1. Sheriff—Compensation as Ex Officio License Collector.

CARSON CITY, January 10, 1921.

MR. T.V. HURLEY, *Sheriff, Virginia City, Nevada*.

DEAR SIR: You have propounded the following query:

> Is the Sheriff of Storey County entitled to receive compensation as ex officio license collector for the collection of business licenses?

Pursuant to section 33 of an act of the Legislature of the State of Nevada, entitled, "An Act to provide revenue for the support of the government of the State of Nevada," etc., Stats. 1915, p. 236, as Sheriff you are clearly entitled to such compensation. The salary act of Storey County, approved March 20, 1909, stats. 1909, p. 167 provides among other things, that the Sheriff and ex officio Assessor shall receive the sum of eighteen hundred dollars a year, and that the same shall be in full payment for all services rendered by him. The said Act fails to provide any compensation or salary to the Sheriff as license collector. In the case of Bradley v. Esmeralda County, 32 Nev. 159, on page 166 thereof, our Supreme Court says:

> The office of the collector of licenses is a separate and distinct office, and has been so regarded in all of the revenue acts passed by the Legislature of this State. Citing State v. Lawton, 19 Nev. 202; State v. LaGrave, 23 Nev. 373-385.

The office of license collector being a separate and distinct office from Sheriff and Assessor, the salary Act of 1909 has no application thereto, and the Sheriff is, therefore, entitled to receive the compensation provided for by law to be paid a license collector.

Yours very truly,

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

2. Public Offices—An Official May Not Hold Two Incompatible Offices—Respective Offices as Member of Nevada Tax Commission and as Member of Board of County Commissioners are Incompatible.

CARSON CITY, January 18, 1921.

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

SIR: Hon. Shober Rogers has forfeited the office of State Tax Commissioner by reason of his election and qualification as County Commissioner of Churchill County. The general principle of law is that the same person cannot hold two offices that are incompatible. This is the common-law rule. As a member of the Board of County Commissioners of Churchill County, Mr. Rogers is also a member of the County Board of Equalization. As a State Tax Commissioner he would possess the power to sit in review, both as a member of the State Board of Equalization and as a member of the Nevada Tax Commission, of the acts and proceedings of the County Board of Equalization. Incompatibility in the offices of the State Tax Commissioner

is, therefore, clear and certain.

> The acceptance of an incompatible office by the incumbent of another office is regarded as a resignation or faction of the first office. 29 Cyc. 1382.

The subject of incompatibility in two offices has been many times before the courts. I desire to quote from some of the cases in support of my position in this case. One of the leading cases is that of State v. Goff, 15 R.I. 505. On page 506 the Court says:

> It is well settled that when a person accepts an office incompatible with one which he then holds, he thereby impliedly resigns or vacates his former office. State v. Brown, 5 R.I. 1; Cotton v. Phillips, 56 N.H. 220; State v. Buttz, 9 Rich. 156; The People v. Carrique, 2 Hill N.Y. 93; Magie v. Stoddard, 25 Conn. 565; Stubbs v. Lee, 64 Me. 195; The People v. Mostrand, 46 N.Y. 375.

At page 507 thereof the Court further says:

> The test of incompatibility is the character and relation of the offices: as where one is subordinate to the other, and subject in some degree to its revisory power; or where the functions of the two offices are inherently inconsistent and repugnant. In such cases it has uniformly been held that the same person cannot hold both offices.

In the case of Cotton v. Phillips, 56 N.H. 220, the question before the Court was whether or not membership in the prudential committee was incompatible with that of auditor of a school district. On page 222 the Court therein says:

> The two offices are clearly incompatible. The prudential committee are charged with the administration of the affairs of the district. They are the sole custodians of the money apportioned to the district for schooling. They make contracts with teachers in their discretion, and disburse the funds. The duties of an auditor are to examine the accounts of the prudential committee, and their vouchers, and report whether they are properly cast and supported, and whether the money has been legally expended. If the same person could hold both offices, he would in fact sit in judgment on his own acts.

The Supreme Court of the State of Maine in the case of Stubbs v. Lee, 64 Maine, 195, clearly states the rule and the reason therefor that the acceptance of a second office, which is incompatible with the first, vacates the first. The language of the Court, which is found on page 198 thereof, is as follows:

> Where one has two incompatible offices, both cannot be retained. The public has a right to know which is held and which is surrendered. It should not be left to chance, or to the uncertain and fluctuating whim of the office-holder to determine. The general rule, therefore, that the acceptance of and qualification for an office incompatible with one then held is a resignation of the former, is one certain and reliable as well as one indispensable for the protection of the public.

In the case of People v. Board of Fire Commissioners of Village of Saratoga Springs, 27 N.Y. Supp. 548, the Court, on page 551 thereof, says:

> The law does not favor the multiplication of offices in one person, and where they are inconsistent with each other, or where such multiplication has a tendency to impair the public service, it will beheld that the occupant must surrender the one or the other if both appointments were conferred upon him at the same time, or, if they were conferred at different times, the acceptance of the one last made

forfeits the first.

In the case of State v. Jones, 130 Wis. 572, the Supreme Court of Wisconsin declares that the offices of County Judge and Justice of the Peace are incompatible and that a County Judge vacates his office by accepting the office of Justice of the Peace.

In the case of Attorney-General ex rel. Dust v. Oakman, 126 Mich. 717, the subject of incompatibility in two offices was considered by the Court. The Court, on page 719, says:

> The rule is that acceptance of a second office, incompatible with the one already held, vacates the first. This was held in Attorney-General ex rel. Moreland v. Detroit Common Council, 112 Mich. 145 (70 N.W. 450, 37 L.R.A. 211). The result of the holding in that case is that, upon acceptance of the office relator is now contending for, he will ipso facto vacate the office of City Assessor. The title to that office will therefore fail hum, but not the title to this. He is not required to sit between two stools. He can have a sitting, but only one.

You are advised that the Hon. Shober Rogers has ceased to be a member of the Nevada Tax Commission and that you possess the power to appoint some person to fill the vacancy created by the acceptance of Mr. Rogers of an incompatible office.

Yours very truly,

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

3. Labor—Hours of, for Nurses in Training or Employee in Nevada State Hospital of Mental Diseases Not Limited by Statute.

CARSON CITY, February 7, 1921.

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

DEAR SIR: Answering your inquiry of this date you respectfully advised that the attendant nurses in training or employed in the Nevada Hospital for Mental Diseases do not come under the provision of section 1 of the Act regulating hours of labor for state, county and municipal employees, chapter 203, Stats. 1919; therefore; their hours of work are not limited.

By order of the Attorney-General:

Respectfully submitted,

ROBERTS RICHARDS, *Deputy Attorney-General*.

4. Prohibition—Prepared Legislation Contravening United States Constitution and National and State Prohibition Laws Is Void.

CARSON CITY, February 16, 1921.

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

DEAR SIR: Assembly Bill No. 17, which seeks to amend the city charter of Reno, is in contravention of the Constitution of the United States, the Volstead Act and the Nevada prohibition law, wherein its language endeavors to empower the City Council of Reno to regulate or license places where malt, vinous or spirituous liquors are sold. If this bill is signed by you, the part of the Act mentioned will be nugatory and, therefore, ineffective. Viewing the situation from the standpoint of policy, I beg to emphasize the fact that the Legislature should not in words

empower a city to do anything which is illegal under the laws of the United States or the laws of the State of Nevada. I am writing an opinion as to a legal principle and I do not wish to be understood as casting reflections upon the present Legislature, which inadvertently passed an Act which follows the same language that existed in the city charter at a time when to regulate or to license the sale of intoxicating liquors was legal.

Yours very truly,

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

5. Legislation, Proposed—Opinion Suggesting Method of Amending Certain Acts Relating to Ex Officio Insurance Commissioner.

CARSON CITY, March 2, 1921.

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

SIR: Assembly Bill No. 164, which is entitled "An Act relating to the ex officio Insurance Commissioner and amending certain Acts," seeks to amend four separate and distinct enactments of the Legislature. The title of this Act is not sufficiently comprehensive to accomplish the results sought. A title of an Act should of itself convey enlightenment as to what the subject-matter of the Act purports to do. Any attempt to prepare a title that would include the four Acts mentioned would prove to be unsatisfactory.

It is in my opinion, therefore, that separate Acts should be introduced to separately amend the respective Acts named in Assembly Bill No. 164.

Yours very truly,

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

6. Justice of Peace, Compensation of—Payable from Funds in County Treasury as Other Officers Are Paid--A Particular Township May Not in Absence of Statute Be Specially Taxed to Pay Salaries of Township Officer.

CARSON CITY, March 3, 1921.

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

DEAR SIR: A Justice of the Peace should be paid from funds in the county treasury in the same way that county offices are paid. There is no law that empowers a Board of County Commissioners to levy a tax on a particular township for the purpose of raising money to pay the salary of township officers. In the absence of such a law the board is without any such power.

Yours very truly,

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

7. Pardon of Convict, Its Effect--A Pardon When Full and Complete, Restores Convict to All Civil Rights, and He May Be Appointed to Public Office.

CARSON CITY, March 4, 1921.

HON. FRANK T. DUNN, *District Attorney, Tonopah, Nevada*.

DEAR SIR: We have your letter calling for our official opinion upon the following inquiry:

> Have the County Commissioners the power to appoint a person to the office of Constable, who has been convicted of a felony and thereafter duly pardoned and restored to citizenship?

The earlier authorities by analogy, at least, would indicate that such an appointment could not be made. See Commonwealth v. Fugate (1830), 2 Leigh, 724; but later authorities take the contrary view. The case of State v. Foley, 15 Nev. 69, uses this language: "The effect of a full pardon 'is to make the offender a new man; to acquit him of all corporal penalties and forfeitures annexed to the offense for which he obtains his pardon, and not so much to restore his former, but to give him a new credit and capacity.' (4 Black. Com. 402; see, also, 1 Green. Ev. sec. 377; People v. Pease, 3 Johns. Cases, 333; Wood v. Fitzgerald, 3 Or. 568; In Re Deming 10 Johns, 232; State v. Baptiste, 26 La. Ann. 136; Ex Parte Hunt, 5 Eng. (Ark.) 284; Hester v. Commonwealth, 85 Pa. St. 155; 2 Hawk, P.C. 547, and cases there cited; 1 Phill. Ev. 21; 1 Gilb. Ev. 259.)"

While the cited and quoted case is dissimilar in facts, yet the language so used drawn to its logical conclusion, even if there were no other authority, admits of but one answer to your inquiry, namely: That such appointment may be lawfully made.

Hildreth v. Heath, 1 Bradwell's Reports, 87, contains this language: "Plaintiff in error further insists that the President's pardon, set up in his supplication, removed and cured his disqualification and ineligibility, if any such existed, and that the City Council should have so held. In this we are inclined to think that he is correct and that the City Council decided erroneously in adopting the contrary view of the law.

Mr. Justice Field, in Ex Parte Garland, 4 Wall. 333, has convincingly stated the law in the premises as follows: "A pardon reaches both the punishment prescribed for the offense and the guilt of the offender, and when the pardon is full, it relieves the punishment and blots out of existence the guilt, so that, in the eye of the law, the offender is as innocent as if he never committed the offense. If granted before conviction, it prevents any of the penalties and disabilities and restores him to all his civil rights--it makes him, as it were, a new man, and gives him a new credit and capacity. There is only this limitation to its operation: it does not restore offices forfeited or property or interests vested in others in consequence of the conviction and judgment.

See, also: Cuddington v. Wilkes, Hobart, 81; United States v. Wilson, 7 Pet. 150; Carlisle v. United states, 16 Wall. 147; Osborn v. United States, 91 U.S. 474.

Such is the law. The County Commissioners may make the appointment. It is not the function of this department to discuss its expediency.

By order of the Attorney-General:

Respectfully submitted,

ROBERTS RICHARDS, *Deputy Attorney-General*.

8. Highway, State, Contracts of--State Highway Department Has Right to Allow or Reject Claims Against Fund Remaining for Distribution under a Completed Contract.

CARSON CITY, March 15, 1921.

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

DEAR SIR: We have your letter of 15th instant, relating to State Highway Contract No. 5 and the disposition of moneys held by you applicable to valid claims presented against the contractor.

You have the right, subject to the legal advice which you have received, to pass upon the validity of any of these claims, and those which are invalid you may eliminate upon distribution of the funds in your hands. Those eliminated are fully protected according to statute, in that recourse may be made against the bond in the premises. However, before distributing this fund, I would notify those holding the rejected claims of your intended action and given them a reasonable time to pursue any legal remedy they may have in regard to the fund now in your possession.

By order of the Attorney-General:

Respectfully submitted,

ROBERTS RICHARDS, *Deputy Attorney-General*.

