

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL - 1931

SYLLABUS

OPINION NO. 31-1. STATUTES—REGARDING COLLECTION OF MUNICIPAL ASSESSMENTS CONSTRUED.

1. Section 1384, N.C.L. 1929, requires county officers to collect municipal assessments in certain cases.
2. Municipal assessments are not within tax limit statute.

INQUIRY

Carson City, January 20, 1931.

Section 1384, Compiled Laws of Nevada 1929, provides, in part, that, where a municipal corporation has issued bonds and has levied certain special assessments for certain municipal improvements, such corporation may, by ordinance, direct that such assessments may be placed upon the State and county tax roll and be “collected in the same manner and at the same time as other State and county general taxes are collected, and the several officers of the several counties of this State are hereby authorized and empowered to provide for and collect the said unpaid assessments or portions thereof as herein contained in all cases where the same are directed to be paid and collected in this manner by the city council or other governing board of any incorporated town or city in the State of Nevada.”

- (1) Does the statute authorize the Treasurer or Assessor to place such assessment on the State and county tax roll?
- (2) Does the statute compel the County Assessor or Treasurer to enter this special assessment on the State and county roll, if they do not choose to do so?
- (3) In case the special assessment is placed on the State and county roll, in what manner can it be collected in case of delinquency and the parties do not choose to pay the assessment?
- (4) In the event that they are required to place such assessment on the State and county roll, must the taxes be reduced so that the same will come within the five-cent limit?

OPINION

(1) The statute specifically provides that the several county officers are authorized to comply with the provisions of the section above mentioned.

(2) The provisions of the section allow the municipal authorities to direct the collection of the assessment in the manner prescribed, and the county officers are authorized and empowered to comply with such directions. The use of the words “authorize and empower” sometimes signifies a discretion to be exercised. Where, however, these words are used in reference to a public duty, they are frequently held to be mandatory.

It is the opinion of this office that the intent of the Legislature was to make such duty mandatory in this instance.

(3) The section involved specifically provides that the city assessments therein mentioned shall be collected in the same manner as other State and county taxes.

(4) A special assessment for municipal improvements, as herein involved, is not a tax within the meaning of the tax limit law.

See Wickliffe v. City of Greenville, 186 S.W. 476.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

By: William J. Forman,
Deputy Attorney-General

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

SYLLABUS

OPINION NO. 31-2. SCHOOLS—SCHOOL'S CENSUS, WHEN TAKEN.

School code provides for taking census when advisable; certain powers are given districts when district has more than 1,000 children as shown by last school census.

INQUIRY

Carson City, January 20, 1931.

The following inquiries are made concerning section 67 1/2 of "An Act concerning public schools and repealing certain Acts relating thereto," approved March 20, 1911, as amended, which section grants certain powers to boards of School Trustees "in any school district having one thousand or more school children, as shown in the last preceding school census."

(1) Is there any question as to the validity of the law as it stands, using as a basis a census taken several years ago, when the census as an annual procedure is not taken any longer?

(2) Is there any way by which a school district which did not have a thousand names on the school census when the last regular annual census was taken can legally avail itself of the powers granted to the school board by this law in any way other than by having a special census taken?

OPINION

(1) By section 122 of the Act above mentioned, it is provided that the State Board of Education may provide for a taking of a school census whenever it is advisable.

The Legislature has the power to make reasonable classifications in making certain legislation applicable to certain school districts. The fact that this classification is based upon a census which is not always annually taken would not render the statute invalid.

(2) The additional powers granted by section 67 1/2 are applicable only to school districts having one thousand or more school children *as shown in the last preceding school census*. Until this fact is shown to exist by either a general or special school census, these additional powers are not granted to the School Trustees of a particular district.

Respectfully submitted,

GRAY WASHBURN,
Attorney-General

By William J. Forman,
Deputy Attorney-General

Hon. Melvin, E. Jepsen,
District Attorney of Washoe County,
Reno, Nevada

SYLLABUS

OPINION NO. 31-3. STATUTES—NO STATUTE EXEMPTING WAR VETERANS FROM PAYMENT OF CERTAIN LICENSES.

