

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL - 1927

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251. Schools—Legality of Spending School Moneys for Evening School Education.

(1) Under the provisions of sec. 5 of Stats. 1917, p. 354, as amended by Stats. 1925, p. 138, a Board of School Trustees is authorized to execute orders directed to the County Auditor for the payment of claims for equipment and maintenance.

(2) Additional salaries for teachers are limited in the several amounts to the sum apportioned to the districts or the teachers from the State Distributive School Fund.

INQUIRY

CARSON CITY, January 8, 1927.

A question has arisen as to the legality of spending school moneys for evening school education. I shall appreciate having your opinion on the following question regarding this subject, to wit: Is it illegal to use county funds when the State Board of Education approves courses offered through the cooperation of a local school district and the State Board for Vocational Education? (Ref. Page 158 School Code. Page 13 Session School Laws, 1925.

OPINION

Section 5 of an Act entitled, "An Act to provide for the establishment of evening schools," Statutes 1917, page 354, was amended by Statutes 1925, page 138. The amendment provided in part as follows:

On written orders of a Board of School Trustees having established an evening school, the County Auditor shall issue warrants upon the County Treasurer for the payment of just claims for equipment and maintenance, and for additional salaries of teachers in amounts not to exceed those amounts apportioned to the districts on the teachers from the State Distributive School Fund, all of which claims are hereby made just and legal charges against the General Fund of the county, and the County Treasurer is hereby authorized and directed to pay the same.

Under the provisions of this section, if a Board of School Trustees has established an evening school, the members of said board are authorized to execute orders directed to the County Auditor for payment of claims for equipment and maintenance. The expenses thus incurred are paid out of the General Fund of the county.

In making payments for additional salaries for teachers, however, the Board of School Trustees is restricted in the several amounts to the sum apportioned to the districts on the teachers from the State Distributive School Fund. This is a limitation on the amounts to

be paid teachers, and, if any excess for this purpose is contributed from other agencies, the School Trustees may execute orders upon the County Auditor within the limitation defined in the statute for additional salaries of teachers.

Respectfully submitted,

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

WALTER W. ANDERSON, *Superintendent of Public Instruction, Carson City, Nevada*.

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252. Corporations—Annual Filing of Officers and Directors—Fee Therefor.

A corporation filing its articles of incorporation and paying its fees in March would be required under sec. 1, p. 180, Stats, 125, likewise to make a filing and pay the fee on or before the 1st day of July, next succeeding.

INQUIRY

CARSON CITY, January 11, 1927.

A corporation filed its articles of incorporation and paid the required fees in March, 1926. Said corporation filed the list of its officers and designation of resident agent in May, 1926, paying a fee for same of \$5. Would such a corporation be required to pay an annual fee of \$5 by July 1, 1926, as mentioned in section 1, page 180, Statutes of 1925?

What would be the result if a corporation filed its articles between the dates of July 1 and December 31, 1926?

OPINION

The inquiry herein made requires the construction of sections 1, 2, and 3 of chapter 180, Statutes of 1925. Section 1 requires that, annually, each corporation organized or doing business in this State shall file a list of officers and pay a fee of \$5 on or before July 1.

Section 2 requires that when this annual fee is paid, the Secretary of State shall issue to each corporation a certificate authorizing it to transact business within this State until July 1 of the following year.

Section 3 provides as follows:

Every corporation hereafter organized under the laws of this State, and every foreign corporation hereafter coming into this State, shall, within sixty days after the filing of its articles of incorporation with the Secretary of State, file a list of its officers and directors and a designation of its resident agent and pay to the Secretary of State a fee therefor of five (\$5) dollars, and shall make like filing and pay the fee set forth in section 1 of this Act, annually thereafter.

By section 3, quoted above, it was the evident intent of the Legislature to allow a corporation sixty days' grace within which to make the filing and pay the fee therein provided. The section also provides that such a corporation shall, annually thereafter,

make the filing and pay the annual fee provided for in section 1. From the use of the language quoted it is evident the Legislature intended to require this annual filing and fee after the expiration of the sixty-day period, and on or before the following first day of July; thus, if the sixty-day period expires on or after July 1, the corporation could not be in default until after the next succeeding July 1. If the sixty-day period expires on June 20, for example, the corporation must, in addition to the sixty day filing and fee, make the filing and pay the required annual fee on or before July 1. See Opinion No. 170, Opinions of Attorney-General of 1925-1926.

In both of the cases given in the inquiry, therefore, a corporation would be compelled to make the sixty-day filing and pay the fee, and likewise make a filing and pay the fee required by section 1 on or before the first day of July next succeeding.

Respectfully submitted for the Attorney-General,

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

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

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

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253. Constitution of Nevada—Authority of State to Buy and Sell Electric Energy—  
Boulder Canyon Project Act.

The Constitution of Nevada contains no express inhibition that would deprive the State of the right to buy and sell electric energy.

INQUIRY

CARSON CITY, January 20, 1927.

By direction of the Governor, the annexed letter and bill received from Senator Key Pittman is respectfully referred to your office with the request that you advise what authority the State may have to buy and sell electric energy.

OPINION

In connection with your inquiry there is submitted a letter from United States Senator Key Pittman and a copy of S. 3331, an Act pending in the Congress of the United States known as the Boulder Canyon Project Act.

It is in reference to this proposed Act that your question is submitted and, for a complete understanding of the facts, the following quotation is made from Senator Pittman's letter:

The State of Nevada has a great opportunity to supply its industries with cheap hydro-electric power and at the same time make a profit for the State if it can acquire 100,000 electric horsepower from Boulder Dam. According to the report of the Secretary of the Interior the cost of electric energy at the switchboard will not exceed three mills per kilowatt hours. The State, if it acquired the energy provided in my amendment, could not

only supply its own industries with cheap electric power as needed, but at the same time could make a profit of several hundred thousand dollars a year out of the undertaking. It could sell the power in California under a contract that the amount be diminished as the requirements of the industries in the State increased.

If the State of Nevada is to obtain any permanent benefit out of the construction of the Boulder Dam, immediate action should be taken by the State in addition to action that must be taken by the representatives of the State in Congress.

The concluding paragraph of the letter reads:

Permit me to suggest in addition that you ascertain if, under the Constitution and laws of the State of Nevada, the State has authority to buy and sell electric energy. If it has not such constitutional authority, it may be well to consider the creation of some corporation or other agency to represent the interests of the State in the matter of contracting for the acquisition of such electric energy. In the event that the State should fail in obtaining a compact with California, and that we should fail in the passage of my amendment, the State might still be in a position through proper legislation to apply for a contract for a portion of the electric energy to be generated at the Boulder Dam.

In considering the subject matter of your inquiry, it is necessary to carefully examine the surrounding facts and determine therefrom if the contemplated venture may be termed a public or private enterprise and consider the right of the State to develop its resources through its own activities.

The underlying theories of state government and the state finances make taxation the principal source of revenue. Taxation must be for public as distinguished private enterprise. The constituted authority in levying a tax is restricted to purposes within the sphere of governmental functions. The State cannot enter upon a commercial enterprise, however alluring the prospect, and tax the people for its promotion. The State is a political unit and not a business corporation, except incidentally to further its political purposes. With these general principles in mind we approach a discussion of the question submitted.

In an effort to take advantage of a natural resource which the State owns by reason of state sovereignty and to develop the same for the benefit of all the people of the State, it is desirable that the State utilize, by a purchase or sale, the electric energy developed by the waters of the Colorado River. The question of using public funds derived by taxation for this purpose apparently is not involved. The State is to receive electric energy at a fixed price and sell the same at a profit for the benefit of the inhabitants of the State and, as a result, cheaper power will thus be afforded to the agricultural, mining and other interests of the State of Nevada. The development of this policy will naturally lead to the enhancement of the material wealth of the State by increasing the population, developing the mining resources, and increasing the cultivated areas within the State. If it were necessary to employ money raised by taxation for the purpose of promoting such an enterprise, it could be successfully urged that the endeavors of the State, under the facts stated, are confined to a public as distinguished from a private enterprise.

The Supreme Court of Nevada, in the case of *State v. Churchill County*, [43 Nev. 290](#), held that a law authorizing the issuing of bonds by the county to establish a fund so that money could be loaned to private landowners for the purpose of reclaiming arid lands was invalid because the method provided was ineffective and would result in taxation for private purposes. The Court, by Justice Sanders, stated:

Under the plan adopted, a dozen or as many hundreds of acres of land may be placed under cultivation and the remainder left to go unreclaimed. One owner may be moved to take advantage of the proffered assistance, and others would not be so inclined. One owner or entryman might undertake, through the plan adopted, to reclaim all of his land, while others would be disposed to reclaim but a fraction of their holdings, or look to other sources for assistance than the public fund. It is clear that the operation of the law might result in the taxing of a citizen for the use of a private enterprise conducted by other citizens. Such result is an unauthorized invasion of a private right and contrary to the fundamental principle that no tax is a valid tax except it be laid for a public purpose.

We concede that the only restriction on the powers of this State to tax property within its jurisdiction and to direct the purposes for which taxes shall be raised is that the assessment shall be uniform and equal and the purpose a public one. So long as the uniform and equal and the purpose a public one. So long as the Legislature acts within these conceded powers, the courts may not interfere. *Gibson v. Mason*, supra; *Gold Hill v. Caledonia S. & M. Co.*, supra.

By Statutes 1921, chapter 45, the Legislature authorized the county of Mineral to acquire by purchase, and operate as a public utility, electric power and telephone lines known as the Pacific Division of Nevada-California System. The constitutionality of this legislation was questioned in the case of *Buck v. Boerlin*, [45 Nev. 131](#), and the Supreme Court ruled that it was valid legislation. The power of the county to engage in a business apparently was not questioned.

If the Legislature could delegate to a county the right to engage in the business of buying and selling power, no valid objection could be urged against the State exercising such right under the circumstances stated.

The Constitution contains no express inhibition that would deprive the State of the right to buy or sell electric energy.

I conclude, therefore, that the State has authority, under the facts stated in the Pittman letter, to buy, sell, develop, and dispose of electric energy in connection with the development of the Colorado River. In exercising this right it may be advisable for the Legislature to delegate the details to a commission or board for the sake of efficiency.

Authorities examined in the preparation of this opinion: *Laughlin v. Portland*, 90 Atl. 318; *Jones v. Portland*, 93 Atl. 41, confirmed 245 U.S. 217; *Cryderman v. Wienrich*, 170 Pac. 942; *Lyman v. Stewart*, 190 Pac. 129.

