of your Sheriff.

It appears that the Sheriff of the county died and Mr. J.J. Carew was appointed Sheriff "until his successor is elected and qualifies." Mr. Carew ran for this office at the last election and was defeated by Mr. T.J. Hurley. The question is now who takes the office for the balance of the term of Mr. O'Connor.

Rev. Laws, 2781, provides that the various county officers shall be chosen by the electors of the respective counties at the general election of the year 1866 and at the general election every two years thereafter "and shall enter upon the duties of their respective offices on the first Monday of January subsequent to their election." If any one filed for the unexpired term of Mr. O'Connor and was elected, he would be entitled to fill the office until the first Monday of

January next; if no one was elected for such unexpired term, then there is a vacancy in the office up to the first Monday of January next and the same may be filled by the Board of County Commissioners.

Mr. Hurley, who was elected at the last general election to such office, does not take office until the first Monday of January next.

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

**238. Counties—Employees—Stenographers—Compensation.**

There is no law which prevents a stenographer in the office of the District Attorney from reporting proceedings in the Justice's Court. Upon performance of such work, the stenographer is entitled to receive the compensation provided by law therefor, in addition to her regular salary.

CARSON CITY, November 15, 1918.

MISS M.U. SHIELDS, *Tonopah, Nevada.*

DEAR MISS SHIELDS: We are in receipt of your letter of the 12th instant, requesting an opinion upon the following question:

Is it not allowable for an employee drawing salary by the month from the county, to receive compensation also as per statute for work done in Justice's Court? For instance, is there anything in the law to prevent an employee on salary at \$100 per month in the District Attorney's office, from receiving the per diem and per folio rate for reporting and writing up the preliminary hearing and inquisition in the Justice's Court during that month?

There is no law which prevents a stenographer in the office of the District Attorney reporting proceedings in the Justice's Court. In the absence of such a provision you are legally entitled to perform such work and to receive the compensation provided by the law therefor in addition to your regular salary.

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

BY WM. McKNIGHT, *Deputy.*

**239. Elections—County Commissioners—Canvass—Returns.**

In making the canvass of election returns, the Board of County Commissioners is nothing more or less than a board of canvassers, and they have no right to go back of the certificate of the judges of election or check the tally marks. Such board can only add up the totals from each precinct, and, in adding such totals, they can use only those expressed in the certificate of the inspectors and clerks.

RENO, NEVADA, November 15, 1918.

HON. S.W. BELFORD, *Attorney at Law, Reno, Nevada.*

DEAR SIR: I am in receipt of your request for an opinion on the following state of facts:

The County Commissioners of Washoe County, in making a canvass of the votes of the recent election for the office of Assemblyman, have determined that L.K. Gregory received in this county a majority of four votes over Joseph F.

McDonald. The determination of the board was reached, as I am advised, by checking the tally marks in aa certain precinct in the city of Reno which showed an excess of five votes over the total as certified to by the inspectors and clerks of election. In other words, the Board of County Commissioners in making an abstract of the votes followed the tally marks instead of the written totals, and went beyond the totals, as appearing in the certificate, to ascertain the actual number of votes from the tally marks.

This question is governed by sections 16 and 25 of the General Election Law of 1917, Statutes of 1917, pp. 363, 366. Section 16 provides as follows:

The ballots and poll-lists agreeing, or being made to agree, the board shall then proceed to count and ascertain the number of votes cast, and for whom cast, and when completed, the clerks shall set down in their poll-books, the name of every person voted for, written at full length, the office for which such person received such votes, and the number he did receive, the number being expressed in writing at full length, and also in figures; such entry to be made, as nearly as the circumstances will admit, in the following form, to wit:

At an election held at the house of A.B., in the town or precinct) of ....., in the county of ....., and the State of Nevada, on the ..... day of ....., A.D. ....., the following-named persons received the number of votes annexed to their respective names for the following-described officers, to with:

- A.B. had ..... votes for Member of Congress.
- C.D. had ..... votes for State Treasurer.
- E.F. had ..... votes for State Controller.
- G.H. had..... votes for State Superintendent of Public Instruction.

- I.J. had ..... votes for member of State Senate.
  - K.L. had ..... votes for member of the Assembly.
- (And in like manner for any person voted for.)

M.N.,  
O.P.,  
Q.R.,  
Inspectors of Election.

Attest: A.B.,  
C.D.,  
Clerks of Election.

Section 25 provides in part as follows:

That on the tenth day after the close of any election, or sooner if all the returns be received, the Board of County Commissioners shall proceed to open said returns and make abstract of the votes.

It will be observed from section 16 that the Legislature has taken every precaution to protect the integrity of the certificate. It has required a certificate by the inspectors and clerks of election, and has specified the form thereof; the Legislature has required that the name of every person voted for shall be written at full length; that the number of votes he received shall be expressed in writing and at full length, and also in figures.

I am of the opinion that the certificate controls, and that the Board of County Commissioners, under section 25, are nothing more or less than a board of canvassers, and that they have no right to go back of the certificate, and inspect or check the tally-marks. The Board of County Commissioners, as a board of canvassers, can only add up the totals going from each precinct, and in adding up the totals, they can only add up the totals as expressed in the certificate of the inspectors and clerks. If the Board of County Commissioners were permitted to check the tally-marks, what would there be to prevent them from going still further back and recount the ballots?

Yours very truly,

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

**240. Corporation—Secretary of State—Appointment of Agent—Foreign Corporations.**

The proper fee for the Secretary of State to charge for filing a certificate of appointment of agent of a foreign corporation is five (\$5) dollars.

CARSON CITY, November 15, 1918.

