106. Rewards—Peace Officers Not Entitled to Rewards in Apprehending Violators of Law.

CARSON CITY, January 7, 1920.

DR. EDWARD RECORDS, *Secretary State Board of Stock Commissioners, Reno, Nevada*.

DEAR SIR: We have your request for an opinion as to whether or not J.C. Harris, Sheriff of Elko County, is entitled to the reward offered by your board of apprehending violators of the statute creating your board.

As a rule, a peace officer is not entitled to statutory rewards offered for the apprehension of those violating the law unless it is expressly so provided in the statute. We find nothing in the statute making an exception in favor of a peace officer and are, therefore, constrained to hold that in the case mentioned the Sheriff is not entitled to the reward offered by you.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

107. Public Schools—Head of Family—School Property Sale—Procedure Declared.

CARSON CITY, January 16, 1920.

MR. C.W. SMITH, *Deputy State Superintendent of Schools, Fallon, Nevada*.

DEAR SIR: We have your inquiries calling for our official opinion, first, as to the meaning of the term "heads of families," and, second, the method of procedure in the sale of school property referred to in the School Code of 1919. We here answer your inquiries in the order named by you:

First—As contemplated by the School Code, we are of the opinion that heads of families include both husband and wife and single persons, if such persons reside at a fixed place of abode and have others living there with and depending upon them for support—the support being induced by either moral or legal duty. Therefore, if a bachelor has minor brothers or sisters, or other close relations, depending upon him and is living in a fixed place of abode, we think he should be regarded as the head of a family.

Second—It is true the School Code does not define the method of procedure in the sale of school property. The Trustees, therefore, prior to the sale and as a condition thereof, should prescribe such reasonable procedure as giving due regard to publicity as the value and the nature of the property to be sold warrants; the property, being public property, should be sold to the highest bidder after full opportunity has been given to the public bid. While a reservation should be made in the notice of sale for the rejection of any and all bids by the Trustees, nevertheless, if

such reservation was omitted and a fair value has not been bid for the property, or there is some unforeseen irregularity concerning the sale, the Trustees undoubtedly have the right to reject the bids offered and proceed to a new sale.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

108. Transportation of Prisoners—Officers' Per Diem Fixed by Law.

CARSON CITY, January 23, 1920.

HON. R.B. HENRICHS, *Warden of Nevada State Prison*.

DEAR SIR: The letter of Sheriff Way of Churchill County, relative to the charges that may be legally made for the transportation of prisoners from a county sent to the Nevada State Prison, has been considered by this office.

I am of the opinion that it was clearly the intent and purpose of the Legislature to limit the amount that the officer transporting said prisoners may receive for the purpose of paying the necessary expenses incident to transportation to the sum of $5 per day. It was assuredly not the intent of the Legislature to give such officer extra compensation. It is the duty of counties to pay their own county officers, and no such obligation rests with the State of Nevada.

The segregation contained in section 7591 of the Revised Laws of the State of Nevada is clear and intelligible, and coincides with the decisions of our Supreme Court. The first subdivision covers the subject of expenses incident to railroad and other travel, from the county-seat to the place where the person or persons are delivered. The second subdivision deals with the other expenses incident to said trip, and specially fixes the sum of $5 per diem as the amount to be paid to the officer who serves in such capacity.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

109. Public Schools—Public-School Teachers' Retirement Fund—Physical or Mental Disability Must Occur During Service for Teacher to Receive Benefit of Act.

CARSON CITY, February 5, 1920.

Public-School Teachers' Retirement Salary Fund Board.

DEAR SIRS: We have your inquiry through your executive secretary, under date of January 31, 1920, requesting our opinion of the following question propounded under section 13, as amended, of the Statutes of Nevada for 1919 of an Act entitled "An Act to provide for the payment of retirement salaries to public-school teachers of this State, and all matters properly connected therewith," namely:

> May a teacher who has taught in the State for fifteen years, and who has retired from teaching for any reason other than physical or mental disability, receive the benefits of this Act when, in later years, such teacher becomes incapacitated for teaching on account of old age or other infirmity?

You are respectfully advised that such teacher is precluded from receiving the benefits of the Act. The Act is intended to provide a pension for those who have taught the requisite time and who have become physically or mentally incapacitated during service, although not necessarily on account of the service, and it is not intended to insure the physical or mental condition of any teacher who has voluntarily retired and thereafter becomes physically or mentally disabled. The disability, though not necessarily arising from of the service, must be incident thereto and prior to retirement.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

110. Legislature—Special Session—Speaker is Proper Officer to Call to Order.

CARSON CITY, February 6, 1920.

HON. GEORGE BRODIGAN, *Secretary of State*.

DEAR SIR: Section 4113 of the Revised Laws provides that on the first day of each session of the Legislature the Secretary of State shall call the Assembly to order, and shall preside over the same until a presiding officer shall be elected. I am of the opinion that this section only applies to a session of the Legislature where the Assembly has not a duly elected presiding officer. If at a special session the duly elected Speaker is present, there is no occasion for any other person to preside. It is incumbent upon him to call the meeting to order and to preside during all the proceedings.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

111. Marriage—Ordained Minister—Qualifications to Perform Marriage Ceremony.

CARSON CITY, February 7, 1920.

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

DEAR SIR: Your letter, which recites that a duly ordained minister of the Baptist Church, who for some time past has been without a pastorate, but whose standing in his church as a minister is good, and who has performed the ceremony at various marriages since ceasing to be a pastor, has been considered by this office in regard to whether or not said minister is a regular minister within the meaning of the law, and whether or not he legally acted in officiating at marriages.

The minister in question complied with the law and obtained the necessary license. He obtained the license by presenting to a District Court his credentials as a regularly ordained minister of a certain society or congregation. He is still a regularly ordained minister of his church, and I therefore rule that he is a regular minister and is entitled to act as a minister in the performance of the marriage ceremony.

I beg to remain

Very truly yours,

L.B. FOWLER, *Attorney-General*.

112. Mines—Operation—Hoist-Man Required by Law.

CARSON CITY, February 21, 1920.

HON. A.J. STINSON, *Inspector of Mines*.

DEAR SIR: We have the letter transmitted to us by you of Mr. J.B. Kendall, under date of February 19, 1920, inquiring whether or not it is necessary under the law relating to the Inspector of Mines for an independent contractor, sinking a shaft on the property of the Sutherland Divide Mining Company, to work one shift without a hoist-man.

It is specifically provided by said Act "that at all times when men are in a mine working through a shaft equipped with hoisting machinery, an engineer shall be kept on duty to answer signals."

The language of the Act is plain. There is no exception to this language, and we are constrained to hold that, in the case mentioned, no shift may be worked without the contemplated hoist-man.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

113. County Farm Bureaus—No Valid Appropriation Made—State Controller Advised to Decline Drawing Warrants.

CARSON CITY, February 21, 1920.

HON. GEO. A. COLE, *State Controller*.

DEAR SIR: We have your inquiry of February 14 for our official opinion covering the following statement:

> Several bills have reached this office in the form of claims against the State, by virtue of an Act entitled "An Act to provide for cooperative agricultural and home economics extension work in the several counties in accordance with the Smith-Lever Act of Congress, approved May 8, 1914; providing for the organization of county farm bureaus; for county and state cooperation in support of such work; making an annual appropriation therefor, levying a tax and for other purposes."
>
> We are in doubt of the legal sufficiency of the appropriation mentioned in this Act, and respectfully ask your opinion as to whether or not we may lawfully draw warrants for payment of the claims mentioned.

The purpose of the Act, as is apparent from its title, is laudable one and of deep public interest; but the policy of the law should be of no concern to administrative officers. If the law is deficient, such deficiency can only be remedied by the Legislature itself.

The Act, in so far as it is pertinent to this inquiry, provides:

> SEC. 2. That for the purpose of carrying out the provisions of this act there may be organized in each county within the State of Nevada a corporation to be

known as the county farm bureau. * * *

SEC. 3. The board of directors of the county farm bureau and the director of agricultural extension shall prepare an annual financial budget covering the county's share of the cost of carrying on the cooperative extension work in agriculture and home economics provided in this act, together with the share of each of all other cooperative extension work in agriculture and home economics provided in this act, together with the share of each of all other cooperating agencies; *provided*, that the county's share shall not exceed a sum equal to the proceeds of one cent of the county's tax rate. * * *

SEC. 4. That for the purposes of state cooperation, in the support of county agriculture and home economics extension work, there is hereby annually appropriated, out of any money in the state treasury, not otherwise appropriated, a sum equal to the total appropriations of the several counties for the support of county agricultural and home economics extension work as provided in section three of this act; but shall not be greater in any year than the proceeds of the state tax rate. * * *

From these excerpts it should be appreciated that no means is provided through which the State Controller may ascertain any fixed amount of money attempted to be appropriated. The fixing of such amount depends upon the fulfilment or nonfulfilment of divers contingencies. He may never be able to ascertain any fixed amount. It may rise or fall like the tides of the sea or the mercury in a thermometer, according as the various agencies referred to in the Act avail or ignore at their sole option its provisions.

It is upon such contingencies, and many others that might be referred to, that a fixed amount for the appropriation must necessarily depend. Such situation is not legally permissible.

We view the case of State v. LaGrave, 23 Nev. 25, as so nearly analogous as to be controlling. We quote:

It is said that fixing the maximum amount to be paid each company and directing the controller to draw his warrant for the amount and the treasurer to pay it constitutes an appropriation.

These matters alone do not accomplish that end. To constitute an appropriation there must be money placed in the fund applicable to the designated purpose. The word "appropriate" means "to allot, assign, set apart or apply to a particular use or purpose." An appropriation in the sense of the constitution means the setting apart a portion of the public funds for a public purpose. No particular form of words is necessary for the purpose, if the intention to appropriate is plainly manifested. * * *

Under existing facts it is improbable that the provisions of the statute were intended as an appropriation, because the number of military companies that could have received its benefits was indefinite and uncertain. These facts are: The law permits one company in each of the fourteen counties of the state, and excepts from this provision companies existing at the time of the passage of the act. (Stats. 1893, 96.) We understand that at present there are eight companies in the state, but that number may be increased up to the maximum at any time.

If an appropriation had been intended, the act would conflict with the provisions of the law of 1866 defining the duties of state controller. Among these

duties he is forbidden to draw any warrant on the treasury except there be an unexhausted specific appropriation to meet the same. And it is made his duty, among other things, to keep an account of all warrants drawn on the treasury, and a separate account under the head of each specific appropriation in such form and manner as at all times to show the unexpended balance of each appropriation. (Sections 1812-1831, Gen. Stats.)

The foregoing requirements cannot be observed if the act of 1895 be construed as making an appropriation, because there is no specific appropriation upon which a warrant could be drawn; and also the accounts cannot show the unexpended balance as required.

"By a specific appropriation we understand an act by which a named sum of money has been set apart in the treasury and devoted to the payment of a particular claim or demand. * * * The fund upon which a warrant must be drawn must be one of the amount of which is designated by law, and therefore capable of definitive exhaustion—a fund in which an ascertained sum of money was originally placed, and, a portion of that sum being drawn, an unexhausted balance remains, which balance cannot thereafter be increased except by further legislative appropriation." (Stratton v. Green, 45 Cal. 149.)

You are, therefore, advised by this office to decline to draw the warrants in question.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

114. Artesian Wells—State Aid to Counties in Sinking—Appropriation Invalid.

CARSON CITY, February 24, 1920.

HON. H.W. EDWARDS, *District Attorney, Elko, Nevada*.

DEAR SIR: We have your letter of February 19, calling for our official opinion, relative to the sufficiency of section 1 of an Act entitled "An Act authorizing the expenditure of money by the State under certain conditions for the purpose of aiding counties in sinking artesian wells," approved March 13,1915, to authorize the State Controller to issue warrants pursuant thereto.

The appropriating section of this Act is insufficient, in that there is no specific sum set apart for the purposes intended, nor is the State Controller by any computation enabled to ascertain with certainty and definiteness the amount of money appropriated, so that the same may be segregated in a proper fund and the unexpended balance of the moneys sought to be appropriated, so that the same may be segregated in a proper fund and the unexpended balance of the moneys sought to be appropriated at all times ascertainable. The situation is controlled by the case of State v. LaGrave, 23 Nev. 25, and it seems there is no escape from that decision. You are, therefore, advised that under the Act entitled and approved as aforesaid the State Controller may not legally draw his warrant for any moneys in aid of the of the sinking artesian wells by the counties of this State.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

115. Warrant, State—Warrants Payable at State Treasury—State Not Liable for Bankers' Exchange.

CARSON CITY, March 4, 1920.