Respectfully submitted,

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

HON. FRED. B. BALZAR, *Governor of the State of Nevada, Carson City, Nevada*.

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254. Officers—Compensation—Necessity for Appropriation to Pay Traveling Expenses.

(1) The compensation for the Lieutenant-Governor employed as the presiding officer of the Senate is not predicated upon the necessity of the presentation or allowance of such claim by the State Board of Examiners.

(2) A claim for the Lieutenant-Governor's services as acting Governor must be presented to the Board of Examiners and the State Controller's warrant for the amount of such claim issued when allowed by the Board.

(3) No claim for traveling expenses can be allowed or paid until an appropriation is made by the Legislature setting aside a specific sum of money to cover the charge.

### INQUIRY

CARSON CITY, January 27, 1927.

Statutes 1925, chapter 70, authorizes payment to the Lieutenant-Governor of the sum of fifteen dollars per day for such time as he may be actually employed as presiding officer of the Senate, and, also, when in the absence of the Governor he may act as Governor. In addition to this compensation he is allowed actual traveling expenses made necessary by his acting as President of the Senate or as Governor.

An opinion is requested concerning the procedure for allowing compensation to the Lieutenant-Governor and, also, his actual traveling expenses.

### OPINION

The Legislature has specifically stated the amount of compensation to be received by the Lieutenant-Governor for acting as presiding officer of the Senate and the law fixes the duration of the term of service. This places the Lieutenant-Governor in the same position as other State officers and compensation for this service, therefore, is not predicated upon the necessity of the presentation or allowance of such claim by the State Board of Examiners.

Concerning the amount to be allowed for services as acting Governor, the period of time, of course, is not specific and, therefore, a claim for such compensation should be presented to the Board of Examiners and your warrant for the amount of such claim issued when allowed by the Board.

No claim for traveling expenses can be allowed or paid until an appropriation is made by the Legislature setting aside a specific sum of money to cover this charge. When such an appropriation is made, the Lieutenant-Governor, upon presentation of an itemized statement of such expenses as may be incurred, will be entitled to receive the same, not exceeding the sum of five dollars a day and, in addition thereto, the amount of money expended for railroad fare. When it is necessary for the Lieutenant-Governor to travel on official business outside the State of Nevada, an amount not exceed ten dollars a day is authorized (Stats. 1923, p. 253).

Respectfully submitted,  
M.A. DISKIN, *Attorney-General*.  
HON. ED. PETERSON, *State Controller, Carson City, Nevada*.

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255. Officers.

The Sheriff of Storey County, under the Statutes of 1923, p. 139, is permitted to appoint a Deputy Sheriff though such appointment is left solely to the Sheriff's discretion.

INQUIRY

CARSON CITY, January 27, 1927.

Whether or not the Sheriff of Storey County is authorized to appoint a deputy if it is possible for such Sheriff to perform all the duties of the Sheriff's office.

OPINION

Statutes 1923, p. 139, provides that the Sheriff of Storey County "may appoint a Deputy Sheriff who shall be jailer. The Deputy Sheriff, for services as jailer, shall receive twenty-one hundred dollars a year."

The words "may appoint," as used in the statute quoted, mean "is permitted to appoint" or "has liberty to appoint." (Bouvier Law Dictionary, p. 2169.)

Ordinarily, the word "may" is employed in a statute to express the idea that a discretion may be exercised, and that the performance of the act is not imperative.

It is the opinion of this office, therefore, that the Legislature by the statute of 1923, above quoted, gave to the Sheriff of Storey County the power to appoint a deputy, and whether or not such power is exercised is left solely to the Sheriff's discretion.

Respectfully submitted for the Attorney-General,

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

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

HON. WM. S. BOYLE, *District Attorney, Virginia City, Nevada*.

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256. Officers—Compensation.

The estate of deceased state officer who died on the 11th day of a given month is only entitled to compensation for 11 days, not for a full month's period.

INQUIRY

CARSON CITY, February 1, 1927.

Where an appointive state officer dies and his death occurs on the 11th day of a given month would his estate be entitled to compensation for a full month period or for eleven days?

#### OPINION

The Legislature has adopted a budget system for the payment of compensation to all employees of the State, and an amount sufficient to pay such compensation has been set apart and appropriated.

In view of this fact and the further fact that the right of a public officer to compensation for the performance of duties imposed upon him by law does not rest upon contract, either express or implied, I am of the opinion that the estate of such officer would not be entitled to receive compensation for a full month period, but for the period only of eleven days.

Respectfully submitted,

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

HON. ED. PETERSON, *State Controller, Carson City, Nevada*.

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257. Statutes—Assembly Substitute for Assembly Bill No. 163.

(1) The bill designates the Governor, the Attorney-General, and the State Controller as Directors of the Highway Department.

(2) The words “State Engineer” as used in the Act refer to “State Highway Engineer” thereinbefore designated.

(3) Any change in the department would require the succeeding Highway Engineer to confirm all appointments of his predecessor or to make new appointments.

#### INQUIRY

CARSON CITY, March 25, 1927.

I submit herewith Assembly Substitute for Assembly Bill No. 163 and would like to have an opinion upon this Act. I NOTE THAT THIS Act takes effect on April 1, 1927, and I particularly would like to know how sweeping the effect of this Act will be upon the employees of the Highway Department.

Also, in section 3, line 10, you will note that “State Engineer” is referred to and not “State Highway Engineer.” If it is intended that the State Engineer shall have part of the activities of the Highway Department it will be desirable to know this at as early a date as possible.

#### OPINION



The legislative bill referred to makes a change in the Directors of the Highway Department and names and designates the Governor, Attorney-General, and State Controller to be the Directors of the Highway Department. This change is made by amending section 1, section 2, and section 3, Statutes 1917, p. 309.

Under the provisions of section 3, Statutes 1917, it was provided that the State Highway Engineer was entitled to sixty days' notice before removal. This provision of the law was in effect at the time your contract was entered into and, therefore, fair dealing requires that if any change is contemplated in the office of State Highway Engineer that sixty days' notice be given to you before the termination of your official duties.

Section 4 of the Act authorizes the State Highway Engineer to employ all clerks and other assistants. Any change in your department would, therefore, require your successor to confirm the appointments made by you or make new appointments.

In reference to your second inquiry, the reading of section 3 shows that when the words "said State Engineer" are used reference is made to the State Highway Engineer thereinbefore designated in said section.

Respectfully submitted,

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

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

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258. Corporations—Conditions Requisite to do Business—Insurance Companies.

(1) No statutory authority exists requiring the depositing with the State Treasurer of notes, mortgages, or any other securities by a land value insurance company before being allowed to transact business in the State of Nevada.

(2) If such securities have been deposited in the absence of any written agreement constituting the State Treasurer as trustee, the deposits may be withdrawn.

INQUIRY

CARSON CITY, March 25, 1927.

Is a land value insurance company required to deposit with the State Treasurer notes, mortgages, and other securities before being allowed to transact business in Nevada?

If such a company has deposited such securities, can the same be withdrawn?

OPINION

No statutory authority exists requiring the depositing with the State Treasurer of notes, mortgages, or any other securities by a land value insurance company before being allowed to transact business in Nevada.

If such securities have been deposited, in the absence of any written agreement constituting the State Treasurer as trustee, the deposits may be withdrawn.

Respectfully submitted,

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

HON. ED. C. PETERSON, *State Controller, Carson City, Nevada*.

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259. Officers—State Controller—Duty to Carefully Scrutinize Claims Against State—  
Doubtful Claims to Refuse to Pay.

The State Controller is required by law to pass upon the correctness of all claims against

INQUIRY

CARSON CITY, April 27, 1927.

You advise that the following bill has reached your office:

March 31, 1927. To salary for extra services as typist in the Surveyor-General's office for March, 1927, with the following note:

This claim is to be charged against the salary for typist in the office of Surveyor-General, as fixed in chapter 80, page 128, Statutes of 1919.

You inquire: "Does that statute allow this office to honor and pay the above bill?"

OPINION

The duties of the State Controller, applicable in regard to the allowance of this class of claims against the State, are set out in section 4158, Revised Laws, 1912, which reads in part as follows:

And of claims examined and passed upon by the Board of Examiners (he shall allow) such an amount as he shall decree just and legal, not exceeding the amount allowed by said Board.

Under this section, the Supreme Court of this State has held in the case of *State v. Doran*, [5 Nev. 399](#), that the duty and responsibility of the final auditing and settlement of all claims, such as the one here presented, have been placed solely upon the State Controller. To aid him in passing upon such claims, the law has provided certain fixed rules of law. The most important among them are as follows:

Section 4158, Revised Laws, 1912: And no claim for services rendered or advances made to the State or any officer thereof, shall be audited or allowed unless such services or advancements shall have been specially authorized by law, and an appropriation made for its payment. For the purpose of satisfying himself of the justness and legality of any claim, he shall be allowed to examine witnesses under oath and to receive and consider documentary evidence in addition to that furnished him by the Board of Examiners.

Revised Laws, p. 3096, section 1: The sums appropriated for the various branches of expenditures in the public service of the State shall be

applied solely to the objects for which they are respectively made, and for no others.

An appropriation, in the sense used in the above-quoted statutes, is defined in the case of *State v. LaGrave*, 23 Nev., p. 26, as follows: "The word 'appropriate' means to allot, assign, set apart, or apply to a particular use or purpose."

In the event of presentation of a claim which the Controller considers doubtful as to legality or justness, such a doubt should be resolved in favor of the State and the claimant left to his legal remedy, for the reason that the office of State Controller was created and his duties in passing upon claims were fixed so as to add an additional protection for the State's moneys. (See *State v. Doran*, 5 Nev., p. 399.)

With these rules for his guidance, it is the duty and the power of the State Controller to pass upon both the legality and justness of such claims, and it is not the aim of this office to usurp any of such functions of the State Controller's office.

Respectfully submitted for the Attorney-General,

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

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

HON. ED. C. PETERSON, *State Controller, Carson City, Nevada*.

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260. County Commissioners—Budget Law—Transfer from General Fund—Emergency.

County Commissioners have no authority to transfer money from General Fund to purchase land or erect buildings for county indigent. The budget law governs. Remedy is by emergency loan.

INQUIRY

CARSON CITY, April 27, 1927.

Can the County Commissioners of Pershing County take money accumulated and available in the General Fund for the purchase of land and erection of a building to care for the county indigents out of said General Fund?

