**164. State Board of Health—Power to Compel School Children to Submit to Inoculation with Diphtheria Antitoxin Mixture or Suffer Expulsion from Public Schools.**

(1) Children may be excluded from public schools for failure to be inoculated with diphtheria antitoxin mixture, if such inoculation is an effective preventative or deterrent, and further, if the conditions existing in each particular case makes such inoculation reasonable and necessary for the prevention of epidemic.

(2) There are matter for determination of the medical members of the State Board of Health.

INQUIRY

CARSON CITY, January 20, 1925.

Has the Nevada State Board of Health the power to issue an order compelling school children to submit to the inoculation with diphtheria antitoxin mixture, or suffer expulsion from the public schools?

OPINION

The Work "expulsion" is ineptly used in the above inquiry, and the word "exclusion" would be much more appropriate.

No one can categorically and unqualifiedly answer the above inquiry. All we can do in the matter is to give you the general rules of law governing the matter, leaving the question of the necessity and reasonableness of making inoculation with diphtheria antitoxin mixture a prerequisite to the right to attend public schools, to be decided by the board upon the advice of the members thereof who are trained medical experts, upon a survey of the actual conditions existing in each particular case.

Those parts of the Act creating the State Board of Health, which are applicable to the question involved, are as follows:

> The Board of Health, when necessary, shall have power * * * and may order and execute what is reasonable and necessary for the prevention and suppression of disease. (Subd. 2, sec. 25, Act 1911, as amended by chap. 117, Act 1919.)
>
> The board may, also, from time to time, and when necessary, make, alter, modify, or revoke rules and regulations for guarding the introduction of any disease into the State, or for the control and suppression thereof within it, etc. (Sec. 26, Act 1911, as amended by chap. 117, Stats. 1919.)
>
> The board may declare any or all of its rules and regulations made in accordance with the provisions of this section to be in force within the whole or any specified part of the State. * * * Such rules and regulations, if of general

> application, shall be published in a paper or papers of general circulation; but whenever, in the judgment of the board, it shall be necessary so to do, special rules, regulations or orders may be made for any city, village or town without being so published, and the service of copies thereof upon the proper city, village or town officers shall be sufficient notice thereof. (Sec. 26, Act of 1911, as amended by Stats. 1919, chap. 117.)

From the above it will be seen that the State Board of Health may legally make, prescribe and enforce any reasonable rule, regulation or order that may be necessary for the preservation of the public health.

As to whether the requirements for "inoculation with diphtheria antitoxin mixture" is a reasonable and necessary prerequisite to the right of a child to attend public schools, would depend upon the prevalence of the disease in the community, the efficacy of such inoculation to prevent such disease, and all other circumstances bearing upon the case in each particular instance. These are matters for determination to prevent such disease, and all other circumstances bearing upon the case in each particular instance. These are matters for determination by medical experts and that is the reason for the statutory provision that a majority of the State Board of health shall be "graduated, licensed physicians with the degree of M.D."

Inoculation for the prevention of diphtheria is a recent discovery, and there are no decisions of the courts, at this time, bearing upon this particular matter. However, inoculation or vaccination for smallpox has long been practiced and there are many decisions of the courts applicable thereto. Inoculation in either case is for the purpose of rendering the subject immune from the attack, or of greatly lessening the ravages of the disease. We can, therefore (assuming that inoculation with diphtheria antitoxin mixture is an effective deterrent), by analogy apply the law of those cases to the matter under discussion.

It has many times been decided that compulsory vaccination may be enforced when provided by law, or by regulation of boards of health, when necessary for the protection of the public health.

> Cases dealing with vaccination problems have generally grown out of the action of the authorities in excluding unvaccinated children from the public schools. * * * Failure has been the result in every effort to contest the validity of such action when authorized by the Legislature. Jacobson v. Mass., 197, U.S. 11, 49 L. Ed. 643, and note citing decisions of various state courts.
>
> I think no one will dispute the right of the Legislature to enact such measures as will protect all persons from the impending calamity of a pestilence, and to vest in local authorities such comprehensive powers as will enable them to act competently and effectively. Re Smith, N.Y. 28 L.R.A. 820-823.
>
> A school board has the right to exclude from the schools those who do not comply with a regulation of the city authorities and the school board requiring a certificate of vaccination as a condition of attendance. Duffield v. School Dist. (Pa.) 25 L.R.A., 152, and note citing various state decisions.

From an examination of the decisions of the courts we conclude that children may be excluded from the public schools for failure to be inoculated with diphtheria antitoxin mixture, if such inoculation is an effective preventative or deterrent, and further, if the conditions existing in

each particular case makes such inoculation reasonable and necessary for the prevention of an epidemic.

These are matters for the determination of the medical members of the State Board of Health, rather than for determination by laymen or lawyers.

Respectfully submitted for the Attorney-General,

M.A. DISKIN, *Attorney-General.*

By THOS. E. POWELL, *Deputy Attorney-General.*

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

---

165. Highway Directors, Board Of—Signing of Contracts by Chairman Only.

(1) Under Sec. 16 of Act creating the Highway Department, it is not necessary that all three members of the Board of Highway Directors sign project agreements for Federal aid.

(2) The Chairman of the Board of Highway Directors has full power and authority to sign such agreements for the Board.

INQUIRY

CARSON CITY, January 20, 1925.

Is it necessary, under the statute, that all three members of the Board of Highway Directors sign project agreements for federal aid, or may the chairman sign in his official capacity for the board?

OPINION

Section 16 of the Act creating the Highway Department provides as follows:

> All contracts authorized under the provisions of this Act shall be executed in the name of the State of Nevada and shall be signed by the Chairman of the Department of Highways, attested by the State Highway Engineer under the seal of the Department, signed by contracting party or parties, and the form and legality thereof approved by the Attorney-General.

There is no word, phrase or clause limiting the word "contracts" as used in the above quotation other than the phrase "authorized under the provisions of this Act."

It is obvious, therefore, that the Chairman of the Board may sign for the board any contract which the Act authorizes. The board derives all of its powers from the Act creating it and has no authority to enter into any contract not therein authorized. Section 7 of the Act authorizes the board to enter into "all contracts and agreements with the United States Government relating to the survey, preparation of plans, construction, maintenance of roads under the provisions of said Act of Congress."

Therefore, the Chairman of the Board, having the right to sign all contracts for the board, and the statute having authorized project agreements with the United States Government, the Chairman has full power and authority to sign such agreements for the board.

Respectfully submitted for the *Attorney-General,*

M.A. DISKIN, *Attorney-General.*

By THOS. E. POWELL, *Deputy Attorney-General.*

HON. GEO. W. BORDEN, *State Highway Engineer, Carson City, Nevada.*

---

**166. Employment Agencies—Applicant for Employment Securing Employment Beyond Limits of Town Not Entitled to Refund of Transportation Expense, But Only To Fee Collected.**

In case applicant for employment fails to secure employment, employment agent must refund fee paid, and if applicant is sent beyond limits of city in which employment agent is located, agent shall repay in addition to fee any actual expenses incurred in going to and returning from place sent, if applicant fails to secure employment. Where applicant does secure employment beyond city limits, although discharged in less than seven days, employment agency not required to refund expenses, but only fee paid.

INQUIRY

CARSON CITY, January 20, 1925.

Applicant for employment through licensed agencies provided under section 10 of chap. 167, Stats. 1919, pays a fee of $1.50, and is sent to outside points requiring the expenditure of $16 transportation, hotel and living expenses en route. He is furnished four days employment and is then discharged. Is he entitled to transportation refund in addition to refund of fee under this set of facts?

OPINION

Section 10 of the Act above referred to provides in part as follows:

> In case the applicant paying a fee fails to obtain employment, such licensed agency shall repay the amount of said fee to such applicant upon demand being made therefor; *provided,* that in cases where the applicant paying such fee is sent beyond the limits of the city in which the employment agency is located, such licensed agency shall repay in addition to the said fee any actual expenses incurred in going to and returning from any place where such applicant has been sent; *provided, however,* where the applicant is employed and the employment lasts less than seven days by reason of the discharge of the applicant, the employment agency shall return to said applicant the fee paid by such applicant to the employment agency.

Under the first sentence above quoted, if the applicant fails to obtain employment, the licensed agency shall repay the amount of the fee collected, where the alleged place of employment is *within* the limits of the town where the employment agency is located.

Under the first proviso, where the alleged place of employment is beyond the limits of the city where the employment agency is located and the applicant fails to obtain the employment contemplated, the licensed agency shall refund, not only the fee collected, but also the actual expenses of the applicant in going to and returning from the place where the applicant was sent.

But, under the second proviso, where the applicant is sent beyond the limits of the town where the licensed agency is located and does secure the contemplated employment, though (as in the case under discussion) the applicant is discharged within seven days, the employment agency is required only to refund the fee collected. In the circumstances last above recited, the law apparently presumes that the discharge of the applicant results from the fault either of the applicant or the employment agency.

Respectfully submitted for the Attorney-General,

M.A. DISKIN, *Attorney-General.*

By THOS. E. POWELL, *Deputy Attorney-General.*

HON. FRANK INGRAM, *Labor Commissioner, Carson City, Nevada.*

---

**167. Labor Commissioner—Payment of Forfeiture to for Violation of Law is Constitutional—Distinction Between Forfeitures and Fines.**

(1) Forfeitures and penalties under Nevada statutes are not synonymous with fines. Fines are imposed for violation of criminal laws and may result in imprisonment of defendant. A forfeiture is not prosecuted in a criminal action but is recoverable in a civil action.

(2) Act providing for payment of forfeitures to Labor Commissioner is not unconstitutional as being in violation of sec. 2 of article XI of Nevada Constitution, as it places no limitation upon the Legislature as to disposition of forfeitures.

INQUIRY

CARSON CITY, February 10, 1925.

Is Assembly Bill No. 17, reading in part as follows:

> Sec. 6. Any employer who fails or refuses to pay any of the wages or compensation of an employee, in whole or in part, as in this Act provided, or violates any of the remaining provisions of this Act, shall forfeit to the State of Nevada, for the support and maintenance of the office of Labor Commissioner, a sum not less than fifty ($50) dollars and not more than three hundred ($300) dollars, in the discretion of the court trying the same, to be recovered from the said employer in a civil action, prosecuted in the proper court by the District Attorney of the county, at the instance of the Labor Commissioner.

constitutional in view of that provision of section 2, article XI, of the State Constitution, which provides that all fines collected under the penal laws of this State are solemnly pledged for educational purposes.

OPINION

"Forfeitures" and "penalties," under the statutes of our State, are not, by any means, the equivalent of, or synonymous with "fines." The only respect in which they are related, is that they are all in the nature of punishments for violations of law. They have separate and distinct meanings, and are recoverable in distinctive and entirely dissimilar proceedings, and are satisfied in an entirely different manner.

Fines are imposed for violations of criminal laws. They can only be imposed (except for contempt) in a criminal action tried before a jury upon a verdict of guilty. A fine may be paid in cash, or it may be satisfied, in default of such payment, by imprisoning the defendant personally in the county jail, one day for each two dollars of the fine imposed. So, it will be seen that the imposition of a *fine* may mean the imprisonment of the defendant.

A forfeiture, such as is provided for in Assembly Bill 17, while it is in the nature of a punishment for a violation of law, such a violation is not prosecuted in a criminal action, and such forfeiture is recoverable in a civil action, tried before the court, either with or without a jury.

In this State a jury may be waived by the defendant in a civil action, but in a criminal action even the defendant himself cannot waive a jury trial. Furthermore, while a fine is enforceable against the *person* of the defendant, a forfeiture can only be enforced by execution upon the *property* of such defendant as in other civil actions; and all such recoveries against the property of the defendant, whether as a forfeiture or recoveries upon contract are subject to such disposition as the Legislature may provide. It is, therefore, obvious that "fines" and "forfeitures" as used in our laws, are not synonymous, but have clearly distinctive meanings.

Section 2 of article XI of our Constitution provides that all fines collected under the penal laws of the State are solemnly pledged for educational purposes, but it nowhere places any limitation upon the Legislature as to the disposition of forfeitures.

We are, therefore, bound to conclude that the Legislature may lawfully provide, in Assembly Bill 17, that the forfeitures therein named, be applied to the support and maintenance of the office of Labor Commissioner.

Respectfully submitted for the Attorney-General,

M.A. DISKIN, *Attorney-General.*

By THOS. E. POWELL, *Deputy Attorney-General.*

*Hon. Committee on Labor of the Assembly of the State of Nevada.*

---

**168. Justices of the Peace—Failure to Take Oath On Reelection and Failure to Give Bond—Such Officer Is Only De Facto and Not Entitled to Compensation.**

Justice of Peace being reelected and failing to take new oath or give new bond is only a de facto officer and not entitled to compensation. Vacancy occurs which may be filled by County Commissioners.

FIRST INQUIRY

CARSON CITY, February 17, 1925.

A certain person was elected to the office of Justice of the Peace at the election in 1922, took the oath of office, filed his official bond, which was duly approved and served during his two years term. At the election in 1924, such incumbent Justice became a candidate for reelection and was elected to succeed himself. On the first Monday in January, 1925, such Justice failed and refused to take the oath of office or furnish a new bond to cover the new term of office, claiming the right to hold over "until his successor is duly elected and qualified." What is the status of such office and such officer?

OPINION

Sections 2782 and 4852, Revised Laws, provide that Justices of the Peace shall hold their offices for two years and until their successors are elected and qualified. But that language does not mean that a Justice of the Peace may become a candidate to succeed himself, and if elected refuse to qualify for the office by virtue of such election and claim the right to hold over under the provision of the statutes above quoted. If he had not become a candidate for reelection, and there was no election of any one to succeed him, or if a person who was elected to succeed him failed to qualify, then he would have the right to hold over until his successor was elected and qualified and the Board of County Commissioners would have no right to appoint his successor. However, having sought reelection and having been reelected to succeed himself, it was incumbent upon him to qualify anew or forfeit his right to the office, and upon such failure to qualify, a vacancy occurred which the County Commissioners should fill by appointment. See 29 Cyc. 1400.

Under statutes substantially-identical with ours the Supreme Court of Washington, in the case of State v. Gormley, 102 Pac. 435, 437, used this language:

> For instance, it is a matter of common knowledge that an incumbent actually in office is often reelected for a succeeding term. In such case he is not permitted to continue in office upon his former oath and bond, but must again qualify. He cannot decline to qualify and continue in office under his former tenure. One in this situation must hold under his new tenure or not at all. The term of office will not expire until the successor, though it be himself, is elected and qualified under the decision in the Tellman case, but, unless he qualifies under his new tenure, he forfeits the right to hold under either.

The Supreme Court of Arizona in a recent case, Sweeney v. State (1922), 204 Pac., 1025, under statutes relating to election, qualification and tenure of office of Justices of the Peace and vacancies in office, substantially identical with ours, quoted from the Gormley case with approval and decided that a Justice of the Peace elected to succeed himself must either qualify anew or forfeit his right to the office.

This being the case, if the person in question is, nevertheless, in the possession, and exercising the authority of the office of Justice of the Peace, he is merely a de facto officer and is not entitled to compensation.

SECOND INQUIRY

A certain person was elected to the office of Justice of the Peace at the general election in 1922, and, on the first Monday in January, 1923, took the oath of office and filed an official bond, which was returned without approval to him for correction, but which was never corrected or filed, or approved as required by law. Nevertheless, such person took possession of the office and assumed to exercise the powers and authority of a Justice of the Peace during the term for which he was elected. He became a candidate for reelection at the election in 1924, and was duly elected, and on the first Monday in January, 1925, the date upon which the law requires all county and township officers to qualify, the person so elected either failed or refused to qualify by taking the oath of office or furnishing an official bond. What is the status of such office and such officer?

OPINION

Our opinion upon your first inquiry is applicable to the acts here under consideration and the person exercising the powers and authority of the office of Justice of the Peace is merely a de facto officer and is not entitled to compensation.

It may be further said that such person never having qualified according to law by furnishing an official bond on the first Monday in January, 1923, as required by law, was never other than a de facto officer.

Respectfully submitted for the Attorney-General,

M.A. DISKIN, *Attorney-General.*

By THOS. E. POWELL, *Deputy Attorney-General.*

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

---

**169. Land Grants—Acts of Legislature Providing for Disposition of Lands Granted by Federal Government for Other Than Educational Purposes Void—Legislature May Empower Governor to Accept Lands from Federal Government for "Public Park, Recreation Ground or Game Refuge Purposes."**

(1) Acts of Legislature providing for withdrawal from sale of all lands acquired under various grants from the United States and relinquishment of such lands to the United States in exchange for other lands for "state park and other purposes" as may be agreed upon, is in violation of sec. 3, art. XI of Constitution of Nevada, which solemnly pledges all such lands for educational purposes and cannot be used for other purposes.

(2) Act of Legislature providing for exchange of any lands now owned by State of Nevada for other Government lands for "public park, recreation ground, or game refuge purposes," is clearly a violation of constitutional provisions above mentioned.

(3) Governor may be empowered to accept a grant directly from the Federal Government for "public park, recreation ground or game refuge purposes."

INQUIRY

CARSON CITY, March 3, 1925.

Are Senate Bills Nos. 37 and 38 constitutional?

OPINION

Senate Bills Nos. 37 and 38 are companion bills and were intended to operate together, and supplement each other.