MR. C.C. COTTRELL, *State Highway Engineer*.

DEAR SIR: In regard to the bill presented to your department by the Nevada Northern Railway Company, to cover cost of exchange charged by Washoe County Bank on your check to the said company, I beg to advise that such a claim is not valid.

A state warrant is payable at the State Treasury. It is not the duty of the State to accommodate people by paying out additional sums of money so that claimants may be paid through the particular channels that they specially desire. When a state warrant is drawn, the money is in the State Treasury for its payment, and the person in whose favor it is drawn must attend to its presentation to the State Treasurer.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

116. School Census—Ages of Children Enumerated Therein.

CARSON CITY, March 15, 1920.

HON. W.J. HUNTING, *Superintendent of Public Instruction*.

DEAR SIR: Referring to your inquiry, as to whether or not, where the statute for school-census purposes states the age of the children that may be enumerated therein, such age is computed, in addition to the statutory definition, the year following the age, we beg to advise that we are of the opinion that any lapse of time in addition to the age specified is not contemplated by the statute; and particularly, if the statute designates for census purposes the children of the age of 18 years, that such designation does not contemplate that any children shall be enumerated therein who have passed their eighteenth birthday. We find nothing in the statute that is ambiguous and, therefore, no words of the statute requiring interpretation.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

117. Public Schools—Area of School Districts.

CARSON CITY, March 18, 1929.

HON. W.J. HUNTING, *Superintendent of Public Instruction*.

DEAR SIR: The correspondence relative to annexing to Lake School District No. 3, Pershing County, Nevada, certain territory that was formerly Rye Patch School District, has been considered by me.

It is admitted that such an addition will make the district more than sixteen miles square.

After it is created, the legal situation does not change, and the district must at all times be of a size that does not conflict with the law mentioned.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

118. Revenue—County Commissioner—Road Districts—Special Tax Levy.

CARSON CITY, March 19, 1920.

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

DEAR SIR: Replying to your telegram, I beg to advise that, in that section 3014 of the Revised Laws is still effective, I can see no reason why the Commissioners of your county should not define road districts and levy special tax pursuant to the law of which said section is a part.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

119. Fish and Game—Creation of Districts for Protection of—Act Regulating.

CARSON CITY, March 30, 1920.

MR. H.K. KENNEDY, *Reno, Nevada*.

DEAR SIR: The Legislature of this State in the Fish and Game Act of 1917 exercised a power that belongs to it when it pursued the particular method of dividing the State into separate and distinct districts for the protection of fish. It was not incumbent upon the Legislature to create districts with geographical boundaries instead of giving special recognition to the lakes and rivers of the State.

Section 30 permits the use of spawn, egg or ova of trout, salmon, or of any other species of fish in fishing if the same is attached to a hook, which hook is attached to a line and which line is attached to a rod.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

120. Live Stock, Grazing of—License for—Certain Legislation Unconstitutional Relating Thereto.

CARSON CITY, April 1, 1920.

HON. F.N. FLETCHER, *Secretary of Nevada Tax Commission*.

DEAR SIR: After careful review of the various livestock-license Acts and sheep-license Acts passed at different sessions of the Legislature of Nevada, I have come to the conclusion that for the purpose of acting under a statute that is constitutional, we must go back to the Act of 1901, Statutes of 1901, page 64.

All legislation as to a license tax for grazing live stock or sheep attempted to be enacted as laws by the Legislature since the session of 1901 is unconstitutional. The Legislature in its zeal to bestow special favors has contravened either a provision or provisions of the Constitution of this State or of the United States, or both.

There has been an attempt to favor citizens as against those who are not citizens, to favor residents as against nonresidents, and otherwise to favor certain people as against the rest of the people; and such has been done in a way that cannot be sustained constitutionally.

Certain methods of classification are permissible for the purpose of taxation, either through the license system or other methods of taxation, but such is not the situation presented in the legislation that we are called upon to consider, to determine which Act may be enforced relative to charging licenses for grazing live stock or sheep.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

121. Industrial Insurance—Act Providing for, Construed for Benefit of Injured and Dependent.

CARSON CITY, April 7, 1920.

Nevada Industrial Commission.

DEAR SIRS: In the matter of the claim of Gust Buzas, No. 4857, we have the inquiry whether or not the claim of an injured employee filed pursuant to the provisions of the statute will be held sufficient to keep the same alive for the benefit of his beneficiaries after his death where they have not filed either a notice or a claim within the period of one year.

We are under the opinion that the claim originally filed by the claimant is sufficient and that, were there any question in regard thereto, under section 34½ the Commission has ample power to excuse the beneficiaries. The purpose of the Act is for the benefit of the injured and their dependents, and any other construction might work a grave hardship upon those not responsible for the conditions. However, each case should be governed by its own statement of facts.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

122. Highways—Department of Highways—Right to Dispose of Obsolete Equipment.

CARSON CITY, April 7, 1920.

HON. C.C COTTRELL, *State Highway Engineer*.

DEAR SIR: We have your letter of April 2, inquiring whether or not the Department of Highways has authority to trade in, on the purchase of new equipment, such equipment which has been used to the extent where the cost upkeep is so high that is for the best interests of the department to dispose of its use; and also whether or not the department may dispose of old material unnecessary for use and place the proceeds therefor in the State Treasury.

To each of the inquiries we answer in the affirmative, upon the ground that your department

is discharging certain business functions of the state as contradistinguished to governmental functions, and that, in the discharge thereof, you have the right to use all means and adopt such methods as will tend towards economy and a general saving to your department. As a general rule, however, your action in the premises must be duly approved by your governing body.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

123. Public Service Commission—Cannot Delegate Quasi-Judicial Functions—Approval of Bonds.

CARSON CITY, April 9, 1920.

Public Service Commission of Nevada.

DEAR SIRS: We have your inquiry in the matter of the correspondence between the Tax Commission and Hon. Lester D. Summerfield, District Attorney of Washoe County, propounding the question whether or not the latter may be required to pass upon the sufficiency of sureties on bonds required to be filed with you under section 18 of the Act creating your Commission.

The fact that section 40 of the Act authorizes your Commission to call the District Attorney in aid of any investigation, prosecution, hearing, or trial does not place him under any obligation to discharge any of the quasi-judicial functions of your Commission. These you may not delegate. His duties, in that regard, are those of an attorney in legal matters of public moment. In fact, section 18 of the Act referred to requires the bonds in question to be approved by your Commission, and no other construction cold be placed upon the language in that respect than that the bonds must be approved as to the sufficiency of the sureties thereon. Such being our opinion, it is unnecessary to pass upon the question whether or not, should District Attorney pass upon the sufficiency of the sureties on such bonds, he would thereafter be liable by reason of their inadequacy. We are sure, however, that the District Attorney in all matters would render you such information that he may personally have in regard to such bonds, to the end that you might pass upon their sureties with your best judgment as contemplated by the Act.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

124. Elections—Registration of Voters—Appointment of Deputy Registrars—Boundaries of Precincts.

CARSON CITY, April 27, 1920.

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

DEAR SIR: Your letter of the 23d instant, relative to an Act of the Legislature which provides for the appointment of deputy registrars in each precinct of a county distant more than five miles from the county courthouse wherein no Justice of the Peace resides, and your specific question as to what should be done in the case of a precinct, where the nearest boundary line is more than five miles from the courthouse, has been considered by me.

I am satisfied that the greatest distance should govern. The object of the Act is to make it convenient for the voters to register. That being the case, the law should be construed to make its purpose effective. The ruling herein given is in conformity with this principle.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

125. Public Service Commission—Liability in Approving Bonds.

CARSON CITY, April 28, 1920.

Public Service Commission of Nevada.

DEAR SIRS: We have your inquiry of the 17th instant, requesting our views as to whether or not your Commissioners might incur personal liability in approving indemnity bonds provided by the Act under which you are operating.

In approving or disapproving such bonds, the Commission is acting in a quasi-judicial capacity, and, in so acting, they cannot become personally liable in judging the sufficiency or insufficiency of such bonds. This rule is one of necessity, sustained by law, and, without it, no tribunal exercising judicial functions could operate with that free and independent action necessary to a due fulfilment of its duties as prescribed by law.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

126. Nevada Historical Society—Valid Street Assessment Cannot Be Made on Property.

CARSON CITY, April 28, 1920.

Nevada Historical Society, Reno, Nevada.

DEAR MISS WIER: We have your favor of the 27th instant, relating to the street assessments imposed by the city of Reno, which may affect the property of the Nevada Historical Society.

We quire agree with the Mayor and City Attorney in their conclusion that no legal assessment can be made against this property, but, at the same time, there is no appropriated fund out of which the assessment may be paid by the State. Public moneys may only be disbursed pursuant to a valid appropriation of the Legislature. This is elementary.

We do not think that you should pay this assessment out of the appropriation made to the Society for its maintenance and support. By so doing, you are diverting the moneys from the application intended by the Legislature. We think the proper method for you to pursue is to have a relief bill passed by the Legislature to cover this assessment.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

127. Revenue—Assessment of Live Stock—Act Governing.

CARSON CITY, April 29, 1920.

MESSRS. STODDARD & SALISBURY, *Reno, Nevada*.

GENTLEMEN: Your letter, relative to the method of assessment of live stock, has been considered by me.

I cannot see any legal objections to the Act of the Legislature of 1915, entitled "An Act defining and classifying transient live stock and providing for the assessment, collection, and distribution of taxes on the same."

I therefore rule that this Act governs in regard to the assessment of live stock, and that any decisions rendered by the Supreme Court of this State prior to the passage of the Act that are in conflict with said statute are no longer controlling.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

128. Corporations—Amendment of Articles—Requirements Before Filing Amendments.

CARSON CITY, April 30, 1920.

HON. GEORGE BRODIGAN, *Secretary of State*.

DEAR SIR: Your letter, relative to the amended articles of incorporation of the Security Savings and Loan Association, together with certain law and facts, has been considered by me.

This corporation incorporated by first obtaining the approval of the State Bank Examiner pursuant to the requirements of the building-and-loan-association Act of this State. It has since been recognized and represented itself as a corporation under the control of the State Bank Examiner by virtue of the Act mentioned. It is now the desire of the company to amend its articles by overthrowing the jurisdiction which the State has of it under the said building-and-loan-association Act. I am of the opinion that this cannot be done. If the State now possesses supervisory power over said corporation, then said corporation has not the legal right to amend its articles so that this supervisory power will be destroyed.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

129. Bonds Issue—Act Authorizing—Construction of Inconsistent Provision.

CARSON CITY, May 1, 1920.

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

DEAR SIR: The Act of the Legislature of 1919, authorizing the County Commissioners of Humboldt County to issue bonds, being inconsistent wherein it limits the county to the redemption of ten bonds annually, but requires full redemption to be made within fifteen years, must be construed to make effective the main intent of the Act, as far as redemption is concerned, which is to have all the bonds redeemed within fifteen years.

I am, therefore, of the opinion that the county has the legal right to redeem but such number of bonds annually as may be necessary in order to redeem the full amount of $150,000 within fifteen years.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

130. Livestock Shipment—Inspection Thereof—Act Construed.

CARSON CITY, May 1, 1920.

State Board of Stock Commissioners.

DEAR SIRS: We have your inquiry, calling for an official opinion relating to the construction of the sentence in section 21, chapter 268, Statutes of Nevada, 1915, reading as follows:

> Said inspector shall also inspect all stock or cattle about to be shipped from the state, and the consignor upon demand shall establish fully his title to such stock.

You desire to know whether or not the language quoted applies to shipments from one county to another county of this State where such shipments must pass through the State of Utah in transit. We hold this language does not apply to such shipments, notwithstanding, as you suggest, "there is nothing to prevent the owner from diverting the shipment en route and not returning the stock to the State."

It is evident that the phrase "about to be shipped from the State" means to be shipped from and consigned outside of the State, and the fact that the owner may divert the shipment is not material for we must assume, according to legal presumption, that the owner will obey rather than that he will violate the law.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

131. Cement Commissions—Fixing of Salaries of Commissioners—Act Construed.

CARSON CITY, May 3, 1920.

HON. GEO. A. COLE, *State Controller of Nevada*.