9. Revenue—Taxes Paid on Personal Property in Excess of Legal Amount Thereafter Computed Are Not Voluntarily Paid, and Such Expenses Should Be Refunded.

CARSON CITY, March 16, 1921.

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

DEAR SIR: For the purpose of answering a letter received from you, relative to collecting taxes on personal property, I shall quote from your letter as follows:

> The county tax rate levied in March, 1920, was $1.344, but on account of the valuations showing an excess of the March estimate, the rate was adjusted to $1.2396, so that the excess of the adjusted rate over the levied rate is $0.1044; now as a major portion of the personal property tax has been paid on the levied, or March, rate of $1.344, the following question arises:
>
> Under the above conditions are parties who paid personal property taxes on the March rate, but before the adjustment of the rate in October, entitled to a refund of the excess so paid?
>
> If so entitled, may the County Treasurer now make apportionment to a refund for the excess or difference of $0.1044? If the Treasurer is not so authorized and empowered, may the County Commissioners order such apportionment?

I desire to answer as follows:

The excess amount paid by various taxpayers cannot be held to be a voluntary payment because the taxpayer had the right to assume that the amount fixed would not be changed. Therefore, when a reduction was thereafter made that operated to the benefit of all who had not paid their personal tax, all taxpayers must be held to derive equal advantages due to said reduction. The County Commissioners should, therefore, direct and instruct the County Treasurer to make the necessary refund to conform to the reduction made.

Yours very truly,

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

10. Legislature, Members of—Must Exercise Right to Purchase Revised Laws at Price Fixed by Statute during Their Term—Right So to Do Ceases at the

Expiration of Term.

CARSON CITY, March 16, 1921.

HON. GEORGE. BRODIGAN, *Secretary of State*.

DEAR SIR: It is my opinion that a member of the Legislature must exercise the privilege granted to him by an Act of the Legislature approved March 15, 1917, Stats. 1917, p. 196, whereby he may purchase from the State the Revised Laws at $3 per set during the term for which he has been elected. If he does not so exercise said privilege during his term, then the privilege dies at the expiration of his term of office.

Yours very truly,

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

11. Secretary of State—Law Publications of State Are in His Custody and Disposition—As an Incident Thereto He Has Right to Retain Sufficient Copies Needed for Republication or Emergency.

CARSON CITY, March 16, 1921.

HON. GEORGE BRODIGAN, *Secretary of State*.

DEAR SIR: The custody and sale of the various law-books published under the direction of the State are placed in your hands. As an incident to your powers and duties, you have the right to protect the State by the retention of a sufficient number of copies of the various publications so that, in the case of republication or any emergency, the State will have access to the necessary books. For the purpose of so protecting the State I think it will be a reasonable act on your part to keep in your possession at least six copies of every law-book published under the direction of the State.

Yours very truly,

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

12. State Engineer—Entitled to Added Compensation Allowance by Statute for Ex Officio Services.

CARSON CITY, March 23, 1921.

HON. J.G. SCRUGHAM, *State Engineer*.

DEAR SIR: We have your request calling for an official opinion of certain terms of Senate Bill No. 120 and Assembly Bill No. 178 which purport to allot you certain compensation for services rendered, as provided in those bills. You inquire whether there is any legal reason why you are not entitled to draw the compensation so authorized. We find none, constitutionally or otherwise. In the past, for many years, legislative construction, if no other authority existed, would be sufficient to hold that the allotments to you in these bills are valid.

By order of the Attorney-General:

Respectfully submitted,

ROBERTS RICHARDS, *Deputy Attorney-General*.

13. Legislation—Effect of Granting Right of Way for Railroad.

CARSON CITY, March 23, 1921.

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

DEAR GOVERNOR: We have your letter of the 21st instant, relating to Senate Bill 109 under consideration by you, being an Act purporting to grant a right of way to John E. Sexton and his associates for railroad purposes. You are in doubt as to the right of the Legislature to commit the State as provided in this bill since the State does not own any land along the proposed line.

If you view the bill according to its letter, and not to its substance, your reasoning may be correct, but we take it that the legal effect of the bill, assuming that it purports to grant land for the right of way, would bind the State to no greater extent than a quit-claim conveyance between individuals. We take the bill as a whole as conferring a franchise upon John E. Sexton and others to initiate and consummate in due course of law a proposed railroad. If there are lands in public ownership of the United States, or of individuals, along the course of this right of way, this Act would confer no ownership thereto, and title thereto must be acquired under the federal statutes or in eminent domain.

By order of the Attorney-General:

Respectfully submitted,

ROBERTS RICHARDS, *Deputy Attorney-General*.

14. Nevada Tax Commission—Moneys Contributed by a County for a Specific Purpose May Be Expended Accordingly to the Commission.

CARSON CITY, March 26, 1921.

NEVADA TAX COMMISSION, *Carson City, Nevada*.

DEAR SIRS: We have your letter of 26th instant relating to the application of $400 received from Clark County through an agreement entered into with the Nevada Tax Commission for sharing certain expenses and causing to be placed on the tax-roll certain property escaping taxation.

You inquire whether or not there is sufficient legal authority for the Tax Commission to make use of the $400 due from the county, in the continuance of the work of the field agent in that county. We answer in the affirmative, for the reason, that this $400 is paid under an agreement for defraying specific expenses, and the same may be applied by you accordingly.

By order of the Attorney-General:

Respectfully submitted,

ROBERTS RICHARDS, *Deputy Attorney-General*.

15. Prohibition Law—Officials May Not Designate What Liquids of Alcoholic Content May or May Not Be Sold, Except, Where They May Take Judicial Notice Thereof.

CARSON CITY, March 26, 1921.

RAPKEN & CO., LTD., *San Francisco, Calif.*

DEAR SIRS: We have your letter of March 24, inquiring whether or not a preparation known as Abbott's Bitters could be lawfully sold to the drug and grocery trade of Nevada.

The opinions of the Attorney-General are reserved by law for the State, its officers and institutions; hence, we are precluded from advising you officially. However, out of courtesy we will state that the Nevada prohibition law gives no power to the Attorney-General, or other officials, to designate what liquids of alcoholic contents may or may not be sold, thus leaving a given case to depend upon a question of fact—namely, the contents of the liquid and its adaptability for use as a beverage. We, therefore, may not pass upon the situation presented. We will only pass upon such preparations concerning which a court would take judicial notice such as whisky, brandy, wine, beer, etc., etc. It may be that Abbott's Bitters may be sold through the drug trade, but we doubt very much if the same may lawfully be sold through the grocery trade.

By order of the Attorney-General:

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

16. Federal Taxes—County Officers on Official Business Entitled to Exemption Therefrom When Traveling. Reference Made to Collector of Internal Revenue.

CARSON CITY, March 31, 1921.

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

DEAR SIR: Pursuant to your inquiries we have to advise you as follows:

First—That it is the opinion of this department that county officers are entitled to the federal exemption on railroad traveling expense while engaged in official business, since they are exercising that portion of the sovereignty of the State which is delegated to them.

Second—We are unable to ascertain if a federal war tax is levied on county construction supplies. In this respect we would respectfully refer to you the Collector of Internal Revenue, Reno, Nevada.

By order of the Attorney-General:

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

17. Coroner—Entitled to His Legal Mileage to View Remains in Cases of Inquest—Furnishing of a Conveyance to Him by County or Individual Immaterial.

CARSON CITY, April 11, 1921.

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

DEAR SIR: We have your letter relating to sections 1998 and 7558 of the Revised Laws of 1912, propounding the inquiry whether or not Coroners are allowed for each mile necessarily traveled in going to the presence of the dead body, 25 cents, as specified in said sections. We reply in the affirmative. It is immaterial whether the conveyance for travel is furnished by the county or by a private individual; the Coroner is entitled to this mileage. We do not mean to say,

however, that he would be entitled in addition to this mileage to auto hire procured by himself to go to the presence of the dead body.

By order of the Attorney-General:

Respectfully submitted,

ROBERTS RICHARDS, *Deputy Attorney-General*.

18. Noxious Animals—Force and Effect of Statute Providing for State and County Cooperation—County Cooperation Approval—If a County Fails to Provide Funds, State Rabies Commission Need Expend No Funds for Benefit of Such County.

CARSON CITY, April 11, 1921.

HON. EDWARD RECORDS, *Secretary State Rabies Commission, University of Nevada, Reno, Nevada*.

DEAR SIR: We have your letter requesting an opinion as the cooperative force and effect of chapter 155, Statutes of Nevada 1921, relating to the eradication of noxious animals in the State of Nevada, etc., and particularly as to the point "whether or not the Commission is warranted in limiting the expenditures of its money to such counties as may take this action." The statute in question, stripped of unnecessary verbiage, provides no county funds to consummate its purposes in the several counties and, therefore, under the terms of the Act, should any county refuse or neglect to make provisions for a county rabies fund, the State Rabies Commission may, at its option, refuse to authorize any work to be done in that county. There is no objection in law to the several counties voluntarily raising funds for cooperation in this work, but, before your Commission may take legal notice thereof, such funds must be made subject to the order of the County Rabies Board specified in the Act. A county, however, under the Act may not be required to raise such funds.

By order of the Attorney-General:

Respectfully submitted,

ROBERTS RICHARDS, *Deputy Attorney-General*.

19. Motor Vehicle Law—Act Providing for Licensing Such Vehicles under Certain Conditions by the Public Service commission Does not Supersede Act Providing for Licensing Same by Secretary of State—Both Acts are Effective as Cumulative Enactments.

CARSON CITY, April 13, 1921.

HON. GEORGE BRODIGAN, *Secretary of State*.

DEAR SIR: We have your verbal inquiry calling for our official opinion concerning the operation and effect of an act entitled "An Act providing for a license for the operation of motors and vehicles and other matters relating thereto," approved March 22, 1921, whereby the Public Service Commission, upon the issuance of a certificate of public convenience for the operation of commercial motortruck and passenger lines on the highways of this State shall collect certain license fees.

You inquire whether or not this Act supersedes or conflicts with other Acts whereby you, as Secretary of State, license motor vehicles. We reply in the negative. The Act entitled and approved as aforesaid is cumulative to subsisting Acts and appertains, as is apparent from a reading thereof, to common carriers, whereas the subsisting Acts appertain to all motor vehicles. We are of the opinion, therefore, since neither of the Acts conflict, and the Act entitled and approved as aforesaid refers to common carriers and is cumulative in its scope, and independent in itself, that you should proceed under the Acts therefore subsisting and license all motor vehicles, thereunder and collect the statutory license fees in the manner provided by law.

By order of the Attorney-General:

Respectfully submitted,

ROBERTS RICHARDS, *Deputy Attorney-General*.

20. Elections—Water-Marked Ballot Paper Designated by Statute Should Be Used. If Not Used, in the Absence of Fraud or Resulting Injustice, Election Would Be Upheld.

CARSON CITY, April 27, 1921.

MR. WALTER J. McCURDY, *Attorney-at-Law, Sparks, Nevada*.

DEAR SIR: The Secretary of State informs me that he has water-marked paper which may be used by Sparks at its city election. It is, therefore, advisable for your city to procure the paper from him. An election is not set aside by reason of a technicality, provided that, if by any sound legal reasoning, it can be upheld. Therefore, if paper is used which does not absolutely conform to that designated by law and yet no fraud or injustice results therefrom, I believe that such an election will not be declared invalid. It is necessarily advisable that all administrative officers who have anything to do with elections to follow the law just as closely as possible, and such should be done in this case.

Yours very truly,

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

21. Boxing Exhibitions—There Is No Exemption from Payment of Statutory License Fee.

CARSON CITY, April 18, 1921.

HON. HARLEY A. HARMON, *District Attorney, Las Vegas, Nevada*.

DEAR SIR: We have your inquiry, together with cumulative inquiries from Mr. Stebenne, calling for our official opinion as to whether or not the Statutes of 1917, authorizing the issuance of a license for boxing exhibitions, is applicable to the proposed exhibition of an incorporated club where admittance is confined to the members and their invited guests with or without charge. The proposed exhibition is advertised to the public by posting, etc. It is apparently a public affair. There is no exception provided for in the Act, and if the act in this instance did not govern it could be subject to defeat at will through kindred subterfuges.

Yours very truly,

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

22. Gambling—Certain Games May Be Licensed—County Commissioners, Acting as Town Board, Have Authority to Pass Requisite Ordinance Licensing Certain Games.

CARSON CITY, April 19, 1921.

HON. FRANK T. DUNN, *District Attorney, Tonopah, Nevada*.

DEAR SIR: We have your inquiry of April 8, calling for our official opinion as to whether or not the Board of County Commissioners acting as a town board could legally pass an ordinance licensing certain games and accommodations relating thereto. We have already ruled what gambling games are permitted under the Statutes of 1915, p. 462, in Opinion No. 74, contained in the Biennial Report of the Attorney-General for 1919-1920. The Board of County Commissioners may legally pass an ordinance licensing games and accommodations referred to under the provisions of section 877, subdivision 9, of the Revised Laws of 1912, and particularly under the language: "Provided, that in all unincorporated cities and towns of this State the Board of County Commissioners shall have power to fix and collect a license tax upon the following places of business and amusements, and none other, as follows, it wit: * * * gaming and gambling houses.