Senate Bill No. 37 provides for the withdrawal from sale of all lands acquired under the various grants from the United States of America, and the relinquishment of such of said lands to the United States, in exchange for other lands for "State Park and other purposes," as may be agreed upon. All the lands referred to in Senate Bill 37 were granted by the United States to the State of Nevada, either originally or through subsequent legislation, for educational purposes.

The Constitution of the State of Nevada, article XI, section 3, provides in part as follows:

> All lands, including the 16th and 36th sections in any township donated for the benefit of public schools in the Act of the 38th Congress to enable the people of Nevada Territory to form a State Government, the thirty thousand acres of public lands granted by an Act of Congress, approved July 2, A.D. 1862, for each Senator and Representative in Congress, and all proceeds of lands that have been or may hereafter be granted, or appropriated by the United States to this State, and also the five hundred thousand acres of land granted to the new States under the Act of Congress distributing the proceeds of the public lands among the several States of the Union, approved A.D. 1841, * * * are hereby solemnly pledged for educational purposes, and shall not be transferred to any other funds for other uses; * * *.

Senate Bill 37 is clearly in violation of the above provision of the Constitution. All the lands involved are solemnly pledged by the Constitution for certain specific purposes, namely for purposes of education; and any Legislative Act which attempts to divert such lands, or the proceeds thereof, to any other purpose, is clearly void.

In so far as Senate Bill 38 contemplates the exchange of any lands now owned by the State of Nevada for other Government lands for "public park, recreation ground, or game refuge purposes," it is also clearly a violation of the constitutional provisions above quoted.

Whether the Legislature may constitutionally empower the Governor to accept from the Federal Government grants of public lands for "public park, recreation ground or game refuge purposes," is a question, in view of that provision above quoted which says, "and all proceeds of lands that have been, or may hereafter be granted or appropriated by the United States to this State." However, it is our opinion that the language above quoted refers only to such lands as

have been or may hereafter be granted or appropriated to this State for educational purposes, and that the Governor may constitutionally be empowered by the Legislature to accept a grant directly from the Federal Government for "public park, recreation ground or game refuge purposes."

Respectfully submitted for the Attorney-General,

M.A. DISKIN, *Attorney-General.*

By THOS. E. POWELL, *Deputy Attorney-General.*

SENATOR R.H. COWLES, *Reno, Nevada.*

---

**170. Corporation—Payment of License Tax—Corporation Not in Default Under Act of 1923.**

Any corporation organized after July 1, or between the dates of August 1 and February 15, would not be in default for failure to pay the license tax prior to February 15, and the Secretary of State should not certify the name of such corporation for publication under section 4 of the Act of 1923. (Chap. 190, Stats. 1923.)

INQUIRY

CARSON CITY, March 3, 1925.

Where a corporation is organized in this State between the first day of August and the 15th day of February following, and fails to pay the license tax of $10 provided for in chapter 190, Stats. 1923, is such corporation in default on the 15th day of February, and should the Secretary of State certify the name of such corporation to the Governor for publication, under the provisions of section 4 of said chapter?

OPINION

The answer the query here presented, it is necessary to determine under the Act: (1) When and at what time must the payment of license taxes be made by corporations? (2) When and under what circumstances is a corporation in default?

Directing attention to the first question, section 1 of the Act provides:

> Every corporation organized under the laws of this State, and every foreign corporation, doing business in this State, shall, on or before the first day of July of each year, pay to the Secretary of State a license tax of $10.
>
> Sec. 7. This Act shall go into effect on the first day of April, 1923, and all corporations which shall desire to exist and carry on and continue in business, or may desire to continue in existence within this State after the first day of July, 1923, shall apply for and obtain authority to do so at the time and in the manner as herein provided, and in case of failure to do so the penalties and forfeitures shall become effective and shall be enforced against all defaulting corporations.

To assist that a corporation organized after July 1, or between the dates of August 1 to February 15, must, immediately upon organization, pay the license tax or suffer default, not only

requires the reading of words into the statute, but would be inconsistent with the language of the Act as to the specific time of payment therein directed, viz: on or before July 1, of each year.

I am not unmindful of the provisions of section 2, which in substance provides that "the Secretary of State shall issue to each corporation paying such tax a certificate authorizing it to transact and continue its business within the State for the period of one year." This section, however, should be read in connection with the provisions of section 7, supra, which distinctly provides that application for authority to continue in business is to be made at the time and in the manner as herein provided. The time designated in section 1 is on or before July 1 of each year.

The Supreme Court of California, in the case of Bascu v. Walderman, 160 Pac. 180, held that the words "on or before," are to be construed as meaning "a few days before or a few days after the day specified." There is no doubt but what a corporation organized after August 1 might apply and receive a certificate authorizing it to do business within the State at any time after its organization, and prior to July 1. This is a privilege, under the law, that is given to the corporation. But the State of Nevada could not work a forfeiture under this time provision if the tax is paid on or before July 1.

This is a penal statute and must be strictly construed.

Sutherland, Statutory Construction, vol. 2, page 994, announces this doctrine:

> No case has arisen in which a penalty or forfeiture has been sustained for being within the supposed intention of the statute when not within its terms.

Quoting from the case of United States v. Wigglesworth, the author says:

> It was declared in United States v. Wigglesworth that statutes levying taxes or duties on subjects or citizens are to be construed most strictly against the government and in favor of the subjects or citizens, and their provisions are not to be extended by implication beyond the clear import of the language used, or to enlarge their operation so as to embrace matters specifically pointed out, although standing upon a close analogy.

To hold, therefore, that a corporation organized after August 1 of any year, and between the dates of August 1 and February 15, must pay the license tax or be in default, would be placing such construction upon the words "on or before" that is not warranted by these terms, and clearly such a construction would be by implication enlarging the provisions of the penal statute for the purpose of working a forfeiture.

(2) When and under what circumstances is a corporation in default? Could a corporation organized between August 1 and February 15 be declared in default for failing to pay the license tax?

It will be observed that under section 3 it is provided:

> Any corporation required to pay the tax, which shall refuse or neglect to pay the same on or before the first day of August next following the first day of July, shall be deemed in default.

A corporation, under the facts stated in the question, not being in existence or organized prior to July 1, would not be required to pay the tax and therefore could not be in default. There are no default provisions for corporations organized after August 1 in each year for failure to pay other than on or before July 1, and it must, therefore, logically follow that, if a corporation comes into existence at a time when the default period prescribed by the law has elapsed, the Secretary of

State cannot legally declare or certify the name of such corporation to the Governor under section 4 because no default for the failure to pay within that particular period is provided in the statute.

The Supreme Court of Utah, in the case of Blackrock Copper M. & M. Co. v. Tingey, 98 Pac. 180, construed the section of the Utah law which provides that all corporations should pay an annual state license on or before the 15th day of November in each year. One of the questions presented for decision in this case was whether or not a corporation, organized and existing after the 15th day of November, would be liable for the tax, prior to November 15, of the succeeding year. The Court stated:

> It is further contended that the Act is void for uncertainty, in that it fixes no time at which the duty to pay the tax arises, and because the nonpayment thereof does not prevent the corporation from continuing its business, although it may refuse or neglect to pay the tax. As to the first point, it is sufficient to say that the license tax imposed is an annual tax payable "on or before the 15th day of November of each year." Any corporation falling within the class mentioned in the Act upon whom the tax is imposed, and which has obtained from the State a franchise to transact business as a corporation at any time before the 15th day of November of any year, is liable for the tax, and, when paid, is entitled to the certificate mentioned in section 5 of the Act, which entitles such corporation to continue to transact its corporate business for the whole year and until the 15th day of November of the following year. Any corporation organized after the 15th day of November in any year clearly cannot be required to pay the tax until the following November. If it be said that this authorizes a newly created corporation to transact business for a period for which it pays no tax, it may likewise be said that the same condition exists with regard to any annual tax. Even upon a property tax when a person becomes the owner thereof after the time for assessing the property has passed, he may hold it immune against taxation until the next annual period for assessment arrives. The Legislature no doubt could have provided that any corporation formed after the 15th day of November in any year should be required to pay a tax in proportion to the time intervening between its organization and the end of the yearly term, namely, the 15th day of November. The mere fact that this was not done, however, in no way affects either the certainty or the uniformity.

It is my opinion, therefore, that any corporation organized after July 1, or between the dates of August 1 and February 15th, would not be in default for a failure to pay the license tax prior to February 15, and the Secretary of State should not certify the name of such corporation for publication under section 4 of the Act.

Respectfully submitted,

M.A. DISKIN, *Attorney-General.*

HON. W.G. GREATHOUSE, *Secretary of State, Carson City, Nevada.*

---

**171. Schools—County High Schools—Act of Legislature Providing for County High School in Lander County Not Repugnant to General Law.**

Act of Legislature (Senate Bill 61) of 1925 authorizing construction of high school in Austin, Lander County, is not repugnant to general laws on subject; there is no defect in failure to amend general law, and provisions of the Act are mandatory.

INQUIRY

CARSON CITY, March 6, 1925.

Senate Bill 61 authorizes the Board of County Commissioners of the County of Lander, State of Nevada, to issue bonds to provide for the acquisition of a site for, and for the construction, equipment and furnishing of a high school building in the town of Austin, Nevada. It further authorizes the County Board of Education to acquire a site for, and to construct and equip said building.

Statutes 195, p. 188, provides in what manner a branch county high school might be established. Sections 3414-3424, inclusive, enact the procedure to be followed in establishing county high schools.

You direct my attention to these general laws, and request an opinion on the validity of Senate Bill 61, in the following particulars: (1) Is Senate Bill 61 repugnant to the general laws, supra? (2) Is there any defect in Senate Bill 61 through failure to amend the general law? (3) Are the provisions of Senate Bill 61 mandatory?

OPINION

The Supreme Court of Nevada in the case of Dotta v. Hesson, 38 Nev. 1, has passed upon the matters submitted by you, and held that a similar statute was valid. The Court stated:

> Since the passage of a special Act by the Legislature of 1895, providing for the establishment of a county high school for Elko County (Stats. 1895, p. 59), a number of similar Acts have been passed authorizing the establishment of such schools in the counties of Churchill (Stats., 1905, p. 144), White Pine (Stats 1914, p. 4), and possibly others, inclusive of the Act in question. The passage of these several Acts shows that the Legislature and the people generally have regarded such Acts as not violative of the Constitution as it has been interpreted by numerous decisions of this court. It would be unfortunate indeed if we were now bound to hold this legislation unconstitutional. Whatever room there may have been for argument when the question was first presented as to whether this character of legislation was within the constitutional inhibition, the question can no longer be regarded as an open one. The constitutionality of similar legislation has been before the court repeatedly, and universally sustained. (State v. Lytton, 31 Nev. 67, 99 Pac. 855, and authorities therein cited; (Quilici v. Strosnider, 34 Nev. 9, 115 Pac. 177.)

It must follow, therefore, that queries 1 and 2, submitted by you, must be answered in the negative.

From the language used in Senate Bill 61 I am of the opinion that its provisions are mandatory.

Respectfully submitted,

M.A. DISKIN, *Attorney-General.*

HON. JAMES G. SCRUGHAM, *Governor, Carson, Nevada.*

---

**172. Pharmacist, or Drug Store, Not Entitled To Handle Intoxicating Liquor Until It Has Operated in State for One Year.**

A pharmacist, who has been operating a drug store and dispensing liquor in the State of California, who moves his business to the State of Nevada, would not be entitled to handle intoxicating liquor in Nevada until he has operated a pharmacy in this State for one year, under provisions of Statutes 1923, page 310, section 2.

INQUIRY

CARSON CITY, March 18, 1925.

If a pharmacist, who has been operating a drug store and dispensing liquor in the State of California, moves his business to the State of Nevada, would he be entitled to handle intoxicating liquor as soon as he has moved his stock and established his business, or would he be required to wait one year before dispensing liquor?

OPINION

Statutes 1923, page 310, section 2, provides:

> A pharmacy is defined for the purpose of this Act as a going concern which has been regularly and continuously in operation in the same city, town or locality for at least one year, and which has for said length of time been continuously legally engaged in the business of compounding and dispensing drugs.

It is only a pharmacy as defined in section 2 of the Act, supra, that is entitled to fill prescriptions for intoxicating liquors.

It is my opinion, therefore, that under the facts stated a pharmacist who moves his business to the State of Nevada from some other State would not be entitled to handle intoxicating liquor until he had operated a pharmacy in the State of Nevada for a period of one year.

Respectfully submitted,

M.A. DISKIN, *Attorney-General.*

HON. GEORGE W. BRADY, *Prohibition Director, Reno, Nevada.*

---

**173. School Districts, Transfer or Consolidation Of—Requisites of Petition For—No Notice Required.**

(1) Petition for purpose of consolidating school districts must contain names of three-fifths of heads of families or taxpayers living within each of the districts to be consolidated.

(2) No notice would be required to change the boundaries of districts when a petition is filed containing the names of three-fifths of the heads of families or taxpayers living within the districts affected. This would apply also to notice under the first proviso of the Act and the recommendation of the deputy or district superintendent would not be essential to effect the change provided for in this clause of said section. Section 77 of an Act entitled "An Act concerning public schools, etc., as amended February 7, 1923."

INQUIRY

CARSON CITY, March 18, 1925.

Section 77 of an Act entitled "An Act concerning public schools," and repealing certain Acts relating thereto, approved March 20, 1911, as amended March 24, 1917, as amended February 7, 1923, provides in part as follows:

> They may make changes in the boundaries of districts upon petition of three-fifths of the heads of families or taxpayers living within the district or districts to be affected by the change, or they may make changes in said boundaries so as to place one or more families having school children, residing in a school district much nearer the school house in an adjoining district than that of their own, in the district most convenient for them to attend; *provided*, that this may be done only on written petition of the family or families desiring such change and that said petition shall be accompanied by the recommendation of the Deputy or District Superintendent; *and provided further*, that before decisive action in the premises by the Board of County Commissioners, due notice shall be given to the two school districts to be affected by the proposed change, that parents and others who may be opposed thereto can appear before the Board of County Commissioners at the next regular meeting thereof, to show cause why the aforesaid petition should not be granted. (Page 11.)

In connection with this section an opinion is requested in reference to the following facts and questions arising thereunder. Seven families of Consolidated School District A desire to transfer to District B. In order to do so, under the provisions of chapter 11, Statutes 1923, supra, must they: (1) petition by either three-fifths of the heads of families or taxpayers; or (2) petition by three-fifths of the heads of families and taxpayers; (3) petition by three-fifths of Districts A and B, combined; or (4) petition by three-fifths of each of the districts so that three-fifths of the total of both would be enough; (5) in case a proper three-fifths petition is filed, must notice be given of hearing; or (6) is notice required only when the petition is accompanied by the recommendation of the Deputy or District Superintendent?

OPINION

Prior to the amendment of this section by Statutes 1923, page 10, the former provisions of this section, Statutes 1917, page 389, authorized the changing in the boundaries of districts upon petition of three-fifths of the heads of families *and* taxpayers. The amendment, Statutes 1923, was for the sole and only purpose of changing the word "*and*" in the 1917 Statutes, to the word "*or,*" Statutes 1923.

It is my opinion therefore, that a petition under this section may be signed by three-fifths of the heads of families or taxpayers, and not by three-fifths of the heads of families and taxpayers.

I am of the opinion that the petition presented for the purposes enumerated in said section must contain the names of three-fifths of the heads of families or taxpayers living within each of the districts to be consolidated, and that three-fifths of the total of both would not be sufficient. To hold otherwise would mean that a consolidation might be effected without the concurrence of three-fifths of the heads of families or taxpayers, living within a district where a consolidation was desired and over the objection of the heads of families or taxpayers.

In conclusion with notice required as stated in the two provisos of this section I am of the opinion that the provisos only relate to the antecedent clause and therefore no notice would be required to change the boundaries of districts when a petition is filed containing the names of three-fifths of the heads of families or taxpayers living within the districts affected. This would apply also to notice under the first proviso and the recommendation of the deputy or district superintendent would not be essential to effect the change provided for in this clause of said section.

Respectfully submitted,

M.A. DISKIN, *Attorney-General.*

HON. GROVER L. KRICK, *District Attorney, Minden, Nevada.*

---

**174. Public Printing By Counties, Cities, Towns and School Districts—Act of 1925 Not Unconstitutional—Act Mandatory.**

Statutes of 1925, chapter 120, providing where all public printing required by the various counties, cities, towns and school districts of this State shall be placed is mandatory and is not in conflict with the Constitution of Nevada.

INQUIRY

CARSON CITY, April 15, 1925

Statutes of 1925, chapter 120, page 169, provides:

> All public printing required by the various counties, cities, towns and school districts of this State shall be placed with some bona fide newspaper, or bona fide commercial printing establishment within the county requiring the same, or in which said city, town or school district is located; *provided, however,* if there is no bona fide newspaper, or bona fide commercial printing establishment within the county, adequately equipped to do such printing, then and in that event the printing so required shall be placed through the local bona fide newspaper, or

bona fide commercial printing establishment on commission. Printing required by counties, cities, towns and school districts of this State shall be done within the State.

An opinion is requested as to whether this Act is unconstitutional, and also whether its provisions are mandatory.

OPINION

The provisions of this Act in no way conflict with the Constitution. I am of the opinion that the Act is mandatory and all public printing required to be done by counties, cities, towns and school districts must be handled in the manner set forth in this section.