DEAR SIR: We have under consideration section 2 of the Act (Stats. 1919, p. 193) relating to the Cement Commission, which provides:

> For the expenses of said commission, the sum of five thousand ($5,000) dollars is hereby appropriated, out of any moneys in the general fund of the state treasury not otherwise appropriated.

The question propounded by you is whether or not the compensation fixed by the Governor, to be paid to the Commissioners appointed by him under section 1 of this Act, is payable out of the $5,000 fund appropriated under section 2, quoted as aforesaid. Ordinarily the term "expenses" used in legislative Acts means such items as accrue from time to time in the

administration of a commission or governmental board, but under the Act in question it is apparent that the Commission cannot function unless the compensation fixed by the Governor pursuant to the Act is paid from the expense fund created therein, and, moreover, the proximity of these two sections are so closely related and so disconnected from the following six sections that it is fair to presume that the legislative intent was to have the compensation of the Commissioners paid from the fund provided for in section 2 of the Act.

We, therefore, advise you to pay the salaries fixed in accordance with this opinion.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

132. Revenue—Taxes Levied and Assessed Without Jurisdiction Voluntarily Paid—Cannot Be Refunded.

CARSON CITY, May 7, 1920.

To the Board of County Commissioners, and the District Attorney, Tonopah, Nye County, Nevada.

GENTLEMEN: We have had under consideration your request for an official opinion as to whether or not you should refund to Messrs. D'Arcy and McMahon, as assignees of the Tonopah Mines Corporation, certain taxes paid for the years 1912 to 1915, inclusive, upon certain patented mines situate in Esmeralda County, but assessed through mistake in Nye County.

Primarily, we have to suggest that the tax laws of this State, during the period mentioned, provided an elaborate scheme for the correction of erroneous assessments, and the equalization of values assessed, which was notice to all persons interested of the course for them to pursue on account thereof. In the case under consideration no note was taken of the subsisting provisions of law, and the taxes were paid from time to time pursuant to the assessment.

Accordingly, we are of the opinion that, if there were no other principle of law controlling, the ignoring of the scheme provided by law relating to the premises precludes a refund of the taxes paid at this time, but the taxes were paid without protest and voluntarily, even under assessment made without authority of law, cannot be recovered. Furthermore, the doctrine of laches would apply in this case, defeating any claim for a recovery of this money.

Such being our views, you are advised that you may not legally refund the taxes paid as aforesaid.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

133. Public Schools—Bond Election—Unnecessary for Full Attendance of Trustees to Call.

CARSON CITY, May 18, 1920.

MR. T.W. CHAPMAN, *Deputy Superintendent of Public Instruction, Las Vegas, Nevada*.

DEAR SIR: The fact that, at the time of the calling of the bond election by the Board of School Trustees of Caliente School District, there were only two Trustees of said board does not invalidate the election.

There is nothing in the law that says that at the time of making such a call there must be a full membership and that a unanimous vote shall be necessary. The two School Trustees acting together had the power to do and perform all the functions incident to a school board, and, if all the other requirements have been complied with, then the bond election was perfectly legal.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

134. Corporations—General Corporation Law—Corporate Name—Secretary of State Bound by Official Record.

CARSON CITY, May 19, 1920.

MESSRS. HOYT, NORCROSS, THATCHER, WOODBURN & HENLEY, *Reno, Nevada.*

GENTLEMEN: Replying to your letter, addressed to Hon. Robert Richards, Deputy Attorney-General, I beg to advise you that I verbally advised the Secretary of State that, in determining whether or not the proposed name of a corporation conflicts with the name of an existing corporation conflicts with the name of an existing corporation, he should stand upon the records as they exist in his office, and that any departure from this position would mean great confusion. I see no reason to alter my position in this matter.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

135. Notaries Public—Qualifications for Appointment.

CARSON CITY, May 21, 1920.

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

SIR: There is no law in this State which requires any particular length of residence in a particular county on the part of a person in order that he may be appointed a Notary Public.

Any person of the age 21 years, who is a citizen of the State of Nevada, may be appointed Notary Public in the county designated by you.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

136. Public Contracts—Under Act Cited Surety Bond Not Required.

CARSON CITY, May 21, 1920.

Reno Plumbing and Heating Co., Reno, Nevada.

GENTLEMEN: The Act relative to the Memorial Building provides that "good and sufficient bonds to protect the State shall be required from all contractors."

There is no Act of the Legislature that requires that such bonds shall be given with surety companies as the bondsmen. Any contractor, therefore, has the privilege under the Act of giving a bond with individual persons as sureties instead of a surety company.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

137. Emergency Loan—Deficiency for Elko County Hospital May Be Covered By.

CARSON CITY, May 25, 1920.

HON. GILBERT C. ROSS, *Secretary of State Board of Finance*.

DEAR SIR: The Act of the Legislature of the State of Nevada of 1919, which authorizes the county of Elko to issue bonds to provide for the purchase of a site, and for the construction, equipment, and furnishing of a hospital, etc., must be strictly followed as far as any bond issue is concerned. The county is in that respect governed by the Act.

The situation now presented is that the amount of money raised from said bond issue is insufficient to build and equip the hospital planned by said county. The Legislature could not forecast the exact amount that would be required for the purposes named in the Act mentioned. Elk county is a large, prosperous, and growing county and necessarily desires to construct and equip a hospital of high order and which will be capable of being used for many years to come. We are living in a high-cost age, and it is, therefore, not strange that an amount greater than the sum raised by the bond issue is required to consummate the undertaking mentioned.

I am , therefore, of the opinion that there is unquestionably an emergency that may be legitimately acted upon by your board and that an approval of such a loan by the Board of Finance will be valid.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

138. Emergency Loan—Washoe County Farm Bureau Cannot Obtain—It Funds Otherwise Provided For.

CARSON CITY, May 25, 1920.

HON. GILBERT C. ROSS, *Secretary of State Board of Finance*.

DEAR SIR: The question as to whether or not the State Board of Finance has the power to permit an emergency loan for the purpose of paying an indebtedness of the Washoe County Farm Bureau, Incorporated, has been considered by me.

The Act of the Legislature of 1917, relative to this subject, provides that where a county is authorized to make an emergency loan that an emergency tax shall thereafter be levied and the said loan shall be paid from a fund to be designated "The Emergency Fund." The Act permitting

the incorporation of farm bureaus fixes the method of support of such bureaus, and no way is provided for the raising of funds for the support of such bureaus other than as is in said Act specifically provided.

I am, therefore, of the opinion that the Board of County Commissioners is powerless to levy any emergency tax to pay any loan on behalf of the Wshoe County Farm Bureau, and consequently I must rule that your board is not authorized to approve such a loan.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

139. Revenue—Assessment Levied and Taxes Paid Thereunder Without Protest Final.

CARSON CITY, May 25, 1920.

HON. F.N. FLETCHER, *Secretary of Nevada Tax Commission*.

DEAR SIR: The letter relative to the Garavanta Land and Livestock Company, wherein it states that 200 head of cattle were assessed in its name in Lyon County and 10 head of cattle were assessed in its name in Washoe County, and in which letter it is claimed that only 100 head of cattle should have been assessed in Lyon County, and the further assertion that complaint of this fact was filed in your Commission on January, 1920 ,has been considered by me.

Assessments, like other things in law, must at some time become final. In this case the first installment was paid without objection or complaint, and thereafter a complaint was interposed, contending that the assessment in Lyon County is erroneous.

My ruling is that the assessment as it stands is final, and is not the subject of review.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

140. Public Schools—Sectarian Teaching—Invitations Read to Attend Church of Choice Not Prohibited.

CARSON CITY, May 27, 1920.

HON. W.J. HUNTING, *Superintendent of Public Instruction*.

DEAR SIR: The reading of an invitation to the students of a public school to attend the churches of their respective choice does not conflict with the constitutional provision prohibiting sectarian instruction in any school or university controlled by the State. The invitation must not go beyond a mere invitation, as otherwise it will probably be such that it will conflict with the constitutional restriction.

I am also of the opinion that, upon the written request of a parent, the children of such parent may be excused from attendance at school for a brief time for the purpose of attending a certain church specified by the parent.

Necessarily it is contrary to correct school policy to permit any such courtesy to seriously interfere with the school work. This is something which must be considered by the school authorities in connection with the granting or declining to grant the privilege herein mentioned.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

141. Employment—Employer and Employee—Act Providing for Eight-Hour Day for Women Not Applicable to Telegraph Companies.

CARSON CITY, May 28, 1920.

HON. ROBT. F. COLE, *Labor Commissioner*.

DEAR SIR: We have your inquiry calling for our official opinion as to whether or not the Western Union Telegraph Company in employing women workers for a period in excess of eight hours per day is violating section 1, chapter 14, Statutes of 1917.

This section provide:

> No female shall be employed in any manufacturing, mechanical, or mercantile establishment, laundry, hotel, public lodging-house, apartment-house, place of amusement, or restaurant, or by any express or transportation company in this state, more than eight hours during any one day, or more than fifty-sic hours in one week.

It is apparent that the classifications mentioned relate to occupations of a seeming kindred physical nature, and that females employed by a telegraph company are not included in such classifications, nor can they said to be included in an express or transportation company, since these words are of a generic kind and include only the physical handling of personal property.

Such women, therefore, do not come within the purview of said section.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

142. Revenue—Owner May Pay Tax Assessed on Subdivision Without Paying on Entire Property Assessed.

CARSON CITY, June 7, 1920.

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

DEAR SIR: Section 3645 of the Revised Laws provides that the tax receiver shall not receive any taxes for any portion of real estate less than the least subdivision entered upon the assessment roll. It is, therefore, permissible for a tax payer to pay the tax on subdivisions of his property without paying the taxes upon his entire property. (State v. C.P.R.R. Co., 21 Nev. 94.)

The law provides that the redemption of property sold for failure to pay taxes shall be made in accordance with the provisions of the Civil Practice Act of this State.

In regard to real property sold under execution, section 5292 of the Revised Laws provides that when the sale is of real property and consisting of several known lots and parcels they shall be sold separately.

Section 5298 requires a certificate of sale to give a particular description of the real property sold.

Section 5922 provides as follows:

> Property sold subject to redemption, as provided in section 5298, or any part sold separately may be redeemed in the manner hereinafter provided by the following persons, or their successors in interest:
>
> 1. The judgment debtor of his successors in interest, in the whole or any part of the property.

Any taxpayer has the right, pursuant to the provisions of section 3645 of the Revised Laws, to pay his taxes on any particular subdivision assessed to him and to decline to pay the tax on any other subdivisions. This right, without express legislation, would continue after a sale for delinquency.

The sections quoted herein, however, expressly give such a taxpayer the right to redeem any lot or parcel of his property sold, and it is not incumbent upon him to redeem all the property sold for nonpayment of taxes.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

143. Public Schools—Teachers' Retirement Fund—Application for Benefits—Abstract Questions Asked and Answered.

CARSON CITY, June 7, 1920.

HON. W.J. HUNTING, *Superintendent of Public Instruction*.

DEAR SIR: We have your request, calling for our official opinion upon the inquiries propounded by you, as follows:

> Can a teacher *make an application* for Retirement Salary Fund benefits before she has ceased to draw salary under a contract with a school district in this State? * * * In case application is made before a teacher ceases to draw salary, can the State Teachers' Retirement Salary Fund Board act on her case and grant under the law benefits provided, such benefits to begin at a time subsequent to the period of contract during which such teacher is drawing salary from the school district?

As these inquiries are abstract in form, we are able to reply to you only in similar form. Accordingly, we answer you in the affirmative to each inquiry. If you should propound a concrete case to us in the premises, there may be some fact therein appearing, not now disclosed, which might seriously influence our opinion.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

144. Physicians—Medical Examiners—Violations of Law by Physicians—Law Discussed.

CARSON CITY, June 9, 1920.

DR. S.L. LEE, *Secretary of State Board of Medical Examiners*.

DEAR SIR: The long list of questions propounded by a certain physician, which you have

submitted, has been considered by me.

