

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL - 1930

SYLLABUS

OPINION NO. 30-355. CORPORATIONS, FOREIGN—INSURANCE COMPANIES—AGENTS FOR ACCEPTANCE OF SERVICE OF PROCESS.

(1) Section 8 (Revised Laws, 1273) General Insurance Law, relating to appointment of resident citizen for acceptance of service, does not permit the State Controller in his official capacity to so act, either with or without appointment, unless in the case an agent lawfully appointed removes from Nevada or becomes disqualified, when the statutory exception operates. The office holder, however, may be given power of attorney in his private individual capacity. A corporation being a resident citizen of Nevada may act.

(2) Such companies are presumed to know the law and the State Controller is under no legal duty to point it out to them or their noncompliance therewith. In case of an erroneous appointment, correction may be made thereof without further fee.

INQUIRY

Carson City, January 20, 1930.

I have letters from two fire insurance companies asking if the State Controller or the Insurance Commissioner can be named in their power of attorney to accept service for the company in this State.

Section 8 on page 5 of our insurance law pamphlet specifies that a “citizen and resident of the State must be appointed.”

The records of the Controller’s office show that for many years past the Controller has filed powers of attorney naming the State Controller or the Insurance Commissioner or the State Controller and ex officio Insurance Commissioner as process agent for fire, life, and casualty companies.

In order that I may administer the law correctly, may I ask the following questions:

First—Can an insurance company other than a surety company appoint the State Controller or the Insurance Commissioner as its process agent, or must it appoint a citizen and resident?

Second—If such appointment is illegal, must I require all insurance companies who have filed their power of attorney naming the State Controller or the Insurance Commissioner to name new process agents?

Third—If the insurance companies are required to appoint agents and have filed their original power of attorney in good faith, shall I charge the regular fee of \$5, or make the correction gratis?

Fourth—Can a corporation or firm be appointed as process agent, or must it always be an individual citizen?

OPINION

(1) Section 8, General Insurance Laws of the State of Nevada, provides, in substance, that, before an insurance company organized outside of the State shall be permitted to do business in this State, it must file with the State Controller a certificate enumerating certain facts and, in addition thereto, shall file a power of attorney authorizing a citizen and resident of this State to make and accept service in any proceeding in any of the courts of this State. This section further provides that if a person designated to accept service removes from the State or becomes disqualified, then any citizen having a claim by virtue of any insurance contract may, under these circumstances, make service on such company by serving the State Controller.

It appears, therefore, that the State Controller may not validly accept service unless the agent appointed removes from the State or becomes disqualified. There is no provision in the law, outside of this exception, which would warrant service upon the State Controller. While the individual occupying the official position as State Controller might be lawfully designated as the resident agent, there is no authority in the law for appointing the State Controller in his official capacity as the process agent for an insurance company.

(2) In answer to your second inquiry, it seems to me that this is a question to be decided by the insurance company, whether or not the appointment of the State Controller in his official capacity is a lawful appointment in view of the provisions of section 8.

(3) If insurance companies desire to make an appointment of a citizen and resident of this State as their attorney and have already designated the State Controller as such. I do not think that any charge should be made for filing the second designation.

(4) No objection appears for the designation of a corporation, if such corporation is a citizen and resident of this State.

Respectfully submitted,

M.A. DISKIN,
Attorney-General

Hon. Ed. C. Peterson,
State Controller,
Carson City, Nevada

SYLLABUS

OPINION NO. 30-356. FOODS AND DRUGS—EGGS SOLD TO CONSUMER DIRECT.

Chapter 164, Statutes 1927, construed to prohibit display or sale of eggs to consumers, even though designated "Uncandled" by sign or label. Seller must actually comply with the law respecting the grades and standards of quality of said eggs, together with legal regulations.

INQUIRY

Carson City, January 20, 1930.

Your attention is called to Statutes 1926-1927, chapter 164, and a written opinion is requested as to whether the producer may sell direct to consumer uncandled eggs, provided the container is stamped or labeled with the word "Uncandled."

May retail dealer display uncandled eggs and sell same to consumer, provided the same are labeled "Uncandled Eggs?"

OPINION

Under section 1 of chapter 164, Statutes 1927, it is made unlawful for any person or corporation to sell eggs unfit for human consumption. In order to determine the quality of eggs, it is necessary that the same be subjected to inspection. Under section 5 of the Act, when eggs are sold in lots of half-cases or more and the same are being handled for or are in transit to or being sold to dealers in commercial centers who are to candle and grade the same, it is a sufficient compliance with the law if the same are designated "Not Candled." Before such eggs are offered for sale, however, in my opinion it will be necessary for the seller to have them properly inspected and marked as required by law.

While the provisions of the Act are ambiguous, I am of the opinion that an egg producer may not sell his eggs directly to a consumer without going through the formality of candling and grading the same, and that such eggs may not be sold without this process even if they are labeled "Not Canded." The dealer could not sell uncanded eggs in cartons or other packages even if the same are labeled uncanded. In other words, before these eggs may be offered for consumption to the public they must be candled and graded.

Respectfully submitted,

M.A. DISKIN,
Attorney-General

Sanford C. Dinsmore,
State Food and Drug Commissioner,
Reno, Nevada

SYLLABUS

OPINION NO. 30-357. HIDES, INSPECTION OF—FEES—COUNTY OFFICERS— COMPENSATION OF.

Chapter 76, Statutes 1929, providing for hide inspection services to be rendered by the Sheriff, and the Act fixing the salary of the Sheriff of Lyon County as payment in full for all services rendered, require the Sheriff to turn over to the County Treasurer all such inspection fees. Mileage compensation, not being authorized by any law, cannot be collected in connection with such inspections.

INQUIRY

Carson City, February 4, 1930.

Calling attention to chapter 76, Statutes 1928-1929, being "An Act to provide for the inspection of hides, providing compensation therefor, and other matters relating thereto," this Act provides that it shall be the duty of all Sheriffs, Deputy Sheriffs, Constables, Deputy Constables, Justices of the Peace, and Inspectors of the State Board of Stock Commissioners to inspect such hides and stamp such carcasses in conformity with the Act.

Section 8 of the Act reads:

* * * those authorized by this act to perform such inspections shall be, unless otherwise ordered by the state board of stock commissioners, entitled to charge and receive for such inspection a fee of twenty-five cents.

The Sheriff of Lyon County receives a stated yearly salary which, as provided for by statute, shall be "payment in full for all services rendered."

(1) Should the Sheriff's office, under the foregoing section, turn the twenty-five cent inspection fee over to the County Treasurer, or should he retain it as compensation for the extra work involved?

(2) Where it is necessary for the Sheriff or his deputies to travel several miles to and from the point of inspection, should the Sheriff charge mileage against the person at whose request the inspection was made? If so, should it be at the regular Sheriff's rate of forty cents per mile?

OPINION

(1) Answering the first query, it is our opinion that, inasmuch as the statute requires that the Sheriff of Lyon County shall receive a salary which shall be in payment in full for all services and requires him to turn over all his fees to the County Treasurer, and inasmuch as chapter 76, Statutes of 1929, requires that he make his inspection of hides as Sheriff, then, necessarily, the fees for such service must be turned over to the County Treasurer the same as other Sheriff's fees.

(2) Answering the second query, it is the general rule of law that mileage can only be collected where a statute specifically provides for it. Since the general statute does not cover this subject, and chapter 76, Statutes 1928-1929, has no such provision, the Sheriff is not entitled to receive mileage in connection with inspection of hides.

Respectfully submitted for the Attorney-General,

M.A. DISKIN,
Attorney-Genera

By: William J. Forman,
Deputy Attorney-General

Hon. John R. Ross,
District Attorney of Lyon County,
Yerington, Nevada

SYLLABUS

OPINION NO. 30-358. TRADING STAMPS—CONSTITUTIONAL LAW—POLICE POWER.

(1) Chapter 225, Statutes 1917, although enforced in practice, involves question not passed upon by Nevada Supreme Court, and the Attorney-General gives no opinion as to its constitutionality in such circumstances.

(2) The Act requires a license to be paid by both the person using and the person furnishing trading stamps.

INQUIRY

Carson City, February 4, 1930.

Calling attention to chapter 225 of the Statutes of 1917, being "An Act relating to the use of stamps, coupons, tickets, certificates, cards or other similar devices, for or with the sale of goods, wares and merchandise, and providing a penalty for violation thereof, and repealing all acts in conflict therewith";

(1) Is the Act constitutional, and, if so, does your office deem it enforceable?

(2) Assuming that question No. 1 is answered in the affirmative, then who should pay the tax—the person, firm, or corporation using the stamps, etc., or the person, firm, or corporation furnishing the stamps, etc., or both the person using and the person furnishing?

OPINION

(1) The Act referred to has been in force in this State since 1917 and has been enforced in the State. This type of legislation concerning trading stamps is one upon which there is ample

authority governing its constitutionality. An extensive note is contained in 26 A.L.R. 707, which covers the existing cases. It will be noted from the authorities therein listed that there is a sharp conflict of authority as to the constitutionality of these Acts.

It is the policy of this office, in such a situation, to hold that such questions should be presented to the courts for determination, inasmuch as there has been no Supreme Court decision in this State on the subject.

(2) The statute itself expressly requires both the person using and the person furnishing the trading stamps to procure the license therein required.