Respectfully submitted,

M.A. DISKIN, *Attorney-General.*

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

---

**175. Justices of Peace, Fees of as Ex Officio Coroner—Justice of Peace of Argenta Township, Lander County, Not Entitled to Additional Fees or Compensation as Ex Officio Coroner, Except When Necessary to Hire Conveyance.**

Under Statutes of 1909, page 44, the Justice of the Peace of Argenta Township, Lander County, is not entitled to any additional fees or compensation for services performed as ex officio coroner, and is only entitled, as ex officio coroner, to his necessary expenses when it is necessary to hire a conveyance.

INQUIRY

CARSON CITY, April 15, 1925.

Reference is made to Statutes of 1909, page 44. This Act fixes compensation of the Justice of the Peace of Argenta Township. You request an opinion as to whether or not the Justice of the Peace of Argenta Township, in addition to his salary, is entitled to fees derived from the performance of his duties as ex officio coroner, under the provisions of section 7543, Revised Laws of Nevada.

OPINION

Statutes of 1909, page 44 provides:

> From and after the passage of this Act, the Board of County Commissioners of Lander County are hereby authorized and directed to appropriate from the treasury of said county, and pay to the regularly elected or appointed Justice of the Peace of Argenta Township of said county, the sum of $100 monthly as a salary, *which shall be compensation in full for all services rendered in criminal proceedings or cases, either as coroner or committing magistrate; provided, however*, that said

> Justice of the Peace shall be allowed to retain all fees and commissions allowed by law in civil actions and shall be allowed his necessary expenses while acting as coroner in cases wherein it is necessary to hire a conveyance.

In as much as this Act fixes the salary of the Justice of the Peace at the sum of $100 a month and provides specifically that such salary shall be in full compensation for all services rendered in criminal proceedings or cases, either as coroner or committing magistrate, I am of the opinion that the Justice of the Peace as ex officio coroner is not entitled to any additional fees or compensation for the services performed as ex officio coroner, and is only entitled, as ex officio coroner, to his necessary expenses when it is necessary to hire a conveyance.

Respectfully submitted,

M.A. DISKIN, *Attorney-General.*

HON. W.C. HANCOCK, *Justice of the Peace, Battle Mountain, Nevada.*

---

**176. Appropriations for Salaries Fixed By Law—Failure of Legislature to Appropriate For In General Appropriation Bill Does Not Prevent Payment of Salary.**

Statutes 1919, page 128, fixes salary of one typist in office of Surveyor-General at $1,500 annually, and provides for payment in monthly installments. Failure of Legislature in the appropriation bill to allow a sum sufficient to pay the salaries fixed by law would not thereby prevent the officer from collecting his salary.

INQUIRY

CARSON CITY, April 15, 1925.

Does the failure of the recent Legislature to appropriate a sufficient amount of money to pay the salary of typist in the office of the Surveyor-General for the years 1925-1926, prohibit the issuance of warrants for the several amounts in payment of the salary, or are such payments authorized by the Acts of 1907, section 4398, Revised Laws of Nevada, 1912, Statutes 1919, chap. 80, such Acts never having been repealed or amended.

OPINION

Statutes 1919, page 128, fixes the salary of one typist in the office of the Surveyor-General at $1,500 annually. Section 3 of this Act provides:

> The salaries fixed in this Act shall be paid in monthly installments out of any money in the State Controller shall draw his warrants and the State Treasurer shall pay the same accordingly.

I am of the opinion that section 3, supra, constitutes an appropriation out of the General Fund, and the failure of the Legislature in the general appropriation bill to appropriate a specific sum of money to pay this salary would not militate against or in any way affect the Controller's duty to issue warrants monthly for the payment of the salary of typist in the Surveyor-General's office.

Statutes of 1919, supra, fixed the amount of salary and directed how it shall be paid.

This office has heretofore held in Opinion No. 38 that "failure on the part of the Legislature in the appropriation bill to allow a sum sufficient to pay the salaries fixed by law would not thereby prevent the officer from collecting his salary." See also, State v. Eggers, 29 Nev. 469; State v. Eggers, 35 Nev. 250.

Respectfully submitted,

M.A. DISKIN, *Attorney-General.*

Hon. Geo. A. Cole, *State Controller, Carson City, Nevada.*

---

**177. Attorneys Employed By Officers, Commissions, Etc., of Nevada to Represent State, When—Public Service Commission Allowed to Employ Attorney Outside State.**

Statutes 1923, page 7, prohibiting officers and commissioners of this State from employing attorneys to represent the State of Nevada within this State does not prohibit the employment by the Public Service Commission of an attorney outside of this State.

INQUIRY

CARSON CITY, April 15, 1925.

The Public Service Commission of Nevada has presented to the Board of Examiners a claim in the sum of $250 to cover payment to Mr. John E. Benton, General Solicitor of the National Utilities Commission, and other commissions and courts, in Washington, D.C.

Attention is called to Statutes 1923, page 7, and an opinion is requested concerning the legality of the Public Service Commission employing Mr. Benton to represent the Commission in the manner indicated.

OPINION

It will be noted from a reading of this section that officers and commissioners are prohibited from employing an attorney to represent the State of Nevada within said State. This section also contains the proviso that in cases of emergency where the services of the Attorney-General's office are required in remote counties of the State, the Attorney-General may, when it appears for the best interests of the State, appoint resident attorneys at law of such county as special deputy.

I am of the opinion that this statute does not prohibit the employment of Mr. Benton under the facts stated. If the Attorney-General was required to represent the Commission and perform the services which will be performed by Mr. Benton, the expenses of a trip to Washington, D.C., for one hearing would amount to more than the total amount to be paid to Mr. Benton for all of his services. The Statute of 1923, supra, in my opinion, was adopted to prevent the evil of employing attorneys within this State to perform duties which under the law were to be performed by the Attorney-General in connection with litigation arising and to be prosecuted within the State of Nevada.

Section 2 reads as follows:

> No officer, commissioner or appointee of the State of Nevada, shall employ any attorney at law or counselor at law to represent the State of Nevada *within* said State, or to be compensated by state funds directly or indirectly, as an attorney acting *within* said state for the State of Nevada. * * *

Respectfully submitted,

M.A. DISKIN, *Attorney-General.*

HON. J.F. SHAUGHNESSY, *Chairman Public Service Commission.*

---

**178. Justices of Peace—Act of Legislature Authorizing Payment of Salaries Not Unconstitutional as Regulating Salaries—Claims for Such Salaries, Although Once Rejected, Should Be Paid Under Mandate of Legislature.**

Statutes of 1925, pages 234 and 345, authorizing Board of County Commissioners of Mineral County to pay certain salaries to the Justices of the Peace of Mina and Hawthorne Townships for months of January and February, 1925, these respective officers having, through mistake, failed to qualify as required by law, not unconstitutional as regulating salaries by special act and claims for such salaries, though once rejected by the Board of County Commissioners, should be paid and legislative mandate carried out.

INQUIRY

CARSON CITY, April 15, 1925.

Statutes of 1925, pages 234 and 345, authorizes the Board of County Commissioners of Mineral County to pay certain salaries to the Justices of the Peace of Mina and Hawthorne Townships for the months of January and February, 1925, these respective officers having, through mistake, failed to qualify as required by law. Following the passage and approval of these legislative Acts, the two officers presented their claims for salary to the Board of County Commissioners, and their claims were allowed. The county auditor requests an official opinion upon the following inquiries:

(1) In view of the provisions of section 20, article IV, of the Constitution of Nevada, providing that the Legislature shall not pass local Acts regulating the compensation of township officers, is the legislative Act of 1925 constitutional?

(2) Claims for such salaries having heretofore been rejected by the County Commissioners, will the provisions of section 1526, Revised Laws 1912, bar the legal allowance of such claims?

OPINION

Reference is made to Opinion No. 168, heretofore rendered by this office, in connection with the facts presented. Statutes 1925, pages 234 and 345, recites facts which discloses that Judge McCarthy and Judge Cornelius, through mistake and inadvertence, failed to file an official bond within the time required by law. It was further found by the Legislature that the respective

Justices of the Peace performed the duties of their office, and were de facto officers. After finding these facts, the Legislature authorized and directed the Board of county Commissioners to pay the salaries and fees fixed by law, and they further directed the County Auditor to draw his warrant for such amount, and ordered the County Treasurer to pay the same.

Replying to your first inquiry, it is my opinion that this Act, supra, is not unconstitutional, and does not offend the provisions of section 20, article IV, of the Constitution of the State of Nevada—this for the reason that these statutes do not attempt to fix the salaries of the Justices of the Peace. The salary has already been fixed by law, and the intent and purposes of the Legislature in enacting these laws was to give authority to the Board of County Commissioners and authorize them to pay the Justice of the Peace compensation already established by existing laws.

Replying to your second inquiry, while section 1526, Revised Laws, prohibits the Board of County Commissioners from considering claims which have been presented and rejected, this provision of the statute should be liberally construed, and where the facts or the law in reference to the facts have been changed or enlarged to such an extent as to make a claim heretofore invalid a good and subsisting claim, I am of the opinion that the Board of County Commissioners would be authorized to carry out the legislative mandate, notwithstanding this provision of the law.

Respectfully submitted,

M.A. DISKIN, *Attorney-General.*

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

---

**179. Optometry, Right of Osteopathic Physicians to Practice—Osteopathic Physicians, Right to Practice Optometry.**

Under Statutes 1913, page 129, section 16, physicians and surgeons have the right to practice optometry, and under section 12, Statutes 1925, osteopathic physicians are given the same rights as physicians and surgeons of other schools of medicine. Osteopathic physicians, therefore, have the right to practice optometry.

INQUIRY

CARSON CITY, April 29, 1925.

Reference is made to Statutes 1925, chapter 118, page 162. This is an Act which defines osteopathy and authorizes and regulates the practice of osteopathic physicians and surgeons.

An opinion is requested as to the right of an osteopathic physician to practice optometry.

OPINION

Statutes 1913, page 129, regulates the practice of optometry. Section 16 of the Act provides that:

> Nothing in this Act shall be construed to apply to persons licensed to practice medicine in this State. * * *

Under Section 12, Statutes 1925, page 162, supra, it is provided that:

> Osteopathic physicians and surgeons licensed hereunder shall have the same rights as physicians and surgeons of other schools of medicine.

It follows, therefore, that under section 16, supra, physicians and surgeons have the right to practice optometry, and under section 12, Statutes 1925, supra, osteopathic physicians are given the same rights as physicians and surgeons of other schools of medicine. Osteopathic physicians, therefore, have the right to practice optometry.

Respectfully submitted,

M.A. DISKIN, *Attorney-General.*

HON. WARD E. TAYLOR, *Secretary Nevada State Board of Examiners in Optometry.*

---

**180. Highway Department—Creditors' Claims, Time for Filing.**

Under section 17, Statutes 1917, page 309, providing that any person or corporation furnishing labor or supplies desiring to be protected under the bond of a highway contractor shall file his claim within 30 days from the completion of the contract with the Department of Highways, creditors' claims filed prior to the date when the contract was completed and prior to the 30-day period set forth in the statute after the completion of the contract have been filed within the time required by law.

INQUIRY

CARSON CITY, April 30, 1925.

The State Highway Department entered into a contract for the construction of a public highway in Elko County, Nevada. After the acceptance of the contract a surety bond was filed in accordance with law. Thereafter, and on January 26, 1925, the Highway Department gave notice that the work performed by the Contract had been accepted by the Highway Department, and that creditors could present their claims to the Highway Department any time prior to February 25, 1925.

It appears from the inquiry presented that several creditors filed claims with the Highway Department prior to the date when said contract was accepted by the Highway Department.

An inquiry is now presented as to whether creditors' claims filed with the Highway Department constitute a sufficient compliance with section 17, Statutes 1917, page 309. The particular portion of this section applicable to the facts under consideration reads as follows:

> Any person or corporation furnishing labor or supplies as heretofore provided herein, desiring to be protected under said bond, shall file his claim within 30 days from the completion of the contract with the Department of Highways.

OPINION

Under the facts stated above it appears that several claims have been filed by creditors on a date prior to the date when the contract was completed and prior to the 30 day period set forth in

the statute after the completion of the contract. It is urged that such filings are not a compliance with this section of the law.

Construction of similar statutes has been before the courts many times. I find no case supporting the interpretation contended for by those who urge that the filings indicated are not sufficient under similar provisions of law. On the contrary, the weight of authority holds that the words "within 30 days after" fixes only the limit beyond which the act may not be performed, and does not fix or restrict the first point of time at which the act may be done or notice given.

The Supreme Court of New York, in the case of Merchants' & Traders' Bank v. Meyer, 97 N.Y. Reps. 355, at 361, construed a similar statute where the provisions were similar with that of section 17, supra. The court stated:

> The ordinance relied upon by the defendants was authorized by law, and was in force when the contract was made and it authorized the clause in the contract upon which the judgment brought was based. The ordinance provides for a notice to be given at any time within 10 days after the completion of the work, and the counsel for the plaintiff therefore contends that the notice cannot be given before the completion of the contract but it must be given after the completion, and within 10 days thereafter. We think this not the proper construction.

See, also, Davie v. Miller, 130 U.S. 284; Young v. Orpheus, 119 Mass. 179.

It is my opinion, therefore, that the creditors' claims have been filed within the period required by law.

Respectfully submitted,

M.A. DISKIN, *Attorney-General.*

HON. FRANK INGRAM, *Labor Commissioner, Carson City, Nevada.*

---

**181. Corporations—Reincorporation of, Under 1925 Act—No Fee Except for Certified Copy of Articles of Incorporation.**

Where a corporation existing at date of enactment of corporation law of 1925 desires to reincorporate under the 1925 law, no fees are chargeable therefor, except, only, where there is an increase of capital stock under sec. 77, and except for certified copy of articles of incorporation.

INQUIRY

CARSON CITY, April 20, 1925.

Where a corporation exists prior to the enactment of what might be termed the new corporation law, Statutes 1925, chap. 177, and desires to reincorporate under this law, are any fees chargeable for the reincorporation other than certified copies of the articles of incorporation?

OPINION

Section 82, Stats. 1925, chap.177, provides that any corporation organized and existing under the laws of this State on the day on which this Act becomes effective, may reincorporate under this Act, either under the same or a different name, etc.

Section 77 authorizes the Secretary of State to collect certain fees when filing any certificate of incorporation.

I am of the opinion that where a corporation already organized under the laws of this State desires to reincorporate under the new corporation law, and no increase in capital stock of such corporation is contemplated in the reincorporation of such company, that the Secretary of State would not be authorized to require such corporation to make any payment except for a certified copy of the articles. By reincorporating it is desired only to take advantage of the provisions of the new law, and the formation of a new or different corporation is not contemplate. Section 77 authorizes the collection of the fees therein set forth to be paid only once by the same corporation except, only, where there is an increase of capital stock.

Respectfully submitted,

M.A. DISKIN, *Attorney-General.*

HON. W.G. GREATHOUSE, *Secretary of State, Carson City, Nevada.*

---

**182. Corporations—Reincorporating Under Act of 1925 Not Required to File List of Officers Other Than Annual Filing.**

Corporation organized prior to Act of 1925 reincorporating thereunder are not required to file a list of officers within 60 days after reincorporation, as provided in sec. 3, Statutes 1925, page 323.

INQUIRY

CARSON CITY, April 20, 1925.

Kindly advise as to whether or not a prior organized company taking advantage of the new Corporation Act will be required to file a list of their officers, other than the annual filing as provided for in Statutes of 1925, p. 323?

Will such corporation, under the facts stated, be compelled to file a list of officers within 60 days after reincorporation, as proved in section 3, Statutes 1925, page 323?

OPINION

Both queries are answered in the negative.

Respectfully submitted,

M.A. DISKIN, *Attorney-General.*

HON. W.G. GREATHOUSE, *Secretary of State, Carson City, Nevada.*

---

**183. Budget Law—Not Applicable to Contracts Under Existing Laws with Teachers, Principals, City Superintendents and Other School Supervisors—Law Inconsistent with Budget Law Repealed By Implication.**

The budget law is not applicable to contracts under existing laws with teachers, principals, city superintendents, and other school supervisors, because an amendment by Statutes 1921, p. 329, sec. 14 1/2 provides that the Act shall not be construed to prevent contracts under existing laws with teachers, principals, city superintendents and other school supervisors.

INQUIRY

CARSON CITY, May 2, 1925.

Does the budget law, particularly section 10, page 156, of the 1923 School Code, conflict with the provisions of section 76, chapter 7, page 35, 1923 School Code, permitting boards of Trustees of districts of first class to elect City Superintendents of schools for a term of four years after having served one year acceptably in the district?

OPINION

Section 76, chap. 7, page 35, of the 1923 School Code was originally enacted, Statutes 1911, page 183. So much of section 76 as is material for consideration under the matter submitted, reads as follows:

> The Board of School Trustees of any district of the first class is hereby authorized to create the office of City Superintendent of schools for such district * * *; that no City Superintendent shall be elected for more than one year, unless said City Superintendent shall have first served one year acceptably in the district, when said Board of Trustees is empowered to elect said Superintendent for a term not to exceed four years.

When this law was enacted, the Legislature of this State had not provided for a budget system for the operation of schools and school districts.

By Statutes 1917, page 249, it was enacted that:

> The business of every county in this State, on and after the approval of this Act, shall be transacted on a cash basis.