By order of the Attorney-General:

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

23. Secretary of State—Power to Exact Certain Filing Fees for Foreign Corporation.

CARSON CITY, April 23, 1921.

HON. GEORGE BRODIGAN, *Secretary of State*.

DEAR SIR: When articles of incorporation of a foreign corporation are offered to you for filing, together with amendments thereto separately certified to as amendments thereof, it is your duty to collect a fee for filing of said articles and an additional fee for every one of the certified amendments. If, however, amended or substituted articles eliminate the provisions changed or destroyed by the amendments and substitutes the amendments in their places and thereby make the amended or substituted articles one complete instrument, then only one filing fee can be charged.

Yours very truly,
L.B. FOWLER, *Attorney-General*.

24. Prohibition Law—Amendment Thereto Relating to Procurement of Sacramental Wines Is Constitutional, But Amendment Thereto Relating to Procurement of Certain Other Intoxicating Liquors Is Unconstitutional.

CARSON CITY, April 23, 1921.

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

DEAR SIR: The Act of the Nevada Legislature approved March 22, 1921, entitled "An Act

to amend an Act entitled 'An Act to prohibit the manufacture, sale, keeping for sale, and gift, of malt, vinous and spirituous liquors and other intoxicating drinks, mixtures or preparations,'" etc., Stats. 1921, p. 331, wherein it attempts to change the original Act by making legal the use of certain intoxicating liquors made illegal by the original Act, is, to that extent, unconstitutional. The latter part of section 4, as amended by said Act, relative to the method of procuring wines for sacramental purposes, is valid, for the reason that it does not make legal something that is illegal in the original Act, but merely relates to the method of obtaining wines for sacramental purposes. The original Act provides that in such cases wine may be obtained from a druggist. This permitted any person claiming to be a minister to procure, somewhat promiscuously, wine, based on the contention that it was for sacramental purposes. This was due to the fact that he was not confined to any particular druggist, but could change to a different druggist as often as he desired, so it became difficult to keep a check on the amount of wine so obtained. Under the amended Act the procedure is centralized in the Attorney-General, who is necessarily obligated to see that a particular minister does not receive an under and unnecessary amount of wine. It cannot be reasonably contended that this change works an annulment or repeal of any part of the prohibition law. Since the adoption of said law by the people of Nevada the Federal Government has enacted a prohibition Act. The new procedure will simplify the operation of the Nevada Act so that it will not conflict with the federal Act.

In ruling that certain parts of the amendatory Act are unconstitutional, I am called upon to construe a vital and important provision of our Constitution rather than a construction or interpretation of the Prohibition Act itself. The people, by virtue of the initiative and referendum provision of our Constitution, have reserved to themselves the Legislature, may be enacted as a law by direct action of the people. No construction of these provisions of our Constitution can be justified which will emasculate or destroy them. The part of the amended section which I declare to be constitutional strengthens rather than weakens the law relative to the purpose of wines for sacramental purposes.

Yours very truly,

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

25. Bond Issue—Act Providing for, Valid—Form of Bond Legal—Certain Bonds Lawfully Issued.

CARSON CITY, April 28, 1921.

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

DEAR SIR: You are hereby advised that the Act of the Legislature entitled "An Act authorizing the Board of Examiners to issue and sell bonds to provide money to pay a portion of the cost of constructing a state highway system, and providing for the payment of said bonds," approved March 28, 1919, is a valid enactment and that bonds issued pursuant thereto become a legal obligation and must be paid by the State of Nevada.

You are further advised that the form of bond duly prepared conforms to said Act.

You are also further advised that bonds numbered 1201 to 1440, both inclusive, have been legally issued.

Yours very truly,

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

26. Prohibition Law—Amendments Thereto and Operations Thereof Concerning Transportation of Intoxicating Liquor—Object of the Prohibition Law Is to Prevent Use of Intoxicating Liquors as Beverage.

CARSON CITY, April 30, 1921.

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

DEAR SIR: The closing words in the amendment to section 4 of the Nevada Prohibition Acts, Stats. 1921, p. 331, which read as follows: "Nothing in this Act which makes the transportation of intoxicating liquors for the use and purposes made legal in this section," must be construed as having application only to certain new methods whereby intoxicating liquors may be lawfully obtained. It applies in the following cases: Where certificates are issued by the Stat Board of Health, by the State Board of Education, by the Board of Regents of the University of Nevada, or the Attorney-General, for purposes in conformity with the provisions of said amended section. It certainly cannot be contended that the placing of responsibility in the hands of such public officials weakens the prohibition law. On the contrary, it is fair to indulge in the presumption that they will do just what the Legislature intended them to do—only to issue certificates in cases warranted by law.

In construing and interpreting the Nevada Prohibition Act, the primary object of the law must be kept in view—that is, to prevent he use of intoxicating liquors as a beverage. Assuredly this primary purpose has not been interfered with by the new legislation. Therefore, any holder of a certificate issued according to this amended section is entitled to receive shipments of alcohol or wine in the quantity provided for in any such certificate. Any person having such a certificate necessarily must comply with the provisions of the Federal Prohibition Act.

Yours very truly,

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

27. Emergency Loan—The State Loaning the Money Thereunder May Consent to Extension of Time of Payment According to Method Suggested.

CARSON CITY, May 3, 1921.

HON. ED. MALLEY, *State Treasurer*.

DEAR SIR: We have under consideration the emergency loan made by the State to White Pine County under date of July 18, 1919, and the correspondence in connection therewith. This loan is now overdue and unpaid by reason of the economic situation subsisting in White Pine County and elsewhere. The Board of County Commissioners desire an extension of time for its payment, and the question arises whether or not such extension may be legally given.

We are of the opinion that such extension may be given and, in order that the record may be perfected, we suggest that the County Commissioners pass a proper resolution in the premises reciting the present emergency and requesting the State to withhold demand for payment of the loan for a period of one year or thereabouts, and also requesting that the State Board of Finance approve the extension. Upon receipt of a certified copy of such resolution passed by the Board of County Commissioners of White Pine County unanimously, the State Board of Finance may

approve the same. The record will then be complete, but, irrespective of any action in the premises, the loan as it now subsists is a valid one and the mere nonpayment of it when due would not effect its legality.

By order of the Attorney-General:

Respectfully submitted,

ROBERTS RICHARDS, *Deputy Attorney-General*.

28. Statutory Construction—There Is No Reason Why Section of Revised Laws Cited is Null—It Should Be Followed.

CARSON CITY, May 4, 1921.

HON. CHAS. A. WALKER, *District Attorney, Ely, Nevada*.

DEAR SIR: Your letter relative to section 842 of the Revised Laws has been considered by me. I do not know of any reason why said section should be treated as a nullity. I, therefore, rule that it is a valid provision of law and must be followed.

Yours very truly,

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

29. Revenue—Insurance Policy Payable to Estate of Decedent Is Subject to Inheritance Tax After Exemptions Allowed.

CARSON CITY, May 6, 1921.

INHERITANCE TAX APPRAISERS, *Reno, Nevada*.

GENTLEMEN: After a review of the various decisions on the subject, I have come to the conclusion that where life-insurance money is made payable to the estate it becomes liable for inheritance tax, subject, of course, to the regular exemption given in the Inheritance Tax Act itself. The courts have possessed a strong tendency to rule the other way when there has been any language in the policy justifying a different rule. The use of the words "administrators, executors or assigns for the express benefit of a wife and surviving children" have been held to create a trust fund and that the money did not become part of the estate.

In Florida it has been held that a policy reading "for the benefit of estate" was intended for the benefit of only a minor child and not the creditors, and that the money derived therefrom did not become a part of the estate proper.

In New York and Minnesota it has been held, where a policy reads "to the legal representatives," that the insured means his widow and children and not his estate or creditors.

In the estate now under consideration I understand that it is made payable to the estate without any qualifying words of any description. The money derived from said policy is, therefore, a part of the estate of the decedent and must be treated by you as a part of his estate.

Yours very truly,

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

30. Industrial Insurance—A Judicial Receiver Employing Persons May Elect to Accept Benefits of Nevada Industrial Insurance Act—Such Has Been the Popular

Construction of the Act.

CARSON CITY, May 26, 1921.

CHENEY, DOWNER, PRICE & HAWKINS, *Reno, Nevada*.

DEAR SIRS: We note your inquiry calling for our official opinion as to whether or not a receiver judicially appointed for a corporation, who conducts his business and affairs as a going concern, necessitating the hiring of many employees, may lawfully avail himself of the provisions of the Nevada Insurance Act, being chapter 111 of the Statutes of 1913, and the amendments thereto.

We have been awaiting the return of the chairman of the Nevada Industrial Insurance Commission, and have concluded a consultation with him.

We are of the opinion that a receiver may lawfully accept these acts for many reasons, among which we casually mention:

1. Section 7½ of the Act defines an employer as "every person, firm, voluntary association and private corporation," etc. We hold that a receiver comes within this definition, especially when we take into consideration the spirit, reason, and purpose of the Act sought to be accomplished as stated in its title—namely, "An Act relating to the compensation of injured workmen in the industries of this State and the compensation to their dependents where such injuries result in death, creating an Industrial Insurance Commission, providing for the creation and disbursement of funds for the compensation and care of workmen injured in the course of their employment, and defining and regulating the liability of employers to their employees; and repealing all Acts and parts of Acts in conflict with this Act." Since the assets of the corporation are in *custodia legis*, and the receiver *as such* could hardly be held liable for tort, any other construction would preclude injured workmen, otherwise entitled to damages, from any compensation whatsoever arising about of accidents in the course of their employments, and thus the reason, spirit and purpose of the Act would not be fulfilled.

2. The Nevada Industrial Commission since its creation has acquiesced in this construction; many cases insuring receivers appear on its records; and, accordingly, this departmental construction, we think, would have almost a controlling effect should the question ever arise for judicial determination.

therefore, Mr. Frank Margrave, as the duly appointed receiver the Nevada Packard Mines Company, may lawfully accept the Acts hereinabove referred to.

By order of the Attorney-General:

Respectfully submitted,

ROBERTS RICHARDS, *Deputy Attorney-General*.

31. Public Commissions—A Member May Not Be a Deputy Thereof, Since Commission Could Not Exercise Its Functions with Independents Judgment and Discretion.

CARSON CITY, May 27, 1921.

STATE APIARY COMMISSION, *Reno, Nevada*.

DEAR SIRS: We have your letter of May 19 propounding a certain question for our official

opinion under the Act creating your Commission, which we answer as follows:

A member of your Commission is barred from acting as Deputy Inspector and receiving compensation for his services as such under the Act, for the reason that the appointment of a Commissioner as a Deputy Inspector is contrary to public policy, in that the Commission, as a whole, could not exercise its supervisory functions under the Act with that independent discretion and judgment which is required of all public officers.

By order of the Attorney-General:

Respectfully submitted,

ROBERTS RICHARDS, *Deputy Attorney-General*.

32. Public Schools—Teachers' Contracts—Budget—Certain Inquiries Answered.

CARSON CITY, May 28, 1921.

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

DEAR SIR: Your letter of recent date recites substantially as follows: That a contract to teach was entered into by a certain district with a certain teacher who held a temporary certificate; that, during the existence of said contract, said temporary certificate expired, and the teacher, having failed in the examination for teacher's certificate was for a space of time left without a license to teach; that thereafter upon the recommendation of the School Board of her district she was granted a third-grade certificate, which is good in that district until the next regular teachers' examination; that thereafter the teacher employed pursuant to said contract resumed her work as teacher and continued to teach in said school. You have propounded the query as to whether or not said teacher's contract was at an end when her temporary certificate terminated. I am of the o pinion that when she resumed the performance of her duties under the direction of the School Board, and was duly authorized to teach by the certificate mentioned, that it was for the purpose of continuing the original contract; that all the terms and conditions of said contract applied to her continuance to teach, and she is, therefore, entitled to be compensated according to the terms provided for in said contract. I am satisfied that her contract did not lose its continuity. The actions of both parties to the contract lead me to conclusion.

Answering your other query, as to whether or not after a contract is entered into wherein it is agreed that a teacher shall be paid a monthly salary for a definite number of months, the School Board may close the school prior to the completion of the period named in the contract and be freed of the responsibility for any salary for the uncompleted time, I beg to advise that such action cannot be legally taken. The contract protects the teacher in this respect, and, as long as she is willing to fulfill the agreement entered into by her, she is entitled to be paid for the full period mentioned in the contract.