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

DEAR SIR: We are in receipt of your request for an opinion as to what is—

the proper fee to charge for filing appointment of agent, under the provisions of the Act of 1889.

It is unnecessary at this time to discuss the provisions of the Act mentioned, because your fees are regulated by section 102 of the General Corporation Law (Stats. 1913, p. 58), wherein it is provided that:

On filing any certificate or articles or other paper relative to corporations in the office of the Secretary of State, for the use of the State: \* \* \* For all certificates not hereby provided for, five dollars; *provided*, that no fees shall be required to be paid by any religious or charitable society or educational association having no capital stock; *and provided further*, that foreign corporations shall pay the same fees to the Secretary of State as are required to be paid by corporations organized under the laws of this State.

You are, therefore, advised that the proper fee to charge for filing a certificate of appointment of process agent for a foreign corporation is \$5.

Yours very truly,

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

BY WM. McKNIGHT, *Deputy*.

**241. Elections—County Clerks—Fees.**

County Clerks are entitled to charge and receive for their own use the fee of 10 cents per name provided for furnishing certified copies of the register for use at the primary election named in section 15 (Stats. 1917, p. 283).

CARSON CITY, November 21, 1918.

HON. L.E. GLASS, *County Clerk, Nye County, Tonopah, Nevada*.

DEAR SIR: We are in receipt of your letter of recent date, wherein you request an opinion as

to whether or not you are entitled to any fee in addition to your regular salary for preparing certified copies of the register used at the primary election.

By section 8 of the general registration law (Stats. 1917, p. 426) it is provided that:

The County Clerk of each county of the State of Nevada is hereby declared to be an ex officio county registrar of such county.

The primary election law makes provision for the furnishing of certified copies of the register showing the names of all persons entitled to vote at such primary. Section 15 of said Act (Stats. 1917, p. 283) reads in part as follows:

Said register shall be made by taking the names of all voters on the register on the fifteenth day preceding the primary election. Said registry agent shall be paid ten cents per name for certified copies of the register for use at the primary election.

From a reading of the entire Act, it is apparent that the *registry agent* named in section 15 is the *ex officio county registrar* provided for in the registration law, because such *county registrar* is the only person having control of and possessing the original list of names from which having control of and possessing the original list of names from which certified copies could be made. As the County Clerk is ex officio county registrar and as the statutes distinctly provide for the payment of a fee for the furnishing of certified copies, it is clear that you are entitled to such fee unless there be something in the Act fixing your salary as County Clerk that prevents it.

The compensation of the County Clerk of Nye County is fixed by the Act of 1915 (Stats. 1915, p. 429), section 1 of which reads as follows:

The County Clerk shall receive a salary of three thousand dollars per annum for all his services in said office, and shall be allowed a deputy, to be named by him, at a compensation of eighteen hundred dollars per annum, and shall collect in advance, and monthly turn over to the County Treasurer of the county, fees and compensation received by him in said office.

This statute limits the County Clerk, for all services as such Clerk, to a flat salary of three thousand dollars per annum. Nothing whatever is said with reference to any ex officio services which might later be performed pursuant to any other statute, and no language is used which could, under any stretch of the imagination, be said to include any ex officio office attached to that of County Clerk. (Opinions of Attorney-General, 1918, 227; *Bradley v. Esmeralda County*, [32 Nev. 159](#).)

We are, therefore, of the opinion that you are entitled to charge for and to receive the fee of 10 cents per name for furnishing certified copies of the register for use at the primary election.

Yours very truly,

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

BY WM. McKNIGHT, *Deputy*.

#### **242. Elections—Ballots—Marking Of.**

Stats. 1917, p. 372, provides the method in which ballots shall be marked by the elector, and ballots upon which a cross was made with a lead pencil or pen or by marking with the wrong end of the stamp should be rejected.

CARSON CITY, November 23, 1918.

MRS. BETSY O'REILLY GAMBLE, *Las Vegas, Nevada*.

DEAR MRS. GAMBLE: Mr. Arthur M. Allen, Special Agent of the Department of Justice, has handed us your letter of the 17th instant, wherein you ask whether an election ballot marked with ink should be counted. Replying thereto, will say that the law (Stats. 1917, p. 372) specifically provides that the voter—

shall prepare his ballot by stamping a cross or X in the square, and in no other place, after the name of the person for whom he intends to vote for each office. In case of a constitutional amendment or other question submitted to the voters, the cross or X shall be placed in the square after the answer, which he desires to give.

Such stamping shall be done with a stamp in black ink, which stamp, ink, and ink-pad shall be furnished in sufficient number by the County Clerk for each election precinct in the county.

In *State v. Baker and Josephs*, [35 Nev. 300](#), the court held that ballots upon which the cross was made with lead pencil or pen or by marking with the wrong end of the stamp, as with pen or brush, should be rejected. Trusting that the above gives you the desired information, we are

Yours very truly,

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

BY WM. McKNIGHT, *Deputy*.

**243. Prohibition—Initiative Prohibition Law—Time of Taking Effect.**

The initiative prohibition measure will become a law and take effect at 12.01 a.m., December 17, 1918.

CARSON CITY, November 23, 1918.

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

DEAR MR. HARMON: We are in receipt of your recent letter, in which you request to be advised as to the exact time the initiative prohibition law takes effect.

Section 3 of article 19 of the Constitution provides that if a majority of the qualified electors voting upon an initiative measure shall approve of such measure it shall become a law and take effect from the date of the official declaration of the vote.

In section 26 of the Act relating to elections (Stats. 1917, p. 367) it is provided:

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 and against any questions submitted.