It is not the province of this office to advise a person who is probably endeavoring to at least shave the line as to law violation whether or not a given thing is in reality is criminal in its nature. A duly licensed physician and surgeon should so conduct himself that he will stand above reproach. He should not become a street peddler or an auctioneer. Such things are unprofessional, whether they are criminal or not. One thing is certain: Such a practitioner of medicine should become the subject of close scrutiny, so that in case of an actual violation of the law he may be speedily prosecuted. I am inclined to think that the method of selling medicine that this doctor desires to pursue will very likely be in contravention of an Act of the Legislature of this State, entitled "An Act to provide for the creation of a state board of pharmacy; to regulate the practice of pharmacy; to prohibit the use of deteriorated and adulterated drugs; and to regulate the sale of poisons," approved March 28, 1901, and being sections 4495 to 4514, both inclusive, of the Revised Laws of the State of Nevada.

Section 4513 of said Revised Laws exempts the practitioner of medicine who does not keep a pharmacy or open shop from the provisions of this Act, but this necessarily means that, as far as his own patients are concerned, the Act will not be binding. It further exempts general dealers from the provisions of the Act in so far as it relates to the keeping for sale of proprietary medicines in original packages of drugs and medicines.

If the practitioner mentioned attempts to do all or most of the things suggested by his questions, then I think it is very likely that he will ultimately find himself in a position where he will be guilty of a violation of some law of this State. What particular law may be violated will have to determined when particular facts are presented to the proper officer.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

145. Prohibition Law—Questions by Federal Prohibition Director Answered—Law Discussed *.

CARSON CITY, June 10, 1920.

HON. R.C. STODDARD, *Federal Prohibition Director, Reno, Nevada*.

SIR: Various questions propounded by you, on the prohibition subject, are hereby answered in the order given in your letter:

*See Opinion 147, *post*.

1. Does a permit to transport intoxicating liquors for non-beverage purposes, issued under the National Prohibition Act, purport to authorize an act which is declared by the statutes of Nevada to be unlawful?

Answer—No.

2. Does a permit so issued which purports to authorize the *manufacture*, by retail druggists in the State of Nevada, of intoxicating liquors or any beverage containing so much as the one per centum of alcohol, or any *liquid, mixture or preparation* which will produce intoxication, conflict with the said statutes?

Answer—Yes.

3. Does the word "manufacture," as used in the Nevada Initiative Prohibition Act, include

the word “compound”?

Answer—Yes. The meaning of these words and their application will be referred to in my answer to the next question.

4. May retail druggists be lawfully permitted to *sell* any intoxicating liquor, as above defined, or any liquid, mixture or preparation which will produce intoxication, other than pure grain alcohol and wine for sacramental purposes?

Answer—Our Nevada Act prohibits the sale by any druggist of any liquid, mixture, or preparation which will produce intoxication other than pure grain alcohol, wine for sacramental purposes, and such preparations that are listed in the United States Pharmacopeia or National Formulary and preparations exempted by the National Pure-Food Act. Necessarily, our law in this respect should not be too rigorously construed. In the preparation of prescriptions of duly licensed physicians and surgeons it must be held that it is permissible for druggists to compound for such purpose. Too restricted a construction with those who are expected to get beneficial, and oftentimes speedy, results in the practice of their profession. As Attorney-General I will so construe the law, as far as I may plausible do so, in a way that will prevent physicians and surgeons from being handicapped in treating their patients. Those who place their faith and confidence in members of the medical profession are entitles to be treated without undue and unreasonable interference of law. The absolute exclusion of brandy, whisky, and certain other intoxicating liquors places doctors in a position where they cannot pursue the methods that they consider necessary in attending to their patients, but this is something which cannot be overcome by me, because there the law has left no opening that can be used for that purpose. The law should not be so rigorously construed so as to practically strip the shelves of the druggists, but should only be enforced in a way that will prevent the sale of preparations that will mean the defeat of the purposes of the prohibition law.

5. May physicians prescribe and druggists lawfully sell brandy, on prescription, as provided in the Nevada Act of April 1, 1919?

Answer—No. Said Act is unconstitutional.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

146. Public Schools—Board of Joint School District May Direct Levy of Special Tax—County commissioners of Respective of Counties Must Levy.

CARSON CITY, June 10, 1920.

HON. W.J. HUNTING, *Superintendent of Public Instruction*.

DEAR SIR: You are respectfully advised in reply to the inquiries propounded by you as follows:

1. Should the Board of School Trustees of a joint school district direct the levy of a special tax, as authorized by law, all of the territory of such district is subject to said tax, and the County Commissioners of the respective counties comprising such district must levy and cause such tax to be collected accordingly; notwithstanding there may be no children in a portion of such territory or there are no Trustees appointed or elected from the county of which such territory forms a part? If such joint school district is legally created and organized, it necessarily has the

authority to function in the manner provided by law.

2. If such special tax is directed to be levied by the Board of School Trustees pursuant to section 140 of the School Code of 1919, the Board of County Commissioners can be required to levy and cause the same to be collected only at the time of the next levy and collection of state and county taxes.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

147. Prohibition Law—Supplemental Opinion to Federal Prohibition Director.

CARSON CITY, June 14, 1920.

HON. R.C. STODDARD, *Federal Prohibition Director, Reno, Nevada*.

SIR: In my letter of June 10, 1920, I answered "no" to your question numbered 1, which question is: "Does a permit to transport intoxicating liquors for nonbeverage purposes, issued under the National Prohibition Act, purport to authorize an act which is declared by the statutes of Nevada to be unlawful?"

I intended to amplify my answer, but failed to do so. Necessarily a permit transport intoxicating liquors for nonbeverage purposes, which is clearly in conflict with the Nevada prohibition law, will be so construed so far as Nevada is concerned. Whisky and brandy may be used for medicinal purposes, but, notwithstanding the nonbeverage character of their use, it is not permissible to ship them to this State. I answered "no" to the question because it will not be the disposition of the authorities of this State to construe our prohibition law so that intoxicating liquors, which are nonbeverage in character and which can hardly be used as a beverage, will be included.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

148. Corporations, Foreign—Facts Stated Do Not Require Foreign Corporations to Qualify in This State.

CARSON CITY, June 15, 1920.

MR. WM. J. STEINER, *Seattle, Wash*.

DEAR SIR: In the case mentioned by you—that is, where a corporation having an established business in a State other than Nevada solicits business in this State and makes deliveries pursuant to said solicitation—I am of the opinion that it will be unnecessary for such corporation to file its articles in this State or to take out any kind of a license.

A foreign corporation doing business in this State is denied the right to sue in this State without first coming into Nevada in the manner provided by our laws for recognition of foreign corporations which do a business in this State. I do not think, however, that the law is applicable to the case presented by you, as the corporation will not be doing business in the State of Nevada within the meaning of our Act relative to foreign corporations.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

149. Revenue—Payment of Taxes on Subdivisions Assessed—Supplemental Opinion.

CARSON CITY, June 15, 1920.

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

DEAR SIR: In writing my letter of the 7th instant, I had in view only real property upon which the taxes are delinquent.

Our law places a lien upon all real property for the tax levied upon the personal property of the owner of such real property. As this lien attaches to all the real property of the owner of the personal property, it is the first tax that must be paid. The owner, therefore, cannot in such a case pay upon a subdivision of real property without first paying all the taxes due on his personal property.

The law is not concerned with what has become of the personal property after it is assessed. In the event that the taxes become delinquent, then the owner will be denied the privilege of redeeming a particular lot or parcel of his property without first paying the entire amount due for taxes on personal property.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

150. Revenue—Poll-Tax Provided by Constitution—Legislature May Not Ignore Constitutional Provision.

CARSON CITY, June 15, 1920.

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

SIR: Section 7 of article 2 of the Constitution of Nevada is as follows:

> The legislature shall provide by law for the payment of an annual poll-tax, of not less than two nor exceeding four dollars, from each male person resident in the state between the ages of twenty-one and sixty years (uncivilized American Indians excepted), to be expended for the maintenance and betterment of public roads.

This provision of our Constitution compels the Legislature, in any law enacted by it relative to poll-tax, to make the same applicable to every male person resident of the State between the ages of 21 and 60 years, with the single exception of uncivilized American Indians.

The Legislature has not the power to abrogate, modify, or change this provision of the Constitution through the instrumentality of a statute. There is only one way that men who have served in the Army or Navy of the United States may be exempted from such a tax, and that is by amending the Constitution. The ardent desire of the officials of this State to relieve such men of the obligation to pay poll-taxes cannot help the situation. The constitutional provision is paramount, and until it is changed they cannot be made the subject of an exception.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

151. Elections—Primary Elections—Independent Candidates Not Required to File Statements.

CARSON CITY, June 18, 1920.

MISS ANNE MARTIN, *Reno, Nevada*.

DEAR MISS MARTIN: The law of this State which requires candidates for nominations at a primary election to file statements prior to and subsequent to the primary election has no application to an independent candidate, as an independent candidate has no connection whatever with a primary election.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

152. Employment—Employer and Employee—Contractors on Public Contract Bound by Semimonthly Pay-Day Law.

CARSON CITY, June 21, 1920.

HON. FRANK W. INGRAM, *Labor Commissioner*.

DEAR SIR: Replying to your inquiry of this date, we beg to advise you that chapter 71 of the Statutes of 1919, commonly called the semi-monthly pay-day law, is applicable to contractors and their employees operating under a contract from the Department of Highways.

The fact that such contractors are engaged on public work does not exclude them from the operations of the Act, as they are independent contractors, and, therefore, the relation between them and their employees constitutes private employments.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

153. Employment—Employer and Employee—Blacklisting Prohibited—Law Discussed.

CARSON CITY, June 21, 1920.

DR. CLAUDE H. CHURCH, *Tonopah Nevada*.

DEAR SIR: In reply to your letter of the 15th instant I wish to quote three sections of the Revised Laws of Nevada relative to blacklisting. They are sections 6780, 6781, 6782, as follows:

> No corporation, company, organization, or individual shall blacklist or publish, or cause to be blacklisted or published, any employee, mechanic, or laborer discharged by such corporation, company, organization, or individual with the intent and for the purpose of preventing such employee, mechanic, or laborer from engaging in or securing similar or other employment from any other

corporation, company, organization or individual.

If any officer or agent of any corporation, company, organization or individual, or other person, shall blacklist or publish or cause to be blacklisted or published, any employee, mechanic, or laborer discharged by such corporation, company, organization, or individual with the intent and for the purpose of preventing such employee, mechanic, or laborer from engaging in or securing similar or other employment from any other corporation, company, organization or individual, or shall in any manner conspire or contrive, by correspondence or otherwise, to prevent such discharged employee from procuring employment, he shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than fifty, nor more than two hundred and fifty dollars, or be imprisoned in the county jail not less than thirty nor more than ninety days, or both.

The two preceding sections shall not be construed as prohibiting any corporation, company, organization or individual who may desire to employ such discharged employee, a truthful statement of the reason for such discharge; *provided*, that said written cause of discharge, when so made by such person, agent, company, organization or corporation shall not be used as the cause for an action for libel, either civil or criminal, against the person, agent, company, organization, or corporation so furnishing the same.

The law, as you will observe, prohibits any corporation, company, organization, or individual from blacklisting any discharged employee, with the intent and for the purpose of preventing such employee from engaging in and securing similar or other employment from any other corporation, company, organization or individual. There is no law which prevents a censorship of applicants for employment prior to their being employed. The central employment bureau, mentioned in your letter, must operate in a way that will not be in violation of the blacklisting provisions as herein given. If it becomes the agent of the various corporations, companies, organizations or individuals, and, as such agent, blacklists men after they are discharged, then the Act will make the corporation, company, organization or individual which as discharged such employee criminally liable.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

154. Employment—United States Railroad Administration—Not Subject to Semimonthly Pay-Day Law.

CARSON CITY, July 8, 1920.

HON. FRANK W. INGRAM, *Labor Commissioner*.

DEAR SIR: We are returning, after reviewing, the file relative to the claim of James Isola v. Southern Pacific Railroad Company, a unit of the United States Railroad Administration, for failure to pay wages promptly upon cessation of work as provided in chapter 71 of Statutes of 1919.

We agree with the opinion of Mr. Douglas Brookman, to the effect that state statutes for

failure to promptly pay wages, do not apply to the Federal Government. The Federal Government in the railroad administration was exercising a portion of the sovereignty of the United States, and any state statutes which might conflict or impair the free exercise of such sovereignty is in inoperative. Accordingly, your department should call this incident closed.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

155. Elections—County Commissioners—Must Act Within Time Before Election Prescribed by Law.

CARSON CITY, July 15, 1920.

MR. R.T. ROCHFORD, *County Commissioner, Silver Peak, Nevada*.

