

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL - 1926

219 Water Commissioners, Payment of—Emergency Loans May Be Made for by County Commissioners Where Fund Deficient.

Where in some counties the water fund designated by the Legislature for payment of expenses of water commissioners has no money to pay expenses incurred, an emergency loan should be applied for by the County Commissioners in an amount sufficient to cover the expenses incurred. When such loan is authorized a transfer of money may be made from the general fund of the county in amount sufficient to cover such loan. (Sec. 5, Stats. 1917, as amended 1925, page 338.)

INQUIRY

CARSON CITY, January 8, 1926.

Under the provisions of section 52, chapter 106, Statutes of 1921, among other things it is incumbent upon the State Engineer to prepare a budget of the amount of money estimated to be necessary to pay the expenses of the water commissioners appointed by the Governor to apportion water in accordance with the order of determination of the state Engineer. This budget must be submitted to the County Commissioners before the first Monday of April of each year. It purports to raise money for expenses incurred during the then current year. Such a budget as required under the Act was submitted to the County Commissioners of the various counties through which the Humboldt River flows.

Water commissioners were employed to distribute the water along that river during the past season, and the bills for their services have been submitted to the various Boards of County Commissioners. There being no money in the water commissioner funds the County Commissioners of all but two counties, that is, Elko and Lander, have not seen fit to take the money from their general fund to pay the bills as submitted by the Engineer's Office. Again, due to the shortage of water in the early part of the season, it was necessary to incur more expense than the budget was prepared and submitted for. Various bills submitted by merchants along the stream system, from whom supplies were purchased, remain unpaid as of this date.

This makes an extremely bad condition when people have to wait for money due them for services rendered and supplies furnished.

I would, therefore, like to have an opinion from you as to a legal means whereby the District Attorneys may advise their respective boards of County Commissioners of a method to raise the money to meet this emergency situation.

OPINION

Realizing the vital importance of economically distributing water and desiring to place the burden of the cost therefor upon those deriving the benefit therefrom, the Legislature, by Statutes 1921, chapter 106, has directed the State Engineer to submit to the several Boards of County Commissioners of the State of Nevada budget enumerating the amounts required by him for distributing the water in the several counties. The County Commissioners are then required to levy a tax and collect from the water users an amount sufficient to cover budget requirements.

It appears from your letter that in some counties the water fund designated by the Legislature has no money to pay expenses incurred in following the legislative mandate.

I suggest, under the circumstances, that the provisions of Statutes 1925, p. 338, be followed by the several counties and that an emergency loan be applied for in an amount sufficient to cover the expenses incurred. When such loan is authorized a transfer of money may be made from the general fund of the county in an amount sufficient to cover such loan. This procedure is in accordance with section 5, Statutes 1917, as amended 1925, page 338, which provides:

In case of great necessity or emergency, the board of County Commissioners, by unanimous vote, by resolution reciting the character and nature of necessity or emergency, may authorize a temporary loan for the purpose of meeting such necessity or emergency; * * * *provided further*, that when in the judgment of the County commissioners the fiscal affairs of the county can be carried on without impairment, and there is sufficient money in the general fund of the county, the Board of County Commissioners are authorized, after the emergency loan is authorized as provided above, to transfer from the general fund of the county money sufficient to handle said emergency.

Respectfully submitted,

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

HON. ROBERT A. ALLEN, *State Engineer, Carson City, Nevada.*

220. Nevada Industrial Commission—Occupational Diseases Investigation—Law Is Mandatory and Must Be Complied With Regardless of Whether an Appropriation Made or Not.

By Statutes 1925, chap. 65, the Legislature made it the duty of the Nevada Industrial Commission to make an investigation and gather data concerning the cause, nature and extent of occupational diseases in State of Nevada. This Act must be liberally construed and the Commission is authorized to make such investigations as will secure the data, including a physical examination if necessary. The fact that no appropriation was made will not excuse nonperformance.

INQUIRY

CARSON CITY, January 8, 1926.

Reference is made to Statutes 1925, chapter 65. The Commission requests an opinion:

- (a) As to whether a clinical physical examination may be made under the provisions of this Act; and
- (b) What disposition should be adopted by the Commission in reference to expenses incurred by reason of the additional work imposed upon the Commission thereby.

OPINION

Statutes 1925, chapter 65, provides:

The Nevada industrial commission is authorized and directed, as hereinafter provided, to make an investigation and gather data and information as the cause, nature and extent of occupational diseases in the State of Nevada.

It shall be the duty of the Nevada Industrial Commission to gather information and data from all physicians, surgeons and hospitals, from the State Board of Health, and from county health officers, as to the existence, prevalence, causes, nature and extent of occupational diseases in the State of Nevada. Said commission is authorized to prepare and send out such questionnaires as it may deem necessary in gathering such data and information, and when such data and information is gathered it shall be submitted to the chief medical examiner of the Commission who shall, on or before October 1, 1926, prepare therefrom, and from such other information as he may have, report as to the existence, prevalence, causes, nature and extent of occupational diseases in Nevada, and submit his said report to the Nevada Industrial Commission,

Upon receipt of such report from such chief medical examiner, it shall be the duty of the Nevada Industrial Commission to review the same, and all data and information which it shall have obtained, and to report its findings to the Thirty-third Session of the Nevada Legislature.

The Legislature, by this enactment, has made it the duty of the Nevada Industrial Commission to make an investigation and gather data concerning the cause, nature and extent of occupational diseases in State of Nevada. The Act does not limit this investigation to those individuals employed by an employer who has complied with the Nevada Industrial Commission Act, but requires a general investigation without restriction of occupational diseases. This Act must be liberally construed, and the Commission is authorized to make such investigations as will secure the data required, including a physical examination if, in the discretion of the Commission, such examination is necessary.

The Commission must proceed with this investigation. The legislative Act requires such action. The fact that no appropriation was made will not excuse nonperformance in this instance. Having commanded the work to be carried on by the Commission, the next Legislature will, no doubt, entertain and pass a relief bill covering the amount expended by the Commission in making the survey.

Respectfully submitted,

M.A. DISKIN, Attorney-General.
THE NEVADA INDUSTRIAL COMMISSION, Carson City, Nevada.

221. Schools—School Teachers Not Entitled to Salary When Absent on Account of Illness.

It is not legal for School Board to pay teacher any salary covering days missed on account of personal illness of teacher. (Sec. 104, Stats. 1911, p. 183, as amended Stats. 1917, p. 398.)

INQUIRY

CARSON CITY, January 8, 1926.

Will you kindly give me your ruling as to the effect of section 104 of the School Code on the payment of salary to a teacher absent from school on account of personal illness?

Is it legal for the School Board to pay such teacher full salary covering the days missed on account of such personal sickness, and also to pay any substitute employed to fulfill the teaching responsibility of such teacher while thus absent on account of personal sickness?

If it is legal thus to pay both the teacher absent on account of personal sickness and the substitute who takes her place, for how long a period of such sickness could the School Board pay both the regular teacher who was sick and the substitute who took her place?

OPINION

Section 104, Statutes 1911, page 183, as amended Statutes 1917, page 398, provides:

A school month shall consist of four weeks of five days each, and teachers shall be paid only for the time in which they are actually engaged in teaching; *provided*, that when a intermission of less than six days is ordered by the Trustees no deduction of salary shall be made therefor; *and provided further*, that when on account of sickness or epidemic a longer intermission is ordered by the Board of School Trustees or by a duly constituted Board of Health, and such intermission or closing does not exceed thirty days at any one time, there shall be no deduction or discontinuance of salary or salaries therefor. The term "teacher," as used in this Act, shall be understood to mean teachers, principals and superintendents of the elementary and secondary schools of this State.

Prior to the amendment of 1917 no statutory authority existed for payment of salary during the period when schools were closed on account of the prevalence of an epidemic. Section 104, as now enacted, authorizes payment of salary or compensation for the time teachers are actually engaged in teaching or when not actually engaged in teaching

provided such failure to teach is by reason of an order of the School Trustees based upon a general intermission of school work.

The absence of a teacher by reason of sickness could not, under the most liberal construction of this statute, warrant compensation under either of the provisos stated in section 104. The language of this section is free from ambiguity. It provides that a school month shall consist of four weeks of five days each, and teachers shall be paid only for the time in which they are actually engaged in teaching.

I must conclude, therefore, that where a teacher is unable to teach by reason of sickness and is thus absent from school, under the law no authority exists for the payment of salary during said period.

It is not for executive officers to question legislative policy. I desire, however, to recommend for your earnest consideration, the matter of amending this section at the next legislative session so that a more generous consideration of the teacher be manifested.

Respectfully submitted,

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

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

222. Law Library Fund—Probate Proceedings and Appointment of Guardians Included Under Work “Proceeding.”

Under Statutes 1913, p. 377, providing for a “Law Library Fund” to be set aside from the costs received on the commencement in, or removal to, the District Courts of any civil action, proceeding or appeal, probate proceedings and proceedings in the appointment of guardians come within the purview of this section of the law.

INQUIRY

CARSON CITY, January 27, 1926.

Reference is made to Statutes of Nevada, 1913, page 377. Under the wording of this statute are there included therein probate proceedings and proceedings in the appointment of guardians?