Section 2 of the Act provides:

> For the purpose of this Act, every school district, county high school, or high school district, or educational district, and the governing boards thereof, are deemed to be governmental agencies of the State of Nevada.

Provisions were then made for the preparation of a budget setting forth in detail the aggregate sums required to be raised by taxation for conducting schools for the current year.

Section 10 of this Act makes it unlawful for any of the boards mentioned to "authorize, allow or contract for any expenditures, unless the money for the payment thereof has been specifically set aside for such payment by the budget."

The Supreme Court of Nevada, in the case of Carson City v. County Commissioners, 47 Nev., page 415, held that where a law was inconsistent with the budget law, the latter repealed the former by implication. It is to be noted that the budget law, as enacted in 1917, was amended by Statutes 1921, p. 329, Section 14 1/2, as amended, provides:

> But this Act shall not be construed to prevent contracts under existing laws with teachers, principals, city superintendents, and other school supervisors.

This section, therefore, specifically exempts contracts of the character described in your inquiry from the operations of the budget law, and by reason of it I must conclude there exists no conflict between the two statutes.

Respectfully submitted,

M.A. DISKIN, *Attorney-General.*

HON. W.J. HUNTING, *Superintendent of Public Instruction, Carson City, Nevada.*

---

**184. Corporations—Act of 1925 Does Not Repeal Act of 1903—Fees To Be Charged Corporations Organized Under Act of 1903 Desiring to Amend Articles, Etc.**

(1) Corporation Act of 1925 does not repeal corporation law of 1903. All corporations organized prior to March 31, 1925, which have not reincorporated under 1925 Act are to be charged fees designated in the Act of 1903, as amended in 1923.

(2) The purpose and intent of the Legislature was to have two separate and distinct corporation laws.

INQUIRY

CARSON CITY, May 4, 1925.

You refer to Statutes 1903, page 121, as amended 1923, and also to chapter 177, Statutes 1925.

An opinion is requested as to whether the Act of 1925 repeals, amends, or in any way affects the provisions of the Statutes of 1903, as amended 1923.

You request information as to what fees are chargeable against those corporations organized and existing under the Act of 1903, when such corporations desire to file an amendment to its charter, etc.

OPINION

Statutes 1903, page 121, is an Act providing a general corporation law.

Statutes 1925, chapter 177, is an Act providing a general corporation law.

In the 1925 Act there is no express repeal as to the Act of 1903. It is apparent from the provisions contained in section 1, Statutes 1925, that it was the legislative intent not to have the Act apply to corporations organized prior to March 31, 1925, because of the reading of section 1, which provides as follows:

> The provisions of this Act shall apply to corporations hereafter organized in this State, except such corporations as are expressly excluded by the provisions of this Act; it shall also apply to corporations which are consolidated, or which shall reincorporate hereunder, in the manner provided in section 82 hereof, and to no other corporation.

No corporation, therefore, organized prior to March 31, 1925, would be subject to any of the provisions of this Act, unless and until it complied with the provisions of section 82, Stats. 1925, chapter 177.

Statutes 1925, supra, do not amend or repeal the Act of 1903, supra, by any express provision and it is apparent from reading the statute that no repeal by implication was intended.

A ruling that the latter statute repealed the former would, of necessity, result in the conclusion that corporations organized prior to March 31, 1925, could not amend its articles of incorporation and there would be no provision of law applicable to such corporations. The purpose and intent of the Legislature was to have two separate and distinct corporation laws, one applying to corporations organized after March 31, 1925, and those organized prior thereto that have complied with section 82, Statutes 1925, supra. The Act of 1903 is to apply only to corporations organized prior to March 31, 1925.

Therefore, in connection with the fees to be charged by you, you will bear in mind that for all corporations coming within the purview of Statutes 1925, such charges and fees will be collected as are provided in section 77, Statutes 1925, supra. For all corporations organized prior to March 31, 1925, which have not reincorporated under the new law, you will charge the fees designated in section 102, Statutes 1903, as amended 1923.

Respectfully submitted,

M.A. DISKIN, *Attorney-General.*

HON. W.G. GREATHOUSE, *Secretary of State, Carson City, Nevada.*

---

**185. Revenue—Billboards, Signs, Etc.—License Must Be Procured for Each Separate Sign, Billboard, Etc.**

(1) Under provisions of sec. 3, chap. 90, Statutes 1925, an advertiser must pay the sum of $5 and procure a license for each separate sign, billboard, placard, notice, or other form of outdoor advertising.

(2) If any such sign, billboard, placard, notice or other form of outdoor advertisement is in existence at time said law goes into effect, a license must be procured to continue the same, unless erected or placed in accordance with the provisions of section 3a of the Act.

INQUIRY

CARSON CITY, May 13, 1925.

Does a license procured under the provisions of section 3, chap. 90, Statutes 1925, entitle the licensee to erect, place, paint, or maintain only one billboard, sign, placard, notice or other form

of outdoor advertisement, or does such license authorize the licensee to maintain as many of such forms of advertisement as he desires?

OPINION

Under the provisions of section 3 of the above-named chapter, an advertiser must pay the sum of $5 and procure a license for each separate sign, billboard, placard, notice, or other form of outdoor advertisement, and, if any such sign, billboard, placard, notice or other form of outdoor advertisement is in existence at the time said chapter goes into effect, a license must be procured to continue the same, unless erected or placed in accordance with the provisions of section 3a of the Act.

Respectfully submitted for the Attorney-General.

M.A. DISKIN, *Attorney-General.*

By THOS. E. POWELL, *Deputy Attorney-General.*

HON. GEORGE W. BORDEN, *State Highway Engineer, Carson City, Nevada.*

---

**186. Revenue—Gasoline or Motor Fuel Tax—Does Not Apply to Tractors Used In Construction of Highway Not Open to Traffic.**

Under provisions of section 4, chapter 180, Statutes 1923, as amended by chapter 131, Statutes 1925, fuel used in a tractor operated wholly in the construction of a state highway, and not operated upon any highway open for traffic and used by the public, is not subject to the tax.

INQUIRY

CARSON CITY, May 16, 1925.

Are contractors who use motor vehicle fuel in trucks and tractors used in the construction of the State Highway under contract with the State Highway Department, but not used upon any completed highway, entitled to a refund of the tax paid on such motor vehicle fuel?

OPINION

This question is covered by the provisions of section 4, chapter 180, Statutes 1923, as amended by chapter 131, Stats. 1925.

Section 4 reads in part as follows:

> Any person, firm, or corporation who shall buy and use any motor vehicle fuel, as defined in this Act, for the purpose of operating or propelling stationary gas engines, tractors, farm tractors, harvesting machines, airplanes or motor boats, * * * except in a motor vehicle operated or intended to be operated upon any of the public highways of the State of Nevada, * * * shall be reimbursed and repaid the amount of such tax, etc.

It will be noted from the above language that whether a refund may be made or taxes paid on motor vehicle fuel depends not upon whether or not the vehicle is used on the public highway but upon whether or not it is used *in a motor vehicle* which is *actually operated* upon a public highway or in one which is *indented to be operated* upon a public highway. It is manifest that a motor truck is a motor vehicle which is *intended* to be used upon the public highways, and all motor vehicle fuel used in motor trucks is therefore subject to the tax, whether such motor trucks are actually operated upon the public highway or any other place.

The language of the statute above quoted specifically exempts from taxation (or provides for reimbursement for taxes paid thereon) the fuel used in "tractors," but the language used in the first part of the sentence is modified and restricted by that later used, wherein it says:

> * * * except in a motor vehicle operated or intended to be operated upon any of the public highways of the State of Nevada * * *

so that construing the language used in the first part of the sentence with that language above quoted, it becomes clear that, if a tractor is being actually operated upon the public highways, the fuel used therein is subject to the tax; while if not actually so used, the fuel is not subject to the tax and reimbursement should be made for any taxes paid thereon.

It is also necessary to decide whether or not a portion of the route of a state highway, under contract and in the course of construction is a public "highway" within the meaning of the statute. It is our opinion that a portion of the route of a state highway under construction and uncompleted is not a public highway, within the meaning of the law, and does not become so until it is completed and accepted and thrown open to travel by the public. Before that time it is merely a "right of way" subject to revocation or reversion in case there is never a completed highway thereon. Therefore, fuel used in a tractor operated wholly in the construction of a state highway, and not operated upon any highway open for traffic and used by the public, is not subject to the tax.

Respectfully submitted for the Attorney-General,

M.A. DISKIN, *Attorney-General.*

By THOS. E. POWELL, *Deputy Attorney-General.*

TAX COMMISSION OF NEVADA, *Carson City, Nevada.*

---

**187. Highway Contracts—Retention of 15 Percent Under Contracts Made Before Amendment of Statute.**

(1) All contracts for construction of highways made prior to July 1, 1925, specifically provided that 15 per cent retent provided for by sec. 15, chap. 169, Stats. 1917, be held by Department of Highways for six months. Stats. 1925, chap. 132, amended Act of 1917 by providing that 15 per cent retent should become due and payable 30 days from acceptance of job.

(2) Change in law does not affect contracts already made. Therefore all contracts made before amendatory Act went into effect should hold the 15 per cent retent according to terms of such contracts without regard to when they may terminate.

INQUIRY

CARSON CITY, July 13, 1925.

All contracts for the construction of portions of the state highway entered into prior to July 1, 1925, specifically provide that the fifteen per cent retent provided for by section 15, chapter 169, Statutes of 1917, would be held by the Department of Highways for the period of six months in cases where claims on unpaid bills for labor, materials, or supplies had been filed within thirty days after the acceptance of the job, in order to enable claimants on such unpaid bills to commence action against the contractor and his sureties. There was then no statute covering the matter, and the retent was held only by virtue of that provision in the contract. The Legislature of 1925, by chapter 132, Statutes of 1925, amended section fifteen of the Act of 1917, and specifically provided therein that this fifteen per cent retent should become due and payable at the expiration of thirty days from the acceptance of the job, without regard to claims of creditors. The amendment above referred to went into effect July 1, 1925.

Should this fifteen per cent retent be retained for a period of six months on contracts entered into before July 1, 1925, but which were completed after July 1; or does the amendment of 1925 regarding the fifteen per cent retent to be made at the expiration of thirty days govern?

OPINION

All contracts entered into prior to July 1, the date when the amended statute went into effect, should be carried out strictly according to the terms of such contracts, regardless of the date of their termination; but all contracts entered into after July 1 should conform strictly to the amended statute.

It is a well-settled rule of law that a contract which is lawful when entered into does not become unlawful by reason of a change in the law.

Therefore, on all contracts entered into before July 1 the Highway Department should hold the fifteen per cent retent according to the terms of such contracts without regard to when they may terminate.

Respectfully submitted for the Attorney-General,

M.A. DISKIN, *Attorney-General.*

By THOS. E. POWELL, *Deputy Attorney-General.*

HON. GEORGE W. BORDEN, *State Highway Engineer, Carson City, Nevada.*

---

**188. Automobile Licenses—Automobile Is Assessable to Owner at Time of Issuing License by Assessor—Auto Not in State between January 1 and Second Monday of July, or Prior Thereto, Not Assessable for That Year.**

(1) Owner of automobile recently purchased, which has been in State for year, the former owner having paid no tax, must pay personal property tax to Assessor before license may be issued.

(2) Auto not in State between January 1 and second Monday of July, or prior thereto, not assessable for that year.

INQUIRY

CARSON CITY, August 15, 1925.

1. A man applies for an automobile license on an old car which he has recently purchased. The car has been in the State for a year, but not owned by the applicant until the last few days. The former owner paid no tax on it. Is this car assessable to the new owner at the time of issuing the license by the Assessor?

2. A new car is shipped in and sold. The purchaser applies for a license. Is this car subject to be taxed at this time?

OPINION

Replying to interrogatory No. 1, you are advised that, under the facts stated, in my opinion the owner of said automobile would have to pay personal property tax to the County Assessor before the County Assessor could issue to said applicant a license plate. Attention is called to the proviso in section 4, Statutes 1925, page 175, which authorizes the Assessor to make "a fair and equitable adjustment of assessed value in cases where the applicant has previously secured a license for another car during the same year. * * *"

Reply to question No. 2, if applicant for license, under facts stated, makes and files an affidavit with the Assessor that said car for which license application is made was not within the State of Nevada between the first day of January and the second Monday of July, 1925, or at any time prior thereto, upon such showing the owner or applicant for license on said car would not be obliged to pay any property tax for the reason that said automobile was not assessable for that year.

See Opinions of Attorney-General, No. 90, 1917-1918; 1923-1924, No. 157.

Respectfully submitted,

M.A. DISKIN, *Attorney-General.*

HON. E.E. WINTERS, *District Attorney, Fallon, Nevada.*

---

**189. Building Contracts for State Buildings—No Preference to Nevada Contractors—Nevada Materials Not Required By Law—Other Requirements, However, Must Be Met.**

(1) No statute of Nevada requires that Nevada building contractors be given preference on bids for State buildings.

(2) Nevada laws do not require Nevada materials in construction of State buildings.

(3) Nevada law requires, however, that contracts for public buildings must provide for minimum wage, three dollars per day; no alien employed; eight hours constitute day's work.

INQUIRY

CARSON CITY, August 17, 1925.

An official opinion is requested as to whether Nevada building contractors should be given preference on bids for state buildings; also, if Nevada materials are required in the construction of such buildings.

OPINION

No statutory enactment controls in reference to either of the inquiries presented. The matter then becomes a question of policy to be determined by the board.

The law insists, however, that certain stipulations must be incorporated in contracts covering the construction of public buildings, some of which are: minimum wage, three dollars per day; no alien employed; eight hours constitute a day's work. See sections 3481, 3483, vol. 1, Revised Laws; section 67, 78, vol. 2, Revised Laws, Statutes 1919, chapter 168.

Respectfully submitted,

M.A. DISKIN, *Attorney-General.*

HON. JAMES G. SCRUGHAM, *Carson City, Nevada.*

---

**190. Building Contracts for State Buildings—Mistakes in Calculations On Bid—Deposit On Bid May Be Returned Less Any Damage Sustained—Bid Should Not Be Enforced Where Made Under Mistake and Would Cause Contractor Large Loss.**

(1) Where mistake made by contractor in computing cost of building and bid was approximately $21,000 less than amount actually computed and intended to be offered as bid, contractor should be relieved from entering into contract with Nevada Building Commissions.

(2) Deposit made by bidder, not being required by law, should be returned, less actual damages caused Building Commission, where bidder made miscalculation in offering bid.

INQUIRY

CARSON CITY, August 31, 1925.

Pursuant to provisions of chapter 41, page 47, Statutes 1925, the Nevada Building Commission invited bids for the construction of an exhibit building at Reno, Nevada.

The Campbell Construction Company submitted a bid and delivered to the Nevada Building Commission with said bid its check for twelve thousand dollars, representing five per cent of the bid price.

An examination of all bids submitted disclosed that the Campbell Construction Company was the lowest bidder. Its bid was accepted by the Nevada Building Commission, the construction company was promptly notified to this effect, and a contract tendered for signature.

Within a short time after the construction company had been advised that its bid had been accepted it informed the Commission, orally, that a mistake had been made in failing to compute total cost items in connection with the brick work called for in the specifications and, as a result of said oversight, the bid submitted was approximately twenty-one thousand dollars less than the amount actually computed by it as the cost of constructing said building. The contract submitted to the construction company for signature was returned unsigned with a statement in writing embodying the reasons upon which it based its refusal to sign the contract.

In order to understand the position of the construction company, we quote the following from their letter:

> When we first learned of the proposed construction of the Nevada State Building at Reno, Nevada, we of course were anxious to submit a bid, and endeavored to secure the plans and specifications in order that we might calculate the cost of the project. Unfortunately, we were unable to secure the plans and specifications until a few days before the date set for the opening of the bids. * * * The work involved was quite intricate and extensive, and under the conditions existing a clerical error crept into our calculations which most vitally affected the sum total of our bid and rendered certain a serious loss to us if we entered into a contract in accordance with the mistaken bid so submitted. The error occurred in computing the cost of the brick work called for. * * * In adding the totals of the various items the entire amount allowed for brick, etc., amounting to $19,102.75, was omitted. This error was increased later on since no allowance was made for bonds, equipment, overhead costs, etc., on this feature of the work, so that the total error resulting amounted to approximately $21,000 and, therefore, our bid was that much short of the amount which we intended to submit. The error was not detected by us until after the opening of the bids.

In view of these facts an official opinion is requested as to what action the Nevada Building Commission would take in the premises and if:

I. They should, under the law and facts, compel the Campbell Construction Company to execute the contract tendered in accordance with the bid.

II. What disposition should be made of the deposit of twelve thousand dollars, being five per cent of the bid of the Campbell Construction Company and now in the possession of the Nevada Building Commission.

The fact that a mistake was made by the Campbell Construction Company in computing the total cost of the building and that, by reason thereof, the bid made was approximately twenty-one thousand dollars less than the amount actually computed and intended to be offered as the bid, is not disputed. With this statement controlling as the facts, the law is not difficult of application.

It is elementary that one of the essentials to a valid contract is that there must be a meeting of the minds of the contracting parties. Under the admitted facts here, the bid submitted was one which the Campbell Construction Company never intended to make, and, therefore, the minds of the parties never met upon a contract based thereon. To hold otherwise would require the

adoption of a most drastic rule and one which would prohibit redress for a bidder for public work, no matter how great his mistake or blunder.