Respectfully submitted for the Attorney-General,

M.A. DISKIN,
Attorney-General

By: William J. Forman,
Deputy Attorney-General

Hon. John R. Ross,
District Attorney of Lyon County,
Yerington, Nevada

SYLLABUS

OPINION NO. 30-359. INTOXICATING LIQUORS—MEDICINAL PURPOSES— PHARMACY LICENSES.

Chapter 173, Statutes 1923, section 2, construed to require second and separate license only on substantial change of location, as from one town to another.

INQUIRY

Carson City, February 10, 1930.

I am obliged to again ask your advice on the following question:

Under the statute known as the Inspector of Pharmacies Act, can a drug firm, incorporated under the laws of this State and doing business in this State, move to another location, still carrying the firm personnel and no change being made in the organization, and continue to sell intoxicating liquors for medicinal purposes on doctors' prescriptions?

OPINION

The word "pharmacy" is defined under section 2, Statutes 1923, chapter 173. If a pharmacy has been conducted as stipulated in section 2 for the period designated, the corporation or individual running such pharmacy would have the right to have a license issued under the Act where a change in location is made, provided the location of the pharmacy is in the same city or town. A pharmacy that has been established at Reno at a definite location might move from one building in Reno to another; but, if the corporation desiring a permit moves from one town to another, it would not be entitled under the law to a permit until it had complied with section 2.

Respectfully submitted,

M.A. DISKIN,

Attorney-General

S.C. Dinsmore,
State Food and Drug Commissioner,
Reno, Nevada

SYLLABUS

OPINION NO. 30-360. CONSTITUTIONAL LAW—STATE DEBT LIMITATION—AMENDMENT PROCEDURE.

(1) The limitation of the State debt is as provided by the Constitution, whether the State be directly or indirectly obligated. (See Opinion 361.)

(2) Assuming biennial sessions of the Legislature, it requires six years to amend the State Constitution.

(3) Amendments to the Constitution by initiative, require an enabling Act by the Legislature, as the amendment is not self-executory.

INQUIRY

Carson City, February 10, 1930.

If there is no agreement reached between the Lower Basin States and the Colorado River Basin it will be necessary at once to make known to the Secretary of the Interior just what action we can take through our State in regard to the Boulder Dam power allocation; therefore, I would appreciate if you would answer the following questions at your earliest convenience:

(1) Is there a limit, under our Constitution, to the amount the State Legislature can obligate the State for annual payments, where no bond issue is required?

(2) If so, what is such limit?

(3) Is there any reason why the State Legislature cannot act as a “medium” in case any certain amount of Boulder Dam power is allocated to the State, securing the necessary funds or bonds from other sources, with which to make proper contracts with the Government, and fully protect the interests of the State through a direct contract?

(4) Could the State Legislature, under our Constitution, set up an organization or authority such as the New York “Port of Authority” to handle any particular business of the State, such as the “Boulder Dam power allocation” with proper authority to secure proper means of financing from other sources to properly safeguard the Government against loss from any power allocated the State, and in turn fully protect the State’s interest in a separate contract?

(5) What is the procedure and the minimum time required to change the Constitution of the State of Nevada?

OPINION

(1, 2) These two questions may be considered together, and they are answered by the provisions of section 3, article IX, of the Constitution of the State of Nevada, which provides:

For the purpose of enabling the state to transact its business upon a cash basis from its organization, the state may contract public debts; but such debts shall never in the aggregate, exclusive of interest, exceed the sum of three hundred thousand dollars; except for the purpose of defraying extraordinary expenses as hereinafter mentioned; every such debt shall be authorized by law for some purpose or purposes, to be distinctly specified therein, and every such law shall provide for

levying an annual tax sufficient to pay the interest semiannually, and the principal within twenty years from the passage of such law, and shall specially appropriate the proceeds of said taxes to the payment of said principal and interest; and such appropriation shall not be repealed, nor the taxes be postponed or diminished until the principal and interest of said debts shall have been wholly paid. Every contract of indebtedness entered into or assumed by or on behalf of the state, when all its debts and liabilities amount to said sum before mentioned, shall be void and of no effect. Except in cases of money borrowed to repel invasion, suppress insurrection, defend the state in time of war, or if hostilities be threatened, provide for the public defense.

To enable the State to function on a cash basis, authority is given to incur indebtedness not exceeding three hundred thousand (\$300,000) dollars, exclusive of interest.

Answering your questions propounded under points 1 and 2, you are advised that the limit for which the State may become obligated is the sum of three hundred thousand (\$300,000) dollars, and this amount controls, irrespective of the form which may constitute the evidence of such indebtedness.

(3, 4) These questions are answered by that portion of section 3, Article IX, reading as follows:

Every contract of indebtedness entered into or assumed by or on behalf of the state, when all its debts and liabilities amount to said sum before mentioned, shall be void and of no effect.

An arm or agency of the State would possess no greater right than the State itself. Any contract, therefore, entered into by such an agency as you describe, would be a State contract.

I am of the opinion that the Legislature might legally set up an organization to handle Boulder Dam power allocation, but such agency could not enter into contracts which the State would be prohibited or incapacitated from entering into by virtue of the provisions of the Constitution.

(5) In reply to interrogatory No. 5, the Constitution may be amended under the provisions of article XVI, section 1. In the absence of a special session of the Legislature, a six-year period would have to elapse before an amendment could properly be made under this provision.

Under the amendment of article XIX of the Constitution, adding section 3 relating to the initiative and referendum, the people are given the power to amend the Constitution by initiative petition. The Legislature, however, has failed to provide a method for carrying into effect this amendment to the Constitution and, until such procedure is adopted by the Legislature, in our opinion this method may not be used. (See Opinions of the Attorney-General, 1923-1924, No. 115.)

Respectfully submitted,

M.A. DISKIN,
Attorney-General

Hon. George W. Malone,
State Engineer,
Carson City, Nevada

SYLLABUS

**OPINION NO. 30-361. CONSTITUTIONAL LAW—STATE DEBT LIMIT—
INITIATIVE PROCEDURE FOR CONSTITUTIONAL AMENDMENTS—FISCAL
MANAGEMENT OF BOULDER DAM POWER ASSETS.**

(1) The constitutional limit of the State debt is one per cent of the total State assessed valuation.

(2) The Legislature, subject to constitutional limitation, has full power to make appropriate regulations for initiating constitutional amendments and submitting them to the people for enactment.

(3) The State may accept assets arising from compact or act of authorized Federal officers, not involving primary obligations contravening the constitutional state debt limitation, but it may not divest the State of property, however acquired, without a legislative Act.

(4) The fiscal management of assets arising from Boulder Dam power allocations or privileges is a mixed matter of policy and law, and in the absence of facts respecting the State's lawful commitments and acquisitions, the Attorney-General is not able to advise as to the exploitation or commutation of the same.

INQUIRY

Carson City, February 14, 1930.

I have your letter in answer to my inquiry as to the length of time required to amend the Constitution of the State of Nevada, in which you say that: "Under the amendment of article 19 of the Constitution, adding section 3 relating to the initiative and referendum, the people are given the power to amend the Constitution by initiative petition. The Legislature, however, has failed to provide a method for carrying into effect this amendment to the Constitution."

(1) If a special session of the Legislature was held and a definite procedure laid down by them to proceed under article 19, section 3, then by following such procedure could the proposed amendment to the Constitution of the State of Nevada be decided by the vote of the people at the general election in November, 1930?

(2) If in the regular session of the Legislature in 1931, such procedure should be laid down, then could the matter be determined by a special election following such regular session?

(3) If the Boulder Dam power should be divided among the States by compact, or allocated to them by the Secretary of the Interior, with the understanding that such allocation could be assigned or transferred to municipalities or other agencies, allowing such municipality or agency to become primarily responsible to the Government for such allocation, could our State legally accept such allocation and make such assignment or transfer?

(4) If assignment or transfer of such power is made, may the State legally specify the conditions under which such assignment or transfer be made, to fully protect the interests of the State, or may the State and such municipality or agency mutually agree on the conditions to be written into the contract between the Secretary of the Interior and such municipality or agency for the full and complete protection of the interests of the State?

OPINION

Before answering the above inquiries, I desire to make a correction in the statement contained in Opinion No. 360. In this opinion it was stated that the limit of the State's indebtedness was the sum of three hundred thousand dollars. This statement is incorrect. Under the Constitution, as amended, the State's indebtedness shall not exceed the sum of one (1%) per cent of the assessed valuation of the State.

(1) An answer to this question requires a conjecture as to the possible procedure to be adopted by the Legislature. It is usually customary in cases where an amendment to the Constitution is authorized by direct vote of the people for the Constitution itself or the Legislature to provide a method of procedure to accomplish this purpose. The method usually adopted is for the Legislature to designate the number or percentage of electors whose names must be affixed to the

petition requesting an amendment to the Constitution, to designate the time when such petition must be filed and the office where the same must be deposited, and then a further provision that the amendment be submitted to the people for their approval or disapproval at either a general or special election, and a limitation of time before such election when the petition must be filed.

(2) If the procedure adopted by the Legislature authorized the submission of the question at a special election, the amendment could then be determined at a special election.