OPINION

Statutes 1913, page 377, provides:

SECTION 1. On the commencement in, or removal to, the District Court of any county of this State of any civil action, proceeding or appeal, on filing the first papers therein, the Clerk of said court shall set aside from the costs received such sum as shall be established by ordinance of the County Commissioners, not exceeding five dollars in any case, for a fund which shall be designated as the “Law Library Fund,” to be expended in the purchase of law books, etc.

I am of the opinion that probate proceedings and proceedings in the appointment of guardians come within the purview of this section of the law and can be included under the word "proceeding."

Respectfully submitted,

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

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

223. Revenue—Soldier's Exemption from Taxes Does Not Apply to Any Soldiers of Foreign Countries—Automobile License Not Allowed Without Payment of Tax in Nevada, Although Tax Paid in Another State.

(1) A soldier honorably discharged from the Canadian Army is not entitled to an exemption from payment of taxes in this State, as Stats. 1925, p. 249, sec. 7, only authorizes exemptions to any person who has served in the army, navy, marine corps, or revenue marine service of the United States in time of war.

(2) The payment of taxes upon an automobile of another State would not warrant an exemption of such automobile if the same is within State on Nevada during the period of time when personal property is taxed.

INQUIRY

CARSON CITY, February 3, 1926.

1. Is a soldier, honorably discharged from the Canadian Army, entitled to an exemption from payment of taxes on personal property?

2. Where a party comes from another State and applies for a license for his automobile and exhibits a tax receipt from the other State, is he entitled to a license for such automobile without the payment of taxes?

OPINION

Statutes 1925, page 249, section 7, authorizes exemptions to any person who has served in the army, navy, marine corps, or revenue marine service of the United States in the time of war. The statute, therefore, does not authorize an exemption under the facts stated in your query.

Replying to your second question, the payment of taxes upon an automobile of another State would in no way warrant an exemption of such automobile if the same is within the State of Nevada during the period of time when personal property is taxed.

Respectfully submitted,

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

HON. A. MCCHARLES, *Assessor Ormsby County, Carson City, Nevada.*

224. Fees—Trade-Marks, Fees For—Certificates of Qualification to Surety Companies, Fees for—Conflicting Statutes, Later Controls.

Although prior statutes fixed different fees, Stats. 1925, page 227, must control fees to be collected for issuing trade-marks and for issuing trade-marks and for issuing certificates of qualification to surety companies.

INQUIRY

CARSON CITY, February 11, 1926.

Statutes of 1907, page 374, sections 4635-4637, inclusive, Revised Laws, 1912, provide for the manner of issuing trade-marks. Section 4635 fixes a charge to be collected by the Secretary of State in the sum of two dollars for issuing trade-marks.

Section 4, Statutes 1909, Revised Laws, section 698, fixes the amount of fee to be collected by the Secretary of State for issuing certificates of qualification to surety companies.

Statutes 1925, page 227, enumerates fees to be collected by the Secretary of State and, among other things, provides that for issuing trade-marks the sum of ten dollars shall be charged and for issuing certificates of qualification to surety companies a like amount shall be collected.

An opinion is requested as to which Act must govern.

OPINION

It will be noted that the statutory enactments concerning trade-marks and surety companies specifically cover the charge to be collected by the Secretary of State in each instance. Statutes 1925 fixes the amount of fee to be charged by the Secretary of State and changes the fee in the two instances noted.

The thought is suggested that if Statutes 1925, supra, is to control, section 17 of article 4 of the Constitution is violated in that the later general Act amends the provisions of the two earlier laws in a manner contrary to the Constitution.

The Supreme Court of Nevada in the case of *State v. Cole*, [38 Nev. 488](#), decided practically the same question here presented, and held that legislation of this character did not constitute the amending of a prior Act and that the later Act was clearly independent and complete in itself.

I am, therefore, of the opinion, in view of this decision of the Supreme Court of Nevada, that the Statutes of 1925 must control and the fees therein set forth be collected.

Respectfully submitted,

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

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

225. Revenue—State Lands—Taxation of by State and County—Sale of for Nonpayment of Taxes—Efficacy of Deed to State by Tax Receiver—Possessory Right of May Be Sold.

- (1) State and county have right to tax lands that have been applied for, or contracted, for which no patent has been issued.
- (2) Where a party holding a contract to purchase state lands fails to pay the taxes, the possessory right of such party may be sold, and, by virtue of such sale, the buyer would acquire such possessory right.
- (3) If state contract land sold for taxes and no private persons purchases same, a deed to the State by the tax Receiver would in no way benefit the State or convey to the State any right or interest not now enjoyed by the state.

INQUIRY

CARSON CITY, February 16, 1926.

You submit a deed executed by the County Treasurer and ex officio Tax Receiver of Elko County. This deed purports to convey to the State of Nevada certain lands that were and now are owned by the State and under contract to purchase by Ray Goodwin. Taxes were duly assessed upon the lands covered by sale contract, the same became delinquent, and sale was made, and the deed purports to cover transfer of title. An official opinion is requested as to the power of the State and county to tax land owned by the State and concerning which the State has entered into a contract of sale and payments thereon have not been completed. You also desire to be advised as to whether or not the State shall accept the deed tendered, and what efficacy, if any, the conveyance of the alleged title to these lands to the State by the Tax Receiver would have upon the State's title to this property.

OPINION

This office, under date of March 19, 1888, by an official opinion answered the first question propounded. I feel this opinion correctly states the law.

The opinion reads as follows:

Has the State and County a right to tax lands that have been applied for, or contracted, for which no patent has been issued?

Reply—Yes. All property of every kind, nature and description, both real and personal, with certain specified exceptions, is to be taxed.

Even as to public United States lands, the occupant's possession and improvements are to be valued and taxed as other property. (People v. Shearer, 30 Cal. 661; People v. Black Diamond Coal Mining Company, 37 Cal. 54.)

If a party is entitled to enter Government land the receiver gives him a certificate of entry setting out the facts, by means of which, in due time, he receives a patent. "The contract of purchase is complete when the certificate of entry is executed and delivered, and the land ceases to be a part of the public domain. To deny right of taxation until patent issued

would be a hardship on the State." (United States Supreme Court in *Witherspoon v. Duncan*, 4 Wall., 218. This case is in accord with *Carroll v. Safford*, 3 How. U.S. 441; *U.P.R.R. Co. v. Prescott*, 16 Wall, 193, and cited in *Van Brocklin v. Tennessee*, 117, U.S., 169.)

Our statutes relating to subject of this query are substantially like those of California. (See Pol. Code, 3, 617; 3, 659 Cal. Stats. 1867-8, p. 720; Gen. Laws Nevada, 1081, 331; Stats. 1887, p. 112.)

The applicant secures a valuable precedence, interest in, claim to, or right of possession of "property" which will, in due time, ripen into patent, or return his money. The money would be taxable—why should not its equivalent be also?

The definition of property subject to taxation in the Constitution and statutes is broad enough to include the possessory right, or imperfect interest, acquired by a purchaser from the State, prior to payment of the purchase money, or patent, and the State is not estopped from assessing the same. (*People v. Donnelly*, 58 Cal. 144.) Such right or interest has a substantial, saleable and often great value, and should be estimated upon the same principles as govern valuation of other property. (*People v. Shearer*, 30 Cal. 661, and *State v. C.P.R.R.*, [10 Nev. 63](#)-4. See *Wright v. Cradlebaugh*, [3 Nev. 341](#). The interest in, claim to, and right of possession, not legal *title*.

Concerning your second question, where a party holding a contract to state land fails to pay the taxes, the possessory right of such party may be sold, and, by virtue of such sale, the buyer would acquire such possessory right. In order, however, for this to be effectual, some evidence of such sale should be filed with your office and payments due to the State under contract of purchase must be made until the contract is paid in full.

The deed tendered would in no way benefit the State or convey to the State any right or interest not now enjoyed by the State.

Respectfully submitted,

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

HON. C.L. DEADY, *Surveyor-General, Carson City, Nevada.*

226. Revenue—Sale of Property for Delinquent Taxes—Name of Old Owner May be Crossed Out and Name of New Owner Inserted—Tax Collector May Accept Taxes from Old Owner, but Old Owner Would Not Thereby Acquire Any Right Either Against the New Owner or State—Deed Must Issue to New Owner.

(1) Where property has gone delinquent on 1924 tax roll and is sold in July 1925, the name of the old owner may be crossed out and the name of the new owner inserted. Same property would not have to be rewritten in the tax roll.

(2) If the old owner should tender his check in payment of the 1925 taxes, the tax receiver may accept it. This, however, would not mean that the old owner

would acquire any right whatever by having paid the taxes, either against the new owner or the State.

(3) If the tax receiver should accept the 1925 taxes paid by the old owner, he still could issue the deed to the new owner in the following July, as the old owner, to redeem the property, must pay, in addition to any subsequent taxes, the costs of sale, the 1924 taxes, and the statutory interest.

INQUIRY

CARSON CITY, February 24, 1926.

1. Where property has gone delinquent on the 1924 tax roll and is sold in July, 1925, would the same property have to be rewritten in the tax roll in order to comply with the law which states that all sale property must be assessed in the name of the new owner, or could the name of the old owner be crossed out and the name of the new owner inserted?

2. If the old owner should tender his check in payment of the 1925 taxes could the tax receiver accept it?

3. If the tax receiver should tender his check in payment of the 1925 taxes could the tax receiver accept it?

OPINION

I. The name of the old owner might be crossed out and the name of the new owner inserted. All that the law requires is that there appear upon the tax roll the name of the owner of the property. Whether it appears typewritten originally or whether it is written in is immaterial. It is only necessary that the owner's name appears on the roll.