OPINION

The Act of the Legislature approved March 26, 1917, as amended by the several Acts to date, regulating the fiscal management of counties, cities, towns, school districts, and other governmental agencies, commonly known as the "Budget Act," provides in section 4:

It shall be unlawful for any Commissioner, or any Board of County Commissioners, or any officer of the county to authorize, allow, or contract for any expenditure unless the money for the payment thereof is in the treasury and specially set aside for such payment. (As amended, March 23, 1927.)

As it appears from your inquiry that the funds for the purchase of lands and the erection of a building contemplated by the Pershing County Commissioners have not been specially set aside for such payment, the County Commissioners have not been specially set aside for such payment, the County Commissioners of your county would not be authorized to use the funds from the General Fund for the purposes mentioned.

However, in the event of great necessity or emergency for such an expenditure, proceedings may be taken under section 5 of the Budget Law, as amended, Statutes 1925, p. 338, and an emergency loan for the purpose of meeting such necessity or emergency made. This section of the law also provides that if sufficient funds are available, then a temporary loan can be made from the General Fund for the purpose of furnishing the necessary funds until the emergency tax money is received. The purpose of this latter provision is to prevent the county from paying interest on such a loan when it has the money available to meet the expenditure.

Respectfully submitted for the Attorney-General,

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

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

HON. JOHN A. JURGENSON, *District Attorney, Pershing County, Lovelock, Nevada*.

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261. Health—Chiropractors.

Chiropractors having been recognized by this State as practitioners of medicine and surgery, the Statutes of 1923, p. 38, forbid discrimination against them in their practice in county hospitals.

INQUIRY

CARSON CITY, April 30, 1927.

Whether or not a chiropractor is authorized to practice his profession in the county hospitals of this State.

OPINION

The Statutes of 1923, page 308, in fixing regulations governing county hospitals, provide:

In the management of such public hospital no discrimination shall be made against practitioners of any regular school of medicine and surgery recognized by the laws of Nevada, and all such regular practitioners shall have equal privileges in treating patients in said hospital.

Chiropractors have been recognized and licensed by the state of Nevada for the purpose of healing by the particular means used by them.

The cases generally hold that a chiropractor comes within the definition of a practitioner of medicine and surgery. See *State v. Morrison*, 127 S.E. 75; *Commonwealth v. Jewelle*, 85 N.E. 858; *Territory v. Newman*, 79 Pac. 706.

Prior to the passage of the Act of 1923 authorizing the licensing of chiropractors under a separate board (Stats. 1923, p. 21), they came within the provisions of the Medical Practice Act. See sec. 2370, Revised Laws, 1912.

Therefore, having been recognized by this State as practitioners of medicine and surgery, Statutes of 1923, p. 308, forbid discrimination against them in their practice in county hospitals.

Respectfully submitted for the Attorney-General,

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

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

HON. GUY E. BAKER, *District Attorney, Ely, Nevada*.

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## SYLLABUS

### **262. State Property—Title of State to Real Property Cannot Be Divested Except by Legislative Sanction.**

Where State has acquired real property at Lehman Caves, title thereto cannot be conveyed to an individual except by legislative authority.

## INQUIRY

CARSON CITY, May 6, 1927.

You submit a letter from an individual who is desirous of purchasing certain property at Lehman Caves, White Pine County, Nevada, and, in addition to the property held under private ownership, the party addressing you is anxious to obtain a deed from the State of Nevada for certain property located at Lehman Caves and heretofore conveyed to the State of Nevada. The prospective purchaser requests that the title heretofore conveyed to the State of Nevada be now conveyed to him.

## OPINION

In view of the facts stated above, it will be observed that the State of Nevada by conveyance has acquired title to certain property situate at Lehman Caves.

It is elementary that the State can only divest itself of title to real estate by an Act of the Legislature. State officials are not authorized, nor have they any authority, to in any manner dispose of either the title to or the possession of property of this character without first being authorized so to do by legislative sanction.

The Legislature of the State of Nevada, in the year 1925, in the annual appropriation measure, appropriated the sum of twenty thousand dollars for the support of recreation grounds and game refuges, and a considerable portion of this amount was expended in and about Lehman Caves.

Respectfully submitted,

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

SYLLABUS

**263. Schools—State Nepotism Act—Employment of Teachers.**

Chapter 22, Stats. 1925, exempts from its provisions widows as employees of any State or county officers. It also exempts from its provisions any teacher in a school district when such teacher is not related to more than one of the Trustees, and has received the unanimous vote of all members of the Board of Trustees or the County Board of Education.

INQUIRY

CARSON CITY, June 1, 1927.

1. Does chapter 22, Statutes 1927, governing the employment of persons within the third degree of consanguinity or affinity mean that only widows can teach school in case of relation to one member of the school board?
2. Does it allow a wife, whose husband is a member of the school board, to teach school with the approval of all three members of the board?

OPINION

Chapter 22, Statutes 1927, in regard to the employment of teachers has in no manner changed the law as enacted by the Legislature of 1925, ad chapter 22, Statutes 1927, simply adds to the former law:

*provided*, that nothing in this Act shall prevent any officer in this State, employed under a flat salary, from employing any suitable person to assist in any such employment; *provided*, that the payment for any such service shall be met out of the personal funds of such officer.

The statute specifically exempts from its provisions widows as employees of any State or county officer. It also exempts from its provisions any teacher in a school district when such teacher is not related to more than one of the Trustees and has received the unanimous vote of all members of the Board of Trustees or County Board of Education.

Therefore, the first inquiry should be answered in the negative and the school in the affirmative.

Respectfully submitted for the Attorney-General,

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

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

E.E. FRANKLIN, *Deputy Superintendent of Public Instruction, Elko, Nevada.*

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## SYLLABUS

### **264. Mothers' Pension Act, as Amended by Act of 1921.**

(1) Since amendment by the Act of 1921 application for pensions should be renewed.

(2) Discretion for granting pensions is fixed in the Board of County Commissioners and District Attorney under the conditions outlined in section 3 of the Act of 1921.

## INQUIRY

CARSON CITY, June 2, 1927.

(a) In 1919 a widowed mother applied to the Board of County Commissioners for, and was granted, a mother's pension, under the terms of the Act of March 15, 1915 (Laws of 1915, p. 153), as amended by the Act of February 10, 1917 (Laws of 1917, p. 13), all of which Acts were specifically repealed by the Act of March 16, 1921 (Laws of 1921, p. 179 at 181), since which time there has been no renewal or new application made by pensioner.

Has the present Board of County Commissioners any authority to continue the granting of the pension as originally allowed?

(b) Where the Board of County Commissioners has official knowledge of the fact that a widowed mother is the owner of convertible assets of the value of three thousand dollars—the records of the county showing that county securities of that amount of value at present standing in the name of the mother, and upon which interest is being paid to her regularly, in her own name—has the Board any authority for granting such widowed mother a pension under the Act above referred to?

## OPINION

(a) Inasmuch as the Statutes of 1921, p. 181, repealed the Act of 1915, as amended, the party mentioned in your inquiry should renew her application for the pension. The Act of 1921 being in some respects different and making some additional requirements, therefore, the decision of the Board of County Commissioners under the prior Act would not be in force without a new vote being taken after the passage of the 1921 Act.

(b) The Board would have authority to grant a pension to such a widowed mother under the 1921 Act, as the discretion is fixed in the Board and District Attorney under conditions outlined in section 3 of the Act. If those conditions exist, they would be authorized to make such allowance.

Respectfully submitted for the Attorney-General,

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

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

HON. C.C. WARD, *District Attorney, Mineral County, Hawthorne, Nevada.*

## SYLLABUS

### **265. Officers—State Nepotism Act.**

The employment of a brother of one of the Directors of the State Orphans' Home by that institution violates the State Nepotism Act.

#### INQUIRY

CARSON CITY, June 8, 1927.

Whether or not a brother of one of the Directors of the State Orphans' Home may be employed by that institution.

#### OPINION

Section 4090, Rev. Laws, 1912, provides for the employment of all employees at the State Orphans' Home by the Board of Directors of that institution.

The State "Nepotism Act," as amended, Stats. 1927, p. 43, prohibits the employment within the third degree of consanguinity or affinity of any employee by any School Trustee, State, township, municipal, or county official. A similar statute has been construed by a former Attorney-General to prohibit employment by any board of an employee within the prohibited degree of consanguinity or affinity when such employee is related to any member of such board. (See Opinions of the Attorney-General, 1921-1922, Nos. 120, 124, and 125.)

Under this ruling, therefore, the employment mentioned in your inquiry would be unlawful.

Respectfully submitted for the Attorney-General,

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

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

JOSEPH B. KENDALL, *Superintendent State Orphans' Home, Carson City, Nevada*.

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## SYLLABUS

### **266. Health—Physicians—Conditions Requisite to Practice.**

A person may be granted a license to practice medicine in this State without examination only when the facts of his particular case bring the applicant within the provisions of section 6 of the Medical Practice Act.

#### INQUIRY

CARSON CITY, June 9, 1927.



Under what conditions may a person be given a license to practice medicine in this State without taking the prescribed examination?

### OPINION

A person may be granted a license to practice medicine in this State without examination only when the facts of his particular case bring the applicant within the provisions of section 6 of the Medical Practice Act.

The pertinent part of that section reads as follows:

Said Board may, in its discretion, accept and register, upon payment of the registration fee, and without examination of the applicant, any certificate which shall have been issued to him by the Medical Examining Board of the District of Columbia, or of any State or Territory of the United States; *provided, however*, that the legal requirements of such Medical Examining Board shall have been, at the time of issuing such certificate, in no degree or particular less than those of Nevada at the time when such certificate shall be presented for registration to the Board created by this Act; *and provided further*, that the provisions in this paragraph contained shall be held to apply only to such of said Medical Examining Boards as accept and register the certificates granted by this Board without examination by them of the ones holding such certificates.

Respectfully submitted for the Attorney-General,

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

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

DR. EDWARD E. HAMER, *Secretary of the Board of Public Health, Carson City, Nevada*.

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### SYLLABUS

#### **267. Appropriations.**

(1) Where a contingency appropriation has been authorized by legislative Act the failure of Legislature to include amount in general appropriation bill dose not prevent expenditure.

(2) State money may only be expended during period Federal Government cooperates under Sheppard-Towner Act.

### INQUIRY

CARSON CITY, June 15, 1927.