(3) If the rights of the State are fixed by compact or allocated by the Secretary of the Interior and the State's primary obligation does not exceed the amount specified in the Constitution, the State could legally accept such allocation. An Act of the Legislature, however, will be required to divest the State's interest by assignment or transfer.

(4) An answer to this question would require an intimate knowledge of this State's position as heretofore asserted before the Secretary of the Interior and in the several conferences had between this State and other States in the attempted reconciliation of their differences. In view of the fact that this office did not participate in any of these negotiations before the Secretary of the Interior nor was this office consulted regarding any of the legal phases arising thereunder, we have not sufficient information as to the stipulations or terms that may be lawfully inserted in the compact between the States or in the allocation of the Boulder Dam power by the Secretary of the Interior to this State, and, therefore, cannot intelligently answer this question.

Respectfully submitted,

M.A. DISKIN,
Attorney-General

Hon. George W. Malone,
State Engineer,
Reno, Nevada

SYLLABUS

OPINION NO. 30-362. PUBLIC UTILITIES—RATE CONTRACTS—SUPERVISION OVER AND INTERPRETATION.

(1) The State's power to alter public utility rates does not extend to an executed contract having the United States as one party.

(2) Multiple metering held to be contemplated by language of rate contract.

(3) "Municipal purposes" construed in contract to apply to cities and towns and their needs, rather than as including an irrigation district.

INQUIRY

Carson City, February 21, 1930.

The following inquiries regarding an agreement between the United States and the Canyon Power Company have been made to this office:

(1) Do the provisions of paragraphs 7 and 8 of such agreement constitute a part of the rate schedule of Canyon Power Company, or Nevada Valleys Power Company as successor to Canyon Power Company; and is the Public Service Commission bound to observe the provisions of this agreement, or is it subject to modification by this Commission as being a part of a schedule of a public utility in Nevada?

(2) What interpretation should the Commission place upon the provision of paragraph 8 which provides for the use of 50 kilowatts of electric current at a certain rate specified in this

paragraph? The particular question in this case is whether multiple metering was intended by this paragraph.

(3) Do the provisions of paragraph 9 of this agreement require that preference in the use of power generated at the Lahontan plant be given to the city of Fallon, Truckee-Carson Irrigation District and the city of Lovelock?

OPINION

(1) Ordinarily, contracts made by a public utility subsequent to the enactment of the Public Service Law are subject to modification by the Public Service Commission. The particular contract involved in this case, however, is one made with the United States Government. The State Public Service Commission has no jurisdiction over the United States Government in its sovereign capacity, and, therefore, cannot alter, modify, or in any manner change any contract made by it.

(2) Paragraph 8 of the contract in question reads, in part, as follows: "During the term of this agreement the company shall also furnish the United States not to exceed 50 kilowatts of electric current or so much thereof as may be desired by the United States, to be delivered over the transmission lines constructed and owned by the United States and to be measured by watt-hour meters furnished and installed by the United States at the point of delivery."

The proper interpretation of this paragraph depends upon what effect is given to the words, "watt-hour meters at the point of delivery." Inasmuch as the parties to this contract used the plural designation, "watt-hour meters," it is our opinion that plural metering was intended.

(3) Paragraph 9 of the agreement in question provides as follows: "During the term of this agreement preference in the sale of power generated at the Lahontan plant shall be given, by the company, to municipal purposes.

Such paragraph would require a preference to the city of Fallon and the city of Lovelock for municipal purposes. From the wording of the paragraph and the general use of the word "municipal" it seems hardly possible that the Truckee-Carson Irrigation District could use the power for municipal purposes in the sense in which the word "municipal" is used in the agreement; therefore, the proper interpretation of this paragraph would seem to require that preference be given to the city of Fallon and the city of Lovelock in so far as their demands are for municipal purposes.

Respectfully submitted for the Attorney-General,

M.A. DISKIN,
Attorney-General

By: William J. Forman,
Deputy Attorney-General

Frank B. Warren,
Secretary, Public Service Commission of Nevada,
Carson City, Nevada

SYLLABUS

OPINION NO. 30-363. SCHOOLS—COUNTY TAX LEVY FOR—APPLICATION OF STATE SCHOOL RESERVE.

(1) Section 151, subdivision 4(a), School Code, providing for relief to counties out of State School Reserve of the Distributive School Fund, is not connected with section 152.

(2) Section 139 of the School Code must give way to section 152, subdivision 2, if conflict arises.

(3) Section 151, subdivisions 4(a) and 4(b), provide for relief to counties as a whole and not isolated districts.

(4) In case of failure to seasonably obtain relief from the School Reserve before the same currently reverts to the Distributive School Fund (whether by error in reporting tax rate or otherwise) the relief is lost without remedy, and the State Superintendent has no duty in the premises.

INQUIRY

Carson City, March 3, 1930.

(1) Section 152, subdivision 2, of the School Code provides that the County Commissioners shall levy a school tax sufficient to provide \$625 per apportionment teacher and not less than \$2 per pupil in average daily attendance, subject, however, to the provisions of paragraph 5(a) in section 151.

What effect does this section have upon section 151, subdivision 4(a), providing for the apportionment of State money from the State School Reserve Fund?

(2) If section 151, subdivision 4(a), is in effect, can any of the counties which have levied a tax of thirty-five cents or more upon the one hundred dollars assessed valuation in past years, and if such levy did not bring in sufficient money to meet the minimum demand under section 152, subdivision 2, now compel the State to pay them any of the relief moneys not apportioned under the provisions of this subdivision?

(3) Does subdivision 2 of section 152, requiring the County Commissioners to levy a tax sufficient to provide \$625 for apportionment teacher and not less than \$2 per pupil in average daily attendance, repeal, by implication, section 139 which limits the tax the County Commissioners may levy to 50 cents on each \$100 valuation of taxable property?

(4) Assuming that section 151, subdivision 4(a), is in effect, then is the amendment to section 152, subdivision 2, Statutes 1925, providing that the County Commissioners levy a tax sufficient to raise \$625 per apportionment teacher and \$2 per pupil, effective?

(5) If section 151, subdivision 4(a), is not effective, would section 139 remain in effect and limit the maximum tax to fifty cents on each \$100?

(6) Would the educational districts of Clark County receive relief from the State School Reserve Fund, under section 151, subdivisions 4(a) and 4(b), when the individual district had met the requirements of these subdivisions? In other words, might either school district be entitled to relief although the other district was not?

(7) Would a county high school district of Lyon County be entitled to relief under section 151, subdivision 4(b), when the county high school district met the requirements of this subdivision, regardless of whether the other county high school districts were entitled to this relief or not?

(8) In case of an error on the part of the County Treasurer in reporting the special rate as less than fifteen cents instead of fifteen cents or more, and, in the meantime, all of the State School Reserve Fund has been apportioned before the error has been discovered and the State Controller and State Treasurer have made the entries on their books and the counties have received their allotments in accordance with the apportionment, what are the duties of the State Superintendent in connection with such apportionment?

OPINION

(1) Section 151, subdivision 4(a), reads in part as follows:

Whenever any county shall have levied 35 cents on the hundred dollars assessed valuation of the county for elementary school purposes, if such levy does not

bring in an amount of money equal to that required by law of such county for elementary school purposes, exclusive of bonds and interest thereon, the superintendent of public instruction shall apportion to said county from the State School Reserve Fund a sum of money such that taken with the amount raised by the levy of 35 cents on the hundred dollars by the county will be sufficient to make the sum required by law of such county for elementary school purposes * *

Section 151, throughout, relates to the apportionment of the State Distributive School Fund, of which the State School Reserve Fund is a part.

Section 152 relates to the apportionment of moneys raised by the county, and to the amount of money that must be raised by the county.

The two sections are independent, and the provisions of section 152, subdivision 2, have no effect upon the awarding of relief to the counties provided for in section 151. The relief awarded by section 151, subdivision 4(a), is determined solely by the fact that in certain counties a levy of thirty-five cents has been made on the one hundred dollars assessed valuation, and that such levy has failed to bring in enough money to amount to that sum required by law of such county for elementary school purposes.

(2) This question should be answered in the negative, for the reason that section 152, subdivision 3, provides that any money remaining in the State School Reserve Fund on the 30th day of June and the 31st day of December of any year shall revert to the State Distributive School Fund. When such a reversion has taken place, the right to secure any reimbursement for the preceding semiannual period is lost.

(3) This question is answered by Opinion No. 325, 1929-1930, holding that section 152, subdivision 2, controls.

(4) This question must be answered in the affirmative, for the reason that the two sections are independent, as pointed out in the answer to your first inquiry.

(5) The answers heretofore given to the preceding questions render the answer to this question unnecessary.

(6) Section 151, subdivisions 4(a) and 4(b), provides for relief to counties and not to school districts; therefore, these educational districts could not take advantage of the law.

(7) This inquiry is answered in the negative, for the same reasons as stated in the answer to inquiry No. 6.

(8) There are no duties prescribed by law for the State Superintendent in this regard, after the fund is exhausted.

Respectfully submitted for the Attorney-General,

M.A. DISKIN,
Attorney-General

By: William J. Forman,
Deputy Attorney-General

Hon. Walter W. Anderson,
State Superintendent of Public Instruction,
Carson City, Nevada

SYLLABUS

OPINION NO. 30-364. STATE HIGHWAY ACT—PURPOSE OF STATE-COUNTY HIGHWAY FUNDS.