There is no Nevada law exempting war veterans from payment of peddlers' licenses except veterans of Civil War.

INQUIRY

Carson City, January 28, 1931.

Reference is made to sections 6718 and 6719, Nevada Compiled Laws 1929, which allow veterans of the Civil War, or of the late rebellion, to peddle, hawk, vend, and sell their own goods, and to engage in the business of auctioneering without paying for the license provided by law for those engaged in such business; and the following inquiry is made for the opinion of this office as to the law of this State on the following point:

Is there any Nevada law that gives that right to the veterans of later wars?

OPINION

No, there is no law in this State exempting veterans of wars other than veterans of the late rebellion from license fees for carrying on any such business, or allowing them to carry on any such business, without paying the regular license required of other people engaged in such business.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

Hon. Adams F. Brown,
District Attorney of Esmeralda County,
Goldfield, Nevada

SYLLABUS

OPINION NO. 31-4. STATE FUNDS—NOT TO BE USED FOR POLITICAL ADVERTISING.

Bills against State Farm Bureau and Sheep Commission for charges for newspaper advertising advocating manner of voting on State Rabies Law referendum, are not properly State bills and are invalid.

INQUIRY

Carson City, January 29, 1931.

The State Controller has declined for the present to draw warrants to pay three bills presented for payment, upon the ground, among others, that in his opinion the payment of these bills would be "using State funds to aid * * * in defeating a movement to repeal an existing law, the so-called State Rabies Law."

One of these bills is from the State Farm Bureau, another from the State Sheep Commission, and the other from the Stock Commission. Each of these bills represents a portion of the charge of a newspaper in this State for publishing a political announcement or advertisement run in that newspaper on November 3, 1930, just the day before the general election, November 4, 1930, and entitled: "*Vote Yes On Question 2.*"

This "Question 2" was a referendum for submitting to the vote of the people the question whether the so-called State Rabies Law should be sustained or repealed. A vote "Yes" was a vote to sustain that law while a vote "No" was a vote to repeal it. This question was an issue of considerable interest in the political campaign to be decided by a vote of the people at the general election, November 4 last. The voters were divided on that issue; and even the members of and the people sponsoring the organizations that presented these bills were also somewhat divided on the question.

The State Farm Bureau is supported by moneys derived from a direct tax levied upon all property in the various counties in the State participating in the farm bureau movement, and these moneys are collected in the usual way in such counties, and paid by the various county treasurers of those counties to the State Treasurer, as the contribution of such counties to the fund against which the above-mentioned bills are drawn, and also by moneys derived from a direct tax on all property in the State levied by the State and included in the State tax levy. The law requires that a budget of the expenses of the Farm Bureau be filed in the office of the State Controller of this State, and that this budget shall itemize and specify the particular items of expense to be paid out of the fund. There is no item in the budget so filed for the year 1930 covering expense for any advertisement urging the people to support the present State Rabies Law, so presented to the State Controller by the State Farm Bureau. The law particularly specified that the purpose of the Act creating the Farm Bureau is "diffusing among the people of the State of Nevada useful and practical information on subjects relating to agriculture, home economics and rural welfare and to encourage the application of the same." The Act also provides that disbursements from the State Farm Bureau Fund shall be in accordance with the budgets filed. It further provides that claims or bills for such disbursements, when "approved by the State Board of Examiners," shall be paid upon warrants drawn by the State Controller upon the State Treasurer, when "consistent with the purpose of this Act." (Nevada Compiled Laws 1929, sections 347, 349, 350, 351 and 353.) From these provisions of the law, it will be seen that these disbursements must be in accordance both with the purposes of the Act and with the items of the budget, and must be presented and paid in accordance with the provisions of the above-cited sections of the law.