(1) Section 5 of chapter 48 of 1923 Statutes, page 60, appropriates \$5,522 annually for the administration of the Sheppard-Towner Act. Is this section still in force?

(2) Does the failure of the Legislature to appropriate funds to carry on the provisions of this Act prohibit the issuance of warrants in payment of claims for salary and expenses for same?

#### OPINION

(1) Subsequent legislature session has not repealed Statutes 1923, chapter 48. Inasmuch as the Legislature, by enacting Statutes of 1923, authorized the State to cooperate with the Federal Government in the administration of said Sheppard-Towner Bill and made the appropriation for that purpose, if, for any reason, the United States Government no longer functions under the Sheppard-Towner Act, the right of the State to expend money would not exist and, even if an appropriation has been made for this purpose, moneys could not be expended if the Government was not cooperating with the State under the provisions of this Act.

(2) The failure of the Legislature to include in the general appropriation bill the specific sum set forth in the statutes referred to by you would in no way prevent the expenditure of the several sums, because the special Act is an appropriation in itself and made annually, and the failure to include the amount in the general appropriation budget made by the Legislature would in no way affect the issuance of warrants, providing, however, the United States Government continues to cooperate with the State.

Respectfully submitted,

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

HON. ED. C. PETERSON, *State Controller, Carson City, Nevada*.

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#### SYLLABUS

##### **268. Fish and Game Laws.**

Reenactment of sec. 8, Stats. of 1925, by the Legislature in 1927 in no way affected sec. 8a, Stats. of 1925, and it would be unlawful for any person to take any wild duck, goose, or brant within the State at any times other than those mentioned in sec. 8a.

#### INQUIRY

CARSON CITY, June 20, 1927.

Attention is directed to Statutes 1927, chapter 7, page 6, and an opinion is requested as to the effect of this amendment to the game laws of this State, and particularly as to whether the provisions of this amendment apply to section 3a, Statutes 1925, page 202, or affect it in any way.

#### OPINION

By legislative Act, Statutes 1925, page 253, section 8 was enacted, making it “unlawful for any person to take any wild duck, sandhill crane, plover, curlew, snipe, woodcock, goose, or brant within this State, except between the sixteenth day of September and the thirty-first day of December of each year, both dates included \* \* \*” The Legislature at the same time enacted section 81, making is “unlawful for any person to take any wild duck, goose, or brant within this State except upon a Wednesday, Saturday or Sunday between the sixteenth day of September and the thirty-first day of December of each year, both dates included \* \* \*.” Provision was also made for excepting certain holidays.

The Legislature in 1927 reenacted section 8 of Statutes 1925, supra, but, in making the amendment, no new provisions were added to said section. If it were the intent of the Legislature to destroy the provisions of section 8a, Statutes 1927 would have amended section 8a. By reenacting the provisions of section 8, the same would no way affect the provisions of section 8a.

I am of the opinion, therefore, that the provisions of section 8a must prevail, and that it would be unlawful for any person to take any wild duck, goose, or brant within the State at any times other than those mentioned in section 8a.

Respectfully submitted,

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

R.J. VANNOY, *Game Warden, Fallon, Nevada.*

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## SYLLABUS

### **269. Taxation—Commission Allowed on Collection of Personal Property Taxes— Special Levies.**

(1) Special levies for apiary, live stock, or sheep are not taxes on personal property; hence, no commission may be deducted for the collection of these items.

(2) No authority exists for deducting a percentage on licenses collected and paid to the State by the county officers.

## INQUIRY

CARSON CITY, June 23, 1927.

Do the commissions allowed by statute upon personal property taxes, to be paid by the Assessors into the county treasuries, include special levies for apiary, live stock, or sheep inspection purposes or farm bureau purposes, all of which are to be classed as trust funds administered by the State?

Are commissions allowed on the collection of the State’s portion of licenses collected by the counties and apportioned to the State and county by statutes?

## OPINION

Section 1581, Revised Laws of Nevada, 1912, provides as follows:

On all moneys collected from personal property tax, poll tax, and the tax on the proceeds of mines, by the several County Assessors in this State, there shall be reserved and paid into the county treasury, for the benefit of the General Fund of their respective counties, by said County Assessor, the following percentage commissions: First, on the gross amount of collections from personal property tax, six per cent; second, on the gross amount of collections from poll tax, ten per cent; third, on the gross amount of collections from the tax on the proceeds of mines, three per cent.

The Supreme Court of this State in the case of *State v. Donnelly*, [20 Nev. 214](#), held that the State was obligated to pay to the county the percentages enumerated in section 1581 and for the purposes therein stated.

Under your inquiry, however, special levies for apiary, live stock, or sheep inspection purposes, or farm bureau purposes could not be designated, under the law, as a tax on personal property and, therefore, no authority exists for deducting commissions for the collection of these several items.

In view of the fact that the section, *supra*, does not authorize the payment of commissions on licenses collected, no authority exists for deducting a percentage on licenses collected and paid to the State by the county officers.

Respectfully submitted,

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

HON. ED. C. PETERSON, *State Controller, Carson City, Nevada*.

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270. Water Law—Live Stock—Vested Rights—Statement in Application Determining Amount of Water.

- (1) Facts to establish vested rights for live stock similar to facts under water code.
- (2) State Engineer cannot impair vested right.
- (3) Quantity of water for the live stock governed by number and kind of animals to be watered.

INQUIRY

CARSON CITY, June 28, 1927.

Will you please, at your earliest convenience, give this office your opinion, in writing, on the following questions:

1. What constitutes a vested right for watering range live stock to springs and watering holes on the public range:
2. What constitutes a vested right for watering range live stock on a flowing stream system?

3. In issuing permits under any application for stockwatering purposes, is the State Engineer empowered to regulate or specify on said permit the number and kinds of animals which may be watered, or to issue a certificate of water right thereunder which shall limit the number and kind of animals to be watered?

#### OPINION

The facts necessary to establish a vested right must be the same whether such vested right is asserted under Statute of 1925, chapter 201, being "An Act relating to the use of water for watering live stock," or whether such right is asserted for the appropriation and diversion of waters of a stream system.

A vested right has been defined by the Supreme Court of Nevada in the case of Esser v. Spaulding, 17 Nev. At p. 306, as follows:

It is only when rights have vested under laws that the citizen can claim a protection to them as property. Rights do not vest until all the conditions of the law have been fulfilled with exactitude during its continuance, or a direct engagement has been made limiting legislative power over and producing an obligation. \* \* \* A plain distinction exists between the statutes which create hopes, expectations, faculties, conditions, and those which form contracts.

In his Const. Lim. 445, Judge Cooley says: "It would seem that a right cannot be considered a vested right, unless it is something more than such a mere expectation as may be based upon an anticipated continuance of the present general laws; it must have become a title, legal or equitable, to the present or future enforcement of a demand, or a legal exemption from a demand made by another."

In so far as the duties of the State Engineer are concerned in respect to vested rights under Statutes 1925, chapter 201, the Supreme Court of this State in a number of cases has decided that the State Engineer has no authority, under the law, to impair or affect a vested right, but the compelling of an owner of a vested right to submit his proof to the State Engineer establishing such right and the regulation of such right thereafter by the State Engineer are authorized by law.

Concerning your third inquiry, the same is answered by the provisions of section 1, chapter 201, Statutes 1925. This section of the law provides:

\* \* \* That on application to the State Engineer for any such right it shall not be necessary for the applicant to state or prove or for the State Engineer to determine in cubic feet per second of time the quantity of water the use of which is applied for or granted, but in all such applications, and in all proceedings connected therewith and, also, in all proceedings connected therewith and, also, in all proceedings either before the State Engineer or the courts relating to the proof or establishment of a vested right to use water for watering live stock, it shall be a sufficient measure of the quantity of the water to specify the number and kind of animals to be watered or which have been watered, as the case may be.

Respectfully submitted,  
M.A. DISKIN, *Attorney-General*.  
HON. GEO. W. MALONE, *State Engineer, Carson City, Nevada*.

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## SYLLABUS

### **271. Schools—Employment of Aliens in Improvement Work.**

Section 1 of Stats. of 1919, chapter 168, provides that aliens who have not forfeited their right to citizenship may be employed as common laborers in the construction of public roads when it can be shown that citizens or wards of the United States are not available for such employment.

## INQUIRY

CARSON CITY, July 29, 1927.

The Board of School Trustees of Mina, Nevada, engaged one Anton Mandy to render services in connection with making improvements in School District No. 17. It appears that Mandy is not a citizen of the United States and a protest has been filed with the County Recorder of Mineral County, and an opinion is requested concerning the legality of this claim, in view of the fact that the party employed is not a citizen of the United States.

## OPINION

Section 1, Stats. 1919, chap. 168, provides:

Only citizens or wards of the United States or persons who have been honorably discharged from the military service of the United States shall be employed by any officer of the State of Nevada, or by any contractor within the State of Nevada, or any political subdivision of the State, or by any person acting under or for such officer or contractor, in the construction of public works or in any office or department of the State of Nevada or political subdivision of the State \* \* \* *provided* \* \* \* nor to prevent the working of aliens, who have not forfeited their right to citizenship by claiming exemption from military service, as common laborers in the construction of public roads when it can be shown that citizens or wards of the United \* \* \* are not available for such employment.

If, under the circumstances, the party doing this work is an alien and has not forfeited his right to citizenship by claiming exemption from military service, and the work performed by him is the construction of public roads, and the further showing is made that citizens were not available for such employment, then, and in that event, he would come within the exception. However, if the work performed was on the construction of

public works, or if citizens of the State were available to perform the work performed by the party in question, the claim is not a lawful claim and cannot be allowed or paid.

Section 3 of this Act provides:

No money shall be paid out of the State Treasury, or out of the treasury of any political subdivision of the State, to any person employed on any of the work mentioned in section 1 unless such person shall be a citizen or ward or naturalized citizen of the United States, subject to the exception contained in section 1 of this Act.

Respectfully submitted,

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

HON. WALTER W. ANDERSON, *Superintendent of Public Instruction, Carson City, Nevada*.

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## SYLLABUS

### **272. Taxation—State Gasoline Tax—Applicability to Gas Bought for and Used by the County.**

Gasoline tax is not levied against the municipalities of the State, but against the seller or dealer prior to the purchase of gasoline made by the city.

## INQUIRY

CARSON CITY, August 1, 1927.

Is the State gasoline tax of four cents applicable to gas bought for and used by the county in operating motor vehicles in proper county service?