Replying to your other query, as to whether or not a School Board would be justified in departing from the original budget by spending a part of the money originally intended for the teacher's salary to pay a balance on the school building, I beg to advise that a School Board is bound by the items fixed in the budget and that, therefore, transposition of funds is not permissible.

Yours very truly,

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

33. Secretary of State—May Not Charge Fees for Services Rendered the State and Other Enumerated in Their Official Capacity.

CARSON CITY, May 31, 1921.

HON. GEORGE BRODIGAN, *Secretary of State*.

DEAR SIR: You are hereby advised that hereafter your office will not have the legal right to collect any fees for services rendered by your office to the State of Nevada or any county, city, or town thereof, or any officer thereof acting in his official capacity. Such has been decreed by the Legislature in the amendment to the fee bill which is found in Statutes of 1921, p. 290. I am rendering this opinion pursuant to a communication received from the District Attorney of Washoe County in connection with the claims of your office for the sum of $20 relative to certain requisition papers.

Yours very truly,
L.B. FOWLER, *Attorney-General*.

34. Public Employment—Statute Provides Who May Be Employed on Public Works, Etc.

CARSON CITY, May 31, 1921.

HON. J.H. HART, *Lovelock, Nevada*.

DEAR SIR: The Act of the Nevada Legislature, found in the Statutes of 1921, at page 205, which provides that only citizens or wards of the United States or persons who have been honorably discharged from the military service of the United States shall be employed by any officer of the State of Nevada, or by any contractor of the State of Nevada, or any political subdivision of the State, or by any person acting under or for such officer or contractor, in the construction of public works or in any office or department of the State of Nevada, or political subdivision thereof, and in all cases where persons are so employed preference shall be given to honorable discharged soldiers, sailors, and marines of the United States and to the citizens of the State of Nevada, excludes persons other than those mentioned from employment as courthouse janitors and public-school janitors. The employment of persons other than those specified in the Act is, therefore, a violation of the Act.

Yours very truly,
L.B. FOWLER, *Attorney-General*.

35. Fish and Game—The Statute Permits Board of County Commissioners to Lengthen the Closed Season for Game.

CARSON CITY, May 31, 1921.

MR. E.R. SANS, *Biological Assistant, Bureau of Biological Survey, Reno, Nevada*.

DEAR SIR: Section 2 of an Act to amend certain sections of an Act entitled “an Act for the protection and preservation of fish and game,” etc., approved March 27, 1921, which amended section 50 of the original Act, empowers a Board of County Commissioners when the necessary procedure is taken to lengthen the time of the closed season for game. I am of the opinion that a

fair construction of this section empowers the Board of County Commissioners to so lengthen the closed season that there will be no open season for the particular game specified by said board.

Yours very truly,

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

36. Public Officers—Claim for Subsistence of Field Agent—Officer Held Entitled to His Claim as Made.

CARSON CITY, June 7, 1921.

NEVADA TAX COMMISSION, *Carson City, Nevada*.

GENTLEMEN: Your letter of the 3d instant, relative to the expense claim for subsistence of H.S. Pohe of Yerington, as field agent for your Commission, wherein a claim is made for an allowance for subsistence for the months of January and February, 1921, during which time Mr. Pohe remained in Carson City pursuant to the direction of your Commission, has been considered by me.

I am of the opinion that Mr. Pohe is legally entitled to be reimbursed for money expended by him in payment of his board and lodging while in Carson City acting as herein stated. He was employed in a capacity which makes it unreasonable to say that he was required to maintain an official residence in Carson City. His regular home is Yerington and, under the circumstances, he is entitled to be allowed for subsistence during any of the time that as field agent he worked at points other than Yerington under the direction of your Commission.

Yours very truly,

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

37. Emergency Loan—When Reason Therefor Has Been Approved, the Subject of the Necessity or Emergency for Loan is Determined.

CARSON CITY, June 7, 1921.

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

DEAR SIR: When a public board which is empowered by law to authorize by resolution a temporary loan for the purpose of meeting a necessity or emergency has acted and there is approval of such action by the State Board of Finance, the same constitutes a determination of the subject of a necessity or an emergency. Certainly an extreme case of abuse in this respect would have to be shown before the courts would attempt to interfere with such determination, and the action of the two boards must therefore be viewed as practically conclusive. Consequently, I am of the opinion that when the two boards have acted favorably a valid loan may be made pursuant thereto.

Yours very truly,

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

38. Corporations—Certificate of Stock is Evidence of Ownership—An Assistant Secretary May Act in Signing Certificates.

CARSON CITY, June 7, 1921.

G.L. MATHISEN TRADING CO., *San Francisco, Calif.*

GENTLEMEN: A certificate of stock is only evidence of the title that a stockholder owns his stock. The certificate itself is not the stock, but is merely a paper indicative of the ownership of the amount of stock named in the certificate. A stockholder owns his stock whether he has a certificate or not. I have stated that these legal principles preliminarily so that a determination may be reached of the effectiveness of section 56 of the general corporation law of the State of Nevada which provides that certificates of stock shall be issued under the seal of a corporation, signed by the president, vice-president and by the treasurer or secretary. Taking into consideration the principles of law involved, and the intent and purpose of said section, I am of the opinion that where the by-laws of a corporation empower an assistant secretary to act in the absence of the secretary, that his acts, in so far as certification of stock are concerned, are perfectly legal.

Yours very truly,

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

39. Public Schools—Vocational Training—Amendatory Act Cited Concerning the Schools of Mines is Not Retroactive, But Prospective in its Operations.

CARSON CITY, June 21, 1921.

MR. HOMER DERR, *Director of Vocational Education.*

DEAR SIR: You have propounded to me the following query: Is the Act of the Legislature of 1921 entitled "An Act to amend section 5 of an Act entitled 'An Act creating Schools of Mines,'" etc., Statutes of 1921, p. 264, being chapter 175 thereof, retroactive or is it strictly prospective in its effect? The ordinary rule of statutory construction is that a statute is presumed to be prospective in character unless there is language in the Act itself that indicates the contrary or the subject-matter of the Act is such that the statute would practically fail in a substantial sense if a retroactive construction is not given.

A consideration of the Act mentioned by you requires me to come to the conclusion that the Legislature has by definite language made it operative from and after January 1, 1921. The original Act passed in 1919 contains the language "on and after January 1, 1921." If the Legislature did not desire that the amendatory Act should be effective on and after January 1, 1921, it could have easily eliminated that language and made the Act indisputedly prospective, but, as the Legislature did not do this, but, on the contrary, used retrospective and retroactive language, I am compelled to rule that the Legislature did the very thing that its language purports it intended to do—that is, made the amendatory Act operative from the first day of January, 1921.

Yours very truly,

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

40. Public Schools—Board of County Commissioners Are Required to Levy Special School District Tax for Joint School District Even if There Be No School Children within the County.

CARSON CITY, June 24, 1921.

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

DEAR SIR: You have propounded the following query:

> In the levy of a special district tax on a joint school district created under section 81, page 37, Nevada School Laws, 1921, is it obligatory upon the County Commissioners to levy the special district tax asked for by the Board of School Trustees of such joint district, in accordance with the provisions of section 140, page 49, Nevada School Laws, 1921?

This must be answered in the affirmative. You have inquired whether or not the Board of County Commissioners will be relieved of the obligation of making such levy if there are no school children in that portion of the joint district lying within a given county. I beg to reply that the duty of the Board of County Commissioners in the respect mentioned is absolute, and the fact that there are no school children in that portion of the joint district within said county does not affect the legal situation. The duty of the Board of County Commissioners to make such levy ca in nowise be affected by reason of the fact that all the members of the Board of School Trustees of the joint district reside in a different county. The remedy of the Board of School Trustees, in the event that the Board of County Commissioners fails to make such levy, is to compel the levy mandamus proceedings. I beg also to suggest that a deliberate declination on the part of public officials to perform their duties places them in the position where they may become the subject of successful removal proceedings. Therefore, if the members of the Board of County Commissioners are guilty of defiance of the law in regard to a tax levy, they make themselves liable to the proceedings mentioned.

Yours very truly,

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

41. Emergency Loan—A Record Therefor Approved as Submitted.

CARSON CITY, June 8, 1921.

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

DEAR SIR: An examination has been made of emergency resolution of Lyon County, Nevada, adopted by the Board of County Commissioners of said county on the 6th day of June, 1921, reciting that an emergency exists owing to the fact that the county is without funds to pay Water Commissioners of said county and the various functions connected therewith, and that it is necessary to raise money immediately for that purpose. I find that the resolution of the Board of County Commissioners conforms to the law and that due notice has been given as provided by law. A grammatical error exists in the second "Whereas" of the resolution, wherein the following language is used: "nor will not be available." To make the resolution absolutely accurate the word "not" should be stricken therefrom or the word "nor" should be changed to "and." However, in that the intent and purpose of the resolution can be gathered therefrom, the natural conclusion may be reached from the entire language that the said two negatives do not in this case constitute an affirmative. I think that the resolution may be so construed.

Yours very truly,

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

42. Criminal Law—A Certain Violation of Public Utilities Act Is a Gross Misdemeanor and Must Be Prosecuted in District Court.

CARSON CITY, June 9, 1921.

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

DEAR SIR: A violation of section 41 of chapter 109, Stats. 1919, relative to public utilities, is a gross misdemeanor and must be prosecuted in the District Court. Section 4851 of the Revised Laws limits criminal jurisdiction of Justice Courts to misdemeanors punishable by fine not exceeding $50-, imprisonment not exceeding six months, or by both such fine and imprisonment.

Yours very truly,

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

43. Highways—State Highway Department—Amendatory Act Is Prospective and Does Not Affect Prior Acts.

CARSON CITY, June 13, 1921.

MR. GEO. W. BORDEN, *Assistant State Highway Engineer*.

DEAR SIR: Any change in a route made by State Highway Department pursuant to section 24 of the General Highway Act, which was made prior to the approval of an Act of the Legislature entitled "An Act to amend section 24 of an Act entitled 'An Act to provide a general highway,'" approved March 23, 1917, Stats. 1921, p. 170, constitutes a legal change and is not affected by the said amendment of 1921, provided, of course, that the provisions of section 24 of the general highway law as it originally stood were followed. The amendment of 1921 is prospective in character and cannot affect the acts of the department which took place prior to the enactment of said amendment and which were legal at the time they were performed.

Yours very truly,

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

44. Motor Vehicle Law—Certain Motor Vehicles Are Not under Jurisdiction of the Public Service Commission, Being Especially Reserved Therefrom.

CARSON CITY, June 28, 1921.

PUBLIC SERVICE COMMISSION, *Carson City, Nevada*.

GENTLEMEN: You have propounded the query as to whether or not automobiles operating under certificates from your commission as charted common carriers are protected from the competition of other automobiles that are run for hire.

Section 7 of the Nevada Public Utility Act, Stats. 1919, p. 198, after defining the term "public utility," contains the following provision:

> *Provided, however*, that automobiles used exclusively as hearses or ambulances operated within the limits of cities and towns, and other automobiles

which have no specified routes of travel and which are not operated as common carriers, shall not be construed as being under jurisdiction of the Commission within the meaning hereof.

The Legislature has definitely excepted from the jurisdiction of the Public Service Commission any automobile which has no specific route of travel and which is not operated as a common carrier. This provision must be construed as exempting from the operation of the Act any automobile which is offered for hire to be driven as directed by the person or persons hiring said automobile. The proviso mentioned seems to be definite. I am, therefore, unable to reach a conclusion other than as herein given. In support of my ruling I desire to cite the case of Public Utilities Commission of Utah v. Garviloch, 181 Pac. 272.

Yours very truly,

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

45. Hoisting Engineers—District Board, Election of—Duly Licensed Engineer Only May Vote at Such Election.

CARSON CITY, July 1, 1921.

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

DEAR SIR: In order that a person may vote to elect a member of the district board of examiners pursuant to section 20 of an Act entitled: "An Act providing for the issuance of licenses to hoisting engineers," etc., Stats. 1921, p. 316, it is necessary that the persons so voting should be duly licensed hoisting engineers and are residents of the district in which they cast their votes. The intent and purpose of said section, relative to the electin of said member, would be defeated if indiscriminate voting should be allowed. The section as a part of the Act mentioned must be sensibly construed, and in doing this I have reached the conclusion herein given.

Yours very truly,

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

46. Industrial Insurance—Volunteer Firemen Come Within Purview of Act—It is Mandatory that City or Town Accept Act and Pay Premiums for Its Volunteer Firemen.

CARSON CITY, July 7, 1921.

NEVADA INDUSTRIAL COMMISSION, *Carson City, Nevada*.