II. If the old owner should tender his check in payment of the 1925 taxes there is no law which would prevent the tax collector from receiving it. This rule is stated in Cooley on Taxation, section 1260, as follows:

As the State is interested only in obtaining the revenue it has called for it would seem that before any sale and, consequently, any rights of third parties have intervened any mere volunteer may pay the taxes if he chooses, and the payment would be effectual as far, at least, as to determining the lien of the taxes upon the lot.

This, however, would not mean that the old owner would acquire any right whatever by having paid the taxes, either against the new owner or the State.

III. If the tax receiver should accept the 1925 taxes paid in by the old owner he still could issue the deed to the new owner on the following July, for the law requires that in order for the old owner to redeem he must pay, in addition to any subsequent taxes, the costs of sale, the 1924 taxes, and the statutory interest. He could not redeem the property, then, simply by paying the 1925 taxes.

Respectfully submitted for the Attorney-General.

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

By W.M. J. FORMAN, *Deputy Attorney-General.*

HON. IVEN JEFFRIES, *State Auditor, Carson City, Nevada.*

227. Schools—County High Schools—Taxes for High School Purposes, Amount of Levy For.

Although sec. 1, chap. 183, Statutes 1925, contains apparently conflicting provisions as to amount of tax levy to be made by County Commissioners for high school purposes, in the forepart thereof providing that the tax levy shall be "not less than twenty cents," and thereafter providing "or such a part thereof as is shown in said petitions to be necessary," under the general rule of construction the latter statement, to wit, "or such part thereof," would prevail and the rate would thus be fixed in accordance with the amount required by the facts stated in the petitions.

INQUIRY

CARSON CITY, March 15, 1926.

My inquiry is specifically directed to section 1, chapter 183, Statutes of Nevada 1925, which provides that:

In any county in which no county high school is located, the County Commissioners, at the time of making the annual levy for said county, if petitioned by the Board of Trustees of the district high school in any county having but one duly organized high school, or the several Boards of Trustees of the district high schools in counties having more than one such high school, shall levy a county tax for high school purposes of not less than twenty cents or such part thereof as is shown in said petitions to be necessary on the hundred dollars of assessed valuation of the county, for the benefit of any district high school or schools that comply with the following conditions. * * *

I direct your attention to the fact that the statute says, " * * * shall levy a county tax for high school purposes of not *less* than twenty cents *or such part thereof* * * *." Apparently the statute as it appears is contradictory, in that it prescribes that the Commissioners shall levy a tax of not less than twenty cents and then immediately thereafter sets out "or such a part thereof" as is necessary. If it means such a part of twenty cents, it is clearly contradictory. If, however, it means such part of a whole over twenty cents, it is merely ambiguous.

Kindly give me your opinion.

OPINION

In considering the question here presented, it is important to bear in mind that the budget system has been adopted by legislative Act, and taxation and the amounts to be collected for all governmental purposes are based upon necessity as disclosed by the budget requisites.

Section 1, supra, while commanding the County Commissioners to levy a tax of "not less than twenty cents," further provides "or such part thereof as is shown in said petitions to be necessary."

I am of the opinion that the words, "or such part thereof," qualify the restrictions as contained in the words, "not less than twenty cents," and, therefore, when a petition is filed showing the necessity for a rate lower than twenty cents, the later provision, based upon budget requisites, must control.

There appears to be an apparent conflict in the words, "not less than twenty cents," and the language, "such part thereof as is shown in said petitions to be necessary." It is clear that the Legislature intended that, when a petition filed showed a necessity for a rate of more than twenty cents, the County Commissioners were deprived of the right to make the rate less than twenty cents; but, when the petition showed the necessity for a rate lower than twenty cents, the requirement thus established by the petition authorizes a rate lower than twenty cents.

Admitting that the provisions of this Act are conflicting, under the general rule of construction the latter statement, to wit, "or such part thereof," would prevail and the rate would thus be fixed in accordance with the amount required by the facts stated in the petition.

See *Ex Parte Smith*, 33 Nev. 466.

Respectfully submitted,

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

HON. JOSEPH T. MURPHY, *District Attorney, Tonopah, Nevada.*

228. School Boards—Contracts In Excess of Budget Void—Trustees Executing Such Contracts Subject to Removal—Personal Responsibility of Trustees Not an Official Question.

(1) Where a school board contracted to purchase school supplies the expenditures for which will exceed the budget for that district, the contract therefor is void.

(2) Members of Board of School Trustees voting to make a contract that exceeds the budget allowance are subject to removal from office under provisions of Stats. 1917, sec.10, p.249.

(3) The legal status of a member of a school board who agrees to be personally responsible under terms of a contract entered into on behalf of a school district, in as much as it involves not an official question, cannot be made the subject of an official opinion.

INQUIRY

CARSON CITY, March 16, 1926.

Where a school board has contracted to purchase school supplies or equipment the expenditures for which will exceed the budget for that district, what is the effect of the

Nevada Budget Law: First, as to the binding force of any such contract on the school district; and second, against the members of the Board of School Trustees voting to make such a contract when it exceeded the legal budget?

What further effect would a contract have against the members of the Board of School Trustees in case the members signing a contract that exceeded the budget allowance agreed to be personally responsible for carrying out that contract?

OPINION

Your questions are answered by the provisions of section 10, Statutes 1917, page 249, which provides as follows:

It shall be unlawful for any governing board or any member thereof or any officer of any city, town, municipality, school district or high school district to authorize, allow or contract for any expenditure unless the money for the payment thereof has been specially set aside for such payment by the budget. Any member of any governing board or any officer violating the provisions of this section shall be removed from office in a suit to be instituted by the City Attorney in the case of cities, and by the District Attorney in cases of towns, school districts or high school districts wherein such officer or member of the governing board resides, upon the request of the Attorney-General or upon complaint of any interested party.

The contract, therefore, under the circumstances stated by you is void, and those executing the same are subject to removal from office.

The legal status of a member of a school board who agrees to be personally responsible under the terms of a contract entered into on behalf of a school district, in as much as it involves not an official question, cannot be made the subject of an official opinion.

Respectfully submitted,

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

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

**229. Revenue—Motor Vehicles—When License Tax Collectible—Ownership Alone
Not Test for Liability for Tax—Use Upon Road Essential—Penalty
Payable, When.**

- (1) The test of liability for the payment of license tax for operation of motor vehicles upon public road is the use of such vehicle upon the roads.
- (2) Penalty for failure to pay license becomes due and payable the first day of February in each year.

INQUIRY

CARSON CITY, March 16, 1926.

Reference is made to the Motor Vehicle Laws of 1925. Under section 28 the Department of Highways is charged with the enforcement of this Act, and in our enforcement work several questions have arisen that require clarifying: First of all, concerning the penalty for failure to procure a license before the first day of February. We have seen newspaper reports purporting to state that you have given an opinion to the effect that a license fee is based on the use of the roads and that no penalty will accrue if a vehicle is not in fact operated before the license is applied for. We have assumed that the penalty accrued regardless of operating, basing our assumption on the second sentence of section 2 of the Act which provides that, "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," etc. At first glance it might appear that section 2 and section 10 are in conflict, but a careful reading of section 10 seems to show that the half-year provision applies to vehicles that were not in the State on the first day of January and registered the previous year.

Another point that has arisen is the date that the penalty becomes effective. Section 13 provides that on February 1 a penalty of \$3 shall be added. It appears that some of the Assessors have not been charging the penalty until after February 1.

OPINION

Section 2, Statutes 1925, page 175, provides in part:

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.

That portion of section 10 which is necessary for consideration in the question presented, reads as follows:

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.

Under section 10, failure to operate a motor vehicle upon the public roads and proof thereof by affidavit constitute a showing sufficient to warrant a half-year registration and authorize an exemption from payment of license fee and penalties for the first six months of the year. This exemption from payment of license fee and penalty is based solely upon the fact that the motor vehicle has not been operated upon the public roads. This provision is not in conflict with section 2, as this section contemplates an exception to the specific date of registration requirement in that it states:

In 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.

It was not the intent of the Legislature, in enacting this law, to make ownership of a motor vehicle the basis upon which rested the obligation to pay a tax. If it were, such legislation would violate constitutional provisions and be discriminatory and constitute double taxation. The test of liability for the payment of license tax is the fact that the motor vehicle has been operated upon the public roads. The whole theory of this legislation is grounded upon *use of public roads* and, because of this use, a fee or license tax might be collected from those who, by using the roads, cause the State to make expenditures for their upkeep and maintenance.

This office heretofore has had occasion to consider certain phases of this legislation, and attention is called to that portion of Opinion No. 209, which reads as follows:

* * * 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 amounts stated. It is only when such vehicle is used upon the highway that the resulting duty or obligation to pay the fee accrues.

I am of the opinion, therefore, that a license tax, under this statute, is not payable, nor do the penalties accrue, until the motor vehicle is actually used upon the public roads.

Concerning your second question, I am of the opinion that where a motor vehicle was registered the previous year and operates upon the public roads the succeeding year, the penalty becomes due and payable February first of each year.

Respectfully submitted,

M.A. DISKIN, Attorney-General.

W.P. HARRINGTON, *Department of Highways, Carson City, Nevada.*

230. Fish and Game—Closed Season for Sage Hen—Power of County Commissioners.

(1) No words can be added to legislative act by construction, even though a mistake apparently was made in fixing open season for sage hen.