## OPINION

This officer, in an opinion numbered 41, held that the dealer, and not the purchaser of gas, must pay the tax on all sales of gasoline. This construction of the statute has been sustained by courts of the several States in passing upon statutes containing similar provisions as that of Nevada.

The direct question here presented has been passed upon by the Supreme Court of Oregon in the case of *City of Portland v. Kozer*, 217 Pac. 833. The statutes of Nevada and the statutes of Oregon are very similar, and I feel that the Oregon decision correctly answers the question presented by you. In the Oregon case the court held that, if it were the intent of the Legislature to exempt counties and municipalities from the tax in question, the law would have so declared, and the absence of such exemption requires the payment of the tax by the municipalities. The court further, in construing the Oregon statute, said:

To grant the prayer of the plaintiff city, and relieve several municipalities of the State would leave the statutes in question like mere

skeletons for all practical purposes, a condition that the lawmakers never intended \* \* \*. We conclude that the statutes in question do not provide for levying the tax upon the municipalities of the State, but against the seller or dealer prior to the purchase of gasoline made by the city, and plaintiff is not entitled to the relief prayed for.

Respectfully submitted,

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

HON. C.C. WARD, *District Attorney, Hawthorne, Nevada.*

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## SYLLABUS

### 273. Officers—Annual Vacations.

Section 4109, Rev. Laws of 1912, providing for leave of absence of 15 days with full pay means 15 working days.

## INQUIRY

CARSON CITY, August 1, 1927.

Recently many questions have arisen relative to the State law in regard to annual vacations. Does this law mean fifteen calendar days or fifteen working days irrespective of Sundays and holidays?

## OPINION

Section 4109, Rev. Laws 1912, provides as follows:

Each and every State employee who has been in the service of the State for six months or more, in whatever capacity, shall be allowed in each calendar year a leave of absence of fifteen days with full day, providing the head of each department shall fix the date of such leave of absence.

I am of the opinion that fifteen days means fifteen working days. It could hardly be said that including Sundays and holidays within the vacation period would carry out the intent of the Legislature in authorizing a leave of absence of fifteen days with full pay.

Respectfully submitted,

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

HON. S.C. DURKEE, *State Highway Engineer, Carson City, Nevada.*

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### 274. Taxation—Widows' Exemptions.



(1) A party whose invalid marriage was annulled would not lose any right which she had to a widow's exemption prior to the invalid marriage.

(2) A widow who contracts a valid marriage loses her legal status as such, and this status is not regained by a subsequent divorce in the absence of a statute to the contrary.

### INQUIRY

CARSON CITY, August, 5, 1927.

As to the status of certain widows being entitled to widow's exemption from taxes:

(a) Facts of one case are: A widow who had been entitled to widows' exemption later married, the man she married having a living wife. This marriage was annulled, the case being filed as Mary Smith, the name after her first marriage, versus John Brown, the name of her second husband. Now she is claiming exemption under her former status. Will she be entitled to widow's exemption again?

(b) Another state of facts are: A widow, who was exercising her right to widow's exemption on taxes, married again and was then divorced. In granting the divorce, the court permitted her to resume her former married name, under which name she is claiming widow's exemption. Will she now be entitled to widow's exemption again?

### OPINION

(a) The effect of an annulment of a marriage is to secure a judicial declaration of the invalidity of the marriage and restore the parties to all their legal rights existing prior thereto. Thus, the party named in your first inquiry would not lose any right which she had to a widow's exemption prior to the invalid marriage.

(b) The effect of the marriage and subsequent divorce of the person mentioned in your second inquiry depends upon the construction of the word "widow," as used in section 3621, Revised Laws of 1912, as amended, Statutes of 1923, page 359.

The word "widow" as used in this sense means "a woman who has lost her husband by death and who has not remarried." *Commonwealth v. Powell*, 51 Penn. S. Rep. 438.

A widow who contracts a valid marriage loses her legal status as such, and this status is not regained by a subsequent divorce in the absence of a statute to the contrary. See *Commonwealth v. Powell*, *supra*.

Therefore, the person named in your second inquiry is not at the present time a "widow" within the meaning of section 3621, Rev. Laws of 1912, and is not entitled to the exemption therein provided.

Respectfully submitted for the Attorney-General,

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

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

HON. CHAS. L. SLAVIN, *County Clerk, Tonopah, Nevada*.

## SYLLABUS

### 275. Statutes.

Statutes 1923, chapter 173, defines “pharmacy,” and the definition excludes time engaged in cities in the State outside of the city where application is made.

### INQUIRY

CARSON CITY, August 27, 1927.

A has been engaged in operating a drug store in a certain locality of the State of Nevada for a period of over two years. He gives up his location and moves to another city in the State of Nevada. May your department issue to A in the new locality a license to fill prescriptions for intoxicating liquors under Statutes 1923, chapter 173?

### OPINION

Section 1 of the Act referred to makes it unlawful for any pharmacist to fill any prescription at any place other than a duly licensed pharmacy. Section 2 of the Act defines a pharmacy as “a going concern which has been regularly and continuously in operation *in the same city, town, or locality for at least one year.*”

The fact that A operates a pharmacy in another city or town would not qualify him to obtain a license in any other town, and, before a license can be issued to A in a new locality, he must come within the definition of a pharmacy as defined in section 2, and operate a business in the new locality for a period of one year.

Respectfully submitted,

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

S.C. DINSMORE, *State Inspector of Pharmacies.*

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## SYLLABUS

### 276. State Money—Legality Cashier Checks—Depositing State Money in Banks Prohibited.

- (1) Cashier checks given by bank to State must be considered as valid paper.
- (2) State money must be kept by State Treasurer in private vault and not deposited in bank except as authorized by Statutes 1913, p. 127.

### INQUIRY

CARSON CITY, September 13, 1927.

First—Since entering upon my duties as Treasurer of the State of Nevada I have been carrying upon my records as cash three purported cashier’s checks of the Carson Valley Bank of Carson City, Nevada, the amounts of which aggregate \$516,322.16. At your

direction these cashier's checks were presented for payment on June 29, when they were pronounced fictitious by the cashier of the bank and payment was refused. How should these cashier's checks now be treated in the records of my office?

Second—The records of my office show that heretofore it has been the practice of the State Treasurer to deposit in banks of the State money belonging in the Revolving Fund, and to accept therefor cashiers' checks and treat same as cash. Would it be lawful for me as Treasurer to continue this practice, providing it meets with the approval of the Board of Finance, and with the further provision that the banks furnish approved and adequate surely bonds to protect the State against possible loss?

### OPINION

The cashier's checks to which reference is made in your query and like cashier's checks, having for a great number of years been considered and counted as cash, you are advised that, under the existing conditions, these items should be considered as cash items. The State has no notice of the existence of any state of facts that would or could render such checks invalid.

Your second question is answered by section 4372, Revised Laws, 1912. This section provides:

The State Treasurer shall securely keep in the safe and vault provided for him for that purpose, in his office at the seat of government, all the public moneys, bonds, and securities of the State appertaining to his office, and shall not deposit any part or portion of the same with any individual, copartnership, or corporation; nor shall he use said money, or any part thereof or allow any one else to do so, except in the payment of bonds, or coupons, or warrants properly drawn upon him by the State Controller.

The Legislature, by Statutes 1913, p. 127, declares an exception to the provisions of this section, and authorizes the depositing of State funds in certain banks under well defined and stated conditions. Such deposits can only be made when the State is secured, and the money so deposited must bear a certain rate of interest.

Except as authorized by Statutes 1913, supra, it is your plain duty, under the law, to be the sole custodian of State funds and to keep in the vaults of your office, in actual cash, the money of the State.

I am not unmindful of a custom existing in the State Treasurer's office for many years to carry, and the Board of Examiners to count as cash, cashiers' checks on divers banks. This practice was resorted to, no doubt, because of the fact that a strict adherence to the law would practically make it impossible for the State to function and would greatly endanger State moneys by theft and the like. It was due, no doubt, also to a further consideration of the injury to business in this State by the requiring of large sums of actual cash to remain idle in the vaults of the State Treasurer's office.

It will be noted that the special provisions of law as they apply to the State Treasurer and the custody of State funds were enacted in the year 1866. The necessity, if the State is to properly function, for a change in the several provisions is strongly emphasized by the custom referred to of accepting and counting cashiers' checks.

While I am fully cognizant of the great hardship confronting the State Treasurer's office when the law is strictly adhered to and the handicap in carrying on the business of the State under the existing laws, yet I fee that these are all matters to be considered by the legislature, and it is our plain duty to construe the law as it exists and for the legislature to change the law if it is archaic.

Respectfully submitted,

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

HON. GEORGE B. RUSSELL, *State Treasurer, Carson City, Nevada.*

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## SYLLABUS

### **277. Fish and Game Laws—Trapping of Fur-Bearing Animals by Aliens.**

Under Stats. of 1887, p. 38, a license is not required for the killing of certain noxious animals, hence any person, whether a citizen of the United States or not, may kill coyotes and wildcats without a license.

## INQUIRY

CARSON CITY, September 13, 1927.

Are aliens prohibited by the provisions of the Nevada Fish and Game Law from trapping coyotes, wildcats, and other fur-bearing animals?

Your attention is called to the fish and game laws and the provisions therein contained that no person may hunt or kill wild birds or animals without first having a license therefor, and that a license may not issue to noncitizens of the United States.

## OPINION

The Legislature of the State of Nevada has, by law, protected certain wild game and birds. Section 1, Statutes 1923, p. 349, as amended, Statutes 1925, p. 253, enumerates wild game and birds and provides under what circumstances and in what manner they may be killed. Section 1, Statutes 1923, p. 347, defines fur-bearing animals. Under the law, a license may not be obtained by a person who is not a citizen of the United States to hunt, kill, or trap any of the wild birds or animals so defined by the Legislature.

By enacting Statutes of 1887, p. 38, Revised Laws, 1912, volume 1, sections 718 to 722, inclusive, the Legislature has provided a bounty for the killing of certain noxious animals, including coyotes and wildcats. Under the provisions of this section the boards of County Commissioners are authorized to pay certain bounties for the production of the scalps of coyotes and wildcats.

In view of this fact that the Legislature has declared coyotes and wildcats to be noxious animals and has not included these animals in the animals to be protected, and for which a license to hunt is necessary, it follows that any person, whether a citizen of the United States or not, may kill coyotes and wildcats without a license.

Respectfully submitted,  
M.A. DISKIN, *Attorney-General*.  
JOHN S. CASE, *Justice of the Peace, Paradise Valley, Nevada*.