The third Monday of next December, the day on which the votes will be officially opened and canvassed, comes on the 16th day of that month. The official declaration of the vote will, therefore, be made on December 16, 1918.

It is *from the date* of such official declaration that an initiative measure receiving a majority of the votes cast becomes a law and takes effect.

“From the date” was said by Lord Mansfield, in *Pugh v. Duke of Leeds*, Comp. 714, to be synonymous with the phrase “from the day of the date.” (*Kim v. Osgood’s Admr.*, 19 Mo. 60; *Oatman v. Walker*, 33 Me. 67; *Bigelow v. Willson*, 18 Mass. 485.)

The *day of the date* in this particular case is the *16th*, because “*date*” means the same in its legal as in its ordinary sense and imports the day of the month, the month and the year. (*Heffner v. Heffner*, 48 La. Ann. 1088.)

A “day,” in legal consideration, constitutes twenty-four hours, extending from midnight to midnight. (*Muckenfuss v. State*, 55 Te. Cr. R. 229, 116 S.W. 51, 20 L.R.A.n.s. 783, 131 Am. St. Rep. 813, 16 Ann. Cas. 768; *State v. Richardson*, 16 N.D. 1, 109 N.W. 1026; *Cheek v. Preston*, 34 Ind. App. 343, 72 N.E. 1048; 2 Words and Phrases, 1834.)

And fractions of a day in statutes or legal proceedings are not generally considered. (*Towell v. Hollweg*, 81 Ind. 154; *Brainard v. Bushnell*, 11 Conn. 16; *Cummings v. Holmes*, 11 Ill. App. 158; *Inhabitants v. Inhabitants*, 62 Mass. 371.)

The word “from,” in speaking of time from a certain day, generally excludes the day to which it relates. (*People v. Hornbeck*, 61 N.Y. Supp. 978, 30 Misc. Rep. 212; *Bigelow v. Willson*, 18 Mass. 485; *Peables v. Hannafoid*, 18 Mass. 106; *Kendall v. Kingsley*, 120 Mass. 94; *Rand v. Rand*, 4 N.H. 267.)

In view of the foregoing, it is our opinion that the initiative prohibition measure will become a law and take effect at 12:01 o’clock a.m., December 17, 1918.

Yours very truly,

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

BY WM. McKNIGHT, *Deputy*.

**244. Prohibition—License—Refund—Initiative Prohibition Law.**

A license may recover back the unearned license fee where the license has been revoked wholly by reason of change in governmental policy by the State, and where there is no fault on the part of the licensee.

The initiative prohibition law takes effect at 12:01 a.m., December 17, 1918.

Counties and municipalities should make refund for the unearned portion of each license after the taking effect of the law upon presentation of proper bills.

CARSON CITY, November 26, 1918.

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

DEAR SIR: Your recent letter relative to the initiative prohibition measure duly received. The questions therein asked will be taken up and answered in their order, as follows:

1. Is any refund legally due and payable to the holder of a liquor license, state and county, as a consequence of the “dry” initiative measure being successful at the recent election?

Although there are some decisions to the contrary, principally among which might be mentioned *Fitzgerald v. Witchard*, 130 Ga. 552, 16 S.E. 227, 16 L.R.A.n.s. 519, and *Peyton v. Hot Spring County*, 53 Ark. 236, 13 S.W. 764, the great weight of authority is to the effect that a licensee may recover back the unearned portion of the license fee where the license has been revoked wholly by reason of a change in governmental policy by the State, and where there is no fault on the part of the licensee. (*Pearson v. Seattle*, 14 Wash. 438, 44 Pac. 884; *Martel v. East St. Louis*, 94 Ill. 67; *Hirn v. State*, 1 Ohio St. 15; *Sharp v. Cartage*, 48 Mo. App. 26; *Marshall v. Snediker*, 25 Tex. 460, 78 Am. Dec. 534; *Auburn v. Mayer*, 58 Neb. 161, 76 N.W. 462; *Allsman v. Oklahoma City*, 21 Okl. 142, 95 Pac. 468, 16 L.R.A.n.s. 511, 17 Ann. Cas. 184.)

In our opinion, therefore, each of the various license holders will be entitled, when his license become void by reason of the taking effect of the initiative prohibition law, to a refund for the unearned portion of such license.

2. If a refund is due, when does it begin to run?

The initiative prohibition law will take effect at 12:01 o'clock a.m. on December 17, 1918. (Atty.-Gen. Opin. Nov. 23, 1918.)

The counties and municipalities should make refunds for the unearned portion of each license after taking the effect of the law, upon the presentation of proper bills. So far as the State is concerned, no refunds can be made prior to legislative action, as no money can be drawn from the state treasury but in consequence of appropriations made by law. (*State v. Eggers*, [29 Nev. 469](#); *State v. La Grave*, [23 Nev. 125](#).)

Yours very truly,

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

BY WM. McKNIGHT, *Deputy*.

**245. Prohibition—Initiative Prohibition Act—Liquors, Storage Of.**

The initiative prohibition measure does not prevent one, prior to midnight on December 16, 1918, from storing intoxicating liquor in his home for his own future personal use or from personally using it after such date; such liquor so stored before the law takes effect cannot legally be given or furnished to another after the law becomes effective.

CARSON CITY, November 29, 1918.

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

DEAR SIR: In response to your oral request for an opinion as to whether or not a person may, under the new prohibition law, store intoxicating liquor in his home for his own consumption, will say that there is nothing in the initiative prohibition measure which prevents one, prior to midnight on December 16, 1918, from storing intoxicating liquor in his home for his own future personal use, or from personally using it after said date; but such liquor so stored before the law takes effect cannot be legally given or furnished to another after the law becomes effective.