(2) County Commissioners have power to remedy defects by providing a closed season.

INQUIRY

CARSON CITY, March 29, 1926.

Will you be kind enough to advise your construction of section 2, chapter 165, Session Laws 1925, page 253, reading:

It will be unlawful for any person to take any wild duck, sandhill crane

* * * except between the 16th day of September and the 31st day of December of each year, both dates included. Or to take any sage hen or

sage cock or prairie chicken between the first day of August and the 16th day of August, both dates included in each and every year.

Apparently it was the intention of the Legislature to make the open season on sage hens between the 1st day of August and the 16th of August, but by leaving the word "except" out, it appears that that is the only closed season on sage hens.

The question came up by reason of the filing of a petition in this county to declare the open season during the period between the 1st of August and the 16th.

OPINION

In determining the legislative intent in any statute which is unambiguous, we are confined to the meaning of the language used. By the language used in the statute above quoted, the Legislature has clearly named the closed season for hunting sage hen from August 1 to August 16 of each year, thereby making the open season from August 16 of one until August 1 of the following year. While it is very probable that the Legislature may have made an error in drafting this bill and omitted, by mistake, the word "except" before the word "between" in the statute, as suggested by you, yet we would not be justified in reading this word into the statute where it would entirely change the plain meaning of the law as it now reads.

The County Commissioners of any county, while they have no power to shorten a closed season on game, may lengthen a closed season in accordance with section 50, Revised Laws 1919, volume 3, page 2802. By this means the County Commissioners of any county may shorten the open season and allow the hunting of sage hen only between July 16 and July 30 of each year, or at any other dates they see fit within the year, except between the 1st day of August and the 16th day of August of the same year, for during this period the Legislature has fixed a closed season and the County Commissioners are without any authority to allow the hunting of sage hen during this period.

Respectfully submitted for the Attorney-General.

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

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

HON. H.W. EDWARDS, *District Attorney of White Pine County, Ely, Nevada.*

231. Officers—County Commissioners—Cannot Be Interested in Contracts—Wife of Commissioner.

The law prohibits County Commissioners from making contracts where commissioner is interested directly or indirectly in the contract.

INQUIRY

CARSON CITY, March 30, 1926.

The county of Esmeralda has three County Commissioners and conducts the County Hospital on contract plan, awarding the management and operation by giving contract annually to best bidder.

The wife of one of the County Commissioners desires to bid on contract. Her husband does not participate in voting or in discussion relating to the matter further than recommending that present contract be canceled by giving required notice as its terms provide. The two other County Commissioners approve bid of wife because it is the best bid, and award her the contract.

Does awarding her the contract, under these circumstances, violate any provision of law?

OPINION

Section 1522, Revised Las 1912, prohibits any member of a Board of County Commissioners from being interested, directly or indirectly, * * * in any contract made by the county for any purpose.

I am of the opinion that where the wife of a member of a Board of County Commissioners is awarded a contract by the County Commissioners, such contract would be in derogation of this statute, because, admittedly, the County Commissioner would be indirectly interested in such contract.

Respectfully submitted,

M.A. DISKIN, Attorney-General.

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

232. Revenue—"Nonresident" defined—Foreign Permits for Commercial Purposes—Nonresident Dealer Permit Determined by Department.

- (1) Nonresident permit authorized for three months' period even though automobile used in connection with occupation in going to and from work.
- (2) Where nonresident uses car for commercial purposes, such as selling merchandise, license must be obtained.
- (3) Where nonresident accepts employment in the State he is entitled to nonresident permit for three months.
- (4) Department must determine facts tending to establish that one is a dealer.

INQUIRY

CARSON CITY, March 30, 196.

1. If an automobile is driven into the State of Nevada by a nonresident of said State and the owner of such automobile uses it for the purpose of going to and from his work, which employment he has obtained since coming into the State, is this automobile entitled to a three months' permit without having to take out a license?

2. If an automobile is driven into the State of Nevada by a person who uses such car for business purposes such as peddling merchandise or conducting an agency for commercial firms whose headquarters are in another State, is this automobile entitled to a three months' permit without having to take out a license?

3. If a nonresident of the State of Nevada drives his car into said State for the purpose of visiting and use his automobile for that purpose only, although he may be employed in business or labor that does not require the use of his car, is he entitled to a three months' permit without having to take out a license?

4. If a nonresident of the State of Nevada drives his automobile into said State and after procuring a three months' permit he becomes employed in business or labor within this State, although his three months' permit has not expired, shall he immediately be required to take out a license after obtaining such employment?

5. If a nonresident brings an automobile into the State of Nevada and uses such car for demonstrating purposes, purporting to be a dealer or an agent for some foreign automobile company, shall such car be compelled to carry a dealer's license or shall it carry the regular automobile license?

OPINION

In order to clearly understand the law in reference to the subject matter of your inquiry, it will be necessary to refer to Statutes 1925, page 175. It appears from a reading of this statute that the term "nonresident" is defined as follows:

"Nonresidents" shall mean residents of States or countries other than the State of Nevada and of countries other than the United States whose sojourn in this State, or whose occupation or their regular place of abode or business in this State, if any, covers a total period of less than three months in the calendar year.

That portion of section 22 of this statute which is important in the consideration of the language presented, reads as follows:

No vehicle so registered by a nonresident owner shall be used in the transportation of passengers for hire or for business directly or indirectly.

I am of the opinion, therefore, that, under the facts stated in your first inquiry, the automobile would be entitled to a three months' permit and no license would be required until the expiration of this period.

Under your second question, from the facts stated, it is apparent that the automobile is used "for business directly or indirectly," and such automobile, therefore, would be required to have a license issued for its operation.

Under the facts stated in question No. 3, no license would be required.

No license would be required under the facts stated in question No. 4 until after the expiration of the three months' period.

Concerning the fifth inquiry, the statutes makes the following provision in reference to the word dealer:

* * * *provided, however,* that anything to the contrary notwithstanding, the determination of the department shall be final and conclusive upon the

question whether or not an applicant for registration shall be a manufacturer or dealer within the meaning and intent of this Act.

The word "department" is defined,

* * * the motor vehicle department of the office of the secretary of state.

You will, therefore, present the facts under question No. 5 to the Secretary of State for his determination concerning whether the individual, under the facts stated, would be entitled to be a dealer's license.

Respectfully submitted,

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

HON. J.F. MILES, *Assessor of White Pine County, Ely, Nevada.*

233. Schools—Duty of Trustees on Salary Payments—Payments in Advance.

Trustees of school authorize payment of salaries. County Auditor is administrative officer and acts upon authority of Trustees.

INQUIRY

CARSON CITY, April 7, 1926.

The County Auditor requests my opinion upon the following query (No. 1), and I will appreciate your also answering No. 2:

No. 1. I am in receipt of school voucher duly signed by two members of a Board of School Trustees, covering teacher's salary from March 12 to April 10, 1926. In view of the fact that this is apparently for services which have not yet been entirely rendered, am I authorized to allow this voucher at this time?

No. 2. Is there any legal authority within this State for the payment of claims for services (including salaries) or materials in advance?

OPINION

In answer to your first inquiry you are advised that the County Auditor in the matter of school funds is imply an administrative official. It is the duty of the School Trustees to pay salaries by order to the Auditor (sec. 3305, subdivision 12, Revised Laws, 1912) and the Trustees are liable personally if the warrant is illegal (sec. 3308, Revised Laws, 1912). It is made the duty of the County Auditor to issue his order to the Treasurer when the order of the Trustees is drawn according to law, for, in his hands, the orders are valid vouchers. The Auditor, standing in this relation, is authorized to allow any voucher legally drawn unless there is a protest filed and the Deputy Superintendent of Public Instruction orders him to stop payment on the warrant (Revised Laws, 1912, sec. 3250).

The connection with the second inquiry, we call your attention to sec. 1509, Revised Laws, 1912, which, we believe, fully answers this question.

Respectfully submitted for the Attorney-General.

M.A. DISKIN, *Attorney-General.*
By WM. J. FORMAN, *Deputy Attorney-General.*
HON. J.H. WHITE, *District Attorney, Mineral County, Hawthorne, Nevada.*

234. Revenue—Duty of County Assessor to Prepare Printed List of Taxpayers of County.

INQUIRY

CARSON CITY, April 20, 1296.

Is it the duty of County Assessors to prepare printed lists of the taxpayers within their counties and of the property upon which they are taxed?

OPINION

You are advised that the laws of this State require the County Assessors in each of the counties of this State to prepare a printed list of the taxpayers in the county and the total valuation of the property upon which they severally pay taxes.

Respectfully submitted for the Attorney-General.

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

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

THE NEVADA TAX COMMISSION, Carson City, Nevada.

235. Fish and Game—Statutes—Title of Act—Constitutionality.

(1) Section 17 of article IV of Constitution requires the subject of Act to be expressed in title.

(2) Proposed amendments invalid as not being expressed in title of Act.

INQUIRY

CARSON CITY, April 19, 1926.

You call our attention to Statutes 1925, page 250, chapter 164, and to the fact that in the title of this Act notice is given of an intention to amend the existing laws relative to the protection and preservation of fish and game by adding to the original Act a new section to be known as section 72.