DEAR SIRS: We have your inquiries of the 7th instant relating to the recent amendment to the Nevada Industrial Insurance Act including the volunteer firemen as being entitled to its benefits. You are respectfully advised that it is compulsory on the part of a city or town to provide for its volunteer firemen under the terms of the Act. The phrase referred to "upon the city or town complying therewith," should give rise to no ambiguity. The payments of premiums, etc., are conditions precedent in order to entitle the employee to the benefits of the act.

By order of the Attorney-General:

Respectfully submitted,

ROBERTS RICHARDS, *Deputy Attorney-General*.

47. Hoisting Engineers' License—Must Procure License—Frequency of Operating Hoist is No Test—Operation of Hoist Is the Only Test.

CARSON CITY, July 9, 1921.

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

DEAR SIR: Section 1 of an Act entitled "An Act providing for the issuance of licenses to hoisting engineers," etc., Stats. 1921, p. 316, makes it mandatory for any person who operates any steam, electric, gas, air, or any other hoisting machinery over six-horsepower when either is used in lowering or hoisting men to possess a license except either is used in lowering or hoisting men to possess a license except either is used in lowering or hoisting men to possess a license except either is sued in lowering or hoisting men to possess a license except as specifically provided in the two exceptions contained in said section. Therefore, any person who is engaged in operating hoisting machinery must procure a license pursuant to said Act, of which section 1 is a part. The frequency with which the lowering or hoisting of men is done is not consequential. If men are lowered or hoisted at any time then a license is required.

Yours very truly,

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

48. Industrial Insurance—Certain Phrase Quoted in Amendatory Act Raises No Ambiguity.

CARSON CITY, July 13, 1921.

NEVADA INDUSTRIAL COMMISSION, *Carson City, Nevada*.

DEAR SIRS: We have your inquiry of the 7th instant, relating to the recent amendment to the Nevada Industrial Insurance Act providing for the insurance of volunteer firemen of cities and towns. You are respectfully advised that it is compulsory on the part of a city or town to accept the Act and its amendments according to its terms. The phrase in the amendment—namely, "upon the city or town complying therewith"—should give rise to no ambiguity. It is apparent that this phase refers to conditions precedent to be performed by the city or town such as payment of premiums, etc., before the employee would be legally entitled to the benefits of the Act.

By order of the Attorney-General:

Respectfully submitted,

ROBERTS RICHARDS, *Deputy Attorney-General*.

49. Public Officers—Act Fixing Expenses as State Officers Does Not Apply to Officers of the United States Government in Cooperation with the State.

CARSON CITY, July 14, 1921.

HON. J.G. SCRUGHAM, *State Engineer*.

DEAR SIR: The Act of the Legislature of the State of Nevada entitled "An Act fixing the allowance of expenses of any state officer," etc., approved February 13, 1915, does not apply to a claim presented against the State of Nevada by an officer of the Government of the United States who acts pursuant to a cooperative arrangement between the State of Nevada and the United States. The Act of the Legislature of this State which legalizes the cooperative system between the State and the Federal Government does not incorporate therein any provision similar to the said Act of 1915. Therefore, the provision in said Act of 1915, relative to a claim of a state officer for traveling expenses having vouchers attached, has no application to the case herein mentioned.

Yours very truly,

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

50. Public Bonds—Statute and Transcript of Record show the Mineral County Light and Power Bonds to Be Legally Issued.

CARSON CITY, July 15, 1921.

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

DEAR SIR: We have your request for an opinion as to whether or not the proposed issue under the recent Act of the legislature of the Mineral County Light and Power Line bonds may be validly made and whether or not a transcript of the record shows that the Act of the Legislature has been complied with. You are respectfully advised that the Act of the Legislature authorizing the bond issue is valid and the proceedings thereunder by the Board of County Commissioners of Mineral County are in due conformity therewith and that the provisions of the Act have been complied with in all respects. In addition thereto, we have to advise you that in an opinion of the Supreme Court of this State, filed June 18, 1921, the Court declined to prohibit the Board of County Commissioners from carrying out the terms of this Act, and the points urged in this proceeding were not sufficient to induce a successful judicial attack.

By order of the Attorney-General:

Respectfully submitted,

ROBERTS RICHARDS, *Deputy Attorney-General*.

51. Owyhee River Development Commission—A Deposit from the Funds Appropriated May Be Made in Cooperation with the United States Government.

CARSON CITY, July 18, 1921.

HON. J.G. SCRUGHAM, *State Engineer*.

DEAR SIR: We have your letter calling for our official opinion on certain phases of an act entitled "An Act creating a commission to be known as the Owyhee River Development Commission of Nevada, defining its powers and duties and making an appropriation for the expenses thereof," approved March 21, 1921, and certain correspondence from Governor Boyle and the United States Reclamation Service appertaining thereto. The Act, entitled and approved as aforesaid, has for its object to ascertain, through the Commission created thereby, whether or not it is feasible to develop irrigation for the lands mentioned therein and to obtain a report

thereon. The amount of $2,500 is appropriated for expenses and for per diem of the members of the Commission and wages and expenses of its employees.

It seems that the United States Government has also the same source of water supply under investigation for the purpose of causing it, or the greater part of it, to be placed upon certain irrigable lands in the State of Oregon, but that the United States Reclamation Service, in cooperation with said Commission, is willing to investigate the feasibility of establishing a unit of its proposed project to the end that the lands referred to in the Act, entitled and approved as aforesaid, may be irrigated from said water supply if said Commission will furnish certain engineering work, etc., and deposit with the United States Reclamation Service at Denver, Colo., $1,000 to be applied by it on account of the expenses of such cooperative investigation.

Should said Commission decline to enter into the proposed cooperative investigation, then the United States Reclamation Service will undoubtedly proceed according to its own plans, and ultimately the water supply will be applied to irrigable lands in the State of Oregon and the object the Act, entitled and approved as aforesaid, will thus be frustrated.

You inquire whether or not said Commission may anticipate the expenses of the investigation, or, in other words, make the deposit of $1,000 as proposed by the United States Reclamation Service. Ordinarily, appropriated funds may be withdrawn only upon warrants of the State Controller after the contemplated services are rendered or expenses incurred, but if, adhering to this rule in this instance, the object of the Act, entitled and approval as aforesaid, would be frustrated for the Act itself would become inoperative, it is also a rule of construction that you may deviate from the letter of the statute in order that its object may be fulfilled, especially under the facts submitted where a vast potential irrigable section of this State may forever remain undeveloped by reason of official inability to apply appropriated funds to fulfill the object of the Act. We, therefore, conclude that said Commission may lawfully make the requested deposit.

The form of the contract submitted should be amended in that the State of Nevada, as the contractor, should be eliminated therefrom and, in lieu thereof, the Commission created under the Act entitled and approved as aforesaid should be named as contractor. See Biennial Report of the Attorney-General, 1919-1920, Opinion 55.

By order of the Attorney-General:

Respectfully submitted,

ROBERTS RICHARDS, *Deputy Attorney-General*.

52. Delinquent Tax Sale—On Redemption Therefrom the Treasurer Must Charge and Collect and Subsequent Taxes.

CARSON CITY, July 19, 1921.

HON. ARTHUR E. BARNES, *District Attorney, Goldfield, Nevada*.

DEAR SIR: Your letter of the 14th instant miscarried, and this is the reason for my delay in giving you a reply. I beg to advise that the Treasurer of your county assumed a soung legal attitude relative to the redemption of property that is held in his name as trustee. Pursuant to the provisions of section 3652 of the Revised Laws of Nevada as amended in 1919, it is provided that, if a tax sale no other bid is forthcoming, the Treasurer shall bid the sam ein for the benefit of and the same shall be subject to redemption from the Treasurer the same as from a private

purchaser. Later in said section it is spcifically provided that, in the case of a redemption where a sale has been made to a private purchaser, upon the redemption being made, the said private purchaser shall be reimbursed for any additional taxes paid thereon. For the purposes of redemption it must be held that there has been an implied payment of subsequent taxes by the Terasurer that have become due and that upon a redemption the Treasurer is entitled to the payment of such taxes. Therefore, in such a case no redemption can be made without the payment of said additional taxes.

Yours very truly,

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

53. Public Officers—A De Facto Officer Has No Right to the Salary of the Office.

CARSON CITY, July 22, 1921.

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

DEAR SIR: The question as to whether or not the de facto County Recorder is entitled to certain salary during the time that she served as County Recorder involves a conflicted situation. The State of California has made decisive this point by providing that the occupant of the office shall receive the salary.

In the case of Merkley v. Williams, 3 Cal. App. 268, the subject is elaborately discussed. In the absence of a statute changing the ordinary rule, the law is that the salary annexed to a public office is incident to the title to the office, and not to its occupation and exercise, I have endeavored to find decisions holding to the contrary, but I have not discovered any that are satisfactory. Our Legislature has failed to enact any provision similar to the one that exists in California. This being the case, I am unable to rule that the disputed salary can be paid, but I am compelled to say that, as the law seems to exist, the salary cannot be legally allowed.

Yours very truly,

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

54. Industrial Insurance—A Certain Amendatory Act to the Nevada Industrial Insurance Act Has No Retroactive Effect.

CARSON CITY, July 27, 1921.

NEVADA INDUSTRIAL COMMISSION, *Carson City, Nevada*.

GENTLEMEN: We have your letter of the 20th instant, enclosing petition of E.D. Virden, who was injured on July 20, 1918, for relief under the amendment to the Act creating your Commission, chapter 161 of the Statutes of 1921, and calling for our official opinion as to whether the petitioner is entitled to relief under this amendment.

Compensation has already been awarded petitioner and is now being paid him under the provisions of law subsisting prior to the amendment. Authority is ample to conclude the question. We quote:

> Slink v. Augustus Carey & Company, 113 Atl. 32; *Held*, that the rights and obligations of the parties become vested when the accident to the employee occurred, and cannot be destroyed or enlarged by legislation thereafter enacted.

Gray v. St. Croix Paper Company, 113 Atl. 32; *Held*, it was an error to award compensation at the rate provided in the Act of 1919, as the accident occurred in 1918. Rights and obligations of the parties become vested at the time of the accident and cannot be enlarged by subsequent legislation.

It might be contended that the amendment referred to has retroactive operation, but no retroactive Act can diminish or enlarge or otherwise impair vested rights. Even if the rule were otherwise, it is apparent from the reading of the amendment that it is prospective in its operation and cannot be made to apply retroactively to the case now under consideration. You are therefore advised to deny the petition.

By order of the Attorney-General:

Respectfully submitted,

ROBERTS RICHARDS, *Deputy Attorney-General*.

55. Corporations, Foreign—A Certain Corporation Named under Data Submitted is Amenable to Certain Statutes Cited.

CARSON CITY, July 28, 1921.

HON. GILBERT C. ROSS, *State Bank Examiner*.

DEAR SIR: We have examined certain written data submitted to this department by you, which we are returning herewith, relating to the operations of the Pacific States Savings and Loan Company, and in reply to your inquiry, you are respectfully advised that from the data submitted we hold that this company is amenable to an Act entitled "An Act providing for the incorporation of domestic building-and-loan associations, the licensing of foreign building-and-loan associations, the examination and regulation of all building-and-loan associations doing business in this State by the State Bank Examiner, and other matters properly connected therewith, and repealing a certain Act," approved March 24, 1915, and as amended and approved April 1, 1919. Also to an Act entitled "an Act requiring nonresident joint-stock companies, associations, and corporations doing a buildling-and-loan business to furnish security before doing business in this State, and prescribing penalty for a failure to do so," approved March 20, 1911.

It is apparent, therefore, that you should require the Pacific States Savings and Loan Company to comply with the provisions of these statutes within a reasonable time, and in default of so doing, upon advise from you, this department will proceed to enforce the law.

By order of the Attorney-General:

Respectfully submitted,

ROBERTS RICHARDS, *Deputy Attorney-General*.

56. Public Employment—Bonds of Officers—Payment of Premiums from Public Funds Depends Upon Terms of Statute.

CARSON CITY, July 28, 1921.

HON. ARTHUR E. BARNES, *District Attorney, Goldfield, Nevada*.

DEAR SIR: We have your inquiry under an Act entitled "an Act to provide surety bonds for state, district, county, city, and township officers at public expense," approved March 24, 1918,

as follows:

Does the State pay the premium on the bonds of the deputy stat officers? and

Do the bonds of deputies run to the State or to the principal?

These inquiries we answer in the order named:

1. If a deputy state officer gives a bond in his official capacity, pursuant to the statute, whether or not the State would pay the premium, depends upon the wording of the statute.

2. The bonds of deputy state officers will run to the State or to the principal according to the terms of the statute under which the bonds are given.

If an officer requires of his deputy a bond as protection personally to himself against nonfeasance or malfeasance of the deputy, such bond should run to the officer as principal, and the premium paid from private resources. However, if the statute makes it a perequisite of the deputy to give a bond for the faithful discharge of his duties upon qualifying, the bond would run to the State and premium paid from public funds.