Machinery purchased with State-county highway funds cannot be used for exclusive county purposes but belongs on the State Highway system within the county.

INQUIRY

Carson City, March 3, 1930.

Where road machinery has been purchased from the County-State Highway Fund, may such machinery be used on county roads or must it be used exclusively on State highways within the county?

OPINION

By section 11 of the State Highway Act, the County-State Highway Fund was dedicated to State highway purposes, to be expended under the direction of the State Highway Engineer. Because of this fact, and, therefore, machinery purchased from this fund could not be thereafter used for exclusive county purposes but must be used on the State highway system.

Respectfully submitted for the Attorney-General,

M.A. DISKIN,
Attorney-General

By: William J. Forman,
Deputy Attorney-General

Hon. Franklin E. Wadsworth,
District Attorney of Lincoln County,
Pioche, Nevada

SYLLABUS

OPINION NO. 30-365. CRIMES AND PUNISHMENT—MINE SAFETY.

Revised Laws, 6799, providing for safety equipment in vertical mine shafts according to depth, is a mandatory requirement of law enforced also by punishment for violation as for a misdemeanor.

INQUIRY

Carson City, March 4, 1930.

Referring to section 6799 of the Revised Laws of the State of Nevada, as amended, to wit: "An Act to amend an Act entitled 'An Act concerning crimes and punishments, and repealing certain Acts relating thereto,' " approved March 17, 1911. I will ask you to kindly give me your opinion as to whether or not the above section mentioned makes it mandatory upon any person or persons, company or corporation to sink or work through any vertical shaft, at a greater depth than three hundred and fifty feet, unless the same be provided with safety cage, safety crosshead, or safety skip.

OPINION

Section 6799, Revised Laws of Nevada, provides:

It shall be unlawful for any person or persons, company or companies, corporation or corporations, to sink or work through any vertical shaft, at a greater depth than three hundred and fifty feet, unless the said shaft shall be provided with an iron-bonneted safety cage, safety crosshead or safety skip, to be used in the lowering and hoisting of the employees of such person or persons, company or companies, corporation or corporations. The safety apparatus shall be securely fastened to the cage, crosshead or skip, and shall be of sufficient strength to hold the cage, crosshead or skip loaded at any depth to which the shaft may be sunk; *provided*, that where safety crosshead is used for other than sinking purposes the same shall be equipped with gates as provided by law for cages; *and provided further*, that where skips are used for other than sinking purposes platforms for men to stand on when being hoisted or lowered shall be placed in said skip not less than four feet from top of same, and that an overhead bar be provided for the men to hold to. In any shaft less than three hundred and fifty feet deep where no safety cage, safety crosshead or safety skip is used and where crosshead or crossheads are used, platforms for employees to ride upon in lowering and hoisting said employees shall be placed above said crosshead or crossheads. Any person or persons, company or companies, corporation or corporations, or the managing agent of any person or persons, company or companies, corporation or corporations, violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in the sum of five hundred dollars, or imprisonment in the county jail for a term of six months, or by both such fine and imprisonment.

It is not only the mandatory duty of the corporation or company to provide the safeguards mentioned in said statute, but it is also a misdemeanor for any company or corporation to violate the provisions of this section.

Respectfully submitted,

M.A. DISKIN,
Attorney-General

Hon. A.J. Stinson,
Inspector of Mines,
Carson City, Nevada

SYLLABUS

OPINION NO. 30-366. MOTOR VEHICLES—CARRIERS—LICENSES.

- (1) Chapter 197, Statutes 1929, does not extend to a mere owner of a motor vehicle leased to another.
- (2) Nor is a mail carrier, carrying out his contract only, within said requirement.

INQUIRY

Carson City, March 10, 1930.

- (1) Is an owner of a motor vehicle who leases such motor vehicle to another, liable for the license required by chapter 197, Statutes of 1929?

(2) Does a mail contractor operating a motor vehicle in carrying out such contract, and who carries no passenger or property for hire required to procure such license?

OPINION

(1) Where the relation between the parties is merely a lease of motor vehicle equipment, such relationship does not bring the lessor within the terms of the Act as a person engaged in the business of transporting passengers or property for hire. *State v. Bee Hive Auto Service*, 242 P. 384; *State v. Herty Driv-Ur-Self Stations*, 271 P.331.

(2) A mail contractor engaged in that business solely is not engaged in the business of transporting passengers or property for hire, within the meaning of chapter 197, Statute 1929. *State v. Johnson*, 243 P. 1073.

Respectfully submitted for the Attorney-General,

M.A. DISKIN,
Attorney-General

By: William J. Forman,
Deputy Attorney-General

Frank B. Warren,
Secretary, Public Service Commission of Nevada,
Carson City, Nevada

SYLLABUS

OPINION NO. 30-367. UNDERTAKERS AND EMBALMERS.

A license is required from one who embalms bodies for local burial.

INQUIRY

Carson City, March 17, 1930.

Whether or not an embalmer's license is required by a person embalming bodies for local burial.

OPINION

In view of the provisions of sections 4449 and 4451, Revised Laws of Nevada 1912, it is the opinion of this office that one embalming bodies for local burial is required to secure an embalmer's license.

Respectfully submitted for the Attorney-General,

M.A. DISKIN,
Attorney-General

By: William J. Forman,
Deputy Attorney-General

Hon. Frank J. Cavanaugh,
Treasurer, Nevada State Board of Embalmers,
Tonopah, Nevada

SYLLABUS

OPINION NO. 30-368. MOTOR VEHICLES—CARRIERS—LICENSES.

Chapter 197, Statutes 1929, does not apply to operations exclusively over a route consisting entirely of a private highway.

INQUIRY

Carson City, March 20, 1930.

Whether or not a motor vehicle operator who operates for hire over a highway constructed and maintained solely by private persons is required to secure the license provided for by chapter 197 Statutes 1929.

OPINION

The license required by chapter 197, Statutes 1929, covers only those motor vehicles which transport persons or property over the public highways of the State. Therefore, a man operating solely on a private highway would not be required to secure the license. However, if any part of his route is over the public highway he would be required to comply with the law.

Respectfully submitted for the Attorney-General,

M.A. DISKIN,
Attorney-General

By: William J. Forman,
Deputy Attorney-General

Hon. J.F. Shaughnessy,
Chairman, Public Service Commission of Nevada,
Carson City, Nevada

SYLLABUS

OPINION NO. 30-369. PUBLIC WORKS—PREFERENCE TO CITIZENS AND EX-SERVICE MEN OVER ALIENS REGARDLESS OF QUALIFICATIONS—CONTRACTS AND SUBCONTRACTS, ALIENS MAY NOT BE GIVEN.

(1) Under chapter 60, Statutes 1929 (chapter 168, Statutes 1919, amended chapter 129, Statutes 1921; chapter 60, Statutes 1929) aliens are not eligible to hold a subcontract for State highway construction.

(2) Order of priority established among certain eligible classes of employees, subject to “qualifications being equal,” does not imply any eligibility to aliens, however “qualified,” when it is sought to displace them.

INQUIRY

Carson City, April 21, 1930.

I would appreciate your opinion of the following questions regarding employment of citizens, ex-service men, and aliens, as provided in chapter 60, Statutes 1928-1929.

In section 1, referring to qualifications of applicants: (1) Must preference be given to citizens or ex-service men over aliens, irrespective of qualifications, or does qualification apply only to citizens and ex-service men where a citizen, ward, or ex-service man applies for employment being held by an alien; (2) would aliens holding a subcontract on State highway construction be subject to the provisions of chapter 60, Statutes 1928-1929?

OPINION

Section 1, Statutes 1921, as amended Statutes 1929, page 89, provides:

Section 1. 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 with 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, and in all cases where persons are so employed preference shall be given, qualifications of the applicants being equal, first, to honorably discharged soldiers, sailors and marines of the United States who are citizens of the State of Nevada; second, to other citizens of the State of Nevada; *provided*, nothing in this act shall be construed to prevent the working of prisoners by the State of Nevada, or by any political subdivision of the state, on street or road work or other public work; 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 States or persons who have been honorably discharged from the military service of the United States are not available for such employment; nor to prevent the exchange of instructors between the University of Nevada and similar institutions of the North and South American countries; *and provided further*, that any alien so employed shall be replaced by any citizen, ward, or ex-service man of the United States applying for employment.

This section specifically designates that only citizens or wards of the United States or persons who have been honorably discharged from military service of the United States shall be employed by any officer of the State of Nevada, et cetera. The section further provides that of the persons so designated preference shall be given where the qualifications of the applicants are clear, first, to honorably discharged soldiers, sailors, etc., second, to other citizens of the State of Nevada.

Aliens may only be employed where the conditions as are stated in the Act exist, to wit, when it can be shown that citizens or wards of the United States * * * are not available for such employment.

Answering your questions, with these provisions of the law in mind, you are advised that the preference and qualifications provisions recited in the statute are not applicable to aliens, but apply only to citizens of the United States.

Under the terms of this Act, aliens would not be qualified to hold a subcontract on State highway construction, and the giving of such contract would be in direct violation of the law.