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## SYLLABUS

### **278. Officers—State Controller—Duty on Claims Against State—Legislative Determination on Questions of Economy Conclusive.**

(1) State Controller has independent duty in passing on claims against State, and action by Board of Examiners does not control.

(2) Where Legislature has enacted a law, the question of a different method proving more economical than the legislative proposal cannot be considered.

## INQUIRY

CARSON CITY, September 29, 1927.

Your opinion is desired on the following questions:

(1) Where it can be proven that a State employee can render a better and more economical service to the State and at a saving of much time in the service so rendered, would it be permissible for such State employee to use his or her personal automobile and be reimbursed by the State at a rate of not to exceed fifteen cents a mile?

(2) If it is necessary for a State employee in the course of his or her official duties to travel to a point in the State over a route not served by a public conveyance and return over a route served by public conveyance, or vice versa, having business on both routes, would it be permissible for a State employee to use his or her personal automobile and be reimbursed at a rate of not to exceed fifteen cents a mile for the entire distance?

(3) In case a State employee is called or must travel into a section or sections of the State not served by public conveyance but must, while leaving his official base or residence or while on the trip as a whole, parallel or touch and parallel a route served by public conveyance, can said State employee use his or her personal automobile and be reimbursed by the State at a rate of not to exceed fifteen cents a mile for the entire distance of such a trip?

(4) In traveling to and from a point served by public conveyance, can State employee using his or her personal automobile be reimbursed at the rate of a one-way fare on such public conveyance, or must the round trip rate be used?

## OPINION

In reference to these several questions, you advise that the Board of Examiners has allowed claims against the State for the several items covered by your inquiry.

Allowance of claims by the Board of Examiners does not relieve you of the duty imposed by law to audit and ascertain the correctness of all claims or demands filed against the State of Nevada.

The Supreme Court of this State has held that the State Controller is the auditor in chief of all claims filed against the State Controller in arriving at a proper determination.

Section 4158, Revised Laws, gives the State Controller power to examine under oath witnesses who may be necessary, and to receive and consider documentary evidence in addition to that furnished by the Board of Examiners. In Opinion No. 259, rendered on April 27, 1927, your attention was called to these several matters and we advised you that, in the final analysis, the law placed upon your office the responsibility of passing upon the correctness of the claims presented to you.

The questions submitted by you involve the construction of Statutes 1927, page 219, chapter 137. The provisions of this law are not ambiguous or uncertain. The law, in part, provides:

\* \* \* but the amount for traveling by private conveyance shall in no instance exceed the amount charged for traveling by public conveyance.

The Legislature, by enacting this statute, has vouched for the fact that it will be economical in its operation, and it is not within the power of any individual to refuse to obey the provisions of this law because, in the judgment of such person, the system or theory advanced in opposition may be more economical in its operation; nor may such law be violated because extravagance may result from obedience to the law. All these questions have been decided by the Legislature, and its judgment is binding and conclusive.

(2-3) No necessity exists for the rendition of an opinion in reference to inquiries 2 and 3. The provisions of the section applicable are entirely free from ambiguity, and it is your duty, under the law, to apply the law as stated to the bills presented and act accordingly.

(4) To insist that a State employee in traveling between points covered by a public conveyance is limited to a charge for the use of his car in an amount not to exceed the round trip rate by a public conveyance between said points would require a highly technical and strained interpretation of the law. While the provisions of this law must be obeyed, there is no occasion to render it an absurdity by a supertechnical construction.

Respectfully submitted,

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

ED. C. PETERSON, *State Controller, Carson City, Nevada*.

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## SYLLABUS

### **279. State Money—Accepting Checks in Payment State Demands—Exchange Charges—Insuring of State Money from Theft.**

(1) No authority exists for accepting checks drawn on banks in payment of State demands; such practice would be depositing State money out of custody of State Treasurer.

(2) Exchange charge on remittances by State Treasurer cannot be paid by State.

(3) State money may be insured from loss if appropriation therefor has been made by legislative Act.

### INQUIRY

CARSON CITY, September 29, 1927.

(1) In the course of daily business, we receive U.S. warrants for State and National highway, State University and Sheppard-Towner Act purposes; also, county warrants and checks from numerous sources, as revenue. Please advise if any of these may be accepted lawfully and placed for collection according to common practice, or if all such paper shall be refused, and demands made for remittances in actual cash with transmission charges prepaid.

(2) When State warrants, which have been issued to counties in the discharge of obligations, are returned to the State Treasurer with direction that the money be forwarded, who shall pay the charges of transmission of the money?

(3) In view of the fact that now, more than ever before, precaution should be exercised to insure the treasury against loss by hold-up or otherwise, can the State lawfully arrange for insurance on its money, both in carriage and in its vaults?

### OPINION

(1) By opinion numbered 276 this office has advised you that, under the law, public moneys must be kept in the vaults of your office except in those instances where other disposition may be made of such moneys in compliance with Statutes 1913, p. 137.

By enacting these several sections, the Legislature has clearly indicated a desire to keep the money of the State in its own strong-boxes instead of depositing the same in banks. A review of the statutes of the several States and of the Acts of Congress of the United States shows similar provisions. The State of Kansas, at an early period, had a law very similar to the Nevada law. Recently Kansas authorized deposits of State moneys in banks, under certain restrictions, and it further specifically authorized the State Treasurer to deposit with banks, for collection, drafts and checks payable to the State when security was deposited to insure safety of collections to the State.

The provisions of section 4372 constitute a prohibition of the custody of public moneys with any corporation, institution, or person other than the State Treasurer. Such prohibition would include the depositing of checks and drafts with banks for collection, for this act would require an agency other than the State Treasurer to handle public funds.

(2) Opinion numbered 117 rendered by Attorney-General Thatcher under date of November 10, 1917, holds that the State is not authorized to pay transmission charges on remittances to the counties.

(3) Section 277 of the Constitution provides that

No moneys shall be drawn from the treasury but in consequence of appropriations made by law.

To authorize the payment of insurance premiums would require legislative sanction. It may be, however, that the appropriation made to the Capitol Commissioners for the protection of State property, if the balance on hand, in the judgment of the commission, is sufficient, would constitute authority for the payment of such premiums.

Respectfully submitted,

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

HON. GEORGE B. RUSSELL, *State Treasurer, Carson City, Nevada*.

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## SYLLABUS

### **280. Corporations—Number of Directors.**

(1) A statement in the articles of incorporation that the board of directors shall not be less than three, nor more than seven, is a compliance with par, 6 of sec. 4, chap. 177, Stats. 1925.

(2) A corporation has no authority to delegate to the board of directors the right to increase the number of directors to a greater number than is authorized in the articles of incorporation.

## INQUIRY

CARSON CITY, September 29, 1927.

Will you please render this department an opinion on the following questions:

(1) Under paragraph 6, section 4, chapter 177, Statutes 1925, to wit:

Whether the members of the governing board shall be styled directors or trustees of the corporation and the number of such directors or trustees which shall not be less than three. The names and post-office addresses of the first board of directors or trustees—

is it permissible to state in the articles of incorporation that the number of directors shall not be less than three nor more than seven, etc.?

(2) Can a corporation through its by-laws delegate authority to a board of directors to increase the number of directors to a greater number than that named in its articles of incorporation?

## OPINION

(1) A statement in the articles of incorporation that the board of directors shall not be less than three nor more than seven, in my opinion, is a compliance with paragraph 6 of section 4, chapter 177, Statutes 1925.

(2) A corporation has no authority to delegate to the board of directors the right to increase the number of directors to a greater number than is authorized or stated in the articles of incorporation. Such action would require an amendment to the articles of incorporation.



Respectfully submitted,  
M.A. DISKIN, *Attorney-General.*  
HON. W.G. GREATHOUSE, *Secretary of State, Carson City, Nevada.*

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## SYLLABUS

### **281. Taxation—Redemption—Delinquency.**

(1) A deed to lots after delinquency date would invest the grantee with the right to redeem them.

(2) The grantee could redeem lots 11 to 16 and refuse to redeem or pay taxes on other lots in another distinct subdivision because the two tracts are separate subdivisions and assessed separately with different valuations.

(3) If five lots are in one subdivision or block, and the taxes thereon are delinquent, the total taxes must be paid if one lot in the illustration is to be redeemed.

## INQUIRY

CARSON CITY, September 29, 1927.

I am submitting herewith a duplicate tax statement of White Pine County for the year of 1926, and would respectfully ask that you render an opinion of the following questions:

(1) After this property was sold to White Pine County on July 18, 1927, R.M. Connor conveyed lots 11 to 16, block C, by deed to W.C. Goodman. Did the grantor invest the grantee with his right of redemption?

(2) Can the grantee redeem from the sale lots 11 to 16, block C, and leave the Ellis Addition property stand in the name of White Pine County?

(3) Has a taxpayer the right at any time to come in and pay on any part of his property, either before or after sale, and allow the balance to go delinquent?

## OPINION

The duplicate tax statement shows an assessment of a number of lots in distinct blocks or subdivisions.

(1) Assuming that lots 11 to 16, block C, comprise all the lots assessed at a valuation of \$1,125, a deed to these lots after delinquency date would invest the grantee with the right to redeem them.

(2) The grantee (*supra*) could redeem lots 11 to 16 and refuse to redeem or pay taxes on the lots or parcels of ground embraced in another distinct subdivision, because the two tracts are separate subdivisions and assessed separately with different valuations.

This precise question was passed on by the Supreme Court of Nevada in the case of *State of Nevada v. C.P.R.R. Co.*, [21 Nev. 94](#).

The court, in a concurring opinion, stated:

The answer alleges, that prior to the time the taxes became delinquent, the defendant unconditionally tendered to the tax receiver of Lander County all the taxes due upon a number of these subdivisions, or parcels of property, amounting, in all, to fifteen thousand six hundred and forty-five dollars and sixty-six cents; that he refused to receive it, but subsequently to the commencement of this action, it was demanded by the District Attorney, and paid to the county. The court held the plea of tender insufficient, and gave judgment for the full amount of tax and penalties, less the sum paid. The question is: Can a taxpayer pay the taxes upon some subdivisions of his property, and not on all? It may be admitted that, except under statutory authority, he cannot. Several apparently conflicting provisions of our statutes can be cited, which seem to indicate that the Legislature did not understand it had authorized it. And yet, the language of Gen. Stat. Sec. 1096, “but no tax receiver shall receive any taxes for any portion less than the least subdivision entered upon the assessment roll,; seems to clearly answer the question in the affirmative. If he is not to receive the tax on anything less than the least subdivision, then certainly the manifest implication is, that he can receive it on anything more than that. Words of a statute are never to be construed as unmeaning, if it is possible to avoid it; but if the tax receiver must not receive the tax on anything less than the whole property, then certainly it is meaningless to forbid him receiving it on less than a subdivision. As the defendant tendered the taxes on what was certainly a subdivision of its property, it is unnecessary to consider whether anything less would also have been a subdivision—for instance, whether it could pay on each forty acres of its lands, and demand a receipt therefor.