By order of the Attorney-General:

Respectfully submitted,

ROBERTS RICHARDS, *Deputy Attorney-General*.

57. Employment—Labor Commissioner—Stated Case Reviewed and Procedure Indicated.

CARSON CITY, July 31, 1921.

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

DEAR SIR: We are returning you herewith the letter of the District Attorney of Elko County, relating to certain claims of sheep-herders which remain unpaid.

We agree with the District Attorney that the so-called trust deed would be construed as a mortgage, and we think the statutory affidavit required upon chattel mortgages, and attached to the deed of trust, is at least a substantial compliance with law, and the trust deed would not be subject to attack, by reason of the affidavit being defective as alleged.

We think that the true legal redress of t his case is, first, a criminal action against Quintana, and reenforced by a civil action for the wages unpaid. You might take an assignment for these wages, but we are of the opinion that as the seat of operation is so far removed from your official residence that an action under an assignment would produce delay rather than expedition.

We further remark, as in similar cases, that laborers seem to exhaust their personal efforts in attempting to recover unpaid wages before officially consulting you, and when you obtain these claims their rights have been jeopardized by themselves on account of the delay consumed, and the only redress, as a general rule, left to them, is the criminal action aforesaid.

By order of the Attorney-General:

Respectfully submitted,

ROBERTS RICHARDS, *Deputy Attorney-General*.

58. Aliens, Registration of—There is No Statute in the State Requiring Such Registration.

CARSON CITY, August 13, 1921.

HON. GEORGE BRODIGAN, *Secretary of State*.

DEAR SIR: Replying to your inquiry concerning the antialien registration law, we have to state that this is a statute passed at the last legislature of California requiring all resident aliens therein to register with the County Clerks of the several counties and to pay a registration fee of $10. Of course this statute cannot apply to the State of Nevada or outside of California. We understand from the press, however, that in California this statute is being strenuously attacked in the courts and that some court there has intimated, if it has not already decided, that the statute is unconstitutional. From a cursory consideration we are inclined to think that the highest court will hold statutes of this kind unconstitutional because they do not guarantee equal protection of the laws and are discriminatory in their operations. In any event, any alien resident of Nevada, even though in business in California, would not be required to become registered in California.

By order of the Attorney-General:

Respectfully submitted,

ROBERTS RICHARDS, *Deputy Attorney-General*.

59. Public Schools—Trustees' Recall—Statute and Constitution in Connection Therewith Reviewed.

CARSON CITY, August 19, 1921.

HON. CHAUNCEY W. SMITH, *Deputy Superintendent of Public Instruction*.

DEAR SIR: Replying to your inquiry as to whether or not a valid recall election of a School Trustee may be had in a school district having a voting population of less than 100, I beg to advise in the affirmative.

Under date of August 12, 1919, a ruling was made by this office that a recall election of a School Trustee could not be legally held in such a district, for the reason that the Legislature had failed to provide by statute the necessary procedure relative thereto. At the 1921 session of the Legislature the school law was amended in certain particulars, Stats. 1921, page 298. Section 9 of said amendatory Act amends section 59 of the original Act and in part recites as follows:

> In case of a recall election in districts having a voting population of less than one hundred (100), candidates for the office of School Trustee shall, not later than three days before said election have their names filed with the Clerk of the School Board in district, with the designation of the term of office for which they are candidates, and no names shall be voted on unless filed within the time and in the manner herein provided.

The Constitution, by an amendment thereto providing for the recall of a public officer, contains the following language:

> The recall petition shall be filed with the officer with whom the petition for nomination to such office shall be filed, and the same officer shall order the special election when it is required.

A theory may be plausibly asserted that this provision of the Constitution refers to a petition for a nomination for an office at a regular election. However, in the case of the election of a School Trustee, in a district of the description under consideration, nominations are not filed and voters may vote for any person they desire at the election. The main point to be considered is whether or not the provision of the law providing for the filing of nominations for a recall election with the Clerk of the Board has controlling force in respect to the filing of a petition for

the recall of a School Trustee within the meaning of the constitutional provision herein mentioned. A constitutional provision should be made effective if such can be done without a destruction of the accepted rules of constitutional and statutory construction and interpretation. The recall provision of the Constitution by its terms requires an enabling statute to make it operative. Any Act of the Legislature enacted for such purpose should be so construed or interpreted, if possible, to execute said constitutional provision. In construing such a statutory provision if two plausible theories may be followed, one giving vitality to the Constitution and the other having the opposite effect, the former should be pursued. Such being the case, it is my opinion that the amendatory Act of 1921 should be construed to make valid a recall election in a school district of the character mentioned and that the provision therein contained, providing for the filing of nominations for a recall election with the Clerk of the School Board, governs the filing of a petition for a recall and that said petition is likewise to be filed with the Clerk of the Board.

By order of the Attorney-General:

Respectfully submitted,

ROBERTS RICHARDS, *Deputy Attorney-General*.

60. Proclamation, Executive—Alfalfa Weevil—Power of Inspection under Proclamation Defined.

CARSON CITY, August 20, 1921.

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

SIR: Your letter, relative to regulations 4 and 8 of your quarantine proclamation issued on the 8th day of August, 1921, has been considered by me. I beg to advise that there is no inconsistency or contradiction in the two regulations. All household or agricultural emigrant movables originating in the county of Washoe, State of Nevada, are subject to the requirements contained in regulation 4. All baggage, emigrant movables, household effects, household implements, and other field appliances in process of being exported or removed from the county of Washoe, State of Nevada, are made subject to inspection by the state quarantine officer whether the same originated in Washoe County or elsewhere. Regulation 8 permits the inspection of any such property leaving Washoe County in any case where there is any likelihood that weevil may have entered said property.

Yours very truly,

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

61. Revenue, Banks, Assessment of—Nevada Tax Commission and State Board of Equalization Have Authority to Act in Regard Thereto.

CARSON CITY, August 25, 1921.

STATE BOARD OF EQUALIZATION, *Carson City, Nevada*.

GENTLEMEN: Replying to your inquiry of August 16, calling for official opinion as to the method to be pursued under section 3820, subdivision 2, relating to the assessment and taxation of shares in the Nevada First National Bank of Tonopah, we have to advise you that under the

provision of this section the bank is entitled to have deducted the value of all real estate owned by it on which it pays taxes, situate in this State from the value of the shares in said bank. We understand that it has been the practice to deduct the value of the real estate owned by the bank in the county of Nye with no deductions being made for other counties. This situation arises, no doubt, for the reason that the statute lays down no specific procedure to be pursued in the premises. Under the general powers conferred upon the Nevada Tax Commission and the State Board of Equalization, we are of the opinion that the total value of the real estate of the banks throughout the State may be ascertained by the Commission or the State Board, and the deductions ordered to be paid in accordance therewith as contemplated by the statute.

By order of the Attorney-General:

Respectfully submitted,

ROBERTS RICHARDS, *Deputy Attorney-General*.

62. Revenue—Board of Examines—Act Providing for Deficiency in Public Office Construed.

CARSON CITY, September 2, 1921.

STATE BOARD OF EXAMINERS, *Carson City, Nevada*.

GENTLEMEN: The letter of Hon. Geo. A. Cole, State Controller, addressed to your board, wherein he begins with the following language:

> A study of the so-called "deficiency" statutes of Nevada (1887, 80, and 1915, 221) by myself, and others more qualified, leads to the belief that the same are in active conflict with article 3 and article 4, section 19, of the Constitution of the State of Nevada.

—has been considered by me. I beg to advise that the position enunciated by him is unsound, unreasonable and untenable. The provisions of law referred to by him have been repeatedly recognized and followed since the enactment of the first Act dealing with the subject. Such recognition has been given by your board, the present State Controller himself, and by his predecessors in office. Its value, from a legislative standpoint, has been repeatedly affirmed by the Legislature of this State. There is no part of the Constitution of the State of Nevada which prohibits the Legislature from enacting just such Acts as we now have under consideration. The Acts mentioned do not authorize the drawing of money from the treasury that is unappropriated. They do authorize the contracting of certain indebtedness prior to an appropriation being made.

There is no constitutional provision in this State, and I doubt if there is any in any other State, that prohibits the Legislature from making legal the contracting of an indebtedness by the State through its officers prior to an appropriation. The indebtedness may be first contracted under a statute making such a thing legal, and then an appropriation may be made to pay such indebtedness. Our Legislature has determined the policy to be pursued in this respect and its determination is in this regard final. If the Legislature deemed it expedient or advisable to adopt a contrary policy, it would have the power to do so. It, and it alone, can assert the policy and procedure that must be followed. Deficiency matters are placed by law exclusively in the hands of the State Board of Examiners. the State Controller in respect thereto acts merely in a clerical capacity. The acts of the State Board of Examiners become the subject of review, consideration, and action by the Legislature. I think it may be safely stated that the anonymous eminent adviser

of the State Controller cannot cite a decision in any State in the Union holding that such deficiency statutes are unconstitutional. Different States in the Union acting under the direction of the best-equipped legal minds, have enacted such statutes and these statutes have found the same utilization in other States as they have found in Nevada. The men whose minds brought these statutes into existence, and the officials who have acted pursuant to them, have not heretofore been branded as being guilty of mockery of the Constitution of their respective States. Eminent constitutional lawyers, such as Governor Hiram W. Johnson of California and Governor Joseph K. Toole, have approved Acts similar to, or almost identical in substance with, the deficiency statutes of our State. Other States, in conjunction with our own, have considered it successful and intelligent legislation to provide means for making expenditures in emergency cases without compelling the Governor of a State to call a special session of the Legislature. Various Legislatures in order to obviate the necessity of calling special sessions of the Legislature have, in the interest of economy and expedition, enacted into law deficiency measures. Governor Johnson of California signed an Act in 1915, section 5 of which reads as follows, being found on page 55 of the General Laws of California (Deering):

> The officers of the various departments, boards, commissions and institutions, for whose benefit and support appropriations are made in this Act, are expressly forbidden to make any expenditure in excess of appropriations, except the unanimous consent of the State Board of Control be first obtained, and a certificate, in writing, duly signed by every member of said board, of the unavoidable necessity of such expenditure; and any indebtedness attempted to be created against the State in violation of the provisions of this section shall be absolutely null and void, and shall not be allowed by said State Board of Control, nor paid out of any state appropriations; *provided*, that any member of any such department, board, commissions, or institutions, who shall vote for any expenditure or create any indebtedness against the State in excess of the respective appropriations made by this Act, except by the unanimous consent of the State Board of Control, and the certificate in this section provided to be first obtained, shall be liable on his official bond for the amount of such indebtedness, to be recovered in any court of competent jurisdiction by the person or persons, firm or corporation, to whom such indebtedness is owing.

This provision succeeds Section 663 of the Political Code of California which was long in existence.

The State of Montana, at its legislative session of 1907, enacted a state which was signed by Governor Toole, which contains the following language on page 73 of the Political Code of Montana, and which is as follows:

> No state officer, state board of trustees, or managers or commissioners shall have any authority to, or shall contract any liability or indebtedness whatever in excess of the amount appropriated to such officer, board of trustees, or managers or commissioners, or for the office, institution, commission, or organization under his or their management or control, without previous authorization from the State Board of Examiners, and if any liability or indebtedness be incurred or expenditure be made, in violation of this Act, no claim therefor shall be allowed by the State Board of Examiners.

The State of Colorado has a provision for the contracting of an emergency indebtedness

which provides that before such indebtedness is incurred the same shall be approved by the Governor and Attorney-General. This provision has existed during the entire statehood of Colorado. A similar provision was in existence during the time that it was a Territory.

Section 2718 of the Oregon Laws, vol. 2 (Olson) provides for an emergency expenditure in the following language:

> No warrant shall be drawn the Secretary of State in payment of any claim against the State unless an appropriation has first been made for the payment thereof; but, where such claim has been incurred in pursuance of specific authority of law, and no appropriation has been made for its payment, or, if made, has been exhausted, the Secretary of State shall audit such claim when authorized by the emergency board, and if allowed, shall issue to the claimant a certificate of indebtedness therefor, which certificate shall bear interest at the legal rate from date until funds are provided for its payment by appropriate legislative enactment.

All of the States named herein have in their respective Constitutions a provision that in its effect is the same as the one in our own Constitution—that money shall not be drawn from the treasury unless appropriated by law.

The Budget Act of 1919 does not by its terms or implication repeal the acts of the Legislature of Nevada empowering the State Board of Examiners to act in emergency cases. Such Acts are just as effective now as they were prior to the Budget Act. The State Controller is not empowered by any statute of this State to intercept, nullify, or interfere with the duly exercised powers of the State Board of Examiners in emergency matters. If the State controller declines to perform the clerical work relative to deficiency warrants, he may be compelled to do so by court proceedings or the Board of Examiners may provide a method of drawing money from deficiency allowances.