Respectfully submitted,

M.A. DISKIN,
Attorney-General

Hon. William Royle,
Labor Commissioner,
Carson City, Nevada

SYLLABUS

OPINION NO. 30-370. SCHOOLS—LIFE DIPLOMA—TEACHING REQUIRED.

INQUIRY

Carson City, April 22, 1930.

An opinion is desired on the following points concerning the issuance of life diplomas to teachers:

(1) Can teaching experience gained on the nonrenewable third and second grade certificates be counted in meeting the requirement for a first grade elementary life diploma?

(2) Can experience gained in the elementary schools be counted in meeting the requirement for the high school life diploma?

(3) Can experience gained in the high schools be counted in meeting the requirement for a first grade elementary life diploma?

(4) Would the fact that a person held both a high school and an elementary certificate entitle them to the life diploma of both classes even though their teaching experience had been altogether in the field of high school work or altogether in the field of elementary education?

OPINION

Section 28 of the School Code prescribes the conditions under which life diplomas may be secured. Among the conditions required is the following:

A life diploma granted under this section shall be of the same grade and of the same name as the certificate held by the applicant at the time of the application for the life diploma.

The conditions required for such diplomas are purely statutory and there is apparently no requirement as to what the character of teaching shall be other than that expressed in section 28 of the Code.

The requirements being purely statutory, it is, therefore, the opinion of this office that all the questions asked shall be answered in the affirmative.

Respectfully submitted for the Attorney-General,

M.A. DISKIN,
Attorney-General

By: William J. Forman,
Deputy Attorney-General

Hon. Walter W. Anderson,
State Superintendent of Public Instruction,
Carson City, Nevada.

SYLLABUS

OPINION NO. 30-371. WATERS—PRIORITIES—ORDER OF DETERMINATION— DISTRIBUTION OF WATERS.

INQUIRY

Carson City, May 16, 1930.

In the matter of the adjudication of Little Rock Creek and Pole Creek, listed on page 57 under the Taylor and Sheehan Ranches in the Order of Determination of the Humboldt River, the claim has been made that in view of the note at the bottom of the page:

Pole and Rock Creeks are small streams of variable flow and the culture area and character of the culture varies. Claimants Taylor and Sheehan and their predecessors have at all times used the entire flow of said streams, reaching their points of diversion, increasing and decreasing the amount of culture area and changing the character thereof to adapt themselves to the amount of the flow. The claimants are entitled to the entire flow of said streams reaching their points of diversion for irrigation of the land specified,

all of the flow of these two streams is to be used by Taylor and Sheehan Ranch, regardless of the priority being served on the river.

It is my judgment that the date of priority listed for these creeks, 1878, controls the use of the water and that when the priority of 1878 is being served there is no question, in view of the note quoted above, but that they are entitled to all of the flow; when the priorities are cut below the date of 1878, they would not be entitled to use the flow of these creeks. The question is, then:

When the priorities being served on the Humboldt River are cut below the date of 1878, is the Taylor and Sheehan Ranch entitled to the use of the water furnished by Little Rock Creek and Pole Creek?

OPINION

Under the Order of Determination, as quoted by you, the entire flow of said streams constitutes the rights of claimants. In addition, the order further determines that claimants and their predecessors in interest have at all times used the entire flow of said streams.

If any other claimant disputed this finding, it was his duty, under the law, to file an exception to such determination and, in the absence of such an exception in the record, the determination as made by the State Engineer would be conclusive.

Under the law, it is your duty to distribute the water in accordance with the Final Order of Determination.

With the above statement in mind, it is difficult to understand, in face of the Order of Determination and the finding therein contained, how any other claimant, irrespective of the date of priority, would be entitled to use any part of the water of these two creeks.

Respectfully submitted,

M.A. DISKIN,
Attorney-General

Geo. W. Malone,
State Engineer,
Carson City, Nevada

SYLLABUS

OPINION NO. 30-372. TAXATION—SALE BY COUNTY TREASURER.

Where amount of tax delinquency exceeds three hundred dollars, County Treasurer has no authority to sell property.

INQUIRY

Carson City, June 2, 1930.

Can a County Treasurer sell property where the delinquent taxes, exclusive of poll tax and penalties, exceed the sum of three hundred dollars?

OPINION

You call my attention to chapter 162, Statutes 1926-1927. Section 9 of this law appears to make it discretionary with the County Treasurer as to whether or not, in giving the required notice he includes in such notice delinquent taxes where the amount exceeds three hundred dollars. However, your attention is called to an amendment to section 9, Statutes 1926-1927, chapter 178, where it is specifically provided that the County Treasurer shall advertise property in all cases where the delinquent tax does not exceed the sum of three hundred dollars and the County Treasurer is authorized to sell the same.

It is my opinion, therefore, that the County Treasurer may not sell property where the delinquent tax, exclusive of poll tax and penalties, exceeds the sum of three hundred dollars.

Respectfully submitted,

M.A. DISKIN,
Attorney-General

Hon. John A. Jurgenson,
District Attorney,
Lovelock, Nevada

SYLLABUS

OPINION NO. 30-373. HEALTH, PUBLIC—APPOINTMENT OF COUNTY HEALTH OFFICER AND COUNTY PHYSICIAN.

INQUIRY

Carson City, June 9, 1930.

In appointing a county health officer under the provisions of section 6 of the State Board of Health Act, approved March 27, 1911, as amended, is it within the duties of the State Board of Health to also appoint such person county physician?

OPINION

Section 6 of the Act mentioned confers upon the State Board of Health the power, under certain circumstances, to appoint a county health officer, but no authority is granted to the Board to appoint a county physician.

Respectfully submitted for the Attorney-General,

M.A. DISKIN,
Attorney-General

By: William J. Forman,
Deputy Attorney-General

Dr. E.E. Hamer,
Secretary State Board of Health,
Carson City, Nevada

SYLLABUS

OPINION NO. 30-374. MEDICAL PRACTICE ACT—OPTOMETRY—USE OF WORD “DOCTOR.”

A person licensed to practice optometry may not lawfully use the word “Doctor.”

INQUIRY

Carson City, June 11, 1930.

Whether or not an optometrist may legally advertise himself as “Dr._____, Eye Specialist,” or “Dr._____, Specialist in the Eye.”

OPINION

Section 13 of the Medical Practice Act makes it a misdemeanor for any person to practice medicine without a license therefor. This section also provides that “it shall be regarded as practicing medicine within the meaning of this act if any one shall use in connection with his or her name the words or letters ‘Dr.,’ ‘Doctor,’ * * * or any other title, word, letter, or other designation intended to imply or designate him or her as a practitioner of medicine, or surgery, or obstetrics in any of its branches.”

The Act relating to optometry, page 2882, vol. III, Revised Laws of 1919, section 16, also provides that nothing in that Act shall give the right to persons so licensed to use the word “Doctor” in connection with their names.

It is, therefore, the opinion of this office that a person licensed to practice optometry does not, by securing such license, have a right to use the word "Doctor" in connection with his name.

Respectfully submitted for the Attorney-General,

M.A. DISKIN,
Attorney-General

By: William J. Forman,
Deputy Attorney-General

Dr. E.E. Hamer,
Secretary, Nevada State Board of Health,
Carson City, Nevada

SYLLABUS

OPINION NO. 30-375. SCHOOL—VACANCIES IN OFFICE—APPOINTMENTS—ELECTIONS.

INQUIRY

Carson City, June 12, 1930.

Will you kindly give me your opinion on the following questions:

(1) In case a vacancy occurs on a board of School Trustees due to any of the causes listed under "Vacancies in Office," page 80 of the 1927 School Code, what date may the School Board set for an election to fill the vacancy? Does section 63 of the 1927 School Code fix this date definitely for the fourth Saturday following the occurrence of the vacancy, or may the election be set at a date prior to the fourth Saturday following the occurrence of the vacancy?

(2) In case of a vacancy on a Board of School Trustees, are there any times when the Deputy Superintendent has authority to appoint a trustee to fill the vacancy previous to the fourth Saturday after the vacancy occurs?

(3) In case of a vacancy on a Board of School Trustees and in case the School Trustees fail to post notices of an election for the filling of the vacancy, may any three electors in the district post notices for an election to fill this vacancy, said notices to be posted not more than ten days nor less than five days before the fourth Saturday after the occurrence of the vacancy?

(4) In case the regular biennial election is not held in April, when does the vacancy on the board occur, and when may the Deputy Superintendent make the appointments to the Board of Trustees? May the Deputy appoint immediately after the fourth Saturday following the regular April election date, or must the Deputy wait until the fourth Saturday following the first Monday in May?

OPINION

(1) The Board is required to set the fourth Saturday after the vacancy occurs for the election named. This is a definite date, and the election cannot be held prior to that time.

(2) A Deputy Superintendent may fill a vacancy previous to the fourth Saturday after the vacancy occurs in the case mentioned in section 64 of the School Code, where the vacancy occurs by reason of the failure to elect trustees at the regular April election.

(3) In accordance with the provisions contained in section 46 of the 1927 School Code, any three electors may post notices for an election to fill the vacancy in case the School Trustees fail to post such notices.

(4) The questions asked in this subdivision are fully answered by Opinion No. 118, rendered by the Attorney-General's office on April 11, 1914. This opinion holds that the vacancy mentioned occurs on the first Monday in May, and that the Deputy Superintendent may appoint before the fourth Saturday following the first Monday in May.