DEAR SIR: We have your inquiry of July 10 as to whether or not the Board of County Commissioners of Esmeralda County may act at its adjourned meeting on July 26 upon the petition presented and filed pursuant to section 1531 of the Revised Laws of Nevada, 1912.

We are of the opinion that the board cannot do so. The section referred to expressly provides that such action must be taken "on or before the first Monday in July preceding any general election." It may be true that, July 5 being a legal holiday, by operation of law business of the board was automatically continued until the next day (Tuesday), but, having failed to act in accordance with this section at the meeting of the board on Tuesday, the power of the board to act thereafter has ceased.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

156. Emergency Loan—School Trustees—Unanimous Vote Required—Statute Mandatory.

CARSON CITY, July 16, 1920.

HON. GILBERT C. ROSS, *Secretary of State Board of Finance*.

DEAR SIR: We have the correspondence transmitted by you between Oliver Iveson, M.J. Burr, Deputy Superintendent of Schools, and yourself, relating to an emergency loan for a certain consolidated school district operating in Washoe and Pershing Counties.

Upon the record, as submitted, you are respectfully advised that the emergency loan cannot be made, since the minutes of the Board of School Trustees show only two members of the board present and acting thereon, whereas the statutes requires a unanimous vote. Such a provision is not discretionary, but it is mandatory, and should a loan be made without such unanimous vote it would be absolutely void.

We appreciate the necessity of this loan, but we are not responsible for the policy of the law; the law requiring a unanimous vote should be fulfiled.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, *Deputy Attorney-General*.

157. Elections—Registration of Voters—Reregistration.

CARSON CITY, July 19, 1920.

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

DEAR SIR: Answering your inquiry of July 6, propounded under section 21 of the registration law of this State (Stats. 1917, p. 432), we are of the opinion that under subdivision 6 thereof, if a person registers and does not state to what party he belongs, or states that he is independent or nonpartisan, he may thereafter, not later than thirty days before the primary election, have his registration card canceled and reregister, giving his party affiliation.

While considering this section literally, a contrary view might be taken. Still, in order that there may be a free expression at the polls, we think the view we take is the proper one.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

158. Elections—Registration and Voting of Women Married to Aliens Prohibited.

CARSON CITY, July 19, 1920.

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

DEAR SIR: We have your inquiry of the 15th instant, relating to the citizenship of American women married to unnaturalized aliens, and the alleged Act of Congress purporting to regulate their status on the account thereof.

Upon inquiries made, we have ascertained that such Act of Congress was introduced, but it has not yet become law. Consequently, it would appear that such women wold not have the right either to register or vote.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

159. Elections—Registration of Voters—Fee of Registry Agents—Ruling of Attorney-General Affirmed.

CARSON CITY, July 23, 1920.

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

DEAR SIR: We have the inquiry of the County Clerk of Mineral County, calling for a legal opinion of this department, transmitted through you, as follows:

> Inasmuch as section 15 of the Primary Law (Stats. 1917, p. 276) provides that the registry agent shall be paid 10 cents per name for certified copies of the register for use at the primary election, I wish to inquire: Am I, as registry agent, entitled to 10 cents per name for said certified copies of the register, in addition to

my salary as County Clerk and Treasurer?

We are of the opinion that the County Clerk is entitled to the fees mentioned in addition to his salary fixed by law. This question was propounded to our predecessor, the Hon. Geo. B. Thatcher, and he decided in accordance with these views. His opinion is sound, and, accordingly, we adhere thereto. (See Opinions of Attorney General, 1917-1918, No. 27, p. 194.)

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

160. Employment—Full Train-Crew Law—Quoted and Applied to Case Stated.

CARSON CITY, July 27, 1920.

MR. E.E. SMITH, *Chairman, Grievance Committee, Brotherhood Railway Trainmen, East Ely, Nevada*.

DEAR SIR: We have your letter of July 21, inquiring whether or not a crew of four men—namely, conductor, engineer, fireman, and one brakeman—can handle in yard limits five freight-cars in picking up one car where the train in operation between stations does not exceed, say, four or five cars.

We think that sections 3588, 3592, and 3593 of the Revised Laws of 1912 answer your inquiry. These sections are as follows:

> It shall be unlawful for any person, firm, company, or corporation, engaged in the business of common carrier, operating freight and passenger trains or either of them, within or through the State of Nevada, to run or operate, or permit or cause to be run or operated, within or through the state, along or over its roads or tracks other than along or over the roads or tracks within yard limits, any freight or passenger train of more than fifty freight, passenger or other cars, exclusive of caboose and engine, with less than a full train crew consisting of not less than six persons, to wit: One conductor, one engineer, one fireman, two brakemen, and one flagman.
>
> It shall be unlawful for any railroad company or receiver of any railroad company, doing business in the State of Nevada, to run over the road or part of its road outside the yard limits, any passenger train consisting of two cars or less, exclusive of engine and tenders, with less than a crew consisting of four persons, one engineer, one fireman, one conductor, and one brakeman, who will act in the capacity of flagman.
>
> It shall be unlawful for any railroad company, or receiver of any railroad company, or receiver of any railroad company, doing business in the State of Nevada, to run over its road or part of its road outside of the yard limits, any passenger train consisting of three cars or more, exclusive of engine and tenders, with less than a crew consisting five persons, one engineer, one fireman, one conductor, one brakeman, and one flagman.

We are, therefore, of the opinion that the Nevada Northern Railway Company switching within yard limits with the crew mentioned by you does not violate the statute.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

161. Prohibition Law—Alcoholic Beverages—Law Applied to Case Stated.

CARSON CITY, July 27, 1920.

MR. S.T. CROUCH, *Newport News, Virginia*.

DEAR SIR: Your letter to the State Prohibition Commissioner has been transmitted to this department for reply. In answer thereto we have to advise you that the opinions of the Attorney-General are reserved by law for the State, its officers and institutions, for which reason we are precluded from answering your officially.

However, you do state that "these compounded flavoring oils which are manufactured * * * do contain alcohol, but the writer considers them unfit for beverage purposes." This statement makes your inquiry a question of fact and could not be answered by this department without a full analysis of the compounds mentioned and testimony relating thereto as to whether or not the same might be used for beverage purposes. On the whole, gleaning from your letter that the flavors are whisky, brandy, rum, port, sherry, and claret wines, etc., it is apparent that a court and prosecuting officer thereof would be required to use the utmost caution before ruling that such flavors do not violate the law.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

162. Elections—Corrupt Practice Act—Law Applied to Case Stated.

CARSON CITY, August 13, 1920.

HON. A. GRANT MILLER, *Attorney at Law, Reno, Nevada*.

DEAR SIR: Section 21 of the Corrupt Practice Act clearly prohibits any person to solicit or ask or invite any candidate to subscribe for or pay for space in any book, program, periodical, or other publication. Any candidate who makes a payment for such purposes, with the hope or intent to influence the result of an election, shall be guilty of a corrupt practice.

Viewing the situation from a technical legal standpoint, I am compelled to say that such payment on the part of a candidate would be indicative of a desire to help his candidacy and to influence the result of an election. The law, as it has come from the Legislature, is very drastic, and, in construing or interpreting it, there is little opening for a liberal view of its provisions. Section 37 may relieve a candidate after he is elected of a multitude of mistakes or misdeeds, but, while he is a candidate, it is of no avail.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

163. Surveyor-General—Duties of, Relating to Irrigation District Including State Lands—Request for Advice—Answer.

CARSON CITY, August 14, 1920.

HON. C.L. DEADY, *Surveyor-General and State Land Register*.

DEAR GENERAL: The papers submitted to me by you, relative to the request that you consent to the placing within the Walker Irrigation District of certain lands, has been considered by me.

The lands in question are now the subject of state contracts issued by your office. If you give your consent that such lands become a part of the district, then, according to section 45 of the Irrigation District Act, enacted in 1919 (Stats. 1919, p. 84), the burden will be placed on the State, if the Act is enforceable, of paying the charges and tolls against the said state lands. The contract-holders, relative to said lands, will become the recipients of special favors from the State and the assumption of such a burden by the State as to lands which are now under contracts of sale seems unreasonable.

A vital point in connection with this subject is the fact that there is not a specific and definite appropriation to pay any charges and tolls for which the State would become liable. It is very likely that the possessory right to state lands of a contract-holder may be brought within the district under the terms of the said Irrigation District Act, and, as long as the contract is in force, the contract-holder may be within the district. If, however, the contract is forfeited, there will then be no binding obligations on the State as to said land, as far as the irrigation district is concerned. The complications are such that I cannot see my clear to advise you to give the consent required.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

164. Elections—Signers of Petition for Independent Candidate Do Not Lose Party Standing.

CARSON CITY, August 14, 1920.

MR. BYRON GATES, *Justice of the Peace, Dayton, Nevada*.

DEAR JUDGE: A person who signs a petition for an independent candidate does not lose his party standing and has the absolute right to vote at the primary election.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

165. Prohibition Law—Use of Alcohol by Hospitals Permitted.

CARSON CITY, August 16, 1920.

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

DEAR SIR: The primary purpose of the Nevada prohibition law is to prevent the use of alcohol in any detrimental form as a beverage. Section 4 regulates the method whereby alcohol

may be sold for medicinal purposes. Another part of the section regulates its sale for pharmaceutical, scientific, and mechanical purposes.

i am of the opinion that the word "scientific" will cover the use of alcohol in a variety of ways in hospitals that do not come within the meaning of the words "medicinal purposes." The use for the purpose of sterilizing surgical instruments, sponging of patients, and as a general antiseptic, when not prepared and used in a way that is potable, may more intelligently be brought within the meaning of the word "scientific" than the words "medicinal purposes."

In our present state of science, it seems that pure grain alcohol is the only discovered liquid that can be used for sterilization purposes that will neither injure surgical instruments, hospital apparatus, or patients.

A construction of our law that will seriously impair the running of hospitals according to the highest standard should be avoided if possible.

I am, therefore, of the opinion that a position contrary to the one herein taken would be so detrimental to the interests of humanity that it would conflict with, rather than support, the intent and purpose of the law under consideration.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

166. Elections—Signers of Petition for Independent Candidates Do Not Lose Party Standing.

CARSON CITY, August 21, 1920.

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

DEAR SIR: You are hereby advised that any legally registered voter, regardless of whether or not his politics are designated, may sign the petition of an independent candidate for office. By doing so he does not lose his party standing and his right to vote at the primary election. The purpose of the law is not to make it practically impossible for a person to run as an independent candidate for office. It is an affirmative right given to any citizen, and the law should be construed so that it will support, rather than impair, his right.

The requirement that he must obtain the signatures of a certain percentage of the voters of the State, district, or county where he is a candidate is a test of his good faith, and, to a certain extent, of his general standing. All that he is required to do is to obtain the signatures of eligible voters, and when he does this, and has the number required by law, his petition then passes beyond the pale of successful legal attack.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

167. Judicial Procedure—Criminal Law—Corporations—No Law Defining Criminal Offense for Officers to Draw Corporate Checks in Name of Corporation.

CARSON CITY, August 24, 1920.

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

DEAR SIR: The law of this State is in a strange and anomalous situation relative to an officer or officers of a corporation drawing checks in the name of a corporation on a bank, or some other institution or person, when said corporation is without funds in the possession of the drawee to pay said checks.

The Act, as it originally stood and as it was amended (Stats. 1917, p. 10), absolutely fails to include within its provisions such officer or officers of a corporation. It seems that, as the law exists, a person who desires to draw bills, notes, checks, or other instruments in writing for the payment of money or the delivery of other valuable property, directed to or drawn upon any real or fictitious person, bank, firm, partnership, or corporation when there is not money, property, or credit in the possession of the drawee to pay the amount specified in the paper, may escape criminal responsibility by incorporating and operating in the name of a corporation rather than in his personal name.

I have endeavored to find some law that would cover the situation, but I am satisfied that the Legislature has absolutely failed to enact any measure that makes criminal such acts of an officer or officers of a corporation. It is a serious defect in the law, but we are powerless to supplement legislative Acts.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

168. Elections—Residence—Student at University of Learning Does Not Lose Legal Residence—Has Legal Right to Change Same.

CARSON CITY, August 25, 1920.

MR. GARDNER WOOD, *San Francisco, Calif.*

DEAR SIR: The law of this State provides that no person shall be deemed to have gained or lost a residence while a student at any university of learning.