Yours very truly,

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

BY WM. McKNIGHT, *Deputy*.

**246. Prohibition—Initiative Prohibition Law—Intoxicating Liquors.**

After the prohibition law becomes effective, it is not unlawful for one to have intoxicating liquor in his house for his own personal use, provided such liquor is placed in his home prior to the time the law takes effect.

Persons invited to the home as guests cannot legally be served with intoxicating liquor.

The prohibition law will take effect at 12:01 a.m., December 17, 1918.

CARSON CITY, November 29, 1918.

HON. C.P. FERREL, *Sheriff, Washoe County, Nevada*.

DEAR MR. FERREL: Replying to your recent letter, relative to the initiative prohibition

measure, will say that your various questions, in our opinion, should be answered as follows:

1. It will not be unlawful, after the prohibition law becomes effective, for one to have intoxicating liquor in his home for his own personal use, provided such liquor is procured and placed in such home prior to the time that the law takes effect.
2. Friends invited to the home as guests cannot legally be served with intoxication liquor.
3. The prohibition law will take effect at 12:01 a.m. December 17, 1918.

Yours very truly,

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

BY WM. McKNIGHT, *Deputy*.

**247. Public Schools—School Teachers—Salaries—Quarantine—Epidemic.**

Teachers should be paid full salaries for one thirty-day intermission caused by epidemic, even though the schools be actually closed for a longer period.

If the school board, in good faith, reopens the school before the expiration of thirty days from the date of closing and later finds it necessary to again close them for a period not exceeding thirty days, the teachers are entitled to their full salaries.

But, if the school board reopens a closed school and later closes it for the apparent purpose of attempting to avoid the letter of the statute, the teachers are entitled to salaries for but one thirty-days intermission.

CARSON CITY, December 10, 1918.

MR. THOMAS E. POWELL, *District Attorney, Humboldt County, Winnemucca, Nevada*.

DEAR MR. POWELL: We wish to acknowledge receipt of your letter of the 9th instant, in which you state that many school boards, in order to be able to pay the teachers for the full time during the period of the epidemic of influenza, have paid them for a thirty-day intermission according to law and then convened the schools for one day, when they were again closed, the purpose being to avoid the statute and pay the teachers for successive thirty-day intermissions. You ask whether such procedure violates the law.

By section 104 of the Act concerning public schools (Stats. 1917, p. 398), it is provided:

A school month shall consist of four weeks of five days each, and teachers shall be paid only for the time in which they are actually engaged in teaching; *provided*, that when an intermission of less than six days is ordered by the Trustees no deduction of salary shall be made therefor; *and provided further*, that when on account of sickness or epidemic a longer intermission is ordered by the Board of School Trustees or by a duly constituted Board of Health, and such intermission or closing does not exceed thirty days at any one time, there shall be no deduction or discontinuance of salary or salaries therefor. The term "teacher," as used in this Act, shall be understood to mean teachers, principals and superintendents of the elementary and secondary schools of this State.

This section specifically provides that there shall be no deduction or discontinuance of salary when the intermission or closing, on account of an epidemic, is duly ordered and does not exceed thirty days at any one time.

Literally construed, the statute would prevent a teacher from securing any salary for any part of a period of intermission, if the entire period exceeded thirty days; literally construed, it would give a teacher full salary for an entire period of intermission lasting several months, if such

period was broken every month by one day's teaching. It is readily seen that the literal meaning is absurd and, if given effect, would work injustice, depending entirely upon the will or caprice of the school board. Under such circumstances, it is universally held that the spirit or reason of the law will prevail over the letter. In our opinion, the spirit and reason of this particular statute demands the following conclusions:

Teachers should be paid full salaries for one thirty-day intermission caused by an epidemic, even though the schools be actually closed for a longer period.

If the school board, in good faith, reopens the schools before the expiration of thirty days from the date of closing and later finds it necessary to again close them for a period not exceeding thirty days, the teachers are entitled to their full salaries.

But, if the school board reopens a closed school and later closes it for the apparent purpose of attempting to avoid the letter of the statute, the teachers are entitled to salaries for but *one* thirty-day intermission.

Yours very truly,

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

BY WM. McKNIGHT, *Deputy*.

**248. Prohibition—Initiative Prohibition Act—Druggists—Intoxicating Liquors.**

(1) Druggists may carry in stock and sell for medicinal purposes, upon prescription, any United States pharmacopeia or national formulary preparation in conformity with the Nevada pharmacy law, which includes whisky, brandy, and many other of the most intoxicating liquors.

(2) Druggists may carry in stock and may sell for medicinal purposes upon prescription and for mechanical, pharmaceutical and scientific purposes, upon affidavit, pure grain alcohol.

(3) Druggists may carry in stock and sell, without a prescription, any preparation which is exempted by the provisions of the national pure food law, if the sale of same does not require the payment of a United States liquor dealer's tax.

CARSON CITY, December 14, 1918.

HON. W.E. BALDY, *District Attorney, Ormsby County, Carson City, Nevada*.

DEAR SIR: We are in receipt of your recent request for an opinion upon the following questions:

1. Can a druggist have in his store whisky, brandy, wine, etc., for use of physicians' prescriptions?
2. Can a druggist have in stock and sell, without physicians' prescriptions, patent medicine containing alcohol, or such articles as bay-rum or witch-hazel?

The initiative prohibition measure provides that a common carrier or transportation company may bring or carry into this State, or carry from one place to another within the State, pure grain alcohol and wine, and such preparations for druggists as may be sold by them for the special purposes and in the manner as set forth in section four, and that druggists may receive and possess the same.