Respectfully submitted for the Attorney-General,

M.A. DISKIN,
Attorney-General

By: William J. Forman,
Deputy Attorney-General

Hon. W.W. Anderson,
State Superintendent of Public Instruction,
Carson City, Nevada

SYLLABUS

OPINION NO. 30-376. STATUTES—UNIFORM ILLEGITIMACY ACT—PAYMENT COSTS.

Where proceedings under Act are instituted by public authorities no costs accrue; where instituted by individual costs must be paid by such person.

INQUIRY

Carson City, June 26, 1930.

The following questions are asked concerning chapter 87, Stats. 1923, p. 142, known as the "Uniform Illegitimacy Act." Sections 7-14, inclusive, of this Act provide for the complaint, warrant, and preliminary hearing, among other things.

(1) Must the county pay the cost of the reporter to take the testimony in shorthand and reduce it to writing to be returned to the District Court?

(2) The last paragraph of section 14 provides: "The warrant, the examination reduced to writing, and the security, shall be returned to the District Court." Shall these papers returned to the District Court in this proceeding be filed in the criminal register or in the civil register in the office of the County Clerk?

(3) In the event the papers are to be filed in the civil register, is it the duty of the County Clerk to collect a filing fee from the complainant, or must he file them without any charge?

(4) The preliminary hearing and trial under this Act seem to be of a quasi-criminal nature. Is it the duty of the District Attorney to represent the complainant in these proceedings under this Act?

OPINION

The Act in question sets forth the proceedings, which the weight of authority holds to be of a civil nature.

Section 7 of the Act provides: "The proceeding to compel support may be brought by the mother, or, if the child is or is likely to be a public charge, by the authorities charged with its support."

By reason of the provisions of section 7, it is the opinion of this office that, where the proceedings are brought by the public authorities, the county must pay the cost of the transcript and there would be no fee on filing the case with the County Clerk, and it would be the duty of the District Attorney to represent the public authorities. On the other hand, if the proceeding was brought by the mother, it being a civil proceeding, the same rules would apply as to other civil proceedings.

Respectfully submitted for the Attorney-General,

M.A. DISKIN,
Attorney-General

By: William J. Forman,
Deputy Attorney-General

Hon. Merwyn H. Brown,
District Attorney, Humboldt County,
Winnemucca, Nevada

SYLLABUS

OPINION NO. 30-377. MOTOR VEHICLE—LICENSE—LEASING CAR.

Leasing automobile with driver requires license as common carrier.

INQUIRY

Carson City, July 8, 1930.

Whether or not persons renting motor vehicles and providing a driver for a stipulated sum are liable for a license as a carrier for hire.

OPINION

This office has heretofore rendered an opinion that merely leasing an automobile without driver did not come within the provisions requiring a license by persons conducting the business of operating automobiles for hire; however, when a driver is furnished, the car is under the control of the company leasing the car, and it is the opinion of this office that such company comes within the statutes requiring a license.

Respectfully submitted for the Attorney-General,

M.A. DISKIN,
Attorney-General

By: William J. Forman,
Deputy Attorney-General

Public Service Commission of Nevada,
Carson City, Nevada

SYLLABUS

OPINION NO. 30-378. SCHOOLS (SEE OPINION NO. 383)—TERM OF OFFICE OF PERSONS APPOINTED SCHOOL TRUSTEES.

INQUIRY

Carson City, July 14, 1930.

Your opinion is desired regarding the following statement of facts:

At the last general election J. W. Treat, deceased, was elected for long term member of the Lander County Board of Education. Mr. J. W. Treat died on January 3, 1930, and just recently Walter W. Anderson, Superintendent of Public Instruction, appointed Jasper Vail to the vacancy. I do not know how the appointment was worded, but presume that it was worded as provided for in section 178 of the School Code, that is, for the "unexpired term."

Question: Does Jasper Vail hold his office until January 1, 1933, or will he have to run for election this fall?

From a reading of your Opinion 117 as the same appears in your Biennial Report, 1923-1924, and Opinion 137, it is my own opinion that Mr. Vail holds office until January 1, 1933, but, in view of the fact that the same may be questioned, I desire your official opinion on the above question.

OPINION

When Opinion No. 117 was written, section 64 of the School Code contained different provisions than those contained in the present School Code. Under section 64 as enacted by the Legislature of 1925, Statutes of Nevada, p. 168, the statute specifically provides that "The term of office of any trustee appointed by the Deputy Superintendent shall not extend beyond the first Monday in May following the next regular school election."

It is my opinion, therefore, that Mr. Vail would be governed by these provisions of the law, and that his term would not extend until January, 1933.

Respectfully submitted,

M.A. DISKIN,
Attorney-General

Hon. Howard E. Browne,
District Attorney,
Austin, Nevada

SYLLABUS

OPINION NO. 30-379. Referendum—Signer's of Petition Withdrawal of Name—Determination of Qualification of Signers—Moot Questions.

- (1) Signers of referendum petition may not withdraw.
- (2) Secretary of State has no authority to pass on qualifications of signers of such petition.
- (3) Moot questions cannot be determined.

INQUIRY

Carson City, July 14, 1930.

Under date of July 5, Mr. L. C. Branson filed with the Secretary of State a referendum petition aimed at the repeal of chapter 99, Statutes of Nevada, 1923, the same being the statute under which this Commission was created and now operates. The filing of this petition has raised several points on which we should appreciate your opinion, as follows:

- (1) Can the signers of this petition withdraw their names?
- (2) Can this petition as a whole be declared invalid on the basis that some of the signers are nonelectors and, in fact, aliens, even though it carries enough other signatures of bona fide electors to supply the number legally required on such a petition?
- (3) If the petition as filed with the Secretary of State is carried at the next general election and chapter 99, Statutes of Nevada, 1923, is repealed by vote of the people, will chapter 155, Statutes of Nevada, 1921, be automatically revived and become effective?
- (4) If the petition in question is successful and chapter 99, Statutes of Nevada, 1923, is repealed at the next general election by vote of the people, can the 1931 Legislature pass a new Act covering the same ground and along the same general lines?

OPINION

(1) Answering question No. 1, the Supreme Court of this State in the case of *State v. Scott*, 285 P. 511, held that, under the provisions of our law, voters who sign petitions cannot legally withdraw their names from such petitions. Quoting from a decision by the Supreme Court of Iowa, our Supreme Court concluded that jurisdiction attached on the day when the legal petition was filed. It further concurred in the ruling that "The power to act having been conferred upon the board by virtue of the legal petition, it could not be impaired or taken away by the protests or demands to withdraw the same of the petitioners."

(2) In answer to your second question, the Supreme Court of this State in the case of *State v. Glass* held that, if the petition had annexed to it the legal number of names, together with the affidavit required by law, the party designated by the statute to receive the petition was but a ministerial officer who had no authority to exercise judicial discretion in determining whether or not the names appearing thereon are aliens or nonelectors.

As to whether or not the sufficiency of the petition may be attacked by court proceedings is not a matter for me to determine.

The Secretary of State, if the petition appears to be in due form, has no discretion but to file the same and, if he is not prevented by court action from placing the same on the official ballot, the matter will be submitted to the voters for decision.

Respecting the questions enumerated under your third and fourth queries, the same are moot questions and are based upon a contingency that may or may not happen. This office, in accordance with its established custom, for the reason that the questions are moot, cannot render a decision upon the matters presented until such time as the matters submitted can be considered existing public questions that must be determined.

Respectfully submitted,

M.A. DISKIN,
Attorney-General

State Rabies Commission,
University of Nevada,
Reno, Nevada

SYLLABUS

OPINION NO. 30-380. ELECTIONS—NAMES ON PRIMARY BALLOT WHERE BUT ONE PARTY HAS CANDIDATES—FILING FEE PAID BY WORTHLESS CHECK.

(1) Where two are seeking nomination in same political party for which there is no other candidate, the names of the two candidates must appear on primary ballot.

(2) If Clerk accepts check in payment of filing fee and no funds are in bank to pay check, the Clerk has no authority to omit name of such candidate from ballot.

INQUIRY

Carson City, August 5, 1930.

(1) You are referred to the case of *State v. Beemer*, [51 Nev. 192](#), where section 22 of the Primary Election Law, as amended 1927, was construed.

In view of this decision, where two men are seeking nomination as candidates for an office in the same political party must their names appear on the primary ballot?

(2) Where a candidate pays his filing fee with check and the check is returned because there is not sufficient funds in the bank to meet the check, and this appears after the date for filing declarations has expired, does such candidate forfeit the right to have his name placed on the ballot?

(3) Under Statutes 1929 it is mandatory with the County Commissioners to fix salaries to township officers at their regular meeting in July. Where this meeting is recessed until July 28, may salaries be fixed at the later meeting?

(4) Assuming that on the meeting on July 5 proper order was made fixing salaries, but Clark failed to enter the order, could the omission be corrected?

OPINION

(1) Prompted by an abundance of precaution, it is my opinion that the names of the two candidates of the same political faith aspiring for the nomination for an office for which there is no candidate either as an independent or other political party the names of the two candidates should appear on the primary ballot.

The Legislature has specifically provided that where but two candidates have filed for a nonpartisan office the names of such candidates shall be omitted from the primary election ballot and such candidates shall be declared to be the nominees for such office. The Legislature, however, has not prescribed the same conditions for other offices other than nonpartisan offices.