It would be inequitable to say that the minute a bid is submitted the bidder places himself into a trap from which there is no release—no matter what the circumstances are; and if, in preparing the bid, his clerk makes a mistake and thereby he agrees to perform work worth a million dollars for five hundred thousand dollars he must be held to the strict letter of his bid and, if necessary, thereby be forced into bankruptcy.

It should not be the policy of this State in launching an undertaking of such magnitude and importance to insist upon a technical and narrow construction of a contract which would entail endless delay and litigation and throw a cloud of uncertainty over the high ideals which prompt an exhibition of this character.

The authorities are not in harmony on this point, but the weight of authority sustains the doctrine stated supra.

Moffett, etc. Co. v. Rochester, 178 U.S. 373, 20 S. Ct. 957; 44 U.S. (L. Ed.) 1108, *reversing* 91 Fed. 28; 62 U.S. App. 392; 33 C.C.A. 319, and *affirming* 82 Fed. 255. Bloomington v. Bromagin, 137 Ill. App. 509. School Com'rs. v. Bender, 36 Ind. App. 164; 72 N.E. 154. Barlow v. Jones (N.J.), 87 Atl. 649. New York v. Dowd Lumber Co., 140 App. Div. 358; 125 N.Y.S. 394. Balaban Co. v. New York, 87 Misc. 312; 149 N.Y.S. 954.

I am of the opinion, therefore, that, under the facts stated, the Campbell Construction Company should be relieved from entering into a contract with the honorable Commission.

What disposition should be made of the deposit of twelve thousand dollars, being five per cent of the bid of the Campbell Construction Company and now in the possession of the Nevada Building Commission?

There exists no general statute regulating the advertising for bids for public buildings in any respect. Special Acts authorizing building construction have enumerated the law governing how bids should be advertised and received. The Act authorizing the exhibit building is very incomplete in respect to what the Commission should do. It provides: “After such site has been acquired without expense by the State of Nevada, it shall then be the duty of the Nevada Building Commission to prepare plans and specifications, advertise for bids, and let contracts upon the best terms obtainable.”

It will be noted that no deposit is required from bidders, no period for publication is prescribed, no forfeiture clause for failing to sign contract by successful bidder. Had provisions of this nature been inserted in the Act, the Nevada Building Commission would have no discretion but to retain the twelve thousand dollars as liquidated damages. (Kimball v. Hewitt, 2 N.Y.S. 697.)

Without statutory authority, therefore, and no notice of any kind or character having been given to the bidder that amount of deposit would be forfeited in the event he was the successful bidder and refused to sign the contract, I am of the opinion that only so much of said deposit as will be required to reimburse the Commission for actual damages sustained can be retained.

Wilson v. Baltimore, 34 Atl. 774; Lindsey v. Rockwall County, 30 S.W. 380.

Respectfully submitted,

M.A. DISKIN, *Attorney-General.*

THE NEVADA BUILDING COMMISSION, *Carson City, Nevada.*

---

**191. Revenue—Mining Claims, Patented—Assessment May Be More Than $500.**

Under the Constitution and laws of Nevada, patented mining claims are to be assessed at not less than $500. If facts warrant, such claims may be assessed at more than $500, there being no maximum fixed by law.

INQUIRY

CARSON CITY, September 4, 1925.

You request an opinion as to the legal right to assess a patented mining claim for an amount greater than five hundred dollars for each claim.

OPINION

Article 10, section 1, of the Constitution of Nevada, provides:

> The Legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property * * *, except mines and mining claims, when not patented, * * * and, when patented, each patented mine shall be assessed at not less than five hundred dollars ($500) * * *.

Section 2, Statutes 1915, chapter 316:

> Each patented mine shall be assessed at not less than five hundred dollars ($500) * * *.

Section 3:

> The County Assessor shall assess each patented mine in his county at not less than five hundred dollars ($500).

Under the Constitution and legislative enactments, patented mining claims are to be assessed at not less than five hundred dollars. A minimum valuation is thereby determined, but no maximum is fixed.

If the facts warrant, there exists no legal reason why a valuation upon patented mining claims should not be fixed in excess of five hundred dollars.

Respectfully submitted,

M.A. DISKIN, *Attorney-General.*

NEVADA TAX COMMISSION, *Carson City, Nevada.*

---

**192. Revenue—Soldier's or Sailor's Exemption from Taxation—Can Claim Exemption in Only One County.**

Soldier owning property in two counties, although having total value of less than $1,000, can only claim exemption in one county, under Stats. 1925, page 250.

INQUIRY

CARSON CITY, September 4, 1925.

A soldier owns property in both Ormsby County and Lyon County, having a total value of less than one thousand dollars. he filed an affidavit in Ormsby County claiming an exemption, and he filed another affidavit in Lyon County claiming an exemption. The exemption claimed in Lyon County was refused.

Is he entitled to claim an exemption in two counties?

OPINION

Statutes 1925, chapter 163, page 250, subdivision 7:

> * * * The property not to exceed the amount of one thousand dollars, of any person who has served in the army, navy, marine corps, or revenue marine service of the United States in the time of war and who has received an honorable discharge therefrom; *provided*, that such exemption shall be allowed only to claimants who shall make an affidavit annually before the County Assessor to the effect that they are actual bona fide residents of the State of Nevada, that such exemption is claimed in no other county within this State * * *.

Before an exemption can be allowed an affidavit must be filed, containing, among other recitals, a statement "that such exemption is claimed in no other county of this State." In the absence of such an affidavit no exemption is authorized. The exemption mentioned is only extended to those who qualify by filing a statement, under oath, and in the language of the statute.

Therefore, when the necessary showing is made to claim an exemption in Ormsby County, the applicant would not be in a position to state facts warranting the exemption in Lyon County.

Respectfully submitted,

M.A. DISKIN, *Attorney-General.*

NEVADA TAX COMMISSION, *Carson City, Nevada.*

---

**193. Corporations—Withdrawal from State—Filing Papers by Secretary of State Ministerial—No Statute Authorizing Withdrawal of Corporation from Nevada.**

(1) Foreign corporation licensed to do business in Nevada offers for filing with Secretary of State "Notice of Withdrawal of the Texas Company of Utah from the State of Nevada." Secretary of State must file paper regardless of legal effect thereof.

(2) Nevada has no statute authorizing withdrawal of corporation from this State.

INQUIRY

CARSON CITY, September 4, 1925.

There have been presented to your office for filing certain written documents entitled "Notice of Withdrawal of the Texas Company of Utah from the State of Nevada." These papers are duly executed by the president and secretary of the corporation.

You request an opinion as to your duty in the premises and the legal effect of such withdrawal upon your future disposition concerning this corporation.

OPINION

The Texas Company of Utah is a foreign corporation and was licensed to do business in this State on October 29, 1923.

The Supreme Court, in the case of State v. Brodigan, 44 Nev. 212, ruled that your duty in connection with filing papers of this character was ministerial.

You will therefore file the papers presented.

It is not for you at this time to consider the legal effect of the documents filed, or whether or not a foreign corporation can successfully withdraw from this State upon the filing of such a declaration. We have no statute in this State authorizing such procedure.

Respectfully submitted,

M.A. DISKIN, *Attorney-General.*

HON. W.G. GREATHOUSE, *Secretary of State, Carson City, Nevada.*

---

**194. Gross Operating Revenues, Gross Income, Gross Proceeds, Gross Receipts, Synonymous Terms.**

(1) Stats. 1925, page 62, requiring Mineral County Power System to set aside monthly from the "gross operating revenues" such percentage as may be required as a replacement fund, etc., means the entire amount of cash received from the operating sources during the calendar month.

(2) Gross income, gross proceeds, gross receipts, gross operating revenue, are synonymous terms and mean entire amount of cash received from operating sources.

INQUIRY

CARSON CITY, September 4, 1925.

Statutes of Nevada, 1925, chapter 48, section 6, page 62, reads as follows:

> *Provided further*, that the board of managers shall cause to be set aside monthly from the gross operating revenues of such system such percentage thereof as may be required, but not less than five per cent (5%) as a replacement fund, etc.

Will you please define the term "gross operating revenue?"

Also, if the term "gross operating revenue" means for any one month, the actual amount billed by the Power System for one month.

OPINION

The word “revenue” is synonymous with the word “income.” Bouvier's Law Dictionary, vol. 2.

Gross receipts are defined as the gross amount of cash received. 28 Corpus Juris, 828.

Gross income means all money received. (Hollywood Water Company v. Carter, 238 Fed. 339.)

Gross income, gross proceeds, gross receipts, gross operating revenue, are synonymous terms. Paysee's Legal Definitions, page 655.

It follows, therefore, that the words “gross operating revenue or income” mean the entire amount of cash received from the operating sources during the calendar month.

Respectfully submitted,

M.A. DISKIN, *Attorney-General.*

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

---

**195. Billboards, Signs, Etc.—Constitutionality of Law Regarding Not Passed Upon—Constitutional Questions Should Be Passed Upon By Supreme Court.**

While some doubt as to validity of certain provisions of Act to regulate and license the erection, etc., of billboards, signs, etc., Stats. 1925, chap. 90) it is policy of Attorney-General's officer to refrain from declaring a statute unconstitutional unless such legislation is palpably contrary to the organic law. Debatable issues of such importance should be passed upon by Supreme Court.

INQUIRY

CARSON CITY, September 14, 1925.

Attention is directed to Statutes 1925, chapter 90, being an Act entitled “An Act to regulate and license the erection, placing, painting or posting of billboards, signs, placards or other forms of outdoor advertising; providing penalties for violation of this Act and other matters properly connected therewith.”

An official opinion is requested relative to the constitutionality of this measure.

OPINION

After a careful consideration of the points and authorities submitted, and from an independent investigation, I am not convinced that this Act is unconstitutional. While some doubt exists in my mind as to the validity of certain provisions of this legislation, I do not entertain that degree of conviction respecting the illegality of the Act as a whole as would warrant me in ruling that the measure is invalid.

It has always been the policy of this office to refrain from declaring a statute unconstitutional unless such legislation is palpably contrary to the organic law. (Opinions of the Attorney-

General, 1923-1924, No. 100.) This procedure has been prompted by a desire to submit debatable issues of this importance to the Supreme Court for its determination. The legal questions involved present issues of great public interest and should be finally passed upon by the Supreme Court.

I respectfully suggest that, at the first opportunity, a test case be filed and the entire matter submitted to the Court for determination.

Respectfully submitted,

M.A. DISKIN, *Attorney-General.*

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

---

**196. Revenue—Soldier's or Sailor's Exemption from Taxation—Community Property Exempt Although in Name of Wife.**

(1) Under subdivision 7, sec. 5, Stats, 1891, as amended by Stats, 1925, page 249, property of value of $750 held as community property in name of wife of an ex-service man is entitled to exemption for full amount, and not only one-half.

(2) Community property in this State being under entire management and control of husband, he may have exemption of full value of community property within the limits of the exemption provided by law; he is therefore entitled to exemption of $750, the full value of community property, and is not limited to one-half value thereof.

INQUIRY

CARSON CITY, September 15, 1925.

Subdivision 7, section 5, Statutes 1891, as amended Statutes 1925, page 249, contains the following:

> * * * The property not to exceed the amount of one thousand dollars, of any person who has served in the army, navy, marine corps, or revenue marine service of the United States in the time of war and who has received an honorable discharge therefrom; *provided*, that such exemption shall be allowed only to claimants who shall make an affidavit annually before the County Assessor to the effect that they are actual bona fide residents of the State of Nevada, that such exemption is claimed in no other county within this State, etc.

Where property of the value of seven hundred fifty ($750) dollars is owned and possessed as community property and stands of record in the name of the wife of an ex-service man, is such property entitled to an exemption, providing the facts come within the provisions of this subdivision; or is such property entitled to an exemption of one-half of its value, to-wit: three hundred seventy-five ($375) dollars?

OPINION

Revised Laws of Nevada, 1919, page 2813, section 2160, provides:

> The husband shall have the entire management and control of the community property, with the like absolute power of disposition thereof, except as hereinafter provided, as of his own separate estate * * *.

While it is true that an exemption of this kind, which is personal in its nature, does not extend to the family of the person exempt (Crawford v. Burrell Tp., 53 Pennsylvania State, 219), under the laws of this State community property is under the entire management and control of the husband and it is the purpose of this exemption statute to give to the persons described in section 7 the benefit of such exemption to the extent of one thousand dollars.

I am of the opinion, therefore, that a soldier in this particular case is entitled to the full exemption in the amount stated, provided the other condition of the statute are complied with. To hold otherwise would be in direct violation of this provision of the statute and would be compelling the individual to pay a tax when the same is not authorized, but clearly exempted, under this provision of law.

Respectfully submitted,

M.A. DISKIN, *Attorney-General.*

NEVADA TAX COMMISSION, *Carson City, Nevada.*

---

**197. Corporations—Nonprofit Cooperative Corporations, Fraternal Associations, Churches, Farm Bureaus, Etc., Not Required to File List of Officers.**

> Nonprofit cooperative, fraternal corporations, churches, farm bureaus, etc., are exempt from filing lists of officers under Act of 1925, chap. 180, sec. 5.

INQUIRY

CARSON CITY, September 28, 1925.

Under section 5, chapter 180, Statutes 1925, it is provided that the Secretary of State shall, on or before the 15th day of October of each year, file with the Governor a list of all defaulting corporations.

We are desirous of obtaining your opinion as to whether or not there is any class of corporations, such as nonprofit cooperative, fraternal, churches, farm bureaus, etc., exempt from this list because of its failure to file a list of officers as required in the above-mentioned Act.

OPINION

Statutes 1925, chapter 180, enacts provisions similar to Statutes 1923, page 342, except that under the former Act a list of officers is required to be filed while under the latter a license tax is imposed.

I am satisfied that both Acts are revenue measures.

In Opinion No. 67 (Opinions of Attorney-General, 1923-1924) it was ruled that Statutes 1923, page 342, did not apply to corporations of the character described by you, and I feel that the same rule of law is applicable to Statutes 1925, chapter 180.

I conclude, therefore, that non profit cooperative corporations, fraternal associations, churches, farm bureaus, etc., are exempt from filing a list of officers under the provisions of this Act.

Respectfully submitted,

M.A. DISKIN, *Attorney-General.*

HON. W.G. GREATHOUSE, *Secretary of State, Carson City, Nevada.*

---

**198. Highway Department—Contract for Payment for Gravel on Placer Claim—Estopped to Deny Title to Property.**

(1) Where Highway Department contracted to pay for gravel from placer claim, it is estopped to deny title to property held by parties with whom contract made.

(2) Where Highway Department made contract with placer claim owner for payment of gravel therefrom, it is immaterial whether gravel can be held under such claim for reason that Department is estopped to deny title of placer owner because title is recognized by making contract.

INQUIRY

CARSON CITY, September 28, 1925.

This department has used approximately 3,000 yards of material from a pit located near the city of Elko, the material being taken from land included in a claim located as a placer claim by certain residents of the city of Elko. The character of the material might be classified as a lime shale and, so far as we can determine, is not of a mineral character. Under their ownership as a placer claim the locators are demanding a royalty of 25 cents a yard for the material removed. The placer locations were made in July, 1921, and, we understand, heretofore the city of Elko and the county of Elko have used material from this pit and have paid a royalty to the owners for such material as was removed. We are in doubt as to the propriety of paying for this material in view of the character of title to the land from which it is taken. Therefore we refer to you herewith certified copy of the placer location, together with a copy of letter of August 24, to Mr. H.C. Sproule, Secretary of the Elko Cement Works, with the request that you give us an opinion as to whether or not such a payment should be made by the State for this material. Attached, also, for your information, is a copy of the opinion of the Attorney-General dated November 17, 1917, relating to this same subject, and under which we have heretofore refused to make payment for gravel under mineral lode location.

It appears that the Highway Department, however, entered into an agreement with the Elko Cement Works at Elko, Nevada, wherein and whereby they agreed to pay to the latter the sum of twenty-five cents a yard for gravel removed from the pit.

OPINION

By opinion rendered November 17, 1917, this office ruled that deposits of gravel are not subject to entry as a placer claim. Since that time, however, the Land Department at Elko, Nevada, has ruled that, by reason of large outcroppings of oil shale on the ground, it could be held under the placer law for the reason that oil shale is held to be a mineral.

The question as to whether or not title can be initiated to this ground by location as placer claim or otherwise, in view of the facts stated, is immaterial. It is admitted that a contract was entered into prior to the removal of the gravel between the Highway Department and the Elko Cement Works and that, by virtue of this agreement and understanding, the Highway Department agreed to pay twenty-five cents per yard for the gravel removed.

I am of the opinion that the Highway Department, by reason of its conduct in entering into a contract and agreeing to pay for the gravel, is now estopped to question the title of the Elko Cement Works to the land in question for any purpose.

The law is thus stated in 21 Corpus Juris, page 1238:

> If, in making a contract or in a course of dealing, the title of one party or the other to the property involved in the transaction is recognized and the dealing proceeds upon that basis, both parties are ordinarily estopped to deny that title or to assert anything in derogation of it.

See, also, Sever v. Gregovich, 16 Nev. 325.

I am of the opinion, therefore, that the Highway Department should pay the Elko Cement Works for the gravel so removed.