My construction of the law in this respect is that, while such a student is not deemed to have lost a residence, he still has the right to assert claim to a different residence. If he, therefore, registers at a place where he is attending school, it will be recognized as valid under the laws of this State.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

169. State Rabies Commission—Conflicting Appropriating Statutes—Later Controls.

CARSON CITY, August 27, 1920.

State Rabies Commission, Reno, Nevada.

DEAR SIRS: We have your inquiry, calling for an official opinion, propounded as follows: "The point at issue * * * is whether chapter 29, Statutes of Nevada for 1919, making a definite appropriation of $35,000 a year for the biennium governs, or whether chapter 244, Statutes of

Nevada for 1919, fixing the State tax levy for 1919-1920, as the last legislative expression on this subject should govern."

You are respectfully advised that these statutes, in so far as they relate to the same subject-matter, should be construed together, and that the latter legislative expression should control to the extent that a fund is thereby set aside for your Commission of which you may avail yourself pursuant to the former Act to the extent of $35,000 per year.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

170. Revenue—Sworn Statement of Taxable Property—What Constitutes—Procedure Defined.

CARSON CITY, September 1, 1920.

State Board of Equalization.

DEAR SIRS: We have your letter of August 31, inquiring "as to what constitutes a sworn statement of taxable property under the law and how the Assessor shall obtain the same and how he shall proceed in case the statement is not according to law?"

You are respectfully advised that the Nevada Statutes, as amended for 1913, p. 162, and 1915, p. 178, answers your inquiry substantially as follows:

> First—That the Assessor shall demand from the taxpayer a statement, under oath, of all real estate and personal property owned or claimed by the taxpayer, and, if the taxpayer shall neglect or refuse, on such demand, to give such statement, he shall be guilty of a misdemeanor and shall be prosecuted accordingly.
>
> Second—This statement should be sworn to before the Assessor or his deputy or other officer authorized to administer an oath. If the statement is not in accordance with the law, it should be returned for correction, and, if not corrected, should be treated as a nullity. The Assessor's duty ceases when he has complied with the statute above cited and, particularly, by reporting to the District Attorney the names of all persons neglecting or refusing to give the statement as required by the Act.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

171. Corporations, Foreign—Amendment of Articles—Case Governing—Fees Chargeable.

CARSON CITY, September 3, 1920.

HON. GEORGE BRODIGAN, *Secretary of State.*

DEAR SIR: With reference to the contention of counsel for the Standard oil Company of California, as to whether or not it is liable for the license fee prescribed for corporations, to be

paid to you upon qualifying, we have examined the authorities submitted to you by such counsel. We think that upon reading the same it is apparent that they do not apply, but the case is covered by the principles laid down in General Railway Signal Company v. Virginia, 246 U.S. 511, and under the authority of that case we respectfully advise you to charge and collect the statutory fee from the Standard Oil Company upon filing its amended articles of incorporation.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

172. Elections—Candidate With No Opposition May Act as Inspector.

CARSON CITY, September 7, 1920.

HON. BART S. FITZPATRICK, *Justice of the Peace, Luning, Nevada*.

DEAR SIR: We have your inquiry of September 1 as to whether or not you may act on the primary election board since you are a candidate for Justice of the Peace, with no opposition either at the primary or general election.

Under these facts submitted by you, we are of the opinion that you may legally act as such inspector and that you are not in any manner invalidating the election thereby.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

173. Revenue—Tax Exemption of Veterans—Statute Applies to Veterans of All Wars.

CARSON CITY, September 8, 1920.

HON. J.F. MILES, *County Assessor, Ely, Nevada*.

DEAR SIR: A construction should be passed upon the Act of the Legislature of the State of Nevada, entitled "An Act exempting property of veterans" (Stats. 1917, p. 65) that will give full force and effect to the intent and purposes of said Act.

It does not seem plausible that the Legislature of this State enacted such an exemption Act for the purpose of discriminating in favor of men who have served in any particular wars and that would therefore fail to give the same exemption to men who would serve their country in the same capacity after the passage of the Act. The sensible construction is that the Legislature of this State desired that an Act, permanent and continuing in its effectiveness, should be placed upon the statute-books so that all men coming within the provisions of the Act should be exempted as provided for in said Act, regardless of the war in which they engaged and whether or not their participation in a war was prior to subsequent to the passage of the Act.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

174. Elections—Candidates for Judicial Office Must File Application as Non-partisan.

CARSON CITY, September 10, 1920.

HON. W.R. REYNOLDS, *District Attorney, Eureka, Nevada*.

DEAR SIR: A person cannot run for any judicial office as an independent candidate. It is mandatory that a person aspiring for such an office must file his application as a nonpartisan candidate prior to the expiration of the time fixed by law for filing applications of candidacy at the primary election.

A vacancy that is permitted to be filled must be one that occurs after a nomination has been made. The mere facts that no one has filed in the manner provided by law to become a candidate for a given office and that there is, therefore, no candidate for such office do not create a vacancy.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

175. Gambling—Municipal Corporations Have Power to Regulate and License Gambling Permitted by Law Under Police Power.

CARSON CITY, September 10, 1920.

REV. E.F. JONES, *Reno, Nevada*.

DEAR SIR: You have propounded to me two questions as follows:

> May a municipal corporation regulate the hours relative to playing the gambling games made legal by the state law?

My answer is that in the exercise of the police power of a municipal corporation and for the protection of the life, property, and happiness of the people situate therein, it may adopt any reasonable regulations and in this regard may confine all legalized gambling to certain hours.

In answer to your second question, I beg to advise that a municipal corporation has the power to impose a substantial license upon any house that operates gambling games, even though said games are made legal by state law.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

176. Public Funds—State Highway Law—Application of Funds of Bond Issue.

CARSON CITY, September 11, 1920.

HON. C.C. COTTRELL, *State Highway Engineer*.

DEAR SIR: Section 6 of an Act of the Legislature of the State of Nevada entitled "An Act to provide a general highway law for the State of Nevada" (Stats. 1917, p. 309), relative to the powers and duties of the State Highway Engineer, says:

> The state highway engineer shall have charge of all the records of the department of highways; shall keep a record of all proceedings and orders pertaining to the business of his office and of the department; and shall keep on

file copies of all plans, specifications, and estimates prepared by his office. He 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. he shall investigate and determine the methods of road construction best adapted to the various sections of the state, and shall establish standards for the construction and maintenance of highways in the various counties, giving due regard to the topography, natural conditions, character, and availability of road-building material. He may at all reasonable times be consulted by county officers having authority over highways and bridges relative to any question involving such highways and bridges, and he may, in like manner, call on such county officials for any information or assistance they may render in the performance of his duties with reference to the highways and bridges within their county, and it shall be the duty of such county officials to supply such information when called upon for the same by the said highway engineer. He shall determine the character and have the general supervision of the construction and repair of all roads and bridges improved under the provisions of this act. He shall report all the proceedings of his office to the board of highway directors annually, and at such other times as they may designate.

The reading of the provisions contain in said section must necessarily lead to the conclusion that the Legislature intended that the scope of that Act should extend to all highways that the Department of Highways, acting through the State Highway Engineer, would determine to be necessary for state purposes. The mere fact that the Legislature designated four routes as constituting state highways does not limit the jurisdiction of the Highway Department in its operations to the routes described, but the said Department of Highways may expand and include roads outside the routes described when such are necessary to carry out the real intent and purposes of said Act of the Legislature. The road from Reno to Purdy mentioned in your letter is undoubtedly a road that may be considered of great value if it is included in the general system of highways.

I am, therefore, of the opinion that the State Highway Department may use money raised from the bond issue provided by the Legislature for the purpose of doing work on said road, the understanding being that Washoe County will reimburse the State for the money expended.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

177. Public Schools—School Trustee—Must Be Citizen—Qualifications.

CARSON CITY, September 20, 1920.

MR. M.J. BURR, *Deputy Superintendent of Public Instruction, Carson City, Nevada*.

DEAR SIR: You are hereby advised that a person who is not an American citizen is not qualified to be appointed a School Trustee. The fact that such a person may have declared his intention to become an American citizen does not change the situation. Section 3 of article 15 of the Constitution of Nevada recites:

No person shall be eligible to any office who is not a qualified elector under this constitution.

A School Trustee holds an office under the meaning of this constitutional provision.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

178. Public Schools—School Trustees May Require District Attorneys to Render Opinion—May Employ Special Counsel in Certain Cases.

CARSON CITY, September 20, 1920.

MR. J.F. BARTON, *County Auditor, Yerington, Nevada*.

DEAR SIR: It is affirmatively declared in the School Code of Nevada that the District Attorneys of the several counties must give, when required, and without fee, legal opinions in writing to School Trustees on matters relating to the duties of their offices. The Legislature limited the statutory duties of the District Attorneys in this respect to the giving of legal opinions.

I am, therefore, compelled to come to the conclusion that, if School Trustees desire legal services beyond the mere obtaining of legal opinions in a case where legal services are absolutely required, they may employ special counsel for such purposes. They should not, however, employ special counsel to write legal opinions relative to the duties of School Trustees unless it is a case where the District Attorney is disqualified.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

179. Judicial Procedure—United States Not Excepted in Statutes—Must Give Bonds in Judicial Proceedings.

CARSON CITY, September 23, 1920.

HON. WM. WOODBURN, *United States Attorney, Reno, Nevada*.

DEAR SIR: Section 5487 of the Revised Laws of Nevada relieves the State of Nevada or any county, city, or town of this State, or any officer thereof in his official capacity, from the necessity of giving a bond, undertaking, or security in any action or proceedings prosecuted or defended for the public benefit.

The framer of this section evidently did not have in contemplation the utilization of the state courts by the United States, and consequently the latter is not included in said section. I do not think that there is any provision of law in this State that exempts the United States from giving a bond or undertaking in any proceeding or action in the state courts where such bond or undertaking is ordinarily required.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

180. Public Schools—Part-Time Schools—Certain Portion of Act Invalid.

CARSON CITY, September 29, 1920.

HON. W.J. HUNTING, *Superintendent of Public Instruction*.

DEAR SIR: The attention of this office has been called to the defectiveness of the title of an Act of the Legislature of this State entitled "An Act to provide for the establishment of part-time schools and classes, and to compel attendance of minors upon such schools and classes," approved March 25, 1919, in regard to its application to section 3 of said Act, which is as follows:

> All children of the state shall attend school until the age of eighteen unless they are employed and are excused from attendance in accordance with terms of subdivisions 1, 3, and 5 of section 203, chapter 133, Statutes of 1911.

I am constrained to say that I believe that section 3 of said Act is invalid, because of its being foreign to the title.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

181. Public Schools—Teacher's Contract—Termination Thereof—School Trustee—Vacancy of Office.

CARSON CITY, September 29, 1920.

HON. W.J. HUNTING, *Superintendent of Public Instruction*.

DEAR SIR: Replying to your inquiry as to what effect section 97 of the School Code of Nevada has upon the contract entered into between a teacher and the Board of School Trustees in the event that the school is compelled to be closed under and by virtue of the provisions of said section, I beg to advise that all contracts between School Trustees and school teachers are necessarily made in the light of existing laws, and such laws are, by implication of law, a part of the contract itself. Therefore, when a school is closed down because of the fact that there are not sufficient children in the district to sustain it, and the closing is therefore made compulsory by law, the contract is at an end, and there are no longer any obligations resting upon either of the parties to the contract. They are restored to the same condition that they would have been in if the contract had never been executed.

In regard to your second inquiry as to whether or not a vacancy occurs in the membership of a Board of School Trustees when a member of such board has moved from the school district to some other school district within the State, or has moved out of the State, I beg to reply that subdivision 6 of section 2799 of the Revised Laws of this State, which relates to this subject, reads as follows relative to a vacancy occurring in a public office:

> The ceasing of the incumbent to be a resident of the state, county, city, or precinct in which the duties of his office are to be exercised or for which he shall have been elected or appointed.

If the appointing power is satisfied that the holder of a public office is no longer a resident of the State, district, county, city, or precinct, as the case may be, then such appointing power

should declare that a vacancy exists and should appoint some person to fill such vacancy. The appointing power must be certain that the absence is not temporary and one wherein the incumbent intends to return to the place where he is required to perform his official duties, but, on the contrary, has absolutely ceased to be a resident of the State, district, county, city, or precinct, as the case may be, with no immediate intention to return to the place where he is required to perform his official duties.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

182. Revenue—Inheritance Tax—Exemption on Distributive Shares—Deductions.

CARSON CITY, September 30, 1920.