(2) The County Clerk would have the right to insist that all parties filing declarations with him under the Election Law pay the fees for such filing in cash. Having accepted a check which he had no authority to accept, and it appearing that the check is returned not paid for want of sufficient funds, the County Clerk would be personally responsible for the amount of the check and the transaction would in no way affect the right of the party to have his name placed on the ballot.

(3) The Board of County Commissioners would have the right under the law to fix the salaries of township officers at the recessed meeting.

(4) The minutes of the Clerk could be corrected by proper order.

Respectfully submitted,

M.A. DISKIN,
Attorney-General

John R. Ross,
District Attorney of Lyon County,
Yerington, Nevada

SYLLABUS

OPINION NO. 30-381. STATUTES—AMENDMENT—PROVISION OF LATTER ACT PREVAILS.

Section 3619, Rev. Laws, 1912, was amended Statutes 1927, chapter 162. By Statutes 1927, chapter 178, section 3619 was again amended. The provisions of the latter statute prevail.

INQUIRY

Carson City, August 5, 1930.

Attention is called to section 3619, Revised Laws of the Nevada, 1912, and an opinion is requested as to the legal rates to be charged for advertising delinquent taxes.

Reference is made to chapter 162, Statutes 1927, and chapter 178, Statutes 1927.

OPINION

Section 3619, Revised Laws, 1912, was amended by Statutes of 1927 chapter 162, and under this amendment the cost for publishing delinquent taxes could not exceed three dollars. This amendment was approved March 28, 1927. By Statutes 1927, chapter 178, section 3619 was again amended, with a provision and reference to charges for publication of delinquency that the same should not be more than the legal rate. This latter amendment was approved March 29, 1927.

It is my opinion that the amendment approved March 29, 1927, must prevail and, therefore, the charge for publishing delinquent taxpayers is fixed at an amount not more than the legal rate.

Respectfully submitted,

M.A. DISKIN,
Attorney-General

Claude H. Smith,
Secretary, Nevada State Press Association,
Fallon, Nevada

SYLLABUS

OPINION NO. 30-382. REFERENDUM—ELECTIONS—EFFECTIVE DATE OF LAW REPEALED BY REFERENDUM—EXPENDITURE OF STATE MONEY UNDER SUCH LAW.

Where existing law is repealed by referendum vote, such law becomes inoperative at the time designated under section 26 of General Election Laws.

INQUIRY

Carson City, August 5, 1930.

If chapter 99, Statutes of Nevada 1923, is repealed at the next general election on the basis of the petition filed by Mr. Branson with the Secretary of State, upon what date will such repeal become effective?

On the basis of the above, upon to what date would it be legally safe for this Commission to incur liabilities to be paid out of their present appropriation? Would claims covering liabilities incurred by this Commission have to be in the hands of the State Controller prior to the date of repeal as above, or would they be honored and paid after the date of such repeal, providing they cover only obligations created prior thereto?

OPINION

(1) Section 97 of the General Election Law provides in part that when a majority of the electors voting on the question shall signify disapproval, the law or resolution so disapproved shall be void and of no effect.

There is no direct provision in the law which definitely determines the effective date when such law or resolution disapproved shall become effectual. However, we must read this section of the law with other provisions of the Election Law of this State in order to arrive at a correct conclusion.

Section 26 of the Election Law provides that on the third Monday of December succeeding such election the Chief Justice of the Supreme Court and the Associate Justices shall meet and canvass the vote "for and against any question submitted." The Legislature in enacting this section has created a body for the purpose of making a canvass of the votes cast and conclusively determine by such canvass the result of such election.

It is my opinion that if the measure presented is approved by the voters, the law would not be repealed until the machinery set up by the Legislature to determine the correctness of the count had functioned and publicly proclaimed the result of the canvass. In other words, the third Monday of December would be the date such repeal would become effective if the voters approved such measure.

(2) Your Commission could not incur or pay liabilities after the third Monday of December.

Respectfully submitted,

M.A. DISKIN,
Attorney-General

Dr. Edward Records,
University of Nevada,
Reno, Nevada.

SYLLABUS

**OPINION NO. 30-383. SCHOOLS—CORRECTIONS MADE IN OPINION NO. 378—
DISTINCTION BETWEEN SCHOOL TRUSTEES AND COUNTY BOARDS OF
EDUCATION.**

INQUIRY

Carson City, August 25, 1930.

Reference is made to Opinion No. 378. The question presented in this opinion was whether or not a person appointed as a member of the County Board of Education would hold office for the balance of the unexpired term.

OPINION

In submitting the question, reference was made to Opinions Nos. 117 and 137. These two opinions dealt with the term of office of a School Trustee appointed to fill a vacancy and not to a member of the County Board of Education. In arriving at the conclusions in Opinion No. 378, we applied the law applicable to School Trustees to members of the County Boards of Education.

School Trustees are appointed by the Deputy Superintendents of Public Instruction, while members of the County Boards of Education are appointed by the Superintendent of Public Instruction. Under section 178 of the School Code, it is specifically provided that the Superintendent of Public Instruction, when a vacancy occurs, shall fill the vacancy for the unexpired term. It must follow, therefore, that when the Superintendent of Public Instruction fills a vacancy it is for the unexpired term and not until the next election.

Under the facts stated in Opinion No. 378, Mr. Vail would hold office for the balance of the unexpired term.

Respectfully submitted,

M.A. DISKIN,
Attorney-General

Hon. Howard E. Browne,
District Attorney,
Austin, Nevada

SYLLABUS

OPINION NO. 30-384. SCHOOLS—NEPOTISM ACT—EFFECT OF FAILURE TO NOTIFY TEACHER OF REEMPLOYMENT.

(1) Statutes 1928, chapter 181, automatically reemploys a teacher when School Board fails to notify teacher as provided.

(2) The Nepotism Act has no application under these circumstances, because employment is consummated by law.

INQUIRY

Carson City, August 25, 1930.

Your answer is requested to the following question, namely:

Can a teacher, disqualified by relationship for employment as teacher under chapter 22, section 1, Statutes of Nevada, 1926-1927, be employed under chapter 151, section 1, Statutes of Nevada, 1928-1929, without unanimous vote of the School Board, by simply giving notice to the Board of Trustees of the district of

acceptance of reemployment when the other conditions specified in the statute authorize reemployment under such notice of acceptance?

Under chapter 22, section 1, Statutes of Nevada, 1926-1927, provision is made by which the disqualification in the degree therein mentioned may be overcome, or removed, by unanimous vote of the Trustees, where the teacher is related to only one of the Trustees.

Chapter 151, section 1, Statutes Nevada 1928-1929, makes provision for the reemployment of teachers automatically, by the teacher giving notice, within 10 days after May 15, of acceptance of reemployment, when no notice has been given the teacher by the Board of Trustees in respect to reemployment.

A teacher in this county, within the degree of relationship to one of the School Trustees prohibited in chapter 22, gave the Board of Trustees, in proper time, notice of acceptance of reemployment, after failure of the Board of Trustees to give her written notice as to reemployment.

The teacher claims under chapter 151, section 1, Statutes Nevada, 1928-1929, that she is relieved of the necessity of unanimous vote of the School Trustees in favor of reemployment, by virtue of having filed with the Board notice of acceptance of reemployment at the proper time.

OPINION

Statutes 1926-1927, chapter 22, section 1, makes it unlawful "for any School Trustee * * * to employ on behalf of the State of Nevada * * *, in any capacity, any relative of such employer within the third degree of consanguinity or affinity." It is further provided in the Act that the provisions "shall not apply to school districts when the teacher so related is not related to more than one of the Trustees and shall receive a unanimous vote of all members of the Board of Trustees."

Statutes 1928, chapter 151, makes it the duty of the school board to notify teachers, in writing, on or before the 15th day of May of each year, concerning the reemployment of such teachers for the ensuing year. This section also provides as follows: "In case the board through its proper official shall fail so to notify its teachers, then those teachers who are employed and who have been so employed for the major part of the current year shall be deemed reelected on the same terms as for the then closing school year, and the board shall issue the regular contract in such cases as though the board had elected said teachers in the usual manner; *provided*, that any teacher who shall have been informed of his reelection by written notice from the board, or who shall have been automatically reelected in accordance with the provisions of this Act, in either event shall, within ten days thereafter, present to the board in writing his or her acceptance of the position."

In the facts stated by you, it appears that on the 15th day of May there were but two legally qualified and acting members of the school board. One of such members was related by marriage to the teacher.

It further appears that no affirmative action was taken by the board and that the teacher was not advised, under Statutes 1929, chapter 151, that her services were no longer required.

It further appears that within the time stated by this section the teacher in question submitted to the board in writing her acceptance of the position.

I am of the opinion that, inasmuch as the board failed to notify the teacher as required by Statutes 1928-1929, it is now the duty of the board to issue to the teacher the regular contract, with the same force and effect as though the board by unanimous vote had elected said teacher.

If the board did not desire to retain the services of the teacher they had the right, under the law, to so advise her within the time required, and their failure to do the things the law requires them to do *ipso facto* calls into operation the provisions of this section of the law.