Section 4 of the Act reads in part as follows:

The provisions of this Act shall not be construed \* \* \* to prevent the sale and keeping and storing for sale by druggists of pure grain alcohol for mechanical, pharmaceutical, medicinal and scientific purposes, or of wine for sacramental

purposes, by religious bodies, or any United States pharmacopeia or national formulary preparation in conformity with the Nevada pharmacy law, or any preparation which is exempted by the provisions of the national pure food law, and the sale of which does not require the payment of a United States liquor dealer's tax.

The section further provides that no druggist shall sell any such *grain alcohol* for *medicinal* purposes except upon a written prescription, in a prescribed form, of a physician of good standing in his profession and not of intemperate habits, or addicted to the use of any narcotic drug; and that it shall be lawful for a druggist to sell *grain alcohol* for *pharmaceutical, scientific and mechanical* purposes, or wine for sacramental purposes by religious bodies, only to any person, not a minor, and who is not of intemperate habits, or addicted to the use of narcotic drugs, who shall, at the time and place of such sale, make and file an affidavit in the form prescribed by the Act.

Although the Act does not specifically require a prescription or an affidavit for the sale of anything except alcohol and wine, it does provide that any druggist who shall sell or give away *any liquors* without such affidavit or prescription shall be deemed guilty of a misdemeanor and be subject to a penalty. As a penalty implies a prohibition, the literal construction of the statute requires that the prescribed affidavit or prescription must be filed with the druggist before he can sell or give away *any liquors*. The word "liquors," as used in the Act,

shall be construed to embrace all malt, vinous or spirituous liquors, wine, porter, ale, beer or any other intoxicating drink, mixture or preparation of like nature; and all malt or brewed drinks, whether intoxicating or not, shall be deemed malt liquors; \* \* \* and all liquids, mixtures or preparations, whether patented or not, which will produce intoxication, and all beverages containing so much as one-half of one per centum of alcohol by volume, shall be deemed spirituous liquors, and all shall be embraced in the word "liquors."

This language, literally construed is certainly sufficiently broad and comprehensive to include every liquor which contains any quantity of alcohol. It is a matter of common knowledge that alcohol is the intoxicating principle or the basis of all intoxicating drinks, and that whatever contains alcohol will, if a sufficient quantity be taken, produce intoxication. Consequently, all liquor containing alcohol is within the letter of the statute. But, if the letter of the statute be followed, many absolutely necessary toilet and culinary purposes are included within any one of the four. A person who desires bay-rum or cologne for toilet purposes or lemon extract for cooking purposes cannot get a physician's prescription, therefor, nor file an affidavit that he intends to use it for mechanical pharmaceutical or scientific purposes, and yet only in those ways does the Act provide for sales. Neither can a person, if the statute be literally followed, purchase any one of the numerous meritorious patent medicines, without a prescription. As a prescription cannot, in many instances be obtained, the purchase of many of such medicines will be absolutely prohibited.

Druggists selling intoxicating liquor or grain alcohol, used for filling prescriptions, must take out special-tax stamps as retail liquor dealers. Without the payment of a United States liquor dealer's tax, they cannot sell filled prescriptions containing grain alcohol. Literally construed, the Act will prevent the sale of any United States pharmacopeia or national formulary preparation in conformity with the Nevada pharmacy law, if the same contains alcohol, for the reason that such sale requires the payment of a United States liquor dealer's tax. And, if the payment of the

tax be sufficient to prevent the sale of any pharmacopeia or national formulary preparation, it is also sufficient to prevent the sale of grain alcohol.

It is apparent, particularly in view of the fact that section 13 of the Act contemplates the payment of such a tax, that the letter of the law is absurd and must give way to its spirit and reason.

Besides, the initiative prohibition measure is a penal statute. All of its provisions, with reference to druggists, are exceptions to the general law. Under the rules governing the construction of penal statutes, provisions creating exceptions must be liberally construed. (*Ex Parte Davis*, [33 Nev. 309](#), 110 Pac. 1131.)

In the opinion of this office, the spirit and reason of the law, liberally construed with reference to druggists, justify the following conclusions:

1. Druggists may carry in stock and may sell for medicinal purposes, upon prescription, any United States pharmacopoeia or national formulary preparation in conformity with the Nevada pharmacy law, which includes whisky, brandy, and many other of the most intoxicating liquors.

2. Druggists may carry in stock and may sell, for medicinal purposes upon prescription and for mechanical, pharmaceutical and scientific purposes upon affidavit, pure grain alcohol.

3. Druggists may carry in stock and may sell, without a prescription, any preparation which is exempted by the provisions of the national pure food law, if the sale of the same does not require the payment of the United States liquor dealer's tax.

Yours very truly,

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

BY WM. McKNIGHT, *Deputy*.

#### **249. Public Schools—School Teachers—Salaries—Epidemic—Quarantine.**

School trustees may lawfully pay salaries of teachers for an intermission of thirty days caused by declaration of quarantine on account of an epidemic, and, if it is necessary to close the school again at the expiration of said time, they may declare another thirty days' intermission and pay salaries therefor.

CARSON CITY, December 16, 1918.

MR. WILLIAM M. HANSEN, *Gardnerville, Nevada*.

DEAR SIR: In answer to your favor of the 12th instant asking the law in regard to the payment of teachers during quarantine, let me say that section 104 of the School Code was amended by the Statutes of 1917, p. 398, by adding the additional proviso "that when on account of sickness or epidemic a longer intermission is ordered by the Board of School Trustees or by a duly constituted Board of Health, and such intermission or closing does not exceed thirty days at any one time, there shall be no deduction or discontinuance of salary or salaries therefor."