The State Sheep Commission is supported by direct tax on sheep in this State, fixed by this Commission and levied and collected as other taxes, and paid to the State Treasurer and kept in a separate fund designated "Sheep Inspection Fund." The purpose of the Act is to provide a body to have control of the sheep industry in this State and to make and enforce regulations for the treatment, suppression, and eradication of certain diseases and parasites detrimental to sheep. Its powers are broad; but we do not find in the Act any authorization to expend the moneys in the fund for political purposes or to promote or defeat any political or other issue to be voted upon at an election. Notwithstanding the fact that section 10a of the Act (Nevada Compiled Laws 1929, section 3881) allows broad powers to the Commission as to the nature of the expenditures to be paid out of the fund named, it is apparent from a reading of the entire Act and a consideration of the method of payment of claims against the fund there mentioned and against the State generally, that it was the intention of the Legislature that the expenditures of which the Board is there made the "sole and exclusive judge" were limited to the expenses incident to carrying out the objects and purposes of the Act as above stated. In the third subparagraph of section 3 of the Act (Nevada Compiled Laws 1929, section 3873) it is expressly provided that "*all bills*" for

salaries and “*expenses*” incident to the enforcement of the Act must be “*audited, allowed, and paid*” in the same manner as other claims against the State. In other words, such bills cannot be paid unless and until they have been audited and “*allowed*” by the Board of Examiners of the State; and the State Controller and Board of Examiners are expressly given by this Act the same right to scrutinize the bills of the State Sheep Commission and pass upon them and limit them to the objects and purposes of the Act as they generally have with reference to other bills presented against the State and its funds for payment. To promote or defeat political or election issues is not one of the objects or purposes of the Act.

The Stock Commission is supported by moneys derived from a direct tax on all cattle, horses, and hogs, levied and collected as other taxes, paid to the State Treasurer and kept by him in a separate fund designated the “Stock Inspection Fund.” The purpose of the Act is to provide a body to have control of the cattle, horse, and hog industry in this State, and to make regulations for the treatment and eradication of diseases among such live stock. What has been said above as to the powers of the Sheep Commission relating to expenditures from the fund and the method of payment thereof applies with equal force to the powers of the Stock Commission in this regard, except that the express powers of the Stock Commission are not so broad in this regard.

Upon the foregoing state of facts you ask my opinion on the following questions:

Question 1. Can the State Farm Bureau use State funds for an advertisement for or against a question that is to be voted upon by the people of the State at a general election?

Question 2. Can the Sheep Commission or the Stock Commission use their funds to advertise for or against a question that is to be voted on by the people of the State at a general election?

OPINION

1. As to Question 1, the State Farm Bureau cannot legally use State funds for an advertisement for or against a question that is to be voted on by the people of the State at a general election, for the reason that such expenditures do not come within the purposes of the Act.

2. As to Question 2, neither the Sheep Commission nor the Stock Commission can legally use funds in the “Sheep Inspection Fund” and “Stock Inspection Fund,” respectively, to advertise for or against a question that is to be voted on by the people of the State at a general election, for the reasons hereinbefore stated and for the reason that such expenditures do not come within the purposes of the respective Acts creating these commissions.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

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

SYLLABUS

OPINION NO. 31-5. STATUTES—MEDICAL PRACTICE ACT—CHIROPODY.

1. An unlicensed physician cannot practice medicine in this State by practicing with a licensed physician.
2. A manicurist has no right to practice chiropody without a license.

INQUIRY

Carson City, February 3, 1931.

1. Is an unlicensed physician who works in the office with a licensed physician of this State practicing medicine according to our law?
2. Has a manicurist the right to treat toenails in this State?

OPINION

1. Whether or not one is practicing medicine within the Medical Practice Act depends upon the acts committed. Section 13 of the Medical Practice Act provides what constitutes practicing medicine within the meaning of the law. If, in fact, the individual named in the inquiry was practicing medicine without a license, as defined by the section mentioned, his acts would not be legal simply because he was associated with a licensed physician.