Respectfully submitted,

M.A. DISKIN, *Attorney-General.*

HON. GEO. W. BORDEN, *State Highway Engineer, Carson City, Nevada.*

---

**199. Insurance—Chrysler Plan Is Violation of Law Unless License Obtained to do Business In Nevada—Certificates of Insurance Company Is Contract of Insurance—Persons Collecting Premiums Disguised as "Delivery Charges" on Automobiles Are Insurance Agents Subject to Nevada Laws.**

(1) So-called "Chrysler Plan" of insurance on automobiles, premiums for which are paid under guise of "delivery charges" is contract of insurance and insurance company violates Nevada insurance law unless it procures license to do business in this State.

(2) Automobile dealers or salesmen selling automobiles in Nevada under "Chrysler Plan" of insurance and collecting premiums under guise of "delivery charges" are agents of insurance company and violate Nevada law unless license procured. (Stats. 1915, chapter 99.)

(3) Certificate submitted is contract of insurance.

INQUIRY

CARSON CITY, October 1, 1925.

I will appreciate your advice on the question of the legality (under circumstances herein given) of the so-called "Chrysler plan" of automobile sales in which is included insurance against fire, theft, and transportation peril.

The enclosed correspondence and specimen copy of insurance certificate shows the plan to be briefly as follows: The local dealer of Chrysler cars includes (by order of the Chrysler Company) in his charge to the purchaser a "delivery charge" of from $10.75 to $18.50 per car. This charge is in fact an insurance premium, and so admitted in the correspondence of the Chrysler Company to the dealer. The dealer is ordered to report the sale immediately to an incorporated insurance agency in care of the Chrysler Sales Corporation at Detroit, Michigan. This corporation is evidently the sales department of the Chrysler car manufacturers. The insurance agency then sends to the purchaser a certificate of insurance (see specimen copy) which purports to show that the Palmetto Fire Insurance Company of Sumter, S..C., insures the purchaser, for a period of one year from purchase, against the casualties of fire, theft, and transportation. The certificate is signed in Detroit by the insurance agency apparently acting for the Palmetto Insurance Company. The local dealer does not sign or deliver, but does collect for the certificate. He *sells* the insurance with the car and to that extent acts as agent for the insurance company. He must pay the premium first himself, and then collect it from the purchaser who has no option about the insurance.

The Palmetto Fire Insurance Company is not admitted to do business in this State. It has no agents in Nevada. Our statutes (see sec. 1266, Rev. Laws, 1912) provide that: "No company * * * shall be permitted to transact an insurance business * * * without a certificate authorizing * * * such business." Further, chapter No. 99, Statutes of 1915, provides: "Any person soliciting insurance * * * or taking it on behalf of any company without such (agent's) license, or writing it for any company not authorized to do business in this State shall be guilty of a misdemeanor."

Our statutes in so many places insist upon protection to policy-holders that it seems the legislative intent to hold strictly to account any company, firm, or person who participates in the business of insurance. (See section 1282, Rev. Laws 1912.)

Will you kindly advise me on the following points:

(1) Does the certificate of the Palmetto Fire Insurance Company herewith submitted, if properly filled in and covering property in this State, and signed by the company or its agent, constitute a contract of insurance; and

(2) If so, does the delivery of the same to a purchaser in Nevada become a transaction of insurance within the view of our laws.

(3) If the Palmetto Fire Insurance Company is in violation of law by transacting insurance business in Nevada without being authorized, are the persons who collect premiums thereon (although the price thereof is disguised as "delivery charges: to be considered as agents subject to our statutes.

An examination of these several documents together with the contentions of the Palmetto Fire Insurance Company and their attorneys and your résuméė of the facts show the following concerning their methods of operations:

The Chrysler Sales Corporation is a Michigan Company with its home office at Detroit. The Palmetto Fire Insurance Company is a corporation organized under the laws of South Carolina. Alexander and Alexander are insurance brokers of Baltimore, Maryland, who have established an

office in Detroit, Michigan, and are general agents for the Palmetto Fire Insurance Company. None of these corporations are admitted in or licensed to do business under the laws of this State.

For the purpose of carrying out a proposed insurance plan, the Palmetto Fire Insurance Company and the Chrysler Sales Corporation entered into a contract at Detroit, Michigan. By virtue of the provisions of this contract, Palmetto Insurance Company agrees to issue certificates to every purchaser of a Chrysler car throughout the United States, and the certificate so issued is evidence of the fact that the owner of a Chrysler car is to participate in the contract existing between the Palmetto Fire Insurance Company it is stipulated that the Palmetto Company agrees to insure each car sold by the Chrysler Corporation up to its list price against fire and theft, the insurance becoming effective for a period of one year *from date the car was sold at retail by dealer.*

It was further agreed that on a fixed date of each month the insurance company was to be advised of the number of cars sold the last preceding thirty days. The contract further stipulates that the insurance on each car would be effective the instant there was a sale of a car at retail.

I understand that the reason the Chrysler Sales Corporation and the Palmetto Insurance Company feel that they are immune to the laws of this State and no necessity exists for qualifying before carrying on this business is that they are only concerned with the contract of insurance entered into a aforesaid between the Chrysler Sales Corporation and the Palmetto Fire Insurance Company in the State of Michigan, and that all business thereafter performed in connection with this insurance contract in the several States is done and performed by the insurance company in the State of Michigan, and that, when insurance certificates are issued in this State to purchasers of cars, they are not transacting an insurance business within this State.

It is very interesting to note the construction placed upon these several acts by the Chrysler Sales Corporation. In the general circular containing instructions to all Chrysler distributors and dealers and issued by the Chrysler Motor Corporation, we find the following:

> Insurance coverage is for the benefit of the retail purchaser * * * and applies to actual retail sales' deliveries only. It does not apply against cars carried in stock by the distributor or dealer, or cars on order with or without deposits. Standard equipment fire and theft insurance is in effect immediately the new car delivery is made to the purchaser.

It is seen, therefore, that, notwithstanding the fact that a contract of insurance has been entered into between the Chrysler Sales Corporation and the Palmetto Fire Insurance Company, the subject matter of this contract, to wit, insuring automobiles against fire and theft, is not effective until the automobile leaves the dominion and control of the Chrysler Sales Corporation, its agents and distributees, and comes into the possession of the purchaser of the car in retail market. No insurable interest of Chrysler Corporation is attempted to be protected thereby. To all intents and purposes, therefore, in legal effect, the contract entered into in Michigan might be said to be *executory* in its character. It is an agreement that the Palmetto Insurance Company at a future date will assume liability and protect the retail purchaser of a car from theft and fire at and upon the date of purchase. The thing which breathes life and vigor into this dormant document is the purchase of the car by an individual at retail, and the minute this purchase is made there immediately arises a contract between the Palmetto Insurance Company and the purchaser of the car. This contractural relation is evidenced by what the Chrysler Sales Corporation terms “a certificate of insurance” which is issued to the purchaser of a car.

The relationship, therefore, between Palmetto Fire Insurance Company and the purchaser of a Chrysler car is created and comes into existence in the State of Nevada and not in the State of Michigan.

> In legal contemplation a contract of insurance is made in the State where the last act is done that is necessary to create the contract and give it legal effect as such. Weiditschka v. Supreme Tent, 170 N.W. 300; Lukens v. International Life Ins. Co., 191 S.W. 418.
>
> If the certificate (insurance) is delivered to applicant in the State where he resides, the contract is made in that State and, accordingly, this constitutes doing business therein. Dixon v. Northwestern National Life Insurance Company, 179 N.W. 885.
>
> Where insurance is procured in one State on property located therein, by a broker or agent of a foreign insurance company, this constitutes transacting of insurance business in the said State. Hooper v. California, 155 U.S. 648.
>
> Where premiums are merely collected in one State for an insurance company domiciled in another State, this also constitutes doing business in the former State. Connecticut Mutual Life Insurance Company v. Spratley, 172 U.S. 602.

The dealers in Chrysler cars in the State of Nevada have no option but to collect from each purchaser and each purchaser has no alternative but to pay the insurance premium upon the certificate delivered with each car. From the facts stated, it is impossible to disassociate the sale of a car from negotiations of the insurance. When a sale is consummated the dealer in the State of Nevada must report same to the Palmetto Insurance Company. In case of liability under the policy to a resident of this State, the dealer represents, to a certain extent at least, the insurance company. The conclusion must follow, therefore, that the Palmetto Fire Insurance Company is transacting business within the State of Nevada.

Section 1, Statutes 1881 (Revised Laws 1912, Sec. 1266), provides:

> No company corporation, or association organized under the laws of this State or any other State or government, or firm, or individual shall be permitted to transact an insurance business in this State without a certificate from the State Controller authorizing and permitting the transaction of such business.

An examination of the certificate issued by the Palmetto Fire Insurance Company to the purchaser of a Chrysler car shows that the certificate recites the conditions of the original policy and might be said to be complete in itself. In the event a loss accrued to the holder of one of these certificates it would be interesting to speculate just what position the Palmetto Fire Insurance Company would take concerning whether or not the holder of a certificate could institute suit based on this certificate, or whether such suit must be grounded upon the original contract entered into a Detroit, Michigan, between the insurance company and the Chrysler Sales Corporation.

The proposed plan of insurance is offered to prospective buyers of a Chrysler automobile as an inducement to buy this particular car and in many instances, no doubt the insurance premium is cheaper than could be obtained in other insurance companies.

It must be remembered, however, that the Palmetto Fire Insurance Company is not qualified to do business in this State, and has not designated a resident of Nevada as its agent upon whom process is to be served in case of suit. Therefore, in the event suit is necessary to collect upon a

certificate, the Nevada holder of such certificate must journey back to South Carolina and there institute suit against the Palmetto Insurance Company. A moment's reflection on this situation by the people of Nevada would cause some hesitation in accepting the insurance feature proposed.

I conclude, therefore:

(1) That the certificate of the Palmetto Fire Insurance Company, if properly executed, covering property in this State, constitutes a contract of insurance;

(2) That the delivery of said certificate to a purchaser in Nevada becomes a transaction of insurance within the purview of our statutes;

(3) That dealers and agents of the Chrysler corporation who negotiate or sell Chrysler cars with this insurance feature involved therein are to be considered agents of the Palmetto Fire Insurance Company, and by their acts are guilty of violating Statutes 1925, chapter 99, of the laws of Nevada.

Respectfully submitted,

M.A. DISKIN, *Attorney-General.*

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

---

**200. Mineral County Power System—Right of Public Service Corporation to Discontinue Service to Individual Consumer Without Order of Public Service Commission.**

(1) Under law providing for operation of Mineral County Power Commission subject to supervision of Public Service Commission, the Power Commission has right to discontinue service to an individual consumer for a valid reason.

(2) No opinion given as to right of Power Commission to discontinue service to an entire community without order of Public Service Commission.

INQUIRY

CARSON CITY, October 2, 1925.

In view of the provisions of section 16 (Stats. 1921, p. 84) as amended, Stats. 1925, p. 59, which provides that the maintenance and operation of the Mineral County Power System shall be under the supervision and control of the Board of Managers, subject to the supervision of the Public Service Commission of Nevada, please advise whether, under the provisions of sec. 4, Stats. 1921, p. 81, it is not mandatory that any order of the Board of Managers proposing to discontinue service at any point of operation on said system shall be subject to review and confirmation by the Public Service Commission of Nevada before becoming effective?

OPINION

In view of your letter accompanying this query it is apparent that the discontinuance of service contemplated was to an individual consumer and not to an entire community, town, or territory to which public service had been given.

It is undoubtedly the right of a public service corporation to cease service to an individual consumer and make such action effective without an order of the Public Service Commission, that is, provided the reason for discontinuing service is a valid one. Nonpayment for past services is considered such a cause.

See, Latshaw v. Board of Water and Light Commissioners, 117 N.W. 827; Sheward v. Citizens Water Co., 27 Pac. 439; Irvin v. Rushville Telephone Co., 69 N.E. 258; Shiraz v. Ewing, 29 Pac. 320.

We will not, in this opinion, express what rule would apply in case discontinuance to a city or town was contemplated, as, from your letter accompanying this request for an opinion, the above is apparently the information you desire.

Respectfully submitted for the Attorney-General,

M.A. DISKIN, *Attorney-General.*

By WM. J. FORMAN, *Deputy Attorney-General.*

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

---

**201. Mineral County Power System—Conditions Under Which Power Service May Be Furnished or Discontinued.**

Statute under which Mineral County Power System established is mandatory and controls action of Board of Managers whether contracts are made for furnishing power or otherwise.

INQUIRY

CARSON CITY, October 2, 1925.

Section 1, chapter 48, Stats. 1925, p. 55, amending sec. 2 of the Act creating the Mineral County Power System (Stats. 1921, p. 80), specifically provides that all contracts entered into by said Board of managers for service of power to industrial or commercial power consumers shall specifically require an advance deposit of not less than 75% of the estimated cost of power to be used by such consumer during the ensuring month, and shall also require that such advance payment must be made and paid to the County Treasurer on or before the tenth day of each month, or the service of power shall be discontinued.

Section 4, chap. 48, Stats. 1925, p. 59, amending sec. 16 of the Statutes of 1921, p. 80, provides that unpaid charges of said system for service, etc., shall constitute a lien against the property of such consumer, and shall have precedence over all other claims and demands save and except taxes, and further provides that such accounts shall be deemed delinquent forty days following the month in which service was rendered, and affixes a penalty of 15% for nonpayment, with 3% per month interest on both principal and penalty.

(1) Do the provisions of sec. 1 above apply only where a contract has been specifically entered into?

(2) Are the provisions of sec. 1 mandatory on the Board of managers to cease the service of power if payments are not made as required?

(3) Will the later provisions (in point of position in the Act) of sec. 4, providing for the imposition of heavy penalties and exorbitant interest, be construed as permitting the board to exercise its discretion in continuing or refusing further power service where the consumer is billed with such added penalties and interest?

OPINION

Directing attention to the first question submitted under subdivision 1: So much of section 2 as is material for the consideration of this query reads as follows:

> *Provided, also*, that all contracts entered into by said Board of Managers with consumers for power service upon an industrial or commercial basis shall specifically require an advance deposit to be made each month of not less than seventy-five per cent (75%) of the estimated cost of power to be used by said consumer during the ensuring month, and shall also require that such advance payment must be made and paid to the County treasurer on or before the tenth day of each month, or the service shall be discontinued.

Where it is desired to obtain power service upon a commercial or industrial basis it is imperative for the Board of managers to enter into an agreement with the consumer in compliance with the provisions of this statutory enactment.

In any instance where power for commercial or industrial purposes is sold or delivered, notwithstanding the fact that a contract may or may not have been entered into, whether such contract is evidenced in writing or orally, the provisions of the above statute are applicable; and power sold upon a commercial or industrial basis can be distributed only in accordance with the provisions of this section, and these provisions become a part of every sale, providing the same is made to a consumer upon an industrial or commercial basis.

See, Gill v. Paysee, 226 Pac. 302.

In reference to your second inquiry, I am of the opinion that the provisions of section 1 are clearly mandatory on the board to cease the service of power if payments are not made as required. The section throughout uses the mandatory words “shall” and “must.” In regard to its provisions providing for the demand for the deposit and the shutting off of service, nowhere in the section does it appear that these requirements are to be matters of discretion.

I conclude as follows in reference to your third inquiry:

The latter provision, section 4, could not be construed as permitting the board to exercise its discretion in continuing or refusing further power service, for the reason that this section merely provides a means whereby moneys that are owed to the utility may be recovered. It is by no means an alternative policy to be pursued in rendering services, but is an additional means of collection. To construe it otherwise would allow a discrimination by the Board of Managers in extending credit to some parties and not to others, which could hardly have been the legislative intent.

Respectfully submitted,

M.A. DISKIN, *Attorney-General.*

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

---

**202. Public Printing, Definition of—Law Affecting Applies to Books Containing Ruled Paper, Without Headings, Etc.**

(1) The provision of Statutes 1925, chap, 120 apply 69 books for count use which do not contain printed headings but which contain special rules paper and have binding and printed labels upon them.

(2) All public printing which consists of impressions made by mechanical means is included within statute regulating public printing.

INQUIRY

CARSON CITY, October 5, 1925.

Do the provisions of Statutes 1925, chapter 120, cover books for county use which do not contain printed headings but which contain special ruled paper and have binding and printed labels upon them?

OPINION

I am of the opinion that such work comes within the contemplation and purview of the aforesaid statute.

The word "printing" is defined in Words and Phrases, volume 6, page 5561, as follows:

> To strike off an impression from type, engrossed plates, or the like, by means of a press.

Black's Law Dictionary gives the following definition:

> The art of making books or papers by impressing legible characters thereon.

All public printing required by counties, including work of any kind or character which consists of making impressions or lines by mechanical means, is included within this statute and should be dealt with as in the manner provided by the law.

Respectfully submitted,

M.A. DISKIN, *Attorney-General.*

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

---

**203. Fish and Game—Possession of More Than Legal Number Ducks During Any One Calendar Day Is Violation of Law—Immaterial When Ducks Killed.**

Under Stats. 1923, as amended Stats. 1925, p. 253, making it unlawful for any person to take or have in his possession, during any one calendar day in open season, a greater number than fifteen ducks, it is unlawful for person to have in his possession on any such day more than fifteen ducks, although the excess number may have been killed on some other day.

INQUIRY

CARSON CITY, October 9, 1925.

Section 13, Statutes 1923, as amended Statutes 1925, p. 253, provides:

> It shall be unlawful for any person to take or have in his or her possession, during any one calendar day in open season, a greater number than fifteen ducks .