Notwithstanding the plain provisions of the title of this Act, the Legislature attempts in the body thereof to not only amend the Act by adding a new section but, also, attempts to amend sections 11, 17, 18, 19, 21, 29, 59, 61, and 68 of the existing law without any notice of such amendments in the title of the amending statute.

In view of this state of facts an official opinion is requested as to the constitutionality of those provisions of this amending Act purporting to amend and repeal those certain sections of which no notice is given in the title of the amending Act.

OPINION

It has always been the policy of this office to not declare unconstitutional statutes enacted by the Legislature unless it appears, after a careful scrutiny, that such legislative mandate plainly offends some provision of the organic law. In considering constitutional provisions in reference to statutes, in order to determine their legality, the constitutional enactments should be liberally construed to the end that there may be no unnecessary hampering of legislative will. This rule, however, cannot be amplified to the extent of nullifying the Constitution.

With this premise in mind, we find, in considering the statutes referred to, that the title reads:

Chap. 164—An Act to amend an Act entitled “An Act to provide for the protection and preservation of fish and game, providing penalties for the violation thereof, and repealing all Acts or parts of Acts in conflict herewith,” approved March 27, 1917, as amended March 4, 1921, and as amended March 23, 1921, by adding a new section thereto to be known as section 72.

It will be observed that by the title of this Act it purports to amend the original law only by adding a new section to be known as “section 72.” In the body of the Act it is in part provided: Section one amends section eleven of the original Act; section two amends section seventeen; section three repeals section eighteen; section four amends section nineteen; section five amends section twenty-one; section six amends section twenty-nine; section seven amends section fifty-nine; section eight amends section sixty-one; section nine repeals section sixty-eight; section ten amends the original Act by adding a new section to be known as section seventy-two.

Section 17, article 4 of the Constitution of the State of Nevada, reads as follows:

Each law enacted by the Legislature shall embrace but one subject * *

* which shall be briefly expressed in the title.

The Supreme Court of Nevada in the case of *Ex Parte Hewlett*, 22 Nevada, page 333, decided practically the same question that is presented here. In this case the facts are stated in the opinion as follows:

By Stats. 1893, p. 128, the Legislature enacted an amendment to what is known as the “Fish Law,” the Act consisting of but two sections. Section 1 amends section 2 of the original Act, and contains the provisions as to then it shall be unlawful to catch trout, but permits taking them after April 1. Section 2 amends section 4 of the original Act and prohibits common carriers and others from shipping or transporting trout illegally caught. By Stats., 1895, 83 the Legislature attempted to further amend the Act of 1893. This amendment extends the close season to June 1, and plaintiff’s conviction depends upon the validity of this amendment, as

without it there is no law against taking trout after April 1. It is claimed first that is invalid because the title of the Act does not express its subject. The Court, in applying the law, stated:

But the most serious point is that, after stating in the title that the Act is an Act to amend but one section of the Act of 1893, it goes on to amend sections 4 and 8 of that Act, although, as just stated, there are but two sections to the Act, and consequently no section 4 or 8 to be amended. Under these circumstances, it would seem that the last two sections of the Act of 1895 are unconstitutional, under the provisions of section 17 of article IV of the Constitution, which directs that "each law enacted by the Legislature shall embrace but one subject, * * * which shall be briefly expressed in the title." Having seen fit to restrict the title of the Act to amending but one section of the former Act, the Legislature cannot go on in the body of the Act to amend other sections. *State v. Bankers' & M. Mut. Ben. Ass'n.*, 23 Kan. 499; *Suth. St. Const.*, sec. 87.)

See, also, *State v. Commissioners of Washoe County*, [22 Nev. 399](#).

These authorities seem conclusive on the point here presented.

I am of the opinion, therefore, that the Legislature in the title of this Act having restricted the same to an amendment of the original statute by adding section 72 thereto, it is contrary to section 17, article IV of the Constitution to attempt in the body of this Act to make other amendments and repeals not designated in the title. Sections 1, 2, 3, 4, 5, 6, 7, 8, and 9, Statutes 1925, page 250, are therefore invalid.

Respectfully submitted,

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

HON. L.O. HAWKINS, *District Judge, Winnemucca, Nevada.*

236. Revenue—Registration of Motor Vehicles—Time Allowed.

The law gives a five-day period for obtaining registration of motor vehicles and the time cannot be shortened.

INQUIRY

CARSON CITY, May 26, 1926.

(1) In the case of salesmen coming into the State to do business, the second paragraph of section 2 of the Motor Vehicle Law requires that they procure a license within five days after entering the State. The situation may arise where a salesman may be hard to find and can easily claim that he had not been in the State five days. In as much as the paragraph requires that registrations be made "within five days" is there anything to prevent an inspector requiring a license to be procured immediately upon entering the State, or on finding such a case?

(2) Utah dealers are demonstrating a certain make of car in the Ely district and the Deputy Assessor advised that they had five days to procure registration. Under section 20

of the Motor Vehicle Act no time limit is set for procuring such registration. Are we not right in holding that such dealers be required to register immediately on entering the State?

OPINION

You are advised that section 2 of the Motor Vehicle Law allows a person coming into this State, in the instances cited by you, five days within which to procure a license. The Legislature has seen fit to allow this time for any of the enumerated persons to secure a license. This cannot be changed by construction. You are, therefore, advised that your inspector has no authority to compel either the persons enumerated in number one of your inquiry or those referred to in number two to secure a license before the five days have elapsed.

Respectfully submitted for the Attorney-General,
M.A. DISKIN, *Attorney-General.*

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

W.P. HARRINGTON, *Supervisor of Employment, Adjustments and Public Relations,*
Nevada Department of Highways, Carson City, Nevada.

237. Election—Registration for Special Election Sufficient to Qualify Without Reregistration for General Election.

INQUIRY

CARSON CITY, June 8, 1926.

The inquiry is whether or not it is necessary for parties registering for the first time at the last special election in Lander County on the high school bond issue to reregister for the coming election this fall.

OPINION

The election to which the inquiry refers was a referendum election contest within the county since the last general election. The Act regulating the registration of voters for general, special, and primary elections (vol. 3, Revised Laws, 1919, pages 2736 to 2749) provides the requirements of registration, and it is the intention of this law that when an elector registers for any general, special, or primary election, which registration is a prerequisite to voting, his or her name is placed in the Official Register of voters. When an elector's name is placed in the Official Register he need not reregister unless his card is removed therefrom by the County Clerk for some reason prescribed by law. Among these reasons is the failure to vote at the general election.

This intention is made very clear by section 20 of the Act which provides as follows:

If at any time the register is closed for any impending election but open for some other election, any elector shall be permitted to register for such other election by the County Clerk who retains his registration card in a safe file until the Official Register is again open for filing of cards, at which time all cards in such temporary file shall be placed in their proper position in the Official Register.

The cards, therefore, of the electors to which this inquiry refer are placed in the Official Register and there is no necessity for such electors to reregister for the coming election.

Respectfully submitted for the Attorney-General,
M.A. DISKIN, *Attorney-General.*

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

HOWARD E. BROWNE, *District Attorney, Lander County, Austin, Nevada.*

238. Revenue—Unexpended Balances.

Balance in funds collected by taxation are dedicated to a particular purpose and can be used for no other purpose without legislative authority.

INQUIRY

CARSON CITY, June 12, 1926.

What disposition can be legally made of a balance remaining in a fund received from taxes when the purpose for which such tax was levied has been completely fulfilled.

OPINION

In submitting this question for an official opinion, it is stated that an emergency loan was heretofore negotiated and a tax was levied to repay the amount of this loan, and after payment thereof there remains a substantial balance in such fund. As I understand your inquiry, you desire to be advised if this money might be transferred to the County High School Fund.

It is a well known principle of law that, where money is raised by taxation for a particular purpose, such money cannot be diverted to any other purpose. I am of the opinion, therefore, that the legal way to handle this surplus is to make application to the Legislature authorizing the transfer of this money by legislative Act to the fund indicated.

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

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

239. Schools—Union Schools—Authority of Trustees—Bonds—Boards.

- (1) School districts may unionize, but bonds to be issued must be approved by qualified voters of district.
- (2) Union district schools are controlled by a board consisting of five trustees.

INQUIRY

CARSON CITY, June 14, 1926.

Reference is made to Statutes 1925, page 156. The title of this Act reads, An Act providing for the union of school districts, providing for the government of the schools therein, and providing for other matters relating thereto."

An opinion is requested (a) as to the authority of trustees of the board of education of union school districts, as designated under this statute to issue bonds for the erection of school buildings; (b) the right of such trustees to function for high school purposes.

OPINION

Statutes 1925, page 156, permits the establishment of a union school district when certain provisions of the law have been followed. Section 1 of the Act provides:

On the recommendation of the Deputy Superintendent of Public Instruction, the boards of school trustees having charge of any school district—high school, elementary, or both—may, in joint meeting of the said boards, unite the school districts under their charge into a union school district and establish a union school system therein; *provided*, that a union school district shall be formed and a union school system established when a number of the qualified voters in one or more elementary districts and in the high school district equal to a majority of the voters in each of said districts shall petition for such a district. When such a petition is presented to the County Commissioners, said Board of County Commissioners shall, if they favor the establishment of such union district, provide for such establishment.

Section 3 establishes the method of selecting trustees after the preliminary steps have been carried out.

It will be noted further that under section 3 it is enacted that: "Upon the election or appointment of the trustees of the union district, the offices of trustees of each of the several districts shall be considered as no longer existing."