HON. E.T. PATRICK, *Attorney at Law, Carson City, Nevada*.

DEAR SIR: We have your inquiry requesting an official opinion in the estate of R.C. Scheel, deceased, referring to the application of the inheritance-tax law thereto, and beg to reply to you as follows:

First—That where the statute allows certain exemptions upon a distributive share, such exemption is not allowed to the heirs as a group, but to each heir in the same class. Any other construction of the statute would be unreasonable and not according to apparent legislative intent.

Second—The amount of tax is chargeable against the amount of the estate appraised after the payment of debts—or, in other words, the debts of the estate, expenses of administration, etc., are legal deductions, but, while you have not asked the question, we do not desire to be understood as holding that the increase in value of an estate is not subject to tax. The increase in value of an estate to the close of the administration is subject thereto.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

183. Corporations—Insurance Corporations Failing to Qualify—Proceedings Against Same.

CARSON CITY, October 5, 1920.

HON. GEO. A. COLE, *Insurance Commissioner*.

DEAR SIR: We have your verbal statement of facts to the effect that there is a certain fire insurance company, incorporated under the laws of a sister State, which has neither complied with the corporation or insurance laws of this State where it is placing policies of insurance by mail. The inquiry propounded is as to what means may be employed to prevent such operations by such insurance company.

After considerable research and due consideration, we beg to advise you that no effective legal proceedings may be brought either in the state or federal courts of Nevada, for the reason no jurisdiction over the offending corporation can be obtained therein by constructive service of

progress. The process of this State, where the judgment is to operate *in personam*, must be personally served within its confines; or, if federal jurisdiction is sought to be obtained, the proceedings must be brought in that district of which the offending corporation is an inhabitant. Accordingly, under the facts submitted proceedings could only be prosecuted either in the state courts or in the federal courts where the company referred to by is a resident and inhabitant.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

184. Revenue—Automobile Licenses—No License Fee Therefor May Be Collected from County or Municipality.

CARSON CITY, October 5, 1920.

HON. GEORGE BRODIGAN, *Secretary of State*.

DEAR SIR: We have your letter calling for an official opinion at the request of the District Attorney of Nye County as to whether or not automobile and truck licenses may be collected by the State for automobiles and trucks owned by a county or municipality.

Where such property is devoted to public or governmental purposes and is not used for profit, the same is exempted from state or other tax or license, and, therefore, no license fee should be collected under the state law in the premises. This view is fortified by decision law, which holds that, unless the power to tax or license such property is clearly expressed, the same will not be implied.

See 37 Cyc. 875; section 3621, Revised Laws of 1912; State v. Rhoades, 6 Nev. 352.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

185. Judicial Procedure—Criminal Law—Forfeited Bail Belongs to State.

CARSON CITY, October 6, 1920.

HON. GEORGE A. COLE, *State Controller*.

DEAR SIR: We have your inquiry induced by the County Auditor of Yerington, relating to a claim for forfeited bail money, alleged to have been transmitted to the State Treasurer by mistake, and asking that the same be credited to the County Treasurer of Lyon County. It is insisted that forfeited bail moneys in criminal cases become the property of the county and not of the State. We take the contrary view. Criminal offenses are against the sovereignty of a State, and when a defendant is released under a bail bond the statute provides that that bond shall run in favor of the State. Where the statute permits a deposit of money in lieu of a bail bond, such deposit necessarily is subject to the same terms and conditions as the bail bond itself.

You are accordingly advised that the $2,000 claimed by Lyon County as forfeited bail should be retained by the State.

By order of the Attorney-General:

Respectfully submitted,

ROBERT RICHARDS, *Deputy Attorney-General*.

186. Live Stock, Quarantine of, etc.—Expense Therefor Not Chargeable toCounties.

CARSON CITY, October 8, 1920.

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

SIR: The Act of the Legislature of March 31, 1913, entitled "An Act providing for interstate and intrastate quarantine with respect to domestic animals and other live stock, poultry, bees, and agricultural and horticultural crops," etc., has become more complicated owing to its mutilation in the amendment thereto approved March 24, 1915, in respect to the source from which the money is to be derived for the purpose of making effective quarantine regulations.

One thing is certain, and that is that there is no responsibility in a financial way imposed upon the counties of this State. In that the administration of the Act is placed in the President and Board of Regents of the University of Nevada, the money for its administration should be derived from some fund under the control of the University. The Veterinary Control Service is made a part of the Public Service Division of the University of Nevada. Any appropriation made by the legislature for the Public Service Division of the University of Nevada may be legally used for quarantine purposes.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

187. Public Schools—School Funds for Purchase of Books May Not Be Expended for Talking Machine.

CARSON CITY, October 14, 1920.

MRS. HUGH BROWN, *Nevada Federation of Women's Clubs, Minden, Nevada*.

DEAR MRS. BROWN: Your letter of September 14, 1920, addressed to Miss Maude Gillson, has been referred to this office for a reply.

School laws, as affecting the powers of the School Trustees or other officials given control of the school funds, cannot be too liberally construed. Necessarily a construction should not be so contracted that it will defeat the purpose of a particular Act. The intent of the Legislature must govern. When the Legislature of Nevada passed an Act permitting the use of school money in certain cases for the purchase of books, it can hardly be contended that the Legislature had in contemplation any such thing as Victor talking-machine records. The law fails to provide means for the purchase of anything that may be educational in its character, but the particular law under consideration applies to books. There is, of course, no ambiguity or uncertainty in the meaning of the word "books." I am, therefore, compelled to rule that the law relative to the purchase of books for schools is not sufficiently flexible to apply to phonographic records.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

188. Employment—Labor Commission—Labor Laws—Certain Inquiries Relating to Same Answered.

CARSON CITY, October 23, 1920.

HON. FRANK W. INGRAM, *Labor Commissioner*.

DEAR SIR: Various questions propounded by you are herein given in the order contained in your letter with my answers thereto:

1. Do employees engaged in operating prospect drill in connection with the Ruth mine come under section 1941, Revised Laws of 1912, their work being to prospect in advance of underground operations, but being employed upon the surface?

Answer—Yes.

2. Do the provisions of section 6555, Revised Laws of 1912, apply to employees of the Nevada Consolidated Copper Company engaged in dumping cars into ore-bins, which service is the initial operation of, and in connection with, the milling processes and is not for storage purposes or a part of the transportation of such ores?

Answer—Yes.

3. Is it permissible, under section 6555, Revised Laws of 1912, to work an employee eight hours within a plant used for reduction of ores and then an additional two hours outside of the plant in unloading cars?

Answer—Yes.

4. Is it permissible to permit an employee, under section 6555, Revised Laws of 1912, to obtain outside work from another employer for an additional two or four hours after having worked eight hours within a mill?

Answer—Yes.

5. Do the provisions of section 1941, Revised Laws of 1912, apply to mill employees in the dining-room or eating departments of the Nevada Consolidated Copper Company at McGill and Ruth, Nevada?

Answer—No.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

189. Equipment—Nepotism Law—Not Applicable to Case Stated—Opinion of Former Attorney-General Affirmed.

CARSON CITY, October 23, 1920.

HON. H.U. CASTLE, *District Attorney, Elko, Nevada*.

DEAR SIR: Under date of January 26, 1918, Attorney-General Thatcher, by his deputy, William McKnight, rendered an opinion to Mr. W.W. Booher, Secretary of the Board of Government, Nevada School of Industry, Elko, Nevada, relative to the Nepotism Act, in the

following language:

> 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 to all such matter, it is our opinion that the contemplated employment can be legally made.

It is my policy to uphold a legal opinion rendered by my predecessor unless very strong reasons exist that necessitate, from my viewpoint, the overturning of any such opinion. In the matter under consideration I adhere to the opinion mentioned.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

190. Elections—Transfer of Registration Precinct.

CARSON CITY, October 27, 1920.

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

DEAR SIR: An elector who changes his place of residence from one precinct in a county to another precinct in the same county within ten days prior to November 2, 1920, cannot obtain a transfer. An elector, however, who changed his place of residence from one precinct in a county to another precinct in the same county more than ten days prior to November 2, 1920, is entitled to a transfer. There is no limitation placed upon the time when the elector is to apply for any such transfer. As long as the registry cards are in the possession of the County Clerk or registry agent, the transfer may be effected under section 14 of the registration law.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

191. Revenue—Nevada Tax Commission Has Power to Review Action of State Board of Equalization.

CARSON CITY, November 6, 1920.

Nevada Tax Commission.

GENTLEMEN: The subject-matter contained in your letter of October 29 practically resolves itself into the question as to whether or not the Nevada Tax Commission is possessed of the power, upon proper presentation to it, to review any action of the State Board of Equalization relative to the assessment of property and the equalization thereof.

I am of the opinion that the Commission is possessed of such final power regardless of whether the assessment valuation has been raised or lowered by the State Board of Equalization. Section 6 of the Revenue Act of 1917 (Stats. 1917, p. 328) prescribes the duties imposed upon

the State Board of Equalization. After reciting said duties, the following language is used:

> *Provided, however*, that if said state board of equalization shall fail to perform the duties enumerated in this section, the Nevada tax commission may make such equalization as will be necessary.

In a case where property is assessed at a figure that is too low, it is the duty of the State Board of Equalization to raise the assessed valuation. In a case where the State Board of Equalization fails to do the thing that the facts demand that it should do, then the State Board has failed to perform an important duty placed upon it. Such failure of the Board of Equalization thereupon becomes, by reason of the proviso mentioned, the subject of review by the State Tax Commission. The State Tax Commission is, according to the intent and purpose of said Act of the Legislature, made the paramount and final factor in determining the justice and injustice of all assessment valuations and to fully and completely determine all questions relating thereto in the interest of the revenue system of the State. Subdivision 8 of section 3 of the Act mentioned reads as follows:

> The commission shall have, in addition to the specific powers enumerated, the power to exercise general supervision and control over the entire revenue system of the state.

The latter part of subdivision 10 of said section is in the following language:

> The enumeration of the foregoing powers shall not be considered as excluding the exercise of any needful and proper power and authority of said commission.

These recitals of the powers of the Tax Commission clearly indicate the right of the Commission to investigate and determine the fairness or unfairness of all valuations fixed on property in this State.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

192. Judicial Procedure—Justice Court—Civil Practice Therein in Case Stated.

CARSON CITY, November 9, 1920.

HON. BART S. FITZPATRICK, *Justice of the Peace, Luning, Nevada*.

DEAR SIR: We have your letter of November 7, calling for our official opinion upon the question whether or not in a contested suit filed in your court, on the plaintiff and defendant being absent on the date set for trial, you may consider in evidence a sworn statement as to the correctness of the itemized account sued upon under section 5754 of the Revised Laws, 1912.

You are advised that you may not legally do so, since the case referred to does not fall within said section. The defendant having appeared and answered the complaint, the sworn statement mentioned is ex parte—that is, made out of court without an opportunity for the defendant to cross-examine the plaintiff. The situation precludes it from being legal evidence, and, accordingly, you are not permitted either to admit the same in evidence or to decide the case therefrom.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

193. Prohibition Law—Request for Official Opinion Denied—Attorney-General Cannot Take Judicial Notice of Certain Preparations.

CARSON CITY, December 3, 1920.

MR. P.B. ELLIS, *Attorney at Law, Carson City, Nevada*.

DEAR SIR: We have the request of the Scranton Distributing and Manufacturing Company, transmitted through you, as to whether or not Cusick's Pela Tonic and Cusick's Horke Vino, each containing alcohol in excess of 18%, contravenes the prohibition law of this State.

The opinions of the Attorney-General are preserved by law for the State and its officers and institutions. Hence, we are precluded from whereby we are able to state whether these preparations or other preparations are prohibited, since a decision necessarily must depend upon divers elements which are foreign to our consideration, namely, the chemical analysis of the preparations, whether or not the same may be used as a beverage, etc., and, even then, our opinion would be only advisory. We can take no judicial notice of such preparations, and therefore we may not decide the question. We will decide such questions only where the subject-matter is governed by the doctrine of judicial notice.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

194. Gambling—Municipality Has Power to Regulate Gambling Permitted by Law.

CARSON CITY, December 3, 1920.