(3) A taxpayer may redeem, before or after sale, but, if five lots are in one subdivision or block and the taxes thereon are delinquent, the total taxes must be paid if one lot in the illustration is to be redeemed. If, however, two separate subdivisions are assessed separately with different valuations, it is not necessary that the tax upon all subdivisions assessed to one individual be paid in order to authorize redemption of a lot in one subdivision.

Respectfully submitted,

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

HON. GUY E. BAKER, *District Attorney, White Pine County, Ely, Nevada.*

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## SYLLABUS

### **282. Schools—Power of County Commission to Make Ad Interim Appointments of School Trustees.**

(1) Section 2805 of the Rev. Laws of Nevada limits the powers of County Commissioners in temporarily filling vacancies to “county officers.” A School Trustee is not a “county officer.”

(2) Such vacancies must be filled by election or, in event of failure to elect, then by appointment by the Deputy Superintendent of Public Instruction of the district.

#### INQUIRY

CARSON CITY, September 30, 1927.

1. Does section 2805, Revised Laws of Nevada, 1912, confer upon the Boards of County Commissioners of the respective counties of this State the power to make temporary appointments of School Trustees in the interim after the occurrence of a vacancy in the Office of School Trustee and before the election or appointment by the district Deputy Superintendent of Public Instruction to fill such vacancy, as provided by sections 3301-3302, Revised Laws of Nevada, 1912?

2. Do sections 3301-3302, above cited, supersede said section 2805 and limit the power of appointment of School Trustees to the district Deputy Superintendent of Public Instruction?

#### OPINION

1. Section 2805, Rev. Laws of Nevada, limits the power of the County commissioners in temporarily filling vacancies to “county and precinct” officers.

This office has heretofore ruled that a School Trustee is not a “county officer” within the strict meaning of that term as used in the statutes. (Opinion No. 5, Opinions of Attorney-General, 1915-1916.)

A precinct cannot be construed to mean school district in the ordinary sense in which the word precinct is used in the statutes. (See *Louisville R. Co. v. Johnson*, 115 S.W. 666.)

It is the opinion of this office, therefore, that section 2805, Rev. Laws, 1912, does not authorize the County Commissioners to temporarily fill vacancies in the office of School Trustee.

2. In view of the opinion of this office that section 2805 Rev. Laws does not apply to vacancies in the office of School Trustee, the filling of such vacancies must, therefore, be made in accordance with sections 3301-3302, Rev. Laws, 1912, by election or, in the event of a failure to elect, then by appointment by the Deputy Superintendent of Public Instruction of the district.

Respectfully submitted for the Attorney-General,

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

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

HON. JAMES T. DUNN, *District Attorney, Humboldt County, Winnemucca, Nevada*.

## SYLLABUS

### **283. Schools—Construction Costs—Necessity for Approval of the Deputy Superintendent.**

The Deputy Superintendent must approve all orders for the payment of construction costs in school districts having fewer than five trustees, even though the authorization for such construction has been made by a vote of the people.

## INQUIRY

CARSON CITY, September 30, 1927.

Whether or not it is the duty of the Deputy Superintendent of Public Instruction to approve all school board orders over five hundred dollars which are drawn in payment for construction bills in districts where the qualified voters have authorized bond issues and contracts have been let covering the construction of a school building.

## OPINION

Section 3307, Revised Laws of 1912, provides:

In school districts having fewer than five trustees no warrant for the payment of money for a new school building or for repairs or furniture in excess of five hundred dollars shall be issued unless the order shall be approved by the Deputy Superintendent of Public Instruction.

This section makes no exception in cases where the authorization for the construction of the building has been made by a vote of the people; therefore, the Deputy Superintendent should approve all orders for the payment of money within section 3307, Rev. Laws, 1912, irrespective of whether the authorization for such construction was by a vote of the people or simply by the vote of the Board of Trustees.

Respectfully submitted for the Attorney-General,

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

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

HON. WALTER W. ANDERSON, *Superintendent of Public Instruction, Carson City, Nevada*.

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## SYLLABUS

### **284. Statutes—State Lands—Irrigation District Law Applicable to State Lands Not Under Contract—Certificate State Engineer on Beneficial Use.**

(1) Section 45, irrigation district law, Statutes 1919, chapter 64, as amended, presupposes determination at time of formation of district by State Engineer as to whether or not State land will be benefited by inclusion therein.

(2) Rule announced on method of procedure to include State lands not under contract.

### INQUIRY

CARSON CITY, October 8, 1927.

The inquiry states the following facts:

A legal applicant made application for forty acres of State land not under contract of purchase lying within the Walker River Irrigation District. The Surveyor-General's office requested the State Engineer to furnish them with a certificate under section 45 of the Nevada Irrigation District Act. The State Engineer refuses to supply such certificate on the ground that he has no jurisdiction. The questions under this state of facts are:

1. Whether or not section 45 of the Nevada Irrigation District Act, Stats. 1919, chap. 64, p.84, as amended, Stats. 1921, chap. 79, p. 133, is applicable to State lands not under contract to purchase, lying within the boundaries of a duly organized irrigation district.

2. If the State Engineer fails to file the certificate to the effect that such lands will be benefited by being included within such district, must the Surveyor-General reject all applications for such State lands?

### OPINION

1. Section 45, above cited, reads in part as follows:

State lands, not under contract to purchase, shall not become a part of an irrigation district except by the consent of the State Land Register, who is hereby authorized and required to consent thereto on behalf of the State upon there being filed in his office a certificate signed by the State Engineer to the effect that such lands will be benefited by inclusion therein. District assessments, charges, and tolls against the lands, and any sale or contract to sell any such lands thereafter shall be conditioned upon the payment, by the purchaser or contractor, of all such accrued charges in addition to the purchase price of the land.

This statute presupposes a determination at the time of the formation of the irrigation district by the State Engineer as to whether or not State lands not under contract to purchase would be benefited by inclusion therein. Under the statute, State land not under contract to purchase cannot become a part of an irrigation district, except by the filing of the required certificate in the office of the Surveyor-General by the State Engineer and the consent by the Surveyor-General.

It is evident, therefore, that the land mentioned in the inquiry never became a part of the Walker River Irrigation District.

2. That statute quoted does not require the Surveyor-General to reject applications for such lands. Inasmuch as the lands in question did not become a part of the irrigation district, they would, therefore, be treated the same as any other State lands not a part of an irrigation district.

Respectfully submitted for the Attorney-General,

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

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

SYLLABUS

**285. Water Law—Final Order of Determination—Distributing Stock Water where Exception Filed to Allowance in final Order—Duty State Engineer on Distribution Under Final Order when Same Before Court.**

(1) Where claimant excepts to amount allowed for stock watering in Final Order of Determination the law authorizes a depositing of a bond by claimant to insure distribution according to exception filed. If no bond filed water to be distributed according to Order of Determination.

(2) State Engineer has no discretion in distributing water, but governed by allotments set forth in Final Order of Determination.

(3) Where controversy arose between State Engineer and claimant after Final Order is filed in court, application can be made for relief to court by either party.

INQUIRY

CARSON CITY, November 9, 1927.

(1) Do the provisions contained in the Final Order of Determination of Humboldt river, which reads as follows: "In addition to water used during the irrigation season, each user should be entitled, in his proper proportion and priority, to the use of water in such reasonable amounts as necessary for fall and spring irrigation and for stockwater purposes during the nonirrigating season," constitute sufficient authority for the office of the State Engineer to regulate and distribute the waters of the Humboldt River with respect to storage and stock water during the nonirrigating season? If so, how?

(2) In the administration of the Final Order of Determination pending the issuance of the final decree, is it the duty of the court of jurisdiction to issue instructions in question of controversy regarding interpretation of administration of the said Order of Determination, or is it within the province of the State Engineer, at his discretion, to make such interpretation?

OPINION

In reply to interrogatory No. 1, you are referred to the Final Order of Determination which establishes the respective rights of all claimants to the waters of the Humboldt River. It will be noted that in the Final Order of Determination no definite amount of water is allocated to any claimant for stock-watering purposes during nonirrigating seasons. It will be further ascertained from the exceptions filed by the several claimants that complaint was made in respect to said Order of Determination to the effect that the order was not specific concerning the amount of water to be allowed for stock-watering.

In view of the fact that the Order of Determination does not specifically award to the several claimants any definite amount of water for stock-watering purposes, and the exception raising this question is now before the court for determination, under the statute the several claimants are authorized, upon the filing of a bond, to have the water distributed in accordance with their exceptions. No bond having been executed or filed, the provisions of the Final Order of Determination are, therefore, controlling.

In respect to storage, I assume that you mean the right of an individual to store water in a reservoir. The dates of priority and the amount allowed to the several claimants would have to govern, and the residue, after supplying earlier priorities, may be used for storage purposes, provided, of course, that such use in no way conflicts with priorities earlier in point of time.

Answering question No. 2, the State Engineer has no discretion in administering the waters of the Humboldt River under the Final Order of Determination, except in those instances only where that discretion is reserved to the State Engineer.

It is not the duty of the court to issue instructions in respect to matters coming within the jurisdiction of the State Engineer, but it is the duty of the State Engineer to carry out the provisions of the Final Order of Determination and, in the event that a controversy arises between the State Engineer and a water claimant respecting rights arising under the Final Order of Determination, either party has the right to make an application to the court so that the matter may be finally determined. The court, however, is not to be interviewed for the purpose of having his personal views expressed to the State Engineer as to how the State Engineer should perform his duties under the Final order of Determination. The court simply acts when a matter is formally presented to him in the course of litigation.

Respectfully submitted,

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

HON. GEORGE W. MALONE, *State Engineer, Carson City, Nevada.*

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## SYLLABUS

### **286. Schools—Investment of State Permanent School Fund.**

The Statutes of Nevada, 1917, p. 339, authorizes investments of money of the State Permanent School Fund in bonds of other States where the full faith and credit of such State is pledged for the payment thereof.