Under such amendment this office has held that School Trustees may lawfully pay salaries of teachers for an intermission of thirty days, and, if the epidemic or quarantine is not lifted at the end of that time, the board may cause the school to assemble again and after one day's session declare another thirty-day period of quarantine, during which, of course, the teachers' salaries will continue.

Trusting this will give you the information desired, I am

Yours very truly,

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

**250. Counties—County Commissioners—Budget—Road Expenses—Claims Against Counties.**

The Board of County Commissioners is authorized, under the provisions of section 1508, Rev. Laws, to allow a claim for expenses in holding train for the accommodation of a witness in a criminal case.

Taxes of 1918, already paid in, cannot be used for paying road expenses.

County Commissioners are confined to the budget provided in Stats. 1917, p. 249, and any deficiency or any fund thereof, must be made by section 11 of said Act in relation to emergency loans.

Certain facts held not to be within the provisions of section 1530, Rev. Laws, providing that in letting of contracts where the aggregate exceeds the sum of five hundred dollars, the County Commissioners shall advertise for bids for said contracts.

CARSON CITY, December 19, 1918.

MRS. EDNA COVERT PLUMMER, *District Attorney, Eureka, Nevada*.

DEAR MRS. PLUMMER: Owing to press of business it has been impossible to answer your favor of the 6th instant, asking information on several matters, until this time. I trust the delay has not inconvenienced you or the commissioners. Permit me to answer your various inquiries as follows:

First—A bill for expenses in holding train and telegram, amounting to \$21.50, was presented to your board and passed, and the auditor vetoed the claim.

These expenses were incurred in the prosecution of a criminal action, and the auditor vetoed the claim on the ground that the State was a party to the suit and that the county was not interested in it. The auditor was clearly wrong in his ruling, as the county is also a party to every criminal suit, although the State is the nominal plaintiff, and you were correct in advising the Commissioners that they had a right to allow this claim under the twelfth subdivision of section 1508, Rev. Laws, which gives the Board of County Commissioners power to control the prosecution or defense of all suits in which the county is a party.

If they did not have such power they would have no right to allow witness fees in any ordinary criminal action.

Second—Your county officers wish to know whether the taxes of 1918, already paid in, can be used for paying road expenses. It seems that, owing to severe storms in your county, there was much road-work done and the county fund was not sufficient to pay the expenses incurred.

In my opinion the Act regulating the fiscal management of county, cities, towns and school districts and other governmental agencies (Stats. 1917, p. 249) gives the answer to this question. Section 3 of the Act requires the County Commissioners to prepare a budget: section 4 makes it unlawful for any Commissioner or Board of Commissioners, or any officer of the county, to allow or contract for any expenditure unless the money for the payment thereof is in the treasury and especially set aside for such payment.

I assume that the county of Eureka followed this law in 1918 and prepared a budget and the county road fund, therein provided, proving insufficient, section 4 expressly prohibits the use of any moneys not in the budget for making up the deficiency.

This deficiency, however, may be made by using the provisions of section 11 of the Act in regard to emergency loans. As the deficiency is small, the same may be met by the provisions of Rev. Laws, 1540, which allows the County Commissioners to transfer any surplus moneys which may be in any of the county funds from fund to another.

Third—It seems that the jail of Palisade, Nevada was destroyed by fire; that the Commissioners had the jail at Buckhorn torn down by a certain person at day's labor; that another person hauled the lumber therefrom and was paid at the rate prevailing in the county; that when the lumber was delivered in Palisade, the person who tore down the jail at Buckhorn rebuilt the jail at Palisade at day's wages, and that, in addition to the lumber from the Buckhorn jail, the County Commissioners ordered additional lumber and cement, which additional material was used for building a room for holding the county fire-fighting machine, and for a toilet.

When all the work was finished, it was found the entire cost was over \$500 and you wish to know whether the County Commissioners in view of Rev. Laws, 1530, are authorized to allow and pay the claim for the same.

Section 1530 provides that in letting contracts, when the aggregate exceeds the sum of five hundred dollars, the County Commissioners shall advertise such contracts to be let.

In my opinion, said section does not apply, because it appears that at least four different contracts were involved in this transaction—one for tearing down the jail; another for hauling the lumber; another for erection of the new building, and another for supplying additional material. As neither of these four contracts aggregated \$500, the Commissioners do not violate said section 1530.

Under these circumstances, there is no reason why the claim of one person, even though over \$500, should not be allowed and paid in a lump sum by the Commissioners.

Trusting this will give you the information desired, I am

Yours very truly,

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

**251. Public School—Evening Schools.**

The schools contemplated in the Evening School Act (Stats. 1917, p. 354) are to be free schools, maintained by the state and county funds, and no tuition fee can be required of any one desiring their benefit.

The State Superintendent of Public Instruction cannot authorize State money to be paid for teachers for the maintenance and support of evening schools where tuition fees are charged.

CARSON CITY, December 19, 1918.

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

DEAR SIR: Your favor of the 1st instant, asking construction of the evening-school act (Stats. 1917, p. 354) received.

It seems that a certain school district opened a tuition evening school, and through its city superintendent requested state aid for the salary of its teacher or teachers, and that the school is

for commercial work only.

Later a petition was filed with the state Board of Education, but signed mainly by the students of the tuition evening classes, asking for an evening school for commercial classes only.

It further appears that the regular commercial teacher is being paid extra salary from the school funds of the district in question for doing the evening school for commercial classes only.