Her reemployment as a teacher does not require the affirmative votes of all members of the board. When they failed to notify her that her services were not required, the provisions of law in themselves constituted the authority for her election, and no affirmative vote of the members of the board is required.

For these reasons, therefore, I conclude that the teacher is entitled to her contract.

Respectfully submitted,

M.A. DISKIN,
Attorney-General

Hon. J.A. Houlahan,
District Attorney,
Goldfield, Nevada

SYLLABUS

OPINION NO. 30-385. ELECTIONS—NUMBER OF NAMES TO APPEAR ON BALLOT FOR ASSEMBLY WHERE ONE PARTY DOES NOT HAVE FULL NUMBER OF CANDIDATES.

(1) Under Statutes 1927, page 325, where one party has not a sufficient number of candidates for Assembly to complete the ticket for these offices, the law requires sufficient names to be placed on ballot at general election so that the same exceed in number twice the number to be elected.

(2) At a primary election fifteen Republicans sought nomination for Assembly and six offices were to be filled. At the same election but two Democrats sought the nomination for said offices. The law requires the names of the highest ten Republicans plus the names of the two Democratic candidates to appear on the general election ballot.

Reno, September 6, 1930.

Mr. Elwood H. Beemer, County Clerk, Reno, Nevada.

Dear Sir: You have requested the opinion of this office concerning the number of names that should appear upon the election ballot of the general election in November for Assemblymen from District No. 3.

At the recent preliminary election there were fifteen Republican candidates for the six nominations that party was entitled to, and there were two Democrats for the nomination to which that party was entitled. There were, consequently, no candidates on the Democratic ticket for four of the offices of Assemblymen.

Each member of the Assembly holds a separate and distinct public office. Each has his own individual compensation, and his own independent vote on matters that come before the lower house of the Legislature. The six persons elected from District No. 3 will each, therefore, be elected to a separate and distinct office.

The Statutes of Nevada (Stats. 1927, p. 325) provide, in so far as is material to this question:

The party candidate who receives the highest vote at the primary shall be declared to be the nominee of his party for the November election. In the case of an office to which two or more candidates are to be elected at the November election, those party candidates equal in number to positions to be filled who receive the highest number of votes at the primary shall be declared the nominees of their party; *provided*, that if only one party shall have candidates for an office or offices for which there is no independent candidate, then the candidates of such party who received the highest number of votes at such primary (not to exceed in number

twice the number to be elected to such office or offices at the general election) shall be declared the nominees for said office or offices.

I have conferred on this question with Attorney-General M.A. Diskin, and am authorized to state that this is the joint opinion of the Attorney-General's office and of this office.

The statute heretofore mentioned has already been construed by the Supreme Court of Nevada in the case of *State ex rel. Pittson v. Beemer*, [51 Nev. 192](#). Under the provisions of this statute and as the same has been interpreted by the Supreme Court of this State, it is our opinion that there should be printed upon the November ballot the names of the highest ten Republican candidates for the Assembly from District No. 5, plus the two Democratic candidates for the same offices.

Yours very truly,

LESTER D. SUMMERFIELD,
District Attorney,
Washoe County, Nevada

SYLLABUS

OPINION NO. 30-386. STATUTES—EXPENDITURES CONFINED TO PURPOSES OF LAW.

The activities of a State board in expending money must be confined to provisions of statutes.

INQUIRY

Carson City, September 15, 1930.

Has the Board of Barber Examiners the right to use money in its fund to have a new and different barber bill prepared to present to the Legislature, and has it the right to use these funds for the expenses of obtaining signatures from a majority of the shops in the State?

OPINION

Chapter 131, Statutes 1929, gives the Board of Barber Examiners, in section 16, the right to use such funds for all necessary and proper expenses in carrying out the provisions of the Act. The expenses named in the inquiry are totally outside of the provisions of the Act and have no connection with it.

The purpose outlined in your inquiry is to create a new and different Act, and, therefore, the expenditures would not be justified.

Respectfully submitted for the Attorney-General,

M.A. DISKIN,
Attorney-General

By: William J. Forman,
Deputy Attorney-General

Dr. E.E. Hamer,

Secretary, State Board of Health,
Carson City, Nevada

SYLLABUS

OPINION NO. 30-387. SCHOOLS—EVENING SCHOOLS—MAXIMUM COMPEN- SATION TO BE PAID TEACHERS.

INQUIRY

Carson City, October 8, 1930.

Under the school law providing for evening schools, and calling your attention to sections 3 and 5 on page 162 of the School Code of 1927, the question has arisen here as to whether or not teachers are entitled to more than \$1 per hour and not more than \$40 per teacher for school month. The county high school has evening school and they are paying the teachers \$2 per hour.

I would like to know if there is a limit upon the amount that teachers can be paid and, if so, what is the limit?

OPINION

Under section 3, Statutes 1917, 354, it becomes the duty of the Superintendent of Public Instruction to apportion from the State Distributive School Fund certain sums for maintaining evening schools. Under the specific provisions of the Act, the maximum amount shall not exceed one dollar per hour or more than forty dollars per teacher per school month.

Under section 5, if the Legislature for any reason has failed to provide funds for the support of evening schools, the Board of School Trustees may present annual budgets to the County Commissioners, and the County Commissioners shall determine the amount to be allowed for the maintenance and salaries of said school.

I conclude from reading the statute that, where the teachers are paid from the Distributive School Fund, the maximum amount payable to each teacher in the evening school is one dollar per hour or not more than forty dollars per month. Where the Legislature, however, has failed to provide funds for the support of evening schools, the County Commissioners may fix the salary of such teachers at any amount they feel would be reasonable.

Respectfully submitted,

M.A. DISKIN,
Attorney-General

Hon. E.E. Winters,
District Attorney of Churchill County,
Fallon, Nevada

SYLLABUS

**OPINION NO. 30-388. INSURANCE—FRATERNAL BENEFIT ASSOCIATIONS—
JUVENILE INSURANCE PROHIBITED.**

INQUIRY

Carson City, October 8, 1930.

Under the laws of the State of Nevada can a fraternal beneficiary association or fraternal life insurance company write insurance on the lives of juveniles through a guardian?

OPINION

Section 8, Statutes 1891, provides as follows:

No corporation doing business under this act shall issue a contract of insurance upon the life of any person under fifteen years of age, or after he or she has passed his or her sixty-first birthday.

Under the provisions of this section, juvenile insurance is prohibited, and it would make no difference if the insurance contract were to be made through a guardian.

Respectfully submitted,

M.A. DISKIN,
Attorney-General

George A. Martin,
Deputy State Controller,
Carson City, Nevada

SYLLABUS

**OPINION NO. 30-389. CONSTITUTION—REFERENDUM—STATUTE IN CON-
FLICT—CONSTRUCTION VOTE NECESSARY TO ADOPT.**

(1) The Constitution requires that before referendum is adopted a majority of electors voting must indicate choice before effective actions ensue.

(2) Statute requiring majority of votes on question is contrary to Constitution and is of no effect.

(3) Rabies law not repealed because not voted on by majority voting at election.

INQUIRY

Carson City, December 29, 1930.

In order to be certain of the standing of the State Rabies Commission law, may I have your opinion on the following questions:

1. Was the law repealed by the referendum vote of the recent election?
2. Can bills against the Commission be legally paid from the appropriation for the support of the Commission made by the 1929 Legislature?

OPINION

At the November election, 1930, there was submitted to the voters by referendum the question as to whether or not the Act of the Legislature approved March 8, 1923, and known as "The Rabies Law," should be approved. The official returns of the election establish that 11,567 votes were cast in the affirmative and 11,586 cast in the negative. The official returns also show that for the office of Governor 34,634 votes were cast.

Under article XIX, sections 1, 2, and 3 of the Constitution of the State of Nevada authorize initiative and referendum petitions. Section 2 of article XIX provides: "When the majority of the electors voting at a state election shall by their votes signify approval of a law or resolution, such law or resolution shall stand as the law of the state, and shall not be overruled * * *. When such majority shall so signify disapproval, the law or resolution shall be void and of no effect."

In order to provide a machinery so that these provisions of the Constitution might be carried into effect, the Legislature enacted a law regarding the referendum. Under section 97, section 2535 of Compiled Laws of Nevada 1929, it is provided that: "When a majority of the electors voting on the question of the approval or disapproval of any act at a state election shall, by their vote, signify approval of the same, such act shall stand as the law of the state * * *."

It is quite apparent that when the Legislature enacted the referendum measure it overlooked the fact that the Constitution required a majority of the electors voting at a State election rather than a majority of electors voting on the question submitted. Under the legislative Act, as quoted, the Act referred to by you would be repealed because a majority of electors voting on the question signified their disapproval of the Act.

I am of the opinion, however, that so much of section 2535, *supra*, as conflicts with the provisions of the Constitution is invalid and of no effect, and that the provisions of the Constitution must govern, requiring a majority of the electors voting at a State election to signify their disapproval of the Act. It is apparent from the official returns that a majority of the electors voting at the election of 1930 did not signify their disapproval of the Act, neither did they signify their approval of the Act. The Act, therefore, remains in full force and effect.

In answer, therefore, to your first question, the same is answered in the affirmative.

Your second question is also answered in the affirmative.

Respectfully submitted,

M.A. DISKIN,
Attorney-General

Hon. Ed. C. Peterson,
State Controller,
Carson City, Nevada