The Controller in his letter has attempted to write a speech or essay as to his individual views of the subject under consideration. It is not a part of my duties as your legal adviser to enter into such a realm. In this connection, however, I desire to emphasize the fact that the personal views of the State Controller dwindle into insignificance when drawn in contrast with the expressions of the Legislature of this State—expressions which find support in the acts of the best thinkers and statesmen of the various States of this Union.

Yours very truly,

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

63. Revenue—Taxpayer Failing to Complain of Assessment Before County Board of Equalization May Not Receive Relief from State Board of Equalization.

CARSON CITY, September 9, 1921.

STATE BOARD OF EQUALIZATION, *Carson City, Nevada*.

GENTLEMEN: A taxpayer who has failed to make a complaint in the manner provided for by law before the County board of Equalization, relative to the assessment of his property, becomes bound by the assessment as made by the County Assessor. He is precluded therefore from being heard before the State Board of Equalization or the State Tax Commission.

Yours very truly,

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

64. Constitutional Law—Act Providing for Issuance and Revocation of Licenses for Billiard Halls, Etc., Is Null and Void.

CARSON CITY, September 9, 1921.

HON. LESTER D. SUMMERFIELD, *District Attorney, Reno, Nevada*.

DEAR SIR: It is the policy of this office to refrain from declaring an Act of the Legislature unconstitutional if there is any likelihood of the Act, or any part thereof, being upheld by the courts. A careful consideration of the Act of the Legislature entitled: "An Act to create a county license board to regulate the issuance of licenses for billiard-halls, dancing-halls, bowling alleys, theaters and soft-drink establishments in unincorporated cities and towns of this State," approved March 21, 1921, Stats. 1921, p. 194, forces me to the conclusion that the same must fall in its entirety. If the title of the Act mentioned had for its concluding words the words "outside of incorporated cities and towns of the State," the Act would then be absolutely valid. As the title reads, it does not permit of legislation that includes all territory outside of incorporated cities and towns.

The Act can hardly be construed as supplementary of or an amendment to an Act of the Legislature of this State entitled "An Act providing for the government of towns and cities of this State," approved February 26, 1881, sections 877-893, inclusive, of the Revised Laws, which provides for the government of unincorporated towns and cities by Boards of County Commissioners. This act, in subdivision 9 of section 1, being section 877 of the Revised Laws, gives to a Board of County Commissioners in the government of unincorporated towns and cities very extensive licensing powers. The fact that such power was already vested in Boards of County Commissioners makes it difficult to reach a conclusion as to just what the Legislature decided to cover by the Act being in conflict with the title of the Act, and, there being no way to apply the body of the Act so that it will be consistent with the title, places me in the position where I am compelled to rule that the said Act is null and void.

Yours very truly,

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

65. Proclamation, Executive—Alfalfa Weevil—Under Statute the Governor May Quarantine by Proclamation Certain Counties—Courts May Review Same.

CARSON CITY, September 10, 1921.

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

DEAR SIR: We have your letter calling for an official opinion relative to the proclamation of Governor Boyle, establishing a quarantine throughout the whole of Washoe County, by reason whereof alfalfa may not be lawfully shipped therefrom, since a small well-defined area thereof is infested with what is commonly known as alfalfa weevil.

You state that by a careful survey this area "extends from a point approximately one mile west of Reno to one approximately two miles east of Sparks, being limited on the north by the natural boundaries of the alfalfa fields and only including a strip approximately one matters relating to the premises which do not affect the legality of the situation and must be regarded as

matters affecting the course to be pursued induced by expediency. With these we have no concern as rightly they may not control or influence our opinion. The question propounded by you is, whether or not, under the provisions of the law, the Governor can lay and maintain a quarantine against an entire county on the basis of the showing hereinabove referred to, or whether or not the scope of such quarantine must be limited to the area known to be infested with a dangerous insect pest, and a reasonable and necessary margin of area around the same for protective purposes? The showing referred to by you, in our opinion, is not sufficient upon which to predicate a quarantine against the entire county, and to lay and maintain such quarantine is unreasonable and unnecessary; the quarantine should be limited to the area known to be infested and a reasonable and necessary margin, in addition thereto, surrounding the same.

The power of the Governor to lay and maintain such quarantine is derived from statute, and the power of the Legislature to enact the statute is derived from the police power of the State, but the police power of the State may not be arbitrarily exercised and, when exercised, due regard must be given to the necessity therefor and the reasonable conservation and enjoyment of private rights.

Tiedeman, in Limitations of Police Power, section 1, lays down the rule, thus:

> Any law which goes beyond that principle, which undertakes to abolish rights, the exercise of which does not involve an infringement of the rights of others, or to limit the exercise of rights beyond what is necessary to provide for the public welfare and the general security, cannot be included in the police power of the government.

And the Supreme Court, in In re Morgan 26 Colo. 424, recognizing this rule, uses this forceable language, viz:

> Notwithstanding this general rule, we are here met with the argument, and assertion is badly made, that in the exercise of its police power, the Legislature is subject to no restriction except its own unbridled discretion as to what subjects it may select for regulation, and the kind of regulation it may prescribe. We cannot assent to this doctrine. It may find apparent sanction in unguarded expressions of text-writers, or in judicial opinions, but it is contrary to every well considered decision. It is for the Legislature to determine the exigency, that is, the occasion, for the exercise of the power; but it is clearly within the jurisdiction of the courts to determine what are the subjects upon which the power is to be exercised, and the reasonableness of that exercise. Tiedeman's Limitation of Police Power, sec. 3; People v. J. & M. P.R. Co., 9 Mich. 285; Lake View v. Rose Hill cemetery co., 70 Ill. 191; 18 Am. & Eng. Ency. Law, 746, et seq.; People v. Gillson, 109 N.Y. 389.

We conclude, therefore, if the quarantine of the whole of Washoe County, for the purposes aforesaid, is unreasonable and unnecessary in its extent and operation a court of competent jurisdiction would grant adequate relief to those rightly aggrieved, thus curtailing the same within reasonable and necessary limits

By order of the Attorney-General:

Respectfully submitted,

ROBERTS RICHARDS, *Deputy Attorney-General*.

66. Hoisting Engineers—Act Relating to Hoisting Engineers and Their Licenses

Constitutional—Procedure Indicated.

CARSON CITY, September 26, 1921.

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

DEAR SIR: The Act of March 22, 1921, Stats. 1921, p. 316, entitled "An Act providing for the issuance of licenses to hoisting engineers," etc., recites in regard to a license in section 6 thereof as follows:

> Except as herein otherwise provided, all licenses shall be issued to cover the year commencing with the first day of July. Any person or persons applying for a license under this Act within two months after the commencement of such year shall be required to pay the proportional share of such license for the remainder of such year as hereinbefore provided, and for the next license year at the same time.

Section 8 thereof is as follows:

> Upon application for a license the applicant shall pay to the Inspector of Mines, as chairman of all examining boards, a fee of five ($5) dollars, which shall be placed in the hoisting engineers' license fund in the state treasury, which is hereby created, and no part or portion of said fee shall be returned to the applicant should he fail to pass the required examination.

Section 13 is, in part, as follows:

> All licenses granted hereunder must be renewed yearly and the fee for such renewal shall be the sum of two dollars and fifty cents ($2.50) and the money derived therefrom shall take the same course as provided in section 8. All such applications for renewal must be accompanied by a physician's certificate stating the facts required as herein before provided upon application for license, and such other information as may be required by the ex officio chairman of the examining board.

Section 6 is not in conflict with section 8 wherein the former section provides for a proportionate system for paying the license fees. It is, however, necessary in order to give a sensible meaning to section 6 to eliminate the word "within" and insert therein the words "later than," as otherwise the intent and purpose of said provision would be defeated. Section 8 provides for a preliminary fee of $5 to be paid by all who file applications for an examination under the Act with the additional provision that "no part or portion of said fee shall be returned to the applicant should he fail to pass the required examination." This section emphasizes the fact that n o part of said fee is to be returned to an applicant who fails in examination, but it does not prohibit the return of a part thereof upon the proportional basis to a successful applicant as provided for in section 6. An applicant receiving a license pursuant to the proportionate-fee method is entitled to have issued to him a license for the remainder of the year in which he receives his license. A deposit must be made of $2.50 to cover the fee for the next ensuing year. The license certificate for such ensuing year is not to be issued, however, until the expiration of the year for which the first license is issued, however, until the expiration of the year for which the first license is issued. The issuance of the second license must be deferred for the reason that section 13 expressly provides that prior to the issuance of a renewal of the license of a physician's certificate stating the facts required by the Act must be filed.

Yours very truly,

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

67. Fish and Game—Law Applicable—Powers of Board of County Commissioners Construed.

CARSON CITY, September 15, 1921.

MR. E.R. SANS, *Bureau of Biological Survey, Reno, Nevada*.

DEAR SIR: You have propounded the question as to whether or not the failure of a Board of County Commissioners to designate a thirty-day period for the killing of deer with horns or antelope prior to August 1, as provided for in section 42 of the Fish and Game Act as amended, precludes such board from taking action based upon a petition filed pursuant to section 50 as amended.

It is my opinion that the two sections operate independently. Section 42 grants to such a board absolute power to act of its own volition relative to the particular thirty days between September 15 and December 15 of every year in which such game may be killed. In acting under such section a board acts pursuant to the absolute power therein given. Section 50 provides an entirely different basis of jurisdiction or control of the subject. Therefore, if a petition is filed with a Board of County Commissioners, praying that the board pass a special ordinance prohibiting any open season for deer with horns or antelope, the said board has the legal right to enact such an ordinance even though such enactment takes place after the first day of August.

Yours very truly,

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

68. Public Schools—Duty of Board of County Commissioners to Levy Formation of School District May Not Be Attacked After Its Long Existence.

CARSON CITY, October 4, 1921.

BOARD OF COUNTY COMMISSIONERS, *Minden, Nevada*.

GENTLEMEN: You are hereby advised that it is your duty to levy a tax of 25 cents on each $100 of assessed valuation of Clear Creek School District (Joint) and that a failure to do so will be in violation of section 140 of an Act entitled "An Act concerning public schools and repealing certain acts relating thereto," approved March 20, 1911. The validity of the existence of such school district (joint) cannot be collaterally attacked, and even in a direct proceeding in that regard the courts will rule that after such a long existence the regularity or the formation of such district will be conclusively presumed. There are many decisions supporting the position.

Yours very truly,

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

69. Highway, State—Certain Bonds Legally Issued Therefor.

CARSON CITY, October 14, 1921.

NEVADA INDUSTRIAL INSURANCE COMMISSION, *Carson City, Nevada*.

DEAR SIRS: You are respectfully advised, in reply to your inquiry, that the Nevada State Highway bonds, issued pursuant to chapter 172, Statutes of 1919, approved March 28, 1919, are in due form and the Act under which the same were issued is valid and binding.

By order of the Attorney-General:

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

70. Revenue—Nevada Tax Commission Has Power to Equalize Assessment of Property.

CARSON CITY, October 18, 1921.

NEVADA TAX COMMISSION, *Carson City, Nevada*.

GENTLEMEN: The Nevada Tax Commission has the power to equalize the assessment of property wherein such equalization is not made by the State Board of Equalization. This power is given the Nevada Tax commission in section 6 of an Act entitled "An Act in relation to public revenues," Stats. 1917, p. 328. It, therefore, follows that, if the Carson Valley Bank had been assessed in a way that is different from that which applies to other banks of the State, your board, by reason of the power specifically conferred in you to equalize assessments in cases where equalization has not already been effected, may make the necessary reduction to establish such equalization.

Yours very truly,
L.B. FOWLER, *Attorney-General*.

71. Colorado River Development Commission—Qualifications of Appointees Defined—Member of Legislature Passing Act Not Qualified to Represent State.

CARSON CITY, October 18, 1921.

HON. J.G. SCRUGHAM, *State Engineer*.

DEAR SIR: We have your letter of the 17th instant, calling for an official opinion on certain questions propounded under the Act entitled "An Act creating a commission to be known as the Colorado River Development Commission of Nevada, defining powers and duties and making an appropriation for the expenses thereof," approved March 21, 1921, as follows:

> 1. Would it be legal for a member of the State Legislature of 1921, which passed the Act, to represent the State, and have his expenses from the appropriations there made?

To this inquiry we are constrained to reply in the negative. As well public policy as constitutional provision forbid that such member be appointed a Commissioner under the Act or that he act in a representative capacity for the State to carry out the provisions thereof. In this connection, we call your attention to section 8 of article 4 of the Constitution, which provides: "No senator or member of the Assembly shall, during the term for which he shall have been elected, nor for one year thereafter, be appointed to any civil office of profit under this State, which shall have been created, or the emoluments of which shall have been increased during such term, except such office as may be filled by election of the people." Section 4 of the Act provides for compensation and actual and necessary expenses of the members of the commission;

hence, such member of the Legislature is precluded from appointment as Commissioner or sharing in such compensation and actual and necessary expenses.