Where a person has in his possession thirty ducks and it appears that fifteen ducks were killed on two succeeding day, will such possession constitute a violation of the law?

OPINION

An oral opinion was given a few days ago to the Game Warden of Washoe County to the effect that, under the facts stated, the law would not be violated but the burden of proof would be placed upon the possessor to establish that the ducks were lawfully acquired.

After a more careful examination of this statute and the construction placed upon laws of similar import by the courts, I conclude that the oral opinion is erroneous and not a proper construction of the statute.

The Legislature, having in mind a desire to prevent the wholesale slaughter of ducks, placed a limit upon the amount that might be killed by one individual as well as the number he might have in his possession on one calendar day during the open season.

The Supreme Court of Nevada, in the case of Ex Parte Crosby, 38 Nev. 395, construed a similar statute concerning the number of fish that might be caught and possessed in one calendar day, and held that possession of more than the amount designated in the statute was unlawful.

The mere fact that the number of ducks was lawfully acquired in the instant matter would be immaterial. People v. O'Neil, 68 N.W. 227.

I conclude, therefore, that possession of more than fifteen ducks on one calendar day during the open season constitutes a violation of this law.

Respectfully submitted,

M.A. DISKIN, *Attorney-General.*

HON. J.E. JOHNSON, *Secretary, Reno, Nevada.*

---

**204. Officers—Sheriff Not Entitled to Mileage for Attending Execution Sale at Some Other Place Than County Court House.**

There is no law providing for payment of mileage to Sheriff for attending execution sale at some other place than the county courthouse. Such sales are generally held at the county courthouse.

INQUIRY

CARSON CITY, October 20, 1925.

Is a Sheriff attending a sale of personal property on an execution issued out of the District Court entitled to mileage fee for attending such sale when the sale is at some other place than the county courthouse?

OPINION

Section 2009 and section 1997, Revised Laws of 1912, provide for the fees that may be charged by Sheriffs and for what services fees may be charged. Section 2019, Revised Laws, 1912, provides:

> No other fees shall be charged than those specifically set forth herein, nor shall fees be charged for any other services than those mentioned in this Act.

The first mentioned sections contain no provision whatever for the mileage fees due a Sheriff attending an execution sale. The probable reason for not including this item in the schedule of fees is that sales under execution are generally held at the county courthouse and not necessarily at the place where the personal property is located.

We are of the opinion, therefore, that section 2019 controls and no mileage fee can be charged for attending such sale.

Respectfully submitted for the Attorney-General.

M.A. Diskin, *Attorney-General.*

By WM. J. FORMAN, *Deputy Attorney-General.*

HON. E.E. WINTERS, *District Attorney, Churchill County, Fallon, Nevada.*

---

**205. Revenue—Vendor's License Not Required by One who Retails Wood for Fuel Purposes Obtained from Ground of Vendor In Nevada—Growing Timber Is "Product of Soil."**

(1) A vendor's license is not required for one who retails wood for fuel purposes where the wood is obtained in the State of Nevada on the ground of the vendor.

(2) Wood obtained from growing timber comes within the designation of "products of the soil" as designated in Stats, 1919, p. 183,

INQUIRY

CARSON CITY, October 21, 1925.

Attention is directed to Statutes 1919, p. 183.

An opinion is requested as to whether a vendor's license may be required for one who retails wood for fuel purposes where the wood is obtained in the State of Nevada and on the grounds of the vendor.

OPINION

I am of the opinion that wood obtained from growing timber comes within the designated of "products of the soil" as designated in the statute and, therefore, a vendor of wood, under the circumstances stated, would not be required to obtain a license for selling wood.

Respectfully submitted,

M.A. DISKIN, *Attorney-General.*

HON. FRANK P. LANGAN, *District Attorney, Yerington, Nevada.*

---

**206. Animals—Brands and Marks, Recording and Rerecording of Same.**

(1) Section 13, as amended, Stats. 1925, chap. 18, applies only to brands and marks of record sixty days prior to January 1, 1926.

(2) Any person recording or receiving a new brand or mark from November 1 to December 31, 1925, would not come within the rerecording provisions of sec. 13 ad amended (supra), and the brand recorded within said period remains of record until January 1, 1931.

INQUIRY

CARSON CITY, October 21, 1925.

Does a party recording a new brand under the provisions of sections 6-9, chapter 26, Statutes 1923, between November 1 and December 31, 1925, have to re-record said brand in accord with section 13 of the same Act as amended by chapter 18, Statutes 1925, or does a brand so recorded remain of record without such re-recording until January 1, 1931?

OPINION

I am of the opinion that section 13 as amended, Statutes 1925, chapter 18, applies only to brands and marks of record sixty days prior to January 1, 1926, and any person recording or receiving a new brand or mark from November 1 to December 31, 1925, would not come within the re-recording provisions of section 13 as amended, and the brand recorded within said period remains of record until January 1, 1931.

Respectfully submitted,

M.A. DISKIN, *Attorney-General*

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

---

**207. Revenue—Bees, Tax On—Claim of Exemption from Tax by Bank—Claim of Exemption from by Ex-Soldier—State Apiary Commission—Bee Tax Law Is Inspection Measure and Claims for Exemption Not Allowed.**

(1) Where bank took over stands of bees for debt, claim that they are part of surplus and capital and therefore can only be taxed as such is not allowable, as bee tax thereon is an inspection measure and not properly a tax.
(2) For same reasons, claim of exemption from bee tax is not allowable to ex-soldier.

INQUIRY

CARSON CITY, October 28, 1925.

Twelve hundred stands of bees originally belonging to the Pershing County Honey Company have been taken over, presumably with other assets, by the Lovelock Mercantile Banking Company in satisfaction of indebtedness. The Lovelock Mercantile Banking Company now claims that these stands of bees are part of their surplus and capital and, therefore, can only be taxed as such. Upon this basis they claim exemption from the special tax on bees for the support of the State Apiary Commission provided for by section 6 and 7, chapter 225, Statutes of Nevada, 1921.

You advise, further, that an exemption from this same tax on one hundred fifty stands of bees is claimed by an ex-soldier upon the theory that he is entitled to a tax exemption totaling one thousand dollars on personal property.

An opinion is requested concerning the validity of these several claims.

OPINION

Statutes 1921, chapter 225, constitutes legislative authority for the collection of money denominated as a "tax" by the Legislature, and to be collected upon each stand of bees.

The title to the Act reads in part. An Act to regulate, protect, and encourage apiaries, creating the State Apiary Commission, defining its duties and powers, providing revenue for the support of same, providing penalties for the violation thereof, * * *."

By section 1 of this Act the State Apiary Commission is created. Under section 3 it is provided that the office of State Quarantine Officer shall be considered as the office of the Commission. The Commission is given general power and control over all matters pertaining to the apiary industry. They are authorized to adopt rules and regulations controlling and suppressing diseases and to cooperate with officers of the Department of Agriculture in the enforcement of such rules and regulations.

The Commission is authorized to appoint deputies and inspectors and fix the compensation of inspectors. The Commission is further empowered to fix an annual tax not to exceed twenty-five cents upon each stand of bees and send notice of the same to the County Commissioners. The Commission is further authorized to audit all bills, salaries, and expenses incurred in the provisions of the Act and to be paid from the Apiary Inspection Fund.

The Boards of County Commissioners are commanded to levy a tax recommended by the Commission, which amount is to be determined by the Commission, and the amount of tax so collected is to be forwarded to the State Treasurer who shall keep the same in a separate fund to be known as the "Apiary Inspection fund."

There is contained in this legislation certain other regulatory and inspection measures in connection with the bee industry, and the Commission and their inspectors are authorized to enforce the provisions of the Act.

In order to determine whether the banking company and the ex-soldier are entitled to the exemption as claimed, it is necessary to first ascertain whether the Act in question is to be considered a tax measure providing revenue for the State or whether it is to be termed an inspection enactment and passed by the Legislature in the exercise of its police power. If the conclusion is arrived at that it is an inspection measure, then the exemptions claimed are not allowed under the law.

As to whether an Act of this character is to be denominated a measure for the collection of taxes or a license or inspection measure, we must look to the provisions of the Act itself to make this determination. It is true that the Legislature has called the fees to be collected a "tax," but this name, given by the Legislature in the statute, is not decisive. It will be observed from a reading of this statute that the owner of a stand of bees is required to submit to the commission the number of stands owned by him, and, from this information the commission is authorized to inform the Board of County Commissioners of the county of money required to be raised for supporting the Commission and the deputies and inspectors appointed for enforcing the law. The rate is then determined, based upon the amount of money required to pay the salary and expenses of inspectors, and, in making this determination, the total number of stands of bees is computed by the Commission. It will be noted, therefore, that only the amount necessary to pay the running expenses in the enforcement of inspection regulations is all that accrues by reason of the collection of the fee as made, and the money so collected is not placed in the General Fund of the State but, under the statute, is kept in a separate fund to be known as the "Apiary Inspection Fund." It was the plain intent of the Legislature to make the business of raising bees pay the expense of its proper police regulation. It must be admitted that the State may make any business requiring police regulation pay the expense of regulating and controlling it, and this may be done by exacting fees, license fees, or inspection fees from those engaged in the business.

I am of the opinion, therefore, that upon its face this law is a bona fide police regulation and proper inspection law, and the fees are in good faith exacted to reimburse the State for the expense of inspection and enforcing observation of the law.

In concluding that this measure is an inspection measure and does not provide for a tax on property as the word "tax" is generally understood, the conclusion must necessarily follow that neither the Lovelock Mercantile Banking Company nor the ex-soldier is entitled to an exemption under its provisions.

The following authorities have been considered and reviewed in rendering this opinion:

Colley on Taxation (4th ed.), vol. IV, section 1676; Oil City v. Oil City Trust Company, 25 Atl. 124; New Orleans City v. New Orleans, 36 Law Ed. 121; Willis v. Standard Oil Company, 52 N.W. 652; 32 Corpus Juris, p. 935; 37 Cyc. P. 713; Cincinnati Gas, Light & Coke Co. v. State, 18 Ohio State, 237; Limitation of Taxing Powers and Public Indebtedness (Gray), chap. 20.

Respectfully submitted,

M.A. DISKIN, *Attorney-General.*

HON. EDWARD RECORDS, *State Apiary Commission, U. of N., Reno, Nevada.*

---

**208. Indians and Indian Reservations, Criminal Jurisdiction of State Over—State Police May Arrest Indians or White Persons on Indian Reservation, Except for Offense Committed by One Indian against Person or Property of Another Indian.**

(1) The criminal jurisdiction of State extends over both Indians and white persons, whether within or without an Indian Reservation, except for an offense committed on an Indian Reservation by one Indian against the person or property of another Indian.

INQUIRY

CARSON CITY, November 12, 1925.

Can a State Police officer make an arrest of Indians or white persons within the limits of an Indian Reservation in the State of Nevada?

OPINION

The criminal jurisdiction of the State and all criminal laws or laws applicable to crime extend over both Indians and white persons, whether within or without an Indian Reservation, with one exception, that is, for an offense committed on an Indian Reservation by one Indian against the person or property of another Indian.

Sec. 6270, Revised Laws, 1912; State v. Johnny, 29 Nev. 203; State v. Buckaroo Jack, 30 Nev. 326; State v. Crosby, 38 Nev. 389.

Therefore, a member of the State Police would have the right to make an arrest of either an Indian or white person within the limits of an Indian Reservation in this State, provided that the offense for which he made the arrest was not one committed on an Indian Reservation by one Indian against the person or property of another Indian.

Respectfully submitted for the Attorney-General,

M.A. DISKIN, *Attorney-General.*

By WM. J. FORMAN, *Deputy Attorney-General.*

GARDNER SHEEHAN, *Officer, Nevada State Police, Wadsworth, Nevada.*

---

**209. Revenue—Automobile Licenses—Motor Vehicle Not Operated on Highway Not Required to Have License—Automobile License Fee Is Not Property Tax.**

(1) Owner of motor vehicle who has same in storage prior to third Monday in January and who has not operated it on public highway is not subject to fine for failure to make application for license on or before date mentioned.

(2) The license fee imposed on motor vehicles is not a property tax; ownership of motor vehicle ipso facto does not warrant imposition and collection of license fee; it is only when such vehicle is used upon the highway that the license fee must be paid.

INQUIRY

CARSON CITY, November 13, 1925.

With reference to section 2, Statutes 1925, chapter 122: Will an owner of a motor vehicle who has the same in storage prior to the third Monday in January, and who has not operated it on the public highway, be subject to a fine for his failure to make application for a license to the County Assessor on or before the above date mentioned?

OPINION

The title of this Act reads as follows:

> An Act to provide for the licensing and registration of motor vehicles in the State of Nevada, defining the duties of certain officers in connection therewith, etc.
>
> SEC. 2. No motor vehicle shall be operated on any highway in this State, unless and until the owner thereof shall have complied with this Act in respect to registering said motor vehicle. In the case of a motor vehicle owned in this State on the first day of January of each year and which has been registered the previous year, a new registration shall be made not later than the third Monday in January of each year except as hereinafter provided.
>
> SEC. 3. Every owner of motor vehicles which shall be operated or driven upon the public highways shall, except as herein otherwise expressly provided, have filed in the office of the County Assessor of the county in which he resides a verified application for registration or reregistration on a blank to be furnished by the department for that purpose, containing such information as the department may require for the efficient administration of this Act.
>
> SEC. 8. Registration shall be renewed annually as provided in section ten (10), to take effect on the first day of January of each year. All certificates of registration issued under provisions of this Act shall expire on the last day of the calendar year for which they were issued.

Section 10 in part provides:

> *and provided further*, that a half-year registration may be permitted if the applicant file with the Assessor an affidavit showing that the motor vehicle has not in fact been operated on the highways of this State prior to the first day of July. No fee shall be required for the month of December for a new car in good faith delivered during that month.

It will be noted from reading the provisions of this law that the underlying theory forming the basis for this legislation is the intent manifested to charge a fee for the privilege of using the highway by motor vehicles. The fee imposed is not a property tax; ownership of a motor vehicle *ipso facto* does not warrant the imposition and collection of the amounts stated. It is only when

such vehicle is used upon the highway that the resulting duty or application to pay the fee accrues.

It must follow, therefore, from the plain wording of the statute that the license fee is imposed for the privilege of operating motor vehicles upon the public highways.

From the facts stated in your inquiry, the motor vehicle admittedly is not and has not been used upon the public highways and, therefore, is not subject to either the license fee or the penalty.

Respectfully submitted,

M.A. DISKIN, *Attorney-General.*

HON. W.G. GREATHOUSE, *Secretary of State, Carson City, Nevada.*.

---

**210. Officers—County Commissioners—Advertising, Rate of Pay for—Publication of County Bills Is Advertising.**

(1) The rate of pay for publication of bills allowed by County Commissioners is governed by sec. 2867, Revised Laws, 1912, which is two dollars per square of ten lines for first insertion.

(2) Publication of county bills allowed by County Commissioners is "advertising," and is governed by general statute (sec. 2867, Rev. Laws, 1912), which superseded secs. 1541 and 1542 Rev. Laws, 1912, providing for publication of bills allowed by County Commissioners, with reference to rate of pay for such advertising.

INQUIRY

CARSON CITY, November 16, 1925.

Whether the amount to be paid by the County Commissioners for the publication of bills allowed by them is one dollar per square of ten lines or two dollars per square of ten lines.

OPINION

Sections 1541 and 1542, Revised Laws, 1912, provide for publication of bills allowed by the County Commissioners and that the price to be paid therefor is one dollar per square of ten lines. However, four years later the Legislature passed an Act which is set out at section 2867, Revised Laws, 1912, which provides that all advertising ordered or required by the State of Nevada or by the respective counties of the State shall be paid for by the State or county ordering or requiring the same at the rate of two dollars per square of ten lines. The question then is: Does the later Act control as to the price to be paid for the publication of bills allowed by the County Commissioners? It does if the words "all advertising" is broad enough to cover the publication ordered by section 1541.

Advertising is defined at 2 Corpus Juris, p. 295, as "making public intimation or announcement of anything." In the case of Arthur v. City of Pelaluma, 151 Pac. 183, the Court held that the publication of a proposed freeholders' charter by order of the Board of Trustees was

"advertising," which term embraces all legal matter to be printed and published in a newspaper, the term "advertising" was used in section 2867, Revised Laws, 1912, by the Legislature in this broad sense and this later section would control and require payment for the publication of bills in the amount of two dollars per square of ten lines for the first insertion.

Respectfully submitted for the Attorney-General.

M.A. DISKIN, *Attorney-General.*

By WM. J. FORMAN, *Deputy Attorney-General.*

HON. M.H. BROWN, *Deputy District Attorney, Humboldt County, Winnemucca, Nevada.*

---

**211. Motor Vehicle License Plates—Postage for Mailing Same to Applicants To Be Paid Out of "Motor Vehicle Expense Fund."**

Under sec. 5, Stats, 1925, chap. 122, amounts expended by County Assessors in mailing or expressing numbered plates to applicants for motor vehicle licenses should be paid from the Motor Vehicle License Expense Fund when the same have been approved by the Board of Examiners.

INQUIRY

CARSON CITY, November 16, 1925.