## INQUIRY

CARSON CITY, November 12, 1927.

You submit for official opinion the validity of a proposed act of the State Board of Finance in investing \$90,000 of money of State Permanent School Fund in bonds of State Highway of State of Louisiana.

You request to be advised, if money of the State Permanent School Fund, under the law, may be lawfully used for this purpose, and if the bonds tendered are within the purview of legislative authorization as investment of this fund.

### OPINION

The Constitution of the State of Louisiana by amendment of 1924 authorized the board of Liquidation of State Debt of the State of Louisiana to fund into bonds, notes, etc., not to exceed two million dollars, the avails of automobile license tax under the provisions of Act No. 18 of the Special Session of 1918 in excess of the amount required to retire bonds issued under said Act. By the Constitutional Amendment, *supra*, the Board was authorized to dedicate and set apart to the payment of principal and interest of said issue, from license tax collected from automobiles, an amount sufficient for this purpose.

It will be noted that the annual tax collected by way of automobile licenses is the fund, and the only method provided for paying interest and redeeming the bonds issued thereunder. The full faith and credit of the taxable property of the State is in no way pledged for payment of said bonds, and serious doubts exist in my mind if this license fund would prove inadequate to pay interest or retire bonds when due, whether bondholders would not be confined exclusively for payment to the fund indicated. We are not advised if the Constitution of the State of Louisiana restricts or limits the amount of State indebtedness, or if the amount of the proposed bond issue is within such limitation.

Statutes of Nevada, 1917, page 399, authorize investments of money of State Permanent School Fund “in the bonds of this State or of other States.”

In construing this provision, I am of the opinion that it authorizes investments of these funds in bonds of other States where the full faith and credit of such State is pledged for the payment thereof, and that money for such payment shall be raised by taxation on real and personal property within such State. A dedication of the amount of automobile license taxes collected for retiring said bonds, without pledging the real or personal property of the State for payment, and authorizing a tax to be levied thereon, would, to a certain extent, make payment too uncertain and render extremely doubtful if bonds so issued are State bonds in the sense used under our law.

Respectfully submitted,

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

HON. GEO. B. RUSSELL, *State Treasurer, Carson City, Nevada*.

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### SYLLABUS

#### **287. Water Law—Stock Watering Act—Vested Rights—Protests.**

Where a valid right for stock watering accrued and became vested prior to enactment of Statutes 1925, chapter 201, the provisions of sec. 2 of this Act would not apply; otherwise it would govern.



## INQUIRY

CARSON CITY, November 15, 1927.

A legal applicant made application to the State Engineer on November 23, 1924, for permission to appropriate the waters of a spring located in T. 18 N., R. 62 E., for stock-watering purposes. The application was protested on the grounds that the granting of a permit on same would conflict with existing rights. No action by this office has been taken on the application since its receipt and the protestant now contends that, since the approval of this application was not made prior to the enactment of the stock-watering Act, the provisions of section 2 of said Act must be taken into consideration by the State Engineer before approving the application.

Is the State Engineer bound by the provisions of section 2 of the stock-watering Act in acting upon the application at the present time?

## OPINION

Section 2, Statutes 1925, chapter 201, reads as follows:

Whenever one or more persons shall have a subsisting right to water range live stock at a particular place, and in sufficient numbers to utilize substantially all that portion of the public range readily available to livestock watering at that place, no appropriation of water from either the same or a different source shall subsequently be made by another for the purpose of watering range live stock in such numbers and in such proximity to the watering place first mentioned, as to enable the proposed appropriator to deprive the owner or owners of the existing water right of the grazing use of said portion of the public range, or to substantially interfere with or impair the value of such grazing use and of such water right.

Section 5 of the same Act provides:

Nothing in this Act shall be construed to affect the validity of rights to the use of water for watering live stock acquired under the previously existing laws of this State or to impair any existing vested right to the use of water for that purpose.

Under the facts stated by you, if a valid water right to the springs in question accrued and existed under the provisions of law prior to the enactment of Statutes 1925, supra, the provisions of section 2 would not apply. If no such right existed and merely an application to appropriate had been filed prior to the 1925 Act, and no action taken thereunder, the provisions of section 2 would prevail.

Respectfully submitted,

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

HON. GEORGE W. MALONE, *State Engineer, Carson City, Nevada.*

## SYLLABUS

### **288. Foreign Corporations—Insurance Companies—Filing of Articles of Incorporation.**

The articles of incorporation of foreign insurance corporations are not required to be filed in the office of the Secretary of State excepting those companies qualifying in this State after the enactment of the Rev. Laws of 1912, secs. 695-701.

### INQUIRY

CARSON CITY, December 15, 1927.

Whether or not an insurance company organized under the laws of another State should file its articles of incorporation in the office of the Secretary of State in accordance with the provisions of section 1348, Revised Laws of 1912, relating to filings to be made by foreign corporations generally.

### OPINION

Section 1348, Revised Laws of 1912, provides, in substance, that every corporation organized under the laws of another State, which shall hereafter enter this State for the purpose of doing business herein, shall file its articles of incorporation in the office of the Secretary of State.

This statute was enacted in 1907.

The statutes of this State relating to insurance companies provide that such companies shall qualify to do business in this State by making certain filings and paying certain fees to the State Controller, and, included in these requirements, is a filing of the articles of incorporation of such company in the office of the State Controller, if demanded by him; also, a designation of a person upon whom process might be served.

The Legislature of this State has always treated insurance legislation as a distinct title and has not seen fit to combine matters governing insurance with those of corporations generally. This continued practice of the Legislature in so far as foreign insurance corporations are concerned strongly indicates an intention of the Legislature that the general laws governing foreign corporations are inapplicable to insurance companies generally.

This construction of the legislative intention is further strengthened by the fact that in 1909 the Legislature enacted sections 695-701, Revised Laws of 1912, requiring surety companies to file their articles of incorporation in the office of the Secretary of State. This would have been a useless act if section 1348, Revised Laws 91 1912, applied to insurance companies.

A similar situation was passed upon by the Supreme Court of Montana in the case of *State v. Aachen & M. Fire Ins. Co.*, 41 Pac. 1004, where it was held that the general laws governing foreign corporations did not apply to insurance companies.

The question has also been passed upon in the following cases, with the same result: *St. Louis Ry. Co. v. Commercial Union Ins. Co.*, 139 U.S. 223; *Memphis Is. Co. v. St. Louis Ry. Co.*, 41 Fed. 643.

It is therefor the opinion of this office that articles of incorporation of foreign insurance corporations are not required to be filed in the office of the Secretary of State, excepting those companies as to which the Legislature has indicated a contrary intention, such as surety companies qualifying in this State after the enactment of Revised Laws, 1912, sections 695-701.

Respectfully submitted for the Attorney-General,

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

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

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

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### **289. Foreign Corporations—Filing of List of Officers and Designation of Resident Agent.**

Any foreign surety company which qualified to do business in this State after March 26, 1909, must comply with the provisions of chap. 180, Stats. of 1925.

#### INQUIRY

CARSON CITY, December 15, 1927.

Whether or not a foreign surety company must file in the office of the Secretary of State a list of officers and designation of resident agent in accordance with the provisions of chap. 180, Stats. 1925.

#### OPINION

This office has this day rendered an opinion that insurance companies generally are not subject to the foreign corporation laws of this State, excepting, however, those companies which the Legislature has indicated should comply with these laws.

This ruling is in accordance with the holding in the following cases; *State v. Aachen Ins. Co.*, 41 Pac. 1004; *St. Louis Ry. Co. v. Commercial Union Ins. Co.*, 139 U.S. 223; *Memphis Ins. Co. v. St. Louis Ry. Co.*, 41 Fed. 643.

The Legislature by sections 695-701, Revised Laws of 1912, indicated its intention to require surety companies not theretofore qualified to comply with the general laws governing foreign corporations. Therefore, any foreign surety company which qualified to do business in this State after March 26, 1909, must comply with the provisions of chap. 180, Stats. 1925.

Respectfully submitted for the Attorney-General,

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

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

HON. ED. C. PETERSON, *State Controller, Carson City, Nevada*.

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290. Foreign Corporations—Reinstatement—Recording of Article

(1) Where a default has been entered against foreign corporations that have entered the State prior to 1907, for failure to comply with the provisions of chap. 80, Stats. of 1925, the Governor may reinstate such corporations and the Secretary of State would have authority to issue a certificate of such reinstatement.

(2) The Secretary of State can accept an amendment to the articles of such company when the company's articles are not of record in the office of the Secretary of State.

INQUIRY

CARSON CITY, December 16, 1927.

Prior to the 1907 law, approved March 20, 1907, all foreign companies filed their articles of incorporation with the County Recorder under section 1346, page 390, Vol. 1, Revised Laws, 1912, and the company filing its articles with the Recorder was not required to file certified copy of articles with the Secretary of State, but was only required to file a certificate of appointment of their resident agent in the Secretary of State's office, in accordance with section 5024, Vol. 2, Revised Laws, 1912. In 1907 a law was enacted requiring all foreign companies to file articles in this office. In 1923 a law was enacted levying a \$10 tax on domestic and foreign companies. In 1925 this law was repealed and an Act passed requiring domestic and foreign companies to annually file a list of their officers with the Secretary of State. If said list is not filed in accordance with the said law a penalty of \$2.50 is added. When any company fails to meet the demand of the law its charter is temporarily suspended. Should the company at any time during the delinquency pay up all indebtedness, a certificate of reinstatement is issued by the Secretary of State stating that the company has paid all taxes and has complied with the law and is hereby authorized to legally transact business.

My request is for an opinion on the following questions:

(1) Can the Secretary of State legally issue a certificate of reinstatement to a foreign company qualified to do business in this State prior to 1907, and the company's articles not be of record in the office of the Secretary of State?

(2) Can the Secretary of State accept an amendment to articles of a company qualified as above stated when the company's articles are not of record in the office of the Secretary of State?

OPINION

Replying to interrogatory No. 1, assuming that the Secretary of State is authorized under the law, under the circumstances stated in the inquiry, to declare in default foreign corporations that have entered the State prior to 1907, then it must necessarily follow that

where a default has been entered for failure to comply with the provisions of chapter 180, Statutes 1925, the Governor would be authorized to reinstate such corporation and the Secretary of State would have the authority to issue a certificate of reinstatement.

Your second question is answered in the affirmative.

Respectfully submitted,

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

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

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