It further appears that the regular commercial teacher is being paid extra salary from the school funds of the district in question for doing the evening commercial work, or a part of it, and that a part or all of the tuition paid reverts to the school district in compensation for extra salary paid the commercial teacher in the high school.

You state that your view of the law is that these evening schools ought to be free schools for the people of the community, to be maintained under the limitations of the Act by state and county funds, and that no tuition charge can be required of any one desiring the benefit of the same, and state that, if this view is correct, you cannot authorize state money to be paid therefor.

In the opinion of this office, you have correctly stated the scope of the evening-school Act, and such schools are to be free schools, maintained by state and county funds, and no tuition fee can be required of any one desiring their benefit.

In the opinion of this office, you cannot authorize state money to be paid for teachers for the maintenance and support of evening schools where tuition fees are charged.

Yours very truly,

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

**252. Prohibition—Initiative Prohibition Law—Druggists—Denatured Alcohol.**

Druggists may sell denatured alcohol without prescription affidavit.

Druggists may carry in stock and may sell for medicinal purposes, upon prescription, any United States Pharmacopeia or national or national formulary preparation in conformity with the Nevada Pharmacy Law, which includes whisky, brandy, and many other of the most intoxicating liquors.

CARSON CITY, December 20, 1918.

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

DEAR SIR: Your letter of the 17th instant, relative to the application of the initiative prohibition law, just received. The questions therein asked will be answered in their order as follows:

1. Under section 4 of the Act, a druggist may sell "pure grain alcohol" upon a prescription of a physician; again he (the druggist) may sell "grain alcohol" upon the purchaser making a certain affidavit. Now, it seems, according to a federal law, a druggist cannot sell "grain alcohol" unless it is denatured with either poison or some neutralizing concomitant, to the end, in both cases, that it will be rendered "non-beverage." With this the preamble, the question is: Where grain alcohol is sold, in the form and condition the federal law demands, does a druggist have to first insist upon the physician's prescription or the affidavit, as section 4 sets forth?

The initiative prohibition law permits the sale, by druggists, of pure grain alcohol for medicinal purposes upon prescription, and for mechanical, pharmaceutical and scientific purposes upon affidavit. The only purpose of the prescription or the affidavit is to prevent, as far

as possible, the use of alcohol as a beverage. When alcohol is denatured, in conformity with the federal law, it cannot be so used. The denaturation of alcohol under the federal law completely accomplishes the result for which the prescription or the affidavit under the Nevada law was intended.

Therefore, in our opinion, druggists may sell denatured alcohol without prescription or affidavit.

2. The law is silent in permitting the sale, by a druggist, of wines, except by implication, if then, yet according to the U.S. Pharmacopeia, sherry and white wines are used in making "wine of pepsin," "wine of opium," and "wine of ipecac."

May a druggist under this law, keep in stock, and continue to use in the legitimate compilation of these various wines, such wines as "sherry" and "white" wines?

This question is fully answered in a recent opinion (Atty. Gen. Opin. December 14, 1918) wherein we concluded that:

Druggists may carry in stock and may sell for medicinal purposes, upon prescription, any United States Pharmacopeia or national formulary preparation in conformity with the Nevada pharmacy law, which includes whisky, brandy, and many other of the most intoxicating liquors.

Yours very truly,

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

BY WM. McKNIGHT, *Deputy*.

**253. Officers—County Surveyor—Office For—Counties.**

The Board of County Commissioners is not legally required to furnish the County Surveyor with an office.

CARSON CITY, December 20, 1918.

MR. R.E. TILDEN, *County Surveyor, Humboldt County, Winnemucca, Nevada*.

DEAR SIR: We wish to acknowledge receipt of your letter, in which you state you are the duly elected, qualified and acting County Surveyor of Humboldt County, Nevada, and ask whether or not the county is legally required to furnish you with an office.

The Act creating the office of County Surveyor (Rev. Laws, 1664-1674) provides that such officer shall keep his office at the county-seat. There is, however, no provision, anywhere, which requires the County Surveyor to keep his office open for the accommodation of the public or that makes him the custodian of any public records to which the public are at all reasonable times entitled to access.

Under these circumstances, the law, as laid down by Judge Hawley, in the case of *Owen v. Nye County*, [10 Nev. 338](#), is clearly applicable. It was there said:

We are of the opinion that the officer, who seeks to hold his county liable for the rent of his office, must be one who is by law made the custodian of the public records, to which the public are at all reasonable times entitled to access, or one that is by law required to keep his office open for the accommodation of the public and for the transaction of public business, whether he has business there of his own or that for which he is entitled to pay or not; and he must also show that

he demanded of the Commissioners a suitable office for such purpose and that they had failed and refused to furnish it.

In view of the foregoing, it is our opinion that our office is not legally required to furnish you with an office.

Yours very truly,

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

BY WM. McKNIGHT, *Deputy*.

**254. Public Schools—School Teachers' Salaries—Quarantine—Epidemic.**

Public school teachers are entitled to pay for their salaries during intermission caused by proclamation of quarantine on account of epidemic.

CARSON CITY, December 20, 1918.

MRS. EDNA COVERT PLUMMER, *District Attorney, Eureka, Nevada*.

DEAR MRS. PLUMMER: Your favor of the 16th instant, in relation to pay of school teachers, received.

Section 104 of the School Code (Rev. Laws, 3343) was amended by Stats. 1917, p. 398, so that it now reads as follows:

A school month shall consist of four weeks of five days each, and teachers shall be paid only for the time in which they are actually engaged in teaching; *provided*, that when an intermission of less than six days is ordered by the Trustees no deduction of salary shall be made therefor; *and provided further*, that when on account of sickness or epidemic a longer intermission is ordered by the Board of School Trustees or by a duly constituted Board of Health, and such intermission or closing does not exceed thirty days at any one time, there shall be no deduction or discontinuance of salary or salaries therefor. The term "teacher," as used in this Act, shall be understood to mean teachers, principals and superintendents of the elementary and secondary schools of this State.