Reference is made to section 26, Statutes 1925, page 175, and the second subdivision therein contained. The secretary of State is compelled to furnish to the County Assessors for the administration of the Act all necessary forms, plates, containers, etc. He is permitted to receive fifty cents for each license issued to defray the necessary expense of delivering all material in the hands of the Assessor. After making such delivery to the Assessor, will he then be compelled to furnish postage to the Assessor for his use in delivering the plates?

OPINION

Under section 5, Statutes 1925, chapter 122, it is provided:

Upon receipt of the application and license fee for a motor vehicle, as provided in this Act, the County Assessor shall, if satisfied with the statements contained in the application, file such application in his office and register such motor vehicle with the name, post-office address and business address of the owner, name and address of the legal owner, together with the facts stated in such application, and shall forthwith assign to such motor vehicle a distinctive number, and, *without expense to the applicant, shall issue and deliver, or forward by mail or express to the owner, a certificate of registration and container for same* in such form as the department may prescribe, etc.

It is made the mandatory duty of the County Assessor, under this Act, to comply with these provisions of law. The money expended by the Assessor in mailing or expressing numbered plates, etc., is as much a part of the administrative expense as the purchasing of numbered plates and other supplies.

Section 26, subdivision 2, provides:

> In the event that provision is not made otherwise for the payment of the expenses of administering this Act, the department shall deduct the sum of fifty cents ($0.50) from the payment of each motor vehicle license issued under this Act and shall place the same in a fund to be known as "The Motor Vehicle Expense Fund," to be drawn upon for all expenditures made in administering this Act, after claims have been approved by the Board of Examiners, and the State Controller shall issue warrants for all such expenses incurred. Any and all moneys remaining in said fund at the end of each year shall be transferred to the State Highway Fund.

Prior to the enactment of this statute, the Legislature in 1921, page 375, authorized a deduction of fifty cents for each motor vehicle license issued: said amount to be placed in the Motor Vehicle License Expense Fund. Payments for necessary postage are included in the deductions allowed. This same provision was effective in the year 1923. In fixing the several appropriation items for the Secretary of State's office in the year 1923, the Legislature allowed the sum of fourteen thousand ($14,000) dollars for license plates and other expenses in the administration of this law. Two distinct funds therefore, were available for the payment of these expenses.

To avoid duplication of funds the Legislature, in the Statutes of 1925, provided that the creation of the Motor Vehicle Expense Fund was based upon the contingency that this fund was to be created only "in the event provision is not made otherwise for the payment of the expenses of administering this Act." No provision is made otherwise for the payment of these expenses and, therefore, the deduction of fifty cents for each license plate issued is the only fund available.

The Motor Vehicle Expense Fund has been established and the same is designated in the law as a fund "to be drawn upon for all expenditures made in administering the Act."

We have already concluded that the amounts expended by the County Assessors in performing the duties designated are an administrative expenditure within these provisions.

I conclude, therefore, that the amount expended by the County Assessors in mailing or expressing numbered plates come within the designation of an expenditure made in administering the Act and should be paid from the Motor Vehicle License Expense Fund when the same have been approved by the Board of Examiners.

Respectfully submitted,

M.A. DISKIN, *Attorney-General.*

HON. W.G. GREATHOUSE, *Secretary of State, Carson City, Nevada.*

---

**212. Drug Addicts—Property of, Must Be Returned When Discharged from Institutions or When They Escape—Purpose of Taking Property from, On Incarceration.**

(1) Property taken from drug addicts committed to Nevada State Hospital for Mental Diseases must be returned to them after they have escaped from the hospital, if person having custody of property is satisfied order for return is genuine.

(2) Drug addicts committed to Nevada State Hospital for Mental Diseases occupy practically same position with respect to their property taken from them on incarceration as prisoners committed to penal institutions. Property taken from them remains their property at all times. When discharged from institutions, or even if they have escaped, there can be no good reason for depriving them of their property, as the reason for taking it (as they might use it in aiding them to escape) has ceased whenever they leave the institution.

INQUIRY

CARSON CITY, November 23, 1925.

The drug addicts committed to the Nevada State Hospital for Mental Diseases occupy practically the same position as prisoners committed to penal institutions. However, it is a recognized rule that the only ground for taking money or other property not used in the commission of an offense from the prisoners is that to allow them to keep it during their confinement might aid them in securing an escape from the institution. In the case of drug addicts there is probably another good reason, in that money might enable them, by some means, to procure drugs and thus defeat the purpose for which they were committed to the institution. However, property when taken from them remains their property at all times. When discharged from institutions, or even if they have escaped, there can be no good reason for depriving them of their property, as the reason for taking it has ceased whenever they leave the institution.

See, U.S. v. Parker, 166 Fed. 137; Thatcher v. Weeks, 11 Atlantic, 599.

The person having the property in charge may demand proof of the authenticity of any order for delivery of the property to one other than the owner. If the person having custody of the property is satisfied that the order is genuine, it is our opinion that the property should be delivered on demand.

Respectfully submitted for the Attorney-General.

M.A. DISKIN, *Attorney-General.*

By WM. J. FORMAN, *Deputy Attorney-General.*

SUPT. R.H. RICHARDSON, *Nevada Hospital for Mental Diseases, Reno, Nevada.*

---

**213. Officers—County Commissioners—Quarterly Reports—Statute Providing for Not Repealed—Publication of Data by County Auditor Under 1919 Law Not Sufficient.**

(1) Section 1515, Rev. Laws, 1912, providing for publication by Boards of County Commissioners of quarterly statements has not been repealed.

(2) Publication of data called for under provisions of Stats. 1919, p. 331, sec. 3, to be furnished by County Auditors, will not be sufficient compliance with sec. 1515, Rev. Laws, 1919.

INQUIRY

CARSON CITY, November 24, 1925.

First: Has section 1515, vol. 1, Revised Laws, 1912, been repealed?

Second: If not, is it mandatory that the Board of Commissioners cause to be published the quarterly report therein provided for? And

Third: Will the data called for under the provisions of Statutes 1919, p. 331, section 3, to be furnished by the County Auditor, be construed as containing the information required to be published under section 1515?

OPINION

Section 1515, among other things, provides:

> The boards of County Commissioners shall quarterly publish a statement of the receipts and expenditures of the three months next preceding, and the accounts allowed.

I am of the opinion that this section has not been repealed.

The publication of the data required under the provisions of Statutes 1919, supra, will not be a sufficient compliance with this section, because it is contemplated under this section that all accounts allowed by the Board of County Commissioners for the preceding quarter shall be published and, in addition, thereto, a statement of all receipts and expenditures.

Respectfully submitted,

M.A. DISKIN, *Attorney-General.*

HON. J.H. WHITE, *District Attorney of Mineral County, Hawthorne, Nevada.*

---

**214. Revenue—Motor Vehicle License Fund, Distribution of—Storey County Entitled to Fees Collected.**

(1) Under Stat. 1925, p. 344, fees collected from owners of automobiles residing in the county not included in the state highway system, as defined by law, shall be paid to the Treasurer of such county.

(2) As Storey County did not become a part of the highway system until July 1, 1925, all fees from owners of automobiles residing therein collected prior to July 1, 1925, should be paid over to County Treasurer of Storey County.

INQUIRY

CARSON CITY, November 25, 1925.

Prior to July 1, 1925, the effective date of Statutes 1925, p. 344, Storey County, of the State of Nevada, and the public roads existing therein were not enumerated in the legislative designation of state highway systems.

What disposition, therefore, is to be made of the moneys collected as motor vehicle license fees in Storey County from January 1, 1925, to July 1, 1925?

OPINION

To provide for an equitable distribution of the motor vehicle license fund the Legislature has authorized its distribution: (a) To meet requirements of the Nevada Highway Bond Redemption Fund; (b) That fees collected in counties not included in the state highway system be paid to the Treasurer of such county. By reason of the first method counties within the highway system receive their proportionate amount of the fees collected; counties without the system were directly compensated by payment of the amounts collected to the County Treasurer.

Prior to July 1, 1925, Storey County was the only county not included in the highway system. The Act making it a part of such system was introduced in the Legislature March 21, 1925, and became effective July 1, 1925 (Stats. 1925, p. 1).

The Act authorizing the manner of distributing the funds to the several counties, under the Motor Vehicle License law, was introduced March, 1925, and became effective July 1, 1925.

At the effective date of these two Acts it is insisted that Storey County, being a part of the highway system, is entitled to no direct payment to its County Treasurer of the funds collected between January 1 and July 1, 1925.

To sustain this conclusion, it is necessary to hold that the statements contained in the proviso of the first subdivision of section 26 is entitled to no consideration. It is elementary of course, that a statute must be construed so that every word therein contained will be given force and effect. There is a provision is section 26 which directs that all moneys collected as motor vehicle license fees in 1925, prior to the time this Act shall take effect, shall be deposited in the Motor Vehicle License fund. It is admitted that the several sums of money collected as license fees from owners of automobiles residing in Storey County, prior to July 1, 1925, were collected in the county which was not included in the state highway system, as defined by law.

It seems to me, therefore, that the fact that Statutes 1925, p. 175, providing for the distribution of moneys collected under the Motor Vehicle License Law, and the further fact that the enactment of the law which made Storey County a part of the state highway system became effective July 1, 1925, in no way denies the right of Storey county to be reimbursed for the fees collected in this county prior to July 1, 1925. The wording of the statute is free from ambiguity, and provides:

> That fees collected from owners of automobiles residing in the county not included in the state highway system, as defined by law, shall be paid to the Treasurer of such county.

In as much as it is admitted that Storey County did not become a part of the highway system until July 1, 1925, it is plain that the fees collected in this county prior to July 1, 1925, can be denominated “fees collected from owners of automobiles residing in a county not included in the state highway system,” and, for this reason, Storey County is entitled to the fees so collected up to July 1, 1925.

Respectfully submitted,

M.A. DISKIN, *Attorney-General.*

WM. HARRINGTON, *State Highway Department, Carson City, Nevada.*

---

**215. Employer—Employee—Aliens Cannot Be Employed, With or Without Compensation, in University or Schools of Nevada.**

(1) Under sec. 2, Statutes 1915, p. 427, it is unlawful to either engage or hire a person as teacher who is not a citizen of the United States.

(2) The Legislature, by using the word "engage" in the statute, made it unlawful to have a person not a citizen teach in the schools of this State, with or without compensation.

INQUIRY

CARSON CITY, November, 25, 1925.

A native born citizen of the United States lost her citizenship through marriage to an alien. She has applied under the Cable Act to have her citizenship restored, but her case has not yet been acted upon by the proper Federal jurisdiction. Does the Act of March 26, 1925, page 427, Statutes of 1919 (see Nevada School Laws of 1923, pages 134 and 135), make it unlawful to employ such a person, even though she be paid no salary until after she has secured the restoration of her citizenship by compliance with the recent Act of Congress making possible such restoration?

OPINION

Section 2, Statutes 1915, p. 427, provides:

> It shall be unlawful for the Superintendent of Public Instruction, Regents of the State University, or School Trustees to engage or hire any president, superintendent, teacher, instructor or instructress, or professor in any of the educational departments of this State who is not a citizen of the United States.

This section of the law prohibits you from either engaging or hiring a person as a teacher who is not a citizen of the United States. I am of the opinion that, by using the word "engage," the Legislature thereby made it unlawful for you to have a person not a citizen teach in the schools of this State, with or without compensation.

Respectfully submitted,

M.A. DISKIN, *Attorney-General.*

HON. W.J. HUNTING, *Superintendent of Public Instruction, Carson City, Nevada.*

---

**216. Schools—High School Certificates Not Renewable—First Grade Elementary School Certificates May Be Renewed.**

The State Board of Education has authority under the law to renew first grade elementary school certificates, but have no such power in reference to high school certificates.

INQUIRY

CARSON CITY, November 25, 1925.

(a) Under section 29 of the School Laws of 1923, is there any provision or implication in the section that the high school certificates and first grade elementary certificates therein authorized may be renewed?

(b) Does the following provision in section 25 imply authority on the part of the State Board of Education to renew the certificates provided for in section 29? "Such certificate may be renewed by the State Board of Education according to such rules and regulations as the board may prescribe."

(c) Does the authority herein contained in section 25 to prescribe rules and regulations for the renewal of certificates also carry to apply by implication to the renewal of high school and first grade elementary certificates provided for in section 29?

OPINION

Section 23, Statutes 1923, p. 36, defines the respective certificates which may be issued to teachers.

Section 29 contains no provision authorizing, either directly or by implication, the renewal of high school certificates or first grade elementary certificates.

Section 25, being section 3263, Revised Laws, as amended Statutes 1921, p,. 302, authorizes only a renewal of first grade elementary certificates, which would include the first grade certificate mentioned in section 29.

Authority granted the board to prescribe rules and regulations for the renewal of certificates applies only to elementary grade certificates. The statute reads:

> Such certificate (first grade elementary certificate) may be renewed by the State Board of Education according to such rules and regulations as the board may prescribe.

The words "such certificate" refer to the elementary grade certificates.

Under section 3262, prior to amendment, Statutes 1923, p. 326, the board was empowered to renew high school certificates. When the Act was amended, however, the portion of the statute which authorized such renewals was omitted in the new Act.

I conclude, therefore, that the board has authority under the law to renew first grade elementary school certificates, but they have no such power in reference to high school certificates.

Respectfully submitted,

M.A. DISKIN, *Attorney-General.*

HON. W.J. HUNTING, *superintendent of Public Instruction, Carson City, Nevada.*

---

**217. Revenue—State Tax Commission—State Board of Equalization—County boards of Equalization—Respective Powers of as to Assessments.**

(1) Respective powers of State Tax Commission, State Board of Equalization and County Boards of Equalization defined.

(2) County Board of Equalization has no jurisdiction to either assess or equalize property valuation of public utilities unless such public utility operates entirely within the boundaries of a county.

INQUIRY

CARSON CITY, December 3, 1925.

Whether the valuation for assessment purposes placed upon the property of a public utility by the Tax Commission at their January session and reported by them to the County Assessors for their assessment rolls is final for that year; or may the County Board of Equalization increase the valuation so fixed by the Tax Commission, and the increased valuation become the proper one upon which to base taxation if it is not changed by the State Board of Equalization or the Tax Commission? If the increase was upon a particular portion of the property instead of the whole, would the increase be illegal for that reason?

OPINION

The second paragraph under section 3, Statutes 1917, p. 328, confers upon the Tax Commission:

> Original power of appraisement or assessment of all property mentioned in section 5 of the Act.

Section 5, among other things, provides:

> The Commission * * * shall establish the valuation on any property of an interstate or intercounty nature, and which shall in any event include: The property of all interstate or intercounty railroads, sleeping car, private car line, * * * telegraph, water, telephone, and electric-light and power companies together with the franchises, and the property and franchises of all express companies operating on any common carrier in this State.

Further provisions is made in this section to the effect that such property shall be assessed as a collective unit and, if operating in more than one county, the Commission shall determine the total aggregate mileage operated within this State and so apportion the same upon a mile-unit valuation bases.

It is further provided that in case of omission by said Commission to establish such valuation, it shall be the duty of the Assessors of any counties wherein such property is situated to assess the same.

Section 6 makes it the duty of the State Board of Equalization to equalize and review the tax roll and to raise or lower the valuation on any class or piece of property *except those classes of property enumerated in section 5, supra.*

It will be noted, therefore, from the plain provisions of these several sections, that the County Board of Equalization has no jurisdiction to either assess or equalize property valuation of public utilities unless such public utility operates entirely within the boundaries of a county. Such power, by law, is conferred upon the Tax Commission.

Respectfully submitted,

M.A. DISKIN, *Attorney-General.*

J.A. HOULAHAN, *Deputy District Attorney, Goldfield, Nevada.*

---

**218. Railroad Flagman, Must Have Had One Year's Actual Experience.**

(1) Under provisions of sec. 4, chap. 74, Statutes of 1919, a railroad flagman is required to have had one year's actual experience. In enacting this provision it was the intent of the Legislature to give the work "actual" its ordinary meaning.

(2) A student brakeman actually employed as such for five months only, although given one year's seniority by railroad, is not entitled to act as a flagman under sec. 4 of the Act above mentioned.

INQUIRY

CARSON CITY, December 21, 1925.

This office requests your official opinion on the following set of facts: The legislation involved is section 4 of chapter 74, Statutes of 1919. Sections 1, 2, and 3 provide for the number of trainmen to be employed in freight and passenger service in the State of Nevada. Section 4 reads as follows:

> Sec. 4. The flagman mentioned in sections 1, 2, and 3 of this Act shall have had at least one year's *actual experience* in train service.

The facts under which we desire your opinion are as follows: A is employed as a student brakeman in July, 1925, during the busy months in railroad service and is actually working July, august, September, October, November, and is then cut off from employment on account of reduction of forces. He works in a grocery store from December until the following July. He is then reemployed and is placed in service as a flagman.

Under the rules of the operating company on his reemployment he would have one year's seniority, but his actual experience as that of brakeman is that as stated, namely five months.

Is this man with only five months' actual experience, although he would have one year's seniority, entitled to act as a flagman under section four as noted on the statute referred to?

OPINION

The statute requires one year's actual experience. In enacting this provision it was the intent of the Legislature to give the word "actual" its ordinary meaning, and I am of the opinion that one year's actual experience is necessary before the provisions of this section are complied with.

Respectfully submitted,

M.A. DISKIN, *Attorney-General.*

HON. FRANK W. INGRAM, *Labor commissioner, Carson City, Nevada.*

---