2. The requirements necessary to secure a license to practice chiropody are contained in sections 1070 to 1076, Compiled Laws of Nevada 1929. Unless the person mentioned in the inquiry has secured such a license, she would have no authority to practice chiropody. The practice of chiporody is defined to be the surgical treatment of abnormal nails and superficial excrescencies, such as corns and callosities, and the treatment of bunions.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

By: William J. Forman,
Deputy Attorney-General

Dr. E.E. Hamer,
State Health Officer,
Carson City, Nevada

SYLLABUS

OPINION NO. 31-6. EIGHT-HOUR LAW—OFFICIALS DO NOT COME WITHIN ITS PROVISIONS—EMPLOYEES DO.

The eight-hour law applies to State, county, and city employees, but not to officials; to determine whether person is employee or official, reference must be made to Act creating office or employment.

INQUIRY

Carson City, February 3, 1931.

Would police officers or watchmen, employed by city, town or township, or deputy constables come within the provisions of Chapter 203, Statutes of 1919, regulating hours of employment?

OPINION

Chapter 203, Statutes of 1919, provides, in part, as follows:

The services and employment of all persons, except as otherwise provided herein, who are now, or may hereafter, be employed by the State of Nevada, or by any county, city, town, township, or any other political subdivision thereof, * * * is hereby limited and restricted to not more than eight hours in any one calendar day and not more than fifty-six hours in any one week; * * * *provided*, nothing in this act shall apply to officials of the State of Nevada, or of any county, city, town, township, or other political subdivision thereof * * *.

It will be noted that the Act quoted makes the eight-hour law requirement applicable to employees but not to officials of the State and its political subdivisions. The determination of the question presented in the inquiry, therefore, depends solely upon whether or not the persons named therein are employees or officers.

The Supreme Court of this State, in the case of *State v. Cole*, [38 Nev. 215](#), has quoted with approval the following definitions:

A public office is the right, authority, and duty, created and conferred by the law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public. The individual so invested is a public officer. (Meechem on Pub. Officers, sec. 1.)

Professor Wyman of Harvard defines a public office to be:

“The right, authority and duty conferred by law by which, for a given period, either fixed by law or through the pleasure of the creating power of government, an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public. The warrant to exercise powers is conferred, not by contract, but by law.” (Wyman, Pub. Officers, sec. 44.)

In the same case, the Court stated:

It seems to us that since an office is a creature of the Constitution, of legislative enactment, or of some municipal body, we must look to the instrument which it is alleged created the position to determine the intent of the body creating, which, in this case, is the Legislature. It would certainly be a remarkable situation if the Legislature by the Act in question created an office without any intention so to do. Indeed, it has been held that, in determining whether or not the Legislature in fact created an office, we must look to the intent of the Legislature.

“When the Legislature created and called it an ‘office’ it was an office, not because the peculiar duties of the place constituted it such, but because the creative will of the lawmaking power impressed that stamp upon it.” (*Brown v. Turner*, 70 N.C. 99.)

By sections 4848 to 4850, inclusive, Compiled Laws of Nevada 1929, a deputy constable is classed by the Legislature as an officer. His rights and authority are conferred by law for a given period, and he is invested with some portion of the sovereign functions of government to be exercised by him for the benefit of the public. A deputy constable is, therefore, an official within the meaning of the law and would not be entitled to the benefits of the eight-hour requirement.

A policeman is usually classified as an officer. See note on this subject in 36 L.R.A. (N.S.), page 881. He undoubtedly exercises sovereign functions of government, and, ordinarily, his rights and duties and tenure of office are fixed by the city charter. In some cases, however, the contrary has been held, for the reason that the positions were created and the tenure thereof fixed not by any law or charter but were dependent simply upon the will of the governing body of their city.

Watchmen are usually not officers but employees, as, ordinarily, their duties are not such as to require them to exercise sovereign governmental functions. However, the contrary has been held where the office was created by charter or ordinance and they were classed as officers by the statute.

Therefore, in order to determine definitely whether policemen or watchmen are within the eight-hour law requirement in the statute mentioned in the inquiry, it is necessary to refer to the statute, charter, or ordinance under which they exercise their authority, and determine from the provisions whether they are therein classed as officers or employees within the accepted definitions.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

By: William J. Forman,
Deputy Attorney-General

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

SYLLABUS

OPINION NO. 31-7. Officers—Capitol Commissioners May Allow Use of Legislative Halls for Public Meetings.