Under our interpretation of the law, if the school is closed down for thirty days and then called in session for one day and then closed down for thirty days during the period of epidemic or quarantine embraced thereunder, the Trustees may lawfully pay the teachers full salaries.

Trusting this will give you the desired information, I am

Yours very truly,

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

**255. Prohibition—Initiative Prohibition Act—“Near Beer.”**

A liquor called "near beer" containing less than one-half of one per cent of alcohol is not within the definition of "liquors" contained in section 1 of the Initiative Prohibition Act, and it is lawful for the manufacturer thereof to sell, deliver, and ship this liquor within the State of Nevada.

CARSON CITY, December 20, 1918.

CARSON BREWING COMPANY, *Carson City, Nevada*.

GENTLEMEN: I am in receipt of your letter of the 19th instant, wherein you stated that the "Tahoe Near Beer" manufactured by you contains less than one-half of 1 per cent alcohol.

You ask an opinion whether it is lawful for you to sell, deliver and ship this beer in the State of Nevada. Section 1 of the initiative Act defines the word "liquors" as "all beverages containing so much as one-half of 1 per cent of alcohol by volume." In my opinion this expression is the controlling feature of the whole of the definition.

Inasmuch as your near beer contains less than one-half of 1 per cent per volume, it is not within the operation of the law in question, and, therefore, it is lawful for you to sell, deliver and ship this beer within the State of Nevada.

Yours very truly,

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

**256. Elections—Special Elections To Fill Vacancies—County Commissioners.**

At special elections to fill vacancies, caused by death of the officer-elect, the candidate is to be designated by the party committee of the county, district, or state.

The Primary law does not apply to special elections.

A candidate may be nominated by petition of electors in conformity with section 31 (Stats. 1917, p. 287).

Under section 3797, Rev. Laws, the details of such special election is largely reposed in the hands of the County Commissioners. They have the right to regulate these questions and fix the time for the closing of designation of candidacy and provide other necessary regulations in their order calling the special election.

No filing fee is required of candidates designating their candidacy.

At such special election all persons qualified at the last preceding general election are entitled to vote. The provision of Stats. 1917, p. 439, requiring the County Clerk to compare the tally-sheets with the official register and cancel cards of those not having voted at the general election do not apply.

CARSON CITY, December 20, 1918.

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

DEAR SIR: I am in receipt of your favor of the 16th instant, asking the opinion of this office on several questions which have arisen in connection with the special election to be held in your county for the purpose of filling the vacancy in the office of State Senator of Nevada, caused by the recent death of your state senator-elect and would answer the same as follows:

1. How are candidates to be designated at said election? Section 25 of the Act regulating the nomination of candidates (Stats. 1917, p. 286) provides for the filling of vacancies occurring after the holding of any primary election by the party committee of the county, district or State, as the case may be.

We are, therefore, of opinion that the candidates should be designated by the respective county central committees of Storey County.

2. Your second question is based upon the assumption that the candidates are designated as at primary elections, but we do not think the primary election law applies in this case, as section 2 specially provides: "This Act shall not apply to special elections to fill vacancies."

3. As already stated, the candidates' designation must be by the respective county central committees.

3a. A candidate may be nominated by petition of electors in conformity with section 31 of the primary election Act (Stats. 1917, p. 287).

4. The law does not fix the time for the closing of designation of candidacy. Under section 2797 the matter is largely reposed in the hands of the County Commissioners. They have the right to regulate these various questions and fix the time for the closing of the designations of candidacy and provide other necessary regulations in their order calling the special election.

5. As the primary law has already been above decided not to apply, no filing fee is required.

6. Section 16 (Stats. 1917, p. 43) requires the County Clerk to compare the tally-sheets with the official register and cancel the cards of those not having voted at such election. This provision is evidently for the purpose of purging the official register of those are dead or who have removed from the county or State.

Inasmuch as the new registration will not open until the 1st day of June of the year of the year 1920, it is the opinion of this office that said section 16 does not apply to the present case. Therefore, in preparing the poll-list for this special election, the County Clerk should include therein the names of all who were qualified to vote at the general election in November and disregard all cancelations that he has made under the provisions of said section 16.

Trusting this will enable you to conduct the election in due form, I am

Yours very truly,

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

**257.           Employer and Employee—Counties—Municipalities—Police Department—  
Eight-Hour Law.**

The provisions of section 6778, Rev. Laws, applies to the police department of a municipality.

CARSON CITY, December 27, 1918.

HON. ROBT. F. COLE, *Labor Commissioner, Carson City, Nevada.*

DEAR SIR: IN response to your inquiry for an interpretation of Rev. Laws, 6778, in connection with the employees of the police department of a municipality, who are required to report at 6 o'clock a.m. and are on duty until 6 o'clock p.m., let me say that in the opinion of this office, said section applies to such case and the requiring of twelve hours each day from such employees is a violation of said section.

Yours very truly,

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

**258.           Prohibition—Initiative Prohibition Law—Intoxicating Liquors—Liquor  
License—Druggists.**

Druggists may sell such liquors as are permitted by the prohibition law without the payment of a state liquor license.

Druggists may carry in stock and may sell for medicinal purposes, upon prescription, any United States pharmacopeia or national formulary preparation in conformity with the Nevada pharmacy law, which includes whisky, brandy, and many other of the most intoxicating liquors.



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