Statutes 1911, page 238, as amended Statutes 1913, page 298, and Statutes 1921, page 137, authorize: "Any school district of the State, now existing or which may hereafter be created, is authorized hereby to borrow money for the purpose of erecting or furnishing a school building or buildings * * *."

Sections 192, 193, and 194 provide that the trustees shall, by resolution, submit the matter of issuing bonds for the purposes enumerated above to a vote of the duly qualified electors of the district at a general or special election.

Statutes 1925, supra, were enacted to permit the unionizing of several school districts and place the management under one board of control.

The board thus created would have no power to issue bonds, but, acting under Statutes 1911, the board, by resolution, has the power "to submit the question of contracting a bonded indebtedness to the qualified voters of the district." If a majority of the votes, therefore, at the special election are recorded in favor of the question and the provisions of sections 192, 193, 194, 195, 196, and 197, Statutes 1911, are complied with fully, such bonds so issued would be valid. This statement, of course, is based upon the assumption that the total bonded indebtedness of the school district does not exceed ten per cent (10%) of the total last assessed valuation for county purposes of the taxable property situated within the school district. (Statutes 1911, *supra*, section 191, as amended Statutes 1921, p. 137.) This fact should appear by a proper certificate.

Answering your second query you are referred to section 2, Statutes 1925, p. 256, which provides:

The control and government of all high and elementary schools in said union district shall be vested in a board of education composed of five trustees, two of whom shall be elected from the high school district at large, and three of whom shall be elected from the elementary school district or districts.

Respectfully submitted,

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

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

240. Officers—Consolidation of Office by Special Law—Doubtful Validity.

A statute applicable to one county only which purports to consolidate certain officers, being in conflict with sec. 25, article IV of the State Constitution, is of doubtful validity.

INQUIRY

CARSON CITY, June 17, 1926.

The Legislature of 1925 consolidated the offices of Sheriff and Assessor in Churchill County, effective on and after the first Monday in January, 1927. See Statutes 1925, page 21.

A petition for referendum has been circulated and filed with the Clerk as provided by the Constitution and, also, by Statutes 1925, page 157.

The question now arises as to what candidates can file for office and be placed on the official ballot for the November election, as the question on the referendum will come up to be voted on at the same time as the general election of officers.

Shall the Clerk print the ballots calling for votes for "Sheriff" and votes for "Assessor" as provided under the old law; or shall he print ballots calling for votes for "Sheriff, Ex Officio Assessor and Tax Collector"?

OPINION

The facts stated by you involve a point of law apart from the questions submitted that is statewide in its importance and therefore requires serious consideration.

Statutes 1925, page 21, authorizes the consolidation of the offices of Sheriff and Assessor of Churchill County after the first Monday in January, 1927. This is a special Act and applies only to Churchill County.

Section 32, article IV, Constitution of Nevada, gives the Legislature power to increase, diminish, consolidate, or abolish county offices.

Section 25, article IV, Constitution of Nevada, provides that the Legislature shall establish a system of county and township government which shall be uniform throughout the State.

That the Legislature has the power to consolidate the offices of Assessor and Sheriff, there can be no doubt; but, by the enacting of a law by virtue of which such consolidation is effected in one county only, it might be argued that such action destroys the uniformity of county government as demanded by the Constitution.

The Supreme Court of Nevada in the case of State v. Boyd, [19 Nev. 43](#), and in the case of Singleton v. Eureka County, [22 Nev. 91](#), has held legislation of similar import to be unconstitutional. See, also, State v. Fleming, 153 Pac. 347; McDermott v. County Commissioners, [48 Nev. 93](#).

It is the duty of those construing legislative mandates to indulge in the presumption that every Act of the Legislature is constitutional until the same is declared invalid by the Supreme Court. This policy has been adopted by this office, except only in cases where the law upon its face palpably violates some organic provision.

In view of the Supreme Court's decisions, supra, and the further fact of the importance of the duties performed by the Assessor in taxation matters, I suggest that an action be instituted in court to determine the validity of this statute.

Respectfully submitted,

M.A. DISKIN, Attorney-General.

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

241. Election—Change of Registration—Political Affiliation—When Made.

A change of political affiliation under subdivision 6, sec. 21, Statutes 1917, page 425, must be made thirty days before primary election, and reregistration may be immediately after such change but within the time stated.

INQUIRY

CARSON CITY, July 17, 1926.

Whether an elector wishing to change his political affiliation in accordance with subdivision 6 of section 21 of an Act entitled "An Act regulating the registration of electors for general, special, and primary elections," approved March 27, 1917, Statutes

of 1917, p. 425, may reregister immediately after designating such change, provided such change is made within thirty days before a primary election.

OPINION

Section 21 provides:

The County Clerk must cancel any registry card in the following cases:

Subdivision 6 of section 21 provides:

Upon the request of any elector who desires to change his politics, provided said change is made thirty days before any primary election. If any card is canceled by reason of this subdivision 6, the elector may reregister.

Subdivision 1 of section 21 provides:

At the request of the party registered.

If any card is so canceled the parties shall not be reregistered within thirty days of such cancellation.

To require one to wait thirty days before reregistering in accordance with the provisions of section 21, where a change is desired in political affiliation, would seem to be in conflict with subdivision 6. The two sections, however, are independent. That construction should be given to the Act which would seem best to carry out the legislative intent, and no one should be deprived of his elective franchise unless the statute requires it. Reading these two sections together, it was evidently the legislative intent that subdivision 6 was an exception, and that where one desired his political affiliation changed he should not be required to wait thirty days before registering, the only requirement of subdivision 6 being that such change be made thirty days before a primary election, and the section expressly provides that an elector whose card is canceled by reason of this subdivision may reregister. If the intent had been that the elector must wait thirty days before reregistering, there would have been no necessity for this latter provision.

We are, therefore, of the opinion that one desiring to change his political affiliation under subdivision 6 may reregister immediately and is not required to wait thirty days, provided, however, that such change is made thirty days before a primary election.

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, Winnemucca, Nevada.*

242. Election—Qualification of Candidate—Incompatible Offices—Elective Officer Seeking to Qualify for Other Office.

County Treasurer may be candidate for member of school board but, if elected to the latter office, may be compelled to resign from the former.

INQUIRY

CARSON CITY, July 28, 1926.

Whether or not one person can be a candidate for County Treasurer and, also, a candidate for member of the School Board at the same election.

OPINION

The common law prohibits the *holding* of two offices by one person where the offices are incompatible. It is very doubtful whether one, if elected to both of the positions mentioned, could hold both offices in view of section 3751, Revised Law, 1912, and, also, because the Treasurer is in some instances a check on the School Board. However, this prohibition as to holding two offices which are incompatible does not prevent one from being a candidate for the two offices if the party mentioned is eligible to each of them.

See the case of Commonwealth v. Pyle, 18 Pa. St. 519, holding:

Where the Constitution or a statute declares that certain disqualifications shall render a person ineligible to an office he must get rid of his disqualification before he is appointed or elected; but if the law merely forbids him to hold or enjoy the office or exercise its duties, it is sufficient if he qualifies himself before he is sworn.

The common law rule, then, which forbids the holding of two incompatible offices, would not render one ineligible as a candidate for such two offices, although, if elected to the two offices, the party might not be able to hold both because of this rule.

Respectfully submitted for the Attorney-General,

M.A. DISKIN, Attorney-General.

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

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

INQUIRY

CARSON CITY, August 3, 1926.

1. Can a party who has filed a declaration of candidacy under a party designation withdraw same prior to the final day of filing such declarations?

2. If such candidate may withdraw, can he file another declaration of candidacy under another party designation?
3. Would he be entitled to a return of the fee paid for the first filing?

OPINION

Statutes of 1917, page 276, as amended Statutes 1921, page 389, provides:

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

* * * that I am a member of the party; that I believe in and intend to support the principles and policies of such political party in the coming election; that I affiliated with such party at the last general election of this state, and I voted for a majority of the candidates of such party at the last general election (or did not vote at such general election, giving reasons); that I intend to vote for a majority of the candidates of said party at the ensuing election for which I seek to be a candidate; that if nominated as a candidate of said party at said ensuing election I will accept such nomination and not withdraw * * *.

The case of State v. Brodigan, 142 Pac. 520, holds:

The provision of the statute requiring a candidate to take an oath that he will not withdraw, if nominated, may reasonably imply, in our judgment, that prior to his receiving the nomination he may withdraw.

In the same case it is also held that a candidate without opposition becomes the nominee of the party immediately upon the expiration of the time for filing nominations.

We are, therefore, of the opinion that, prior to the expiration of the time of filing nomination papers, any party candidate may withdraw.

II.

The case of State v. Brodigan, *supra*, also holds:

By these declarations under oath, made prerequisites for one seeking party nomination, it was undoubtedly intended to require the applicant to declare the party of which he was a member and with which he affiliated at the last general election, and this must be the same party under whose party designation he seeks the nomination paper and the oath therein prescribed precludes the idea of an applicant for nomination seeking the nomination of two distinct parties at the same primary.

To allow a party to make the statement under oath hereinbefore quoted and then, on his withdrawal from such nomination, to file for nomination for an office of another political party and make a directly contrary statement under oath, would violate the object of the primary election law, "the object being to prevent one political party from interfering with another as to selection of party nominees for the various offices." State v. Brodigan, *supra*.