The Board of Capitol Commissioners are authorized to allow use of legislative halls for public meetings to promote public welfare; American Legion meeting is for such purpose.

INQUIRY

Carson City, February 6, 1931.

The opinion of this office is requested as to whether the Board of Capitol Commissioners have any right to allow the use of the legislative chambers, both the Assembly Hall and the Senate Hall, in the Capitol Building, for the holding of the 1931 Departmental Convention of the American Legion, or for any other public purpose.

OPINION

The law governing the authority of the Board of Capitol Commissioners in such matters is “An Act providing for a State Board of Capitol Commissioners, defining their duties and powers, and repealing all Acts in conflict therewith,” approved March 20, 1911, Statutes of Nevada 1911, page 286, which Act is found in sections 6885-6895, both inclusive, Nevada Compiled Laws 1929.

Section 6887, Nevada Compiled Laws 1929, being section 3 of that Act, reads as follows:

Said board shall have supervision over and control of the state capitol buildings, the capitol grounds and state waterworks, the state printing office building and grounds, and all other state buildings, grounds and properties not otherwise provided for by law.

Section 6890, Nevada Compiled Laws 1929, being section 6 of that Act, reads as follows:

Said board is authorized, in their discretion, to permit the use of the senate and assembly chambers in the capitol building, when not being used by the legislature, for any public meeting intended to promote the public welfare.

It will be observed that the above-mentioned section 6887 gives the Board of Capitol Commissioners, among other things, supervision over and control of the State Capitol Buildings; and that the above-mentioned section 6890 authorizes the Board of Capitol Commissioner, in their discretion, to permit the use of the Senate and Assembly Chambers in the Capitol Building for any public meeting intended to promote the public welfare, when not being used by the Legislature.

The American Legion is, in the opinion of this office, an organization engaged in enterprises which promote the public welfare; and its contemplated meeting is in the nature of a public meeting, and is certainly intended to promote the public welfare.

It is, therefore, the opinion of the Attorney-General that the Board of Capitol Commissioners has the right to allow the use of both the legislative chambers in the Capitol Building at Carson City for the holding of the 1931 Departmental Convention of the American Legion, provided these meetings be held at such time as these chambers are not being used by the Legislature.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

State Board of Capitol Commissioners,
Carson City, Nevada

SYLLABUS

OPINION NO. 31-8. Citizens—Conditions Under Which Person May Become Citizen Stated.

A person may become citizen of the United States in any of the three following circumstances: (1) By birth; (2) a child of a citizen of the United States, no matter where born; (3) by naturalization.

INQUIRY

Carson City, February 11, 1931.

A Japanese woman resided in the State of Nevada. She left the United States for a visit to Japan. At the time she left the United States she had been pregnant four months. The child was born in Japan. The mother and child returned to the United States when the child was six months of age. Is the child a citizen of the United States?

OPINION

There are three circumstances under which a person may become a citizen of the United States other than by marriage:

First, By being born in the United States;

Second, A child of a citizen of the United States is a citizen thereof no matter where the child is born;

Third, By naturalization proceedings.

As a child mentioned in the inquiry was born in Japan, it would not be a citizen of the United States unless it was a child of a citizen. Its parents, being Japanese, are not under the laws of the United States entitled to be naturalized; therefore, the child mentioned would not be a citizen unless its parents were born in the United States.

In the opinion of this office, the fact that the mother of the child was pregnant at the time she left the United States would not change the status of the child.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

By: William J. Forman,
Deputy Attorney-General

Dr. E.E. Hamer,
State Health Officer,
Carson City, Nevada

SYLLABUS

OPINION NO. 31-9. Taxation—Truck Company Doing Purely Interstate Business Is Subject to License Tax.

Truck company doing purely interstate business is required to secure license required for motor vehicles for hire.

INQUIRY

Carson City, February 18, 1931.

Whether or not a truck company doing a purely interstate business across Nevada is subject to the provisions of the Nevada State Motor Vehicle License Law, approved March 29, 1929.