2. Does the qualification of not to exceed two members belonging to the same political party apply to the three appointive members, or is the State Engineer included?

The State Engineer being named in the Act as an ex officio member, his qualifications have been fixed and determined by the Legislature itself. It is apparent that the qualifications mentioned in section 2 of the Act are for the guidance of the Governor in making his selection of the appointive Commissioners, not more than two of whom shall belong to the same political party. The Governor is given no control over the qualifications of the State Engineer as Commissioner, since the Legislature reserved his status to itself in making him an ex officio member of the Commission. Therefore, the qualification of not to exceed two members belonging to the same political party applies only to the three appointive members and not to the State Engineer as an ex officio member of the Commission.

By order of the Attorney-General:

Respectfully submitted,

ROBERTS RICHARDS, *Deputy Attorney-General*.

72. Torts—County Not Liable for Tort by Reasons of Defective Bridge.

CARSON CITY, October 19, 1921.

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

DEAR SIR: The Legislature of this State has not enacted any provision whereby a county becomes liable for a tort. Therefore, any person who suffers damage by reason of a defective bridge, which is under the control of the county, has no legal claim against the county.

Yours very truly,

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

73. Highway, State—Certain Bonds Thereof Legal.

CARSON CITY, October 19, 1921.

NEVADA INDUSTRIAL COMMISSION, *Carson City, Nevada*.

DEAR SIRS: You are respectfully advised, in reply to your inquiry, that the Nevada state-highway bonds, 601 to 700, both inclusive, and 901 to 950, both inclusive, issued pursuant to chapter 172, Statutes of 1919, approved March 28, 1919, are in due form and the Act under which the same were issued is valid and binding.

Yours very truly,

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

74. Public Employment—An Alien May Not Be Employed as Janitor in County Courthouse.

CARSON CITY, October 20, 1921.

HON. J.H. HART, *Lovelock, Nevada*.

DEAR SIR: You have presented me the query as to whether or not an alien who has claimed exemption from military service can be employed as courthouse janitor.

I beg to advise that such employment contravenes the provisions of an Act of the Legislature of this State entitled "An Act to amend an Act entitled 'An Act to prohibit the employment of any person except a native-born or naturalized citizen of the United States by an officer of the State of Nevada,'" etc., Stats. 1921, p. 205.

Yours very truly,

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

75. Public Employment—An Alien May Not Be Employed as Janitor in a County Courthouse.

CARSON CITY, October 22, 1921.

HON. HAROLD L. HEWARD, *Assistant District Attorney, Reno, Nevada*.

DEAR SIR: Under date of October 20, 1921, I wrote to Assemblyman J.H. Hart of Pershing County, relative to the employment of an alien as janitor in the courthouse as follows:

> You have presented to me the query as to whether or not an alien who has claimed exemption from military service can be employed as courthouse janitor. I beg to advise that such employment contravenes the provisions of an Act of the Legislature of this State entitled "An Act to amend an Act entitled, 'An Act to prohibit the employment of any person except a native-born or naturalized citizen of the United States by any officer of the State of Nevada,'" etc., Stats. 1921, p. 205.

The State of Nevada has a special right to regulate matters of public employment. I am of the opinion that the statute under consideration does not conflict with the Constitution or treaties of the United States or Constitution of Nevada.

Yours very truly,

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

76. Artesian Wells—Bounty Therefor Regulated by Law—Case Stated Does Not Call for Reimbursement by State.

CARSON CITY, October 22, 1921.

HON. CHAS. A. WALKER, *District Attorney, Ely, Nevada.*

DEAR SIR: The Act of the Legislature of the State of Nevada entitled "An Act authorizing the expenditure of money by the State under certain conditions for the purpose of aiding counties in sinking artesian wells," Stats. 1915, p. 127, provides that when a sum amounting to $4,000 or more has been expended by a county for the purposes mentioned in an Act of the Legislature of the State of Nevada, approved March 20, 1913, relative to the acquirement of real estate and the sinking of artesian wells, makes it a requisite for reimbursement to the county by the State that the sum expended must amount to $4,000 or more and which must not exceed $5,000. The

claim of White Pine County being for $1,832.37 does not come within the provisions of said statute. I am, therefore, compelled to rule that the said claim on the part of Whit Pine County is not a valid claim against the State.

Yours very truly,

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

77. Revenue—Uncollected Taxes on Personal Property—Assessor Liable for Noncollected Taxes, But Statute Should Be Liberally Construed in Favor of Assessor.

CARSON CITY, October 22, 1921.

HON. FRANKLIN E. WADSWORTH, *District Attorney, Pioche, Nevada*.

DEAR SIR: A tax is not a debt in the ordinary sense. Statutory law which applies to assessment and the collection of taxes should be strictly followed. Our statute makes the County Assessor personally responsible for failure to collect taxes due on personal property. The law seems to be silent relative to taxes which should have been collected in past years on personal property. The identity of live stock necessarily changes with the years. The fact that taxes must be collected as applied to specific property renders it almost impossible to meritoriously contend that the State may go back over a period of years and demand the payment of uncollected taxes on live stock. I am, therefore, of the opinion that the only sensible position to take is that our statute covering the collection of taxes on personal property, as applied to live stock, must be held to apply to the latest year and not to prior time.

In regard to your other query, as to whether or not taxes paid under an unconstitutional statute may be recovered, I beg to advise that the rule is that in the absence of a statute specifically giving to a taxpayer the right to recover such taxes, the same are held to be voluntary . Our State has no statute which confers any such right on a taxpayer. All payments of taxes which have been made under unconstitutional statutes must be held to be final and no recovery can be made by the persons making such payments.

Yours very truly,

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

78. Revenue—Increased Valuation Ordered by State Board of Equalization Valid.

CARSON CITY, October 24, 1921.

HON. H.J. MURRISH, *District Attorney, Lovelock, Nevada*.

DEAR SIR: Information has been conveyed to me that you have ruled that the 10% horizontal increase and assessed valuation on all real estate and improvements in Lovelock, ordered by State Board of Equalization, is invalid, for the reason that a recommendation to the Tax Commission was attached thereto. I cannot see how the recommendation to the Tax Commission can defeat the action of the Board of Equalization, which has not been interfered with by the Tax Commission. The action of the Board of Equalization is in full force and effect. If there is any part of the resolution that is invalid, it is that part which makes the recommendation. When the Board of Equalization made the raise, it undoubtedly believed that such raise was necessary in the equalization of assessments; at least, we cannot indulge in a

contrary presumption. If the act of said board making said raise cannot become the subject of attack other than that a recommendation to the Tax Commission was attached thereto, then, in my opinion, the raise has been legally made.

You will favor by giving me your attitude in the matter.

Yours very truly,

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

79. Public Schools—At Request of Parents Child May Be Excused from Attendance to Receive Religious Instruction.

CARSON CITY, November 22, 1921.

BOARD OF SCHOOL TRUSTEES, *Carson City, Nevada*.

GENTLEMEN: Under date of May 27, 1920, an opinion was rendered by me addressed to Hon. W.J. Hunting, Superintendent of Public Instruction, in which the following language is used:

> 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.

This language must not be construed as making it mandatory on the part of school authorities to recognize such written request of a parent. It is discretionary on the part of those controlling school affairs as to whether or not recognition is to be given to such request. When children enter school the jurisdiction during school hours passes from the parents to the school authorities. Dual jurisdiction would mean the destruction of school discipline.

Yours very truly,

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

80. Revenue—Finality of Tax Assessments Determined by Delivery of Rolls to the Tax Receiver.

CARSON CITY, December 2, 1921.

BOARD OF COUNTY COMMISSIONERS, *Carson City, Nevada*.

GENTLEMEN: After the assessment roll is delivered to the Tax Receiver, the law presumes that, in the absence of mistake or accident, finality has been reached. In all matters of procedure provided for by the law it is necessarily contemplated that definiteness will some time be reached, and it is my conclusion that definiteness is attained at the time of the delivery to the tax receiver of the assessment roll. If the record preceding the delivery of said assessment roll to the tax receiver positively establishes as a fact that a mistake or accident has occurred, a correction may be made to conform to the truth, but the assessment roll cannot be altered or interfered with in any other respect.

Yours very truly,

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

81. Motor-Vehicle Law—Statute in Certain Respects Construed.

CARSON CITY, December 9, 1921.

HON. HARLAN L. HEWARD, *Assistant District Attorney, Reno, Nevada*.

DEAR SIR: It is my opinion that the word "and" in section 5 of an Act providing for a license for the operation of motors and vehicles and other matters relating thereto, Stats. 1921, p. 335, joining the words "material and passengers" should, for the purpose of harmonizing the provisions of the Act, be interpreted as meaning the disjunctive "or." It is not plausible to conclude that the Legislature, after legislating on the subject covered by said Act, practically destroyed its own Act by attaching thereto a penal section which, if literally construed, will allow persons to deliberately manipulate in a way that will be destructive of the intent and purpose of the Act.

In the case of State v. Brandt, 49 Iowa, p. 593, the following language is found, quoting from page 615 thereof:

> The only question remaining in this connection is, whether we have any authority in law for construing a disjunctive conjunction as a conjunctive and vice versa. That courts have interpreted the word "and" as a disjunctive, and the word "or" as a conjunctive when the sense absolutely required, and this in extreme cases in criminal statutes, against the accused, is laid down as elemental. bishop on Statutory Crimes, p. 243, and cases cited in notes 1 and 2; see, also, The Estate of Hallowell in Supreme Court of Penn., April 3, 1875, and found in Legal Int. (Phil.) of April 9, Vol. 22, No. 15; and this court in The State v. Meyers, 10 Iowa, 448, construed the word "or" to mean "and," and this, too, when such construction operated against the accused. See also, to the same effect, The State v. Cooster, 10 Iowa, 453.

For the purpose of giving vitality to the Act the disjunctive "or" should be inserted in the place of "and" in said section 5 between the words "material" and "passengers."

Yours very truly,

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

82. Elections—Oath of Election—Statute Providing Therefor Not Retroactive.

CARSON CITY, December 10, 1021.

HON. HARLAN L. HEWARD, *Assistant District Attorney, Reno, Nevada*.

DEAR SIR: The new form of oath to be taken by an elector when he registers, as provided for in section 9 of the registration law as amended in 1921, pp. 370-371, should be interpreted as being prospective in its application, and it cannot affect those persons whoa re already legally registered. The Legislature in changing the from of oath certainly did not intend to interfere with other provisions of the statute. The statute should be construed and interpreted to give full vigor to all its parts. The views herein expressed will lead to such a result.

Yours very truly,

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

83. Highway—Resignation of Acting State Highway Engineer Is Legal—The Word

"Acting" May Be Regarded as Surplusage.

CARSON CITY, December 12, 1921.

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

DEAR SIR: Confirming the oral opinion given to you by me, I beg to advise that the designation of George W. Borden, as Acting Highway Engineer, can in nowise affect the validity of his appointment. He is actually State Highway Engineer and the word "Acting" must be treated as surplusage.

Yours very truly,

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

84. Recall Petition—Signer Thereof May Not Withdraw.

CARSON CITY, December 31, 1921.

HON. H.J. MURRISH, *District Attorney, Lovelock, Nevada*.

DEAR SIR: Replying to your inquiry, as to whether or not an elector who has signed a recall petition is possessed of the privilege of withdrawing his name therefrom after the petition has been filed, I beg to reply in the negative. I am satisfied that neither section 9 of article 2 of the Constitution of Nevada, nor the statute enacted to make said section of the Constitution effective, contemplates any amendment by way of addition or subtraction of a petition for the recall of an officer after the filing thereof has occurred.

Immediately upon filing, the machinery relative to a recall of any officer is put in operation. No officer or officers are possessed of any discretionary powers in regard thereto. The Constitution and the statute should be construed and interpreted to make effective the spirit thereof. If electors give their names for the purpose of making possible a petition for the recall of an officer, and thereafter, by means of various and sundry ways, they are persuaded or coerced into making a request that their names be withdrawn and thereby destroy the basis upon which a recall election must rest, the objects and purposes of the constitutional section mentioned and the statue will be unjustly frustrated and will practically prevent any attempt on the part of the people to ever have a public officer recalled.

Yours very truly,

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

85. Public Schools—A Certain Bond Issue Approved.

CARSON CITY, December 31, 1921.

NEVADA INDUSTRIAL COMMISSION, *Carson City, Nevada*.

GENTLEMEN: A careful examination has been made by me of all the proceedings relative to a bond issue for Caliente School District, Lincoln County, State of Nevada. I find that they are all regular and legal and that the bond issue made pursuant thereto is a valid issue and from a legal standpoint you will be safe in purchasing said bonds.

Yours very truly,

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