We are, therefore, of the opinion that a party having filed one nomination paper setting out, under oath, the matters hereinbefore quoted, cannot file for an office of another political party at the same election.

III.

The officers filing the nomination papers of a person have performed the ministerial duty for which the fee was paid, *i.e.*, the filing of the paper, and there cannot, therefore, be any return of the fee even though the candidate may afterwards withdraw. *State v. Brodigan, supra.*

Respectfully submitted for the Attorney-General,
M.A. DISKIN, *Attorney-General.*

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

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

**244. Election—Duty of Secretary of State in Certifying List of County Clerks—
Certify Names only of Those Candidates Having Opposition at
Primary Election.**

Election.

INQUIRY

CARSON CITY, August 9, 1926.

You call my attention to section 10 of the Primary Election Law and request an opinion concerning your duty in certifying a list to the respective County Clerks of the State of Nevada, and whether such list so certified should contain the names of parties who have filed their declaration of candidacy with you and have no opposition for the respective positions.

OPINION

Section 10, referred to, reads as follows:

At least thirty days before any September primary election preceding a November election the Secretary of State shall transmit to each County Clerk of any county a certified list containing the names and post-office address of each person for whom nomination papers have been filed in the office of such Secretary of State, and who is entitled to be voted for in such county at such primary election, together with a designation of the office for which such person is a candidate and of the party or principles he represents; *provided*, that there shall be no party designation for candidates for judicial or school offices.

It will be noted from reading this section that you are to certify a list containing the names of those who have filed in the office of the Secretary of State and who are entitled to be voted for in such county at such primary election. This provision clearly indicates that it is not the names of those who have filed nomination papers in your office that are to be certified, but, in addition to those, it is each person who is entitled to be voted for in such county at such primary election.

Under subdivision "h," section 12, of the Primary Law it is provided:

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

It must follow, therefore, that where there is no party contest for an office the names of the candidates will not be voted for in the county at the primary election, and no necessity exists for your certifying the names of any such candidates.

Respectfully submitted,

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

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

245. Nevada Industrial Commission—Appealing to Supreme Court from Judgment of Lower Court—When Question for Review Is One of Fact, Doubts Should Be Resolved In Favor of Claimant.

Where claimant secures a judgment in lower court against Commission and an appeal to Supreme Court would determine only disputed facts, doubts should be resolved in favor of claimant and no appeal should be taken.

INQUIRY

CARSON CITY, August 17, 1926.

On the 10th day of April, 1924, August Speker, while working for the United Comstock Mines Company in Storey County, Nevada, received an injury to his left shoulder. The Commission, after an examination, sent Mr. Speker to Dr. McChesney, San Francisco, California, for an operation. Thereafter, Mr. Speker returned and in April, 1925, upon the advice of Dr. Maclean, Speker was allowed twelve months temporary total disability and his permanent partial disability was fixed at twenty per cent. On November 10, 1925, being dissatisfied with the award made by the Commission, Speker instituted suit in the District Court of Storey County, claiming compensation as follows: Temporary total disability compensation for a period of seven months in addition to the period allowed by the Commission, or five hundred seventy-four dollars; permanent partial disability in the sum of one hundred per cent of bodily functions, or the total sum of six thousand dollars, less six hundred dollars awarded by the Commission. After the institution of this suit, the Commission made a further allowance of twenty per cent of the use of the functions of the left arm and, upon filing an answer in the District Court, tendered the sum of six hundred dollars to the plaintiff, making a total allowance for

permanent partial disability of twelve hundred dollars. The case was tried by a jury and the jury by their verdict allowed plaintiff a period of seven months' temporary total disability, or five hundred seventy-four dollars, in addition to the award made by the Commission, and allowed plaintiff fifty-five per cent permanent partial disability in addition to the forty per cent allowed by the Commission.

In view of this verdict of the jury, an opinion is requested as to whether or not the defendant, Nevada Industrial Commission, should move for a new trial in the District Court and, if the same is denied, appeal to the Supreme Court of the State of Nevada.

OPINION

The District Court, upon the trial of this case, adopted defendant's theory of the law and instructed the jury that the injury received by the plaintiff resulted in a disability to the functions of the left arm and instructed the jury how plaintiff's disability should be arrived at by them. All objections interposed by defendant in reception of evidence before the jury were sustained by the Court and, as stated above, the Court instructed the jury in accordance with defendant's theory of the case. Therefore, the only question to be presented to the Court upon a motion for a new trial or upon appeal is the question as to whether or not the evidence is sufficient to justify the verdict.

In consideration of this question it will be remembered that in the trial of the case medical testimony was offered upon the part of plaintiff which tended to establish a sixty per cent disability and, upon cross-examination, the doctors testified that such disability affected only the functions of the left arm. The plaintiff took the witness stand in the trial of this case and testified on his own behalf. The shoulder and arm alleged to have been injured were exhibited to the jury and one of the doctors illustrated with plaintiff the impairment of the use of the left arm as suffered by plaintiff. It appeared from the testimony that plaintiff is now engaged as a powderman, and the plaintiff illustrated to the jury to what extent he could use the left arm in his daily work. The jury, of course, was not bound by the testimony of experts in determining the total disability suffered by plaintiff. This was a question to be determined by the jury not only from the testimony of experts but, also, from knowledge and information acquired by the members of the jury from the information given to them by plaintiff and their examination of plaintiff's arm, taking into consideration the extent of the use now enjoyed by plaintiff in said arm.

The Supreme Court of Nevada in the case of *Ryan v. Manhattan Mining Company*, 38 Nev., page 92, was called upon to review a verdict that was claimed to be excessive and one that was alleged to have been rendered due to passion and prejudice on the part of the jury. In sustaining the verdict the Court stated:

The respondent was a witness at the trial in his own behalf. The jury had ample opportunity to observe his manner, conduct, and condition. He was subjected to a long and careful cross-examination by the skilled attorney for appellant. If his testimony brought home to the minds of the jury a belief that his injuries, even though they might not be permanent, were at least debilitating, painful, and long continued, then it was for them, the jury, acting under proper instructions, to assess the damages.

The Supreme Court of the State of Nevada in the case of Gault v. Gross, 39 Nev., at page 382, stated:

The appellate court is reluctant to disturb the judgment of a trial court on the ground that the evidence does not justify the judgment, and will not do so except where there is no substantial evidence to support it.

It must be remembered in connection with cases involving compensation to injured workmen that the Nevada Industrial Insurance Act contemplates the speedy adjustment of claims under it. In this case the question of degree of disability was submitted to a jury of twelve men for their determination and they have fixed the percentage of disability to be awarded plaintiff. From a careful review of all of the evidence introduced, I am not in a position to say that this verdict of the jury was rendered by reason of any passion or prejudice, but believe that they were actuated from a careful deliberation of all the facts presented. In view of this conclusion, it would hardly be fair to the plaintiff to subject him to the slow process of litigation through an appellate court unless we feel that there is a fair chance to reverse the case on appeal. Mere technical questions should not be advanced for defeating the beneficial operation of this law.

I am of the opinion, therefore, that, from an entire review of the record, I cannot say with any degree of certainty that this case, upon appeal to the Supreme Court, would operate to the advantage of defendant, and I am not, therefore, inclined to subject the claimant to further litigation and the expenses of employing counsel to defend the appeal. I am of the opinion that in this case, because of the fact that the only question involved is the sufficiency of the evidence, and a reasonable doubt exists as to the final outcome of such an appeal before the Supreme Court, that doubt should be resolved in favor of claimant and the case should not be appealed.

Respectfully submitted,

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

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

246. Corporations—Fees on filing Articles of Incorporation—Par and Nonpar Stock.

INQUIRY

CARSON CITY, September 15, 1926.

Section 77 of corporation Act 1925, applicable, reads as follows:

For certificates of incorporation, ten cents for each one thousand dollars of par value of stock authorized, or, in the case of shares without nominal or par value, ten cents for each one thousand shares authorized, but in no case less than twenty-five dollars.

Also:

In all cases where the par value of stock of a corporation, as authorized by its certificate of incorporation, or an amendment thereof, shall exceed

one million dollars, the fees to be paid to the Secretary of State for the use of the State shall be at the rate of five cents on each one thousand dollars of par value in excess of one million dollars.

Will you render us a written opinion as to whether there is a difference in estimating the fees on nonpar and par. Should nonpar stock included in the articles with par be estimated the same as the par?

OPINION

In reference to your first inquiry you are advised that there is a difference in computing fees on par and nonpar stock. The fees collectible upon nonpar stock are based upon the number of shares issued.

In reference to your second inquiry, if the aggregate value of par and nonpar stock does not exceed an amount requiring the payment of the minimum fee, the minimum fee of twenty-five dollars should be charged.

Respectfully submitted,

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

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

247. Elections—Indians' Rights to Vote—Residence Qualification, Indian Reservation—State's Jurisdiction Over—Residence Thereon Sufficient.

(1) Residence for required period upon Pyramid Lake Indian Reservation constitutes residence within State of Nevada.

(2) State courts have jurisdiction over crime committed upon the territory and the same must be considered as within the State for the purpose of establishing residence.

INQUIRY

CARSON CITY, September 28, 1926.