OPINION

By section 1 of the Act mentioned in the inquiry, its provisions are applicable to all companies operating motor vehicles for hire over the public highways of the State. This section is applicable to both interstate and intrastate operators. Such a license law has been held to be constitutional as applied to interstate operators by the United States Supreme Court in the cases of *Clark v. Poor*, 274 U.S. 554, and *Interstate Busses v. Blodgett*, 275 U.S. 245.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

By: William J. Forman,
Deputy Attorney-General

Hon. S.C. Durkee,
State Highway Engineer,
Carson City, Nevada

SYLLABUS

OPINION NO. 31-10. Taxation—Personal Property of Individuals on Government Reservation Is Taxable.

Where State has not ceded jurisdiction to United States, property on Government reservation is taxable; persons living thereon are required to pay roll tax, only, if they have become residents of State.

INQUIRY

Carson City, February 20, 1931.

Are officers, enlisted men, and civilian employees living upon a United States Government reservation required to pay taxes upon their personal property situate thereon, such as automobiles?

Are such person required to pay a poll tax?

OPINION

Where the State has not ceded absolute jurisdiction to the United States over a government reservation, persons living thereon, including persons in the service of the Army and Navy, are required to pay taxes upon their personal property situate thereon. See the cases of *Cassells v. Wilder*, 23 Hawaii 61, and *Daniels v. Sault Ste. Marie*, 175 N.W. 160.

The first case cited involved the taxation of an automobile owned by an army officer and used upon a military reservation. The second case involved property of a contractor situate on such a reservation.

The poll tax in this State is required to be collected from residents of the State only. This office has heretofore held in Opinion No. 316 (Opinions of the Attorney-General, 1927-1928) that the mere fact of presence upon a government reservation for the statutory period does not necessarily make one a resident, but that, should such person manifest his intention of claiming a residence on such reservation and to that end comply with the requirements of law, he would become a resident of the State.

Persons belonging to the military service are not, by reason of their military character, relieved of their duties and liabilities or deprived of their rights as citizens. 5 C.J. 364.

Therefore, persons living upon the Government reservation are liable for the payment of the State poll tax, but only if they have become residents of this State.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

By: William J. Forman,
Deputy Attorney-General

Hon. Fred L. Wood,

District Attorney of Mineral County,
Hawthorne, Nevada

SYLLABUS

OPINION NO. 31-11. OFFICERS—COUNTY COMMISSIONERS—POWER OF MAKING AUDIT OF COUNTY OFFICES.

The Board of County Commissioners has the power to employ an accountant to make an audit of the books of county officers.

INQUIRY

Carson City, February 27, 1931.

Has the Board of County Commissioners the authority to employ an accountant to audit the books of county officers?

OPINION

Section 1942, Nevada Compiled Laws 1929, subdivision 3, provides that the Board has the power “to examine and audit the accounts of all officers, having the care, management, collection, or disbursement of any money belonging to the county or appropriated by law, or otherwise, for its use and benefit.”

This section has been construed by the Supreme Court of this State in the case of *Stone v. Bell*, [35 Nev. 240](#), as authority for the County Commissioners to provide for an audit.

Therefore, it is the opinion of this office that the Board of County Commissioners has the authority to employ an accountant to make such an audit.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

By: William J. Forman,
Deputy Attorney-General

Hon. V.H. Vargas,
District Attorney of White Pine County,
Ely, Nevada

SYLLABUS

OPINION NO. 31-12. STATE ENGINEER—DISTRIBUTION OF WATER ACCORDING TO ORDER OF DETERMINATION.

The State Engineer should distribute the water of the Humboldt River according to the order of determination until the entry of the decree.

INQUIRY

Carson City, March 10, 1931.

Should the office of the State Engineer distribute the waters of the Humboldt River during the season of 1931 in accordance with the terms set forth in the decision rendered by Judge Bartlett on December 31, 1930? If not, when will this decision become effective?