HON. ANDREW L. HAIGHT, *City Attorney, Fallon, Nevada*.

DEAR SIR: It is my opinion that a city ordinance, which will prohibit the operation of gambling games between 10 o'clock at night and 6 o'clock in the morning and from 10 o'clock Saturday night to 6 o'clock Monday morning would be perfectly valid.

Gambling is not looked upon with favor in law, and rigorous regulations may be applied thereto by a municipal corporation in the face of the fact that the state law may legitimize certain gambling games. A license fee may be practically prohibitive, or even prohibited, and yet not be invalid. The mere fact that certain gambling games are not prohibited by state law does not place municipal corporations in the position whereby it may not enact a rigorous ordinance on the subject.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*

195. Prohibition Law—Federal Bulletin Covering Procedure Under State Law Approved—Opinion Under Federal Law Not Given.

CARSON CITY, December 8, 1920

American Railway Express Company, Reno, Nevada.

DEAR SIRS: We have your letter inclosing Director's Bulletin No. 2 from the Federal Prohibition Director at Reno, Nevada, covering the regulations for the shipments and delivery of sacramental wine. The procedure noted therein required by our state law is correct as far as this department may finally decide it. In the proper case, the Supreme Court of this State may or may not modify these regulations. We decline, however, to pass upon the procedure noted in the bulletin under the National Prohibition Act or to state laws, for the reason that the function to do so is not reposed in this department, but reposes in the Federal Government.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

196. Elections—City Water-Works Election—Qualification of Voters.

CARSON CITY, December 16, 1920.

HON. W.L. MERITHEW, *City Clerk, Elko, Nevada*.

DEAR SIR: We have the request, transmitted through you, of the Board of Supervisors of the City of Elko, as to whether or not an elector of your city, whose name does not appear upon the assessment roll for the current or preceding year, has the right to vote on the question of purchasing the Elko water-works. Section 77 of your charter requires the judges or officers of election to ascertain of each person offering to vote if such person possess the qualifications prescribed. The qualifications prescribed "shall be construed to be, and include, all persons whose names appear on the tax-roll for the current or the preceding year in which the elector offers to vote." It is apparent, therefore, that the persons referred to in your inquiry do not possess the qualifications prescribed. However, we think that this inquiry should be made direct to your City Attorney, who should advise you in the first instance.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

197. Public Schools—Consolidated School Districts—Must Furnish Transportation—Procedure to Disconsolidate.

CARSON CITY, December 17, 1920.

HON. E.E. FRANKLIN, *Elko, Nevada*.

DEAR SIR: Referring to your letter of November 22, 1920, in regard to the transportation and other matters relating to the Lamoille, Humboldt, and Rabbit Creed Consolidated School District, we have to advise you that under the law the Board of School Trustees must furnish the means of transportation for pupils, and, though there is no specific provision made concerning the opening or closing of gates, such opening and closing of gates is incidental to the object of transportation, and the board must take the necessary means in this respect, so that the transportation may be duly accomplished.

Relating to your inquiry as to the process which must be followed in case the consolidated

districts have to revert to their former condition, you are advised that generally they must follow Chapter 7, commencing with sections 75a, et seq., of the School Code of 1919, which you have. The details in regard thereto are too cumbersome to include here, but at the appropriate time the details must be worked out so that they may have legal and operative effect. After a conference with Mr. Hunting, Superintendent of Public Instruction, we are anxious that not only the board in question, but throughout the State, will do everything in their power to arrive at the ultimate object of the school law, namely, that the children of school age shall have every convenience in order that they may attend school.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

198. Public School—Office Deputy for State Superintendent Cannot Perform Duties of District Deputies—He May Act in Advisory Capacity.

CARSON CITY, December 17, 1920.

HON. W.J. HUNTING, *Superintendent of Public Instruction*.

DEAR SIR: We have your inquiry of the 15th instant, as to whether or not your duly appointed Office Deputy may perform the duties and exercise the powers of the District Deputies appointed under the Act creating them. The duties and powers of District Deputies are specifically enumerated in section 12 of the act entitled "an Act concerning public schools and repealing certain Acts relating thereto," approved March 20, 1911. It appears that these duties are specifically imposed and these powers are specifically reserved to the respective District Deputies, and, accordingly, we hold that your Office Deputy has not the legal right to perform these duties and exercise these powers. We appreciate, however, that an emergency not covered by the law has arisen, and will arise, in the several districts which would require an added official, either to take over in whole, or in part, the functions of a District Deputy or aid him in the discharge of his duties and powers. We suggest, therefore, that your Office Deputy should act in such emergency in an advisory capacity with the cooperation of the District Deputy.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

199. Elections—Initiative and Referendum Petitions—Initiative Petitions Need Not Be Verified.

CARSON CITY, December 17, 1920.

HON. GEO. B. THATCHER, *Reno, Nevada*.

DEAR SIR: We have your inquiry as to whether or not initiative petitions and referendum petitions, respectively, must be verified where they are submitted to an election throughout the State. The scheme for the initiative and referendum is contained in sections 1, 2, and 3 of article 19 of the Constitution of Nevada. The last section proposes the scheme in detail and provides that the section shall be self-executing, but permits legislation to facilitate its operation. No

legislation has been enacted to facilitate the operation of the initiative, but we do find that legislation has been passed covering the referendum, and particularly providing for the verification of referendum petition, in that under section 94 of the Act relating to elections approved March 24, 1917, we ascertain "but each petition must be verified by at least one of the voters." When the Legislature passed the Act including the referendum and excluding the initiative, we are of the opinion that it had the subject-matter of article 19 and its three sections before it and legislated concerning the referendum without reference to the initiative advisedly, and, accordingly, we hold that an initiative petition is not required to be verified.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.

200. Prohibition Law—Institutions of Learning Cannot Be Construed Druggists.

CARSON CITY, December 24, 1920.

HON. WILLIAM A. KELLY, *Collector of Internal Revenue, Reno, Nevada*.

DEAR SIR: We have your inquiry, calling for an official opinion concerning the provisions of the Nevada Prohibition Act relating to the obtaining of pure grain alcohol by universities and other institutions of learning. Your inquiry is succinctly stated as follows:

> Would a scientific or educational institution be permitted to withdraw alcohol "tax free" from a distillery warehouse (there being none in the State of Nevada), and have same shipped to them within the State, said shipment of necessity being interstate, or would they be required to purchase tax-paid alcohol from local druggists under the provisions of section 4 of the state Act?

We regard the question of the shipment being interstate as immaterial, and the term "druggist," used in the Act, is applicable to one who is engaged as such according to the common acceptance of that term and cannot be extended to include a chemical laboratory in a sat of learning. We are of the opinion, therefore, that the method prescribed by the Act is exclusive, and alcohol for scientific or other permitted purposes may only be obtained from, and delivered by, a druggist under the conditions set forth in the Act. The terms of the Act in this respect are plain and clear, and admit of no doubtful meaning.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

201. Public Schools—Heads of Families—Consolidated School Districts—Posting of Notices.

CARSON CITY, December 24, 1920.

MR. JOHN F. PERKINS, *St. Thomas, Nevada*.

DEAR SIR: The term, "head of family," implies that more than one person resides in the particular house and that one is possessed of leadership and assumes the responsibilities connected therewith. A man who lives alone is not the head of a family.

Where two or more school districts are consolidated, a consolidated school district is brought into existence. Therefore, the law which requires that notices shall be posted in at least three conspicuous places within the district, for the purpose of convening the heads of families to act upon questions of schoolhouse sites or to erect, purchase, sell, hire, or rent schoolhouses for the use of the district, is fully complied with by the posting of said notices in three conspicuous places, any place within the consolidated district. In other words, the districts, as they existed prior to the consolidation, and regular voting precincts are not entitled to any legal recognition in determining where said notices are to be posted.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

202. Prohibition Law—Druggist Alone May Sell Alcohol Thereunder.

CARSON CITY, December 30, 1920.

HON. JONATHAN PAYNE, *Acting Prohibition Director, Reno, Nevada*.

DEAR SIR: The only persons authorized by the Nevada prohibition law to sell pure grain alcohol or wines for the purpose made legal by the Act are druggists. They cannot be sold or disposed of by any other persons. Your ruling is correct wherein you maintain that alcohol or wine purchased for the legalized purposes named in the prohibition law of this State must be purchased through duly licensed druggists of this State.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

203. Emergency Loan—Elko County High School Proceedings Therefor—Application of Loan.

CARSON CITY, December 31, 1920.

MR. W.R. ENGLERT, *Clerk of Elko County High-School Board, Elko, Nevada*.

DEAR SIR: We have your inquiry calling for an official opinion concerning the legality of the proceedings of your board covering the proposed emergency loan in the sum of $21,000 to meet the general expenses of the county high schools specified in the transcript transmitted to us. We find these proceedings regular and in due form of law.

Relative to your inquiry as to whether or not the Emergency Loan Act applies to a county high school, I beg to advise that it is clearly the intent and purpose of said Act to include every kind of a high school, and said Act must be so construed. In arriving at the intent of the Legislature it would be unreasonable to conclude that the Legislature intended to deprive a county high school of any of the privileges, prerogatives, and advantages given to any other kind of a high school. Section 183 of an Act concerning public schools, etc., approved March 20, 1911, reads as follows:

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

the state school system.

A consideration of this section in conjunction with the Emergency Loan Act makes conclusive the contention herein asserted—that county high schools in regard to emergency loans are in the same category as the ordinary high-school district. Even assuming that it would become necessary for a court to define the meaning of the words "high-school district" any court would undoubtedly rule that the enlargement of a high-school district wherein it takes in all the territory of a given county would not take it from without the terms "high-school district"—in other words, for the purpose of giving the vitality to the Emergency Loan Act to which it is entitled the courts would, if necessity so demands, rule that a county high school is a high-school district within the meaning of the Act. While the courts would not be unduly liberal in construing the provisions of the Emergency Loan Act, sill they would not adopt an attitude that would defeat in an important instance the purpose of the existence of the Act itself. The fact that no argument can be used to sustain a theory that the law should apply to one kind of a school law and not to another kind, must of itself lead to the conclusion that the Act applies to high schools of every description.

I beg to remain

Very truly yours,
L.B. FOWLER, *Attorney-General*.

204. Public Service Commission—Public Convenience, Hearing and Evidence on Application for Certificate Of.

CARSON CITY, December 31, 1920.

Public Service Commission, Carson City, Nevada.

DEAR SIRS: Replying to your letter, calling for official opinion on the construction placed on section 36½ of the Public Service Commission law, we have to advise you as follows:

> Every public utility owning, controlling, operating, or maintaining, or having any contemplation of owning, controlling or operating any public utility shall, before beginning such operation or continuing of operations, or construction of any line, plan, or system, or any extension of a line, plant, or system within this state, obtain from the public service commission a certificate that the present or future public convenience or necessity requires or will require such continued operation or commencement of operations or construction. * * * Upon granting of any certificate of public convenience, the commission may make such order and prescribe such terms and conditions for the location of lines, plants, or systems to be constructed, extended, or affected as may be just and reasonable.

The cardinal point to which your determination should be directed in the premises is the convenience and necessity of traveling public to subserve which you may prohibit the establishment of competing lines, where the competition would not ultimately redound to the public good, but you would not have power to prohibit the continued operation of a competing line already established, since an attempt so to do would be a confiscation of property and property rights without just compensation being made. Nevertheless, you may so regulate the continued operation of an established competing line so long as such regulation does not amount to prohibition thereof under the guise of regulation. In doing so, the paramount question is the

convenience and necessity of the public, and you, therefore, have the right to cause the competing line to be one—not only in name, but in fact—operating on fixed schedules as to time and fares, and with or without passengers, because, if it may operate only when it is afforded business and for fares that may be offered at the time, it is apparent that ultimately such operations cannot tend to the public good, but to the absolute injury of other bona-fide competitors, heavily financed and taxed, and always operating, with or without business. In arriving at your determination in the premises, there are other elements to which you should give weighty consideration. While respective competitors, in established lines, may have vested property rights therein, it is a principle of law that he who is prior in time, if the public good demand it, should be held to be prior in preferential right.

In conclusion, while you have these broad powers, there should be no arbitrary exercise of your functions, but the same should be so exercised with a discretion which will redound to the public good as based upon the evidence adduced before you.

By order of the Attorney-General:

Respectfully submitted,
ROBERT RICHARDS, *Deputy Attorney-General*.