The Constable of Wadsworth Township, Washoe County, Nevada, has requested an opinion upon the following proposition:

Wadsworth Township, Washoe County, Nevada, includes the Pyramid Lake Indian Reservation, which is under the jurisdiction of the United States Government. It is alleged that the township officials of Wadsworth Township have no jurisdiction within the reservation. Under a recent Act of Congress, Indians, under certain conditions, have been given the right to vote. Can such Indians, residing upon the Pyramid Lake Indian Reservation, vote for township officers of Wadsworth Township, Washoe County, Nevada?

I am asking your opinion on this matter for the reason that such an opinion might affect other offices higher than the township offices.

OPINION

The Congress of the United States, by the Citizenship Act of June 2, 1924, gave to Indians the right to vote.

While citizenship was conferred by this Act, in order to vote in the State of Nevada a residence within the State is mandatory under the law. The boundaries of Wadsworth township include the Reservation.

The sole question to be determined is whether a residence upon the Pyramid Lake Indian Reservation constitutes residence within the State of Nevada. To support the theory that such residence cannot be established requires sustaining the contention that the State of Nevada has no jurisdiction and that the United States has exclusive jurisdiction over this territory.

I am of the opinion that a residence upon this reservation is a residence within the State of Nevada.

The Supreme Court of Nevada in the case of *Ex Parte Crosby*, 38 Nev.389, passed upon the authority of the courts of the State of Nevada to punish an individual for the violation of a statute which made it unlawful for an individual to buy fish from Indians of a reservation and transport them to places of market. The party charged with the commission of this crime, at the time of his arrest, was within the confines of the Pyramid Lake Indian Reservation and had in his possession more fish than the law allowed.

Concerning the right of the State to enforce this law on the reservation, the Court stated:

The Pyramid Lake Indian Reservation was definitely created and the lands embraced therein withdrawn from sale or disposition, by order of President Grant on March 23, 1874, some ten years after the admission of this State into the Union. We have been unable to find the existence of any treaty or agreement between the Government and the Pah Utes, or other tribe of Indians, relative to or affecting the territory embraced within this reservation, either prior or subsequent to the admission of this State. The State has by no Act of which we are aware ever relinquished jurisdiction over this territory.

That the state courts have jurisdiction over offenses committed by parties other than Indians on Indian reservations is, we think, well established; and this general rule is not affected by a provision in the Enabling Act of a State taking account of Indian lands or Indian reservations within the territory or providing that such Indian lands should remain under the absolute jurisdiction and control of the Congress of the United States. (*Draper v. United States*, 164 U.W. 240, 17 Sup. Ct. 107, 41 L.Ed. 419.)

In the case of the *United States v. McBratney*, 104 U.S. 621, 26 L.Ed. 869, the Supreme Court of the United States said:

Whenever, upon the admission of a State into the Union, Congress has intended to except out of it an Indian reservation, or the sole and exclusive jurisdiction over that reservation, it has done so by express words. (The Kansas Indians, 5 Wall. 737, 18 L.Ed. 667; United States v. Ward, Woolw. 17, Fed. Cas. No. 16,639.)

The Supreme Court, therefore, having ruled that the state courts have jurisdiction over white persons and offenses committed within the Indian reservation, we must conclude that this decision negatives the theory that such territory is exclusive within the jurisdiction of the United States and, on the contrary, affirm the principle that the officers of the State of Nevada and the several townships therein have jurisdiction to enforce the criminal laws in said territory.

Respectfully submitted,

M.A. DISKIN, Attorney-General.

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

248. Corporation—Fees for Filing Amendments to Original Articles.

Where corporation files amendment to original articles under section 6 of Corporation law, a filing fee, as provided, must be collected.

INQUIRY

CARSON CITY, November 29, 1926.

Under section 6, chapter 177, "An Act providing a General Corporation Law," the incorporators have a right to modify, change or alter their original certificate of incorporation in whole or in part, which amended certificate of incorporation shall take the place of the original certificate and shall be deemed to have been filed on the date of filing of the original certificate.

Is there any charge for filing such a paper under said section 6 of the above-named law other than for certified copies?

OPINION

In submitting this question you fail to fully quote the provisions of section 6. It appears to me that the plain and unambiguous wording of this section answers your question.

Section 6 provides as follows:

It shall be lawful for the incorporators of any corporation, before the payment of any part of its capital, to file with the Clerk of the county in which copy of certificate of incorporation was filed, and file with the Secretary of State, an amended certificate duly signed by the incorporators named in the original certificate of incorporation, and duly acknowledged or proved as required for certificates of incorporation under this Act,

modifying, changing, or altering its original certificate of incorporation, in whole or in part, which amended certificate shall take the place of the original certificate of incorporation, and shall be deemed to have been filed on the date of filing of the original certificate; *provided, however*, that nothing herein shall permit the insertion of any matter not in conformity with this Act; *and provided, however*, that this Act shall not in any manner affect any proceedings pending in any court, and for filing said amended certificate of incorporation, the Secretary of State shall charge such fee as shall be allowed by law.

I am unable, therefore, to understand how any controversy can arise relative to the duty of your office to charge a fee for filing an amended certificate of the articles of incorporation under section 6, supra.

The Act distinctly provides, after authorizing the right to file such amended certificate, that: "and for filing such amended certificate of incorporation, the Secretary of State shall charge such fee as shall be allowed by law."

It follows, therefore, that it is your duty to collect a filing fee, as provided by law, for performing this service.

Respectfully submitted,

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

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

249. Revenue—County License Taxes—Certain County Licenses Not Collectible Within Incorporated Cities.

County license tax on billiard halls, bowling alleys, theaters, and carnivals is not collectible in incorporated cities and towns, as Act creating county license board excludes incorporated cities and towns from its operation.

INQUIRY

CARSON CITY, November 30, 1926.

Whether or not under the Act of the Legislature approved March 22, 1915, Statutes of 1925, page 236, the Sheriff of Pershing County shall collect county license taxes on billiard halls bowling alleys, theaters, and carnivals within the limits of incorporated cities.

OPINION

The Act of March 22, 1915, sets certain fees on the conduct of the above-named businesses within a county and provides for the collection of these fees by the Sheriff. By chapter 120, Statutes of 1921, page 194, and chapter 50, Statutes of 1923, page 62, the power of fixing the fees and issuance of these county licenses was placed in a county

license board. By express provision of Statutes of 1923, page 62, the power of this board is excluded from incorporated cities and towns.

It was the evident intent of the Legislature to supersede the Statute of March 22, 1925, at least as far as the subjects covered by your inquiry are concerned, by the Statutes of 1921 and 1923 cited above, and to exclude from their operation incorporated cities.

The Sheriff of your county, therefore, should not collect the licenses on billiard halls, bowling alleys, theaters, and carnivals within the limits of incorporated cities and towns.

Respectfully submitted for the Attorney-General,

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

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

HON. CLARENCE L. YOUNG, *District Attorney of Pershing County, Lovelock, Nevada.*

250. Corporation—Surety Companies—Law Applicable to Foreign and Domestic Companies Stated—Limitation on Amount of Risks Written.

Section 695, Revised Laws 1912, limiting amount of bonds for state and county officers that may be executed by surety companies, applies to foreign surety companies. Domestic corporation limited by section 5, Statutes 1897.

INQUIRY

CARSON CITY, December 1, 1926.

Attention is called to Statutes 1909; Revised Laws of 1912, sections 695-701.

Section 695 permits surety companies organized under the laws of any State which comply with the provisions of this Act to execute bonds for state, county and township officers for an amount not exceeding ten per centum of the capital and surplus of such surety companies.

The Nevada Surety and Bonding Company, organized under the laws of the State of Nevada, with a capitalization of two hundred fifty thousand dollars, requests an official opinion touching on the application of section 695, supra, and particularly that portion of said section which limits the right of a surety company to write bonds or undertakings, and whether or not said section is applicable to a corporation organized within the State of Nevada.

OPINION

Section 695, et al., of Revised Laws were enacted by Statutes 1909. The title to the Act reads:

An Act to facilitate the giving of bonds and undertakings in certain cases and prescribing conditions upon which surety companies may become liable thereon in this State; fixing penalties for the violation thereof, repealing conflicting Acts, and other matters relating thereto.

That portion of section 695 (section 1 of the original Act), material for a discussion of the question here presented, reads:

SECTION 1. Any company incorporated and organized under the laws of any State of the United States * * * may be accepted as sole surety * * * upon the bond of any state, county or township officer * * * for any amount not exceeding ten per centum of the capital and surplus of such surety company.

Section 2 of this Act directs that such surety company must appoint the State Controller of this State its attorney upon whom all process may be served.

A further reading of the several sections of this law makes it plain that the purpose of this particular statute was to regulate foreign surety companies doing business in the State of Nevada, and that the provisions of this particular statute have no application to surety companies organized within the State of Nevada.

The Nevada Surety Company was organized under and by virtue of the provisions of sections 1242-1248, Revised Laws of 1912, Statutes 1897, Section 5 of this statute provides:

In no case shall the total amount of liabilities incurred by any company exceed the total amount of stock actually held by the members of any incorporation organized under this Act.

The conclusion must necessarily follow that, in as much as the Nevada Surety Company is organized under the laws of the State of Nevada, section 695 quoted, supra, which limits the right of a surety company in writing bonds for state, county, and township officers and limits the authority so to do to ten per centum of the capital and surplus, does not apply and has no application to the Nevada surety Company; and such company, in writing such bonds and undertakings, is limited only by the provisions of section 5, supra.

Respectfully submitted,

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

HON. WM. WOODBURN, *Reno, Nevada.*