OPINION

Section 38 of the Water Code provides, in substance, that the distribution of the waters of a stream under adjudication shall be in accordance with the Order of Determination after the order is filed and while it is pending in the District Court. Section 37 provides that, on the entry of the decree, a certified copy shall be filed by the Clerk of the court in the office of the State Engineer, which decree "shall be in full force and effect."

This decree contemplated by the Water Code is the final decree entered after the making of express findings. See sections 35, 36, and 36a of the Water Code.

From the sections of the Water Code hereinbefore mentioned, it will be seen that it was the intention of the Legislature that the State Engineer should distribute the waters of a stream under adjudication in accordance with the Order of Determination until the entry of the final decree and that, upon the entry of the decree and the filing of a certified copy thereof in the office of the State Engineer, it should then be in full force and effect. This intention is strongly indicated by section 39, which provides for a bond to stay the Order of Determination. The condition of the bond is that the obligor will pay all damages by reason of such order not being enforced *pending the decree*.

It therefore appears that, unless the opinion and decision reached in the Humboldt River determination can be considered a final decree, as contemplated by the Water Code, distribution must be made during the season of 1931 in accordance with the Order of Determination.

The courts of this State have frequently held that the decision of the court shall, in certain cases, be considered the final judgment. (*See Coleman v. Moore & McIntosh*, [49 Nev. 142.](#)) However, such rule does not apply where further facts must be ascertained to determine the exact character of the judgment. (*See California State Telegraph Co. v. Patterson*, [1 Nev. 159.](#))

The decision in the Humboldt River case is, and necessarily must be, of the latter character, as the records of the proceedings are so voluminous that it was impracticable, if not impossible, to embody in an opinion and decision an exact statement in detail of each and every water user's rights on the stream system. Therefore, the decision in the case under consideration is not a final decree within the meaning of the Water Code.

It has been suggested that the opinion and decision of the court should be considered as an order to the State Engineer under the supervisory powers of the court provided for under section 36 1/2. It would seem that this suggestion is answered by the decision itself. It is not in any sense an order directed to the State Engineer, but simply directs the drawing of findings of fact in accordance with the views of the court therein set forth.

It is, therefore, the opinion of this office that, until further order of the court or until the entry of the decree, the distribution of the Humboldt River should be in accordance with the Order of Determination.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

By: William J. Forman,
Deputy Attorney-General

Hon. George W. Malone,

State Engineer,
Carson City, Nevada

SYLLABUS

OPINION NO. 31-13. Taxation—Special Bond Issues Authorized by Legislation Exceeding Tax Limit Statute.

Where legislature has authorized special bond issues for county, and taxation required will exceed five dollar limit, the latter Act controls and tax limit statute is pro tanto repealed.

INQUIRY

Carson City, March 13, 1931.

Where the Legislature has authorized, by special Act, a county bond issue, may such bonds be issued and the tax levied for the repayment of such bonds if the tax will cause the county tax rate to exceed the five dollar limit?

OPINION

Where the tax limit is imposed by the Constitution, then, of course, no Act of the Legislature can impliedly extend the tax limit; however, the tax limit in this State is imposed by statute, and the question arises as to whether subsequent special authority from the Legislature to a county to levy a special tax or to create a debt impliedly repeals pro tanto the existing statutory limit. The overwhelming weight of authority is to the effect that the later Act controls. There is a conflict of authority on the point, but the best reasoning seems to support the rule that such a repeal pro tanto is effected.

Therefore, in the case mentioned in the inquiry, the bonds might be issued and the tax levied even though the tax exceeded the five dollar limit.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

By: William J. Forman,
Deputy Attorney-General

Hon. Harley A. Harmon,
District Attorney of Clark County,
Las Vegas, Nevada

SYLLABUS

OPINION NO. 31-14. Constitutional Law—Senate Bill No. 67, Chapter 180 of the 1931 Statutes, at Page 289.

The Act passed for relief of George W. Malone and others held to be constitutional.

INQUIRY

Carson City, March 26, 1931.

You ask the opinion of this office as to whether Senate Bill No. 67 granting relief to George W. Malone and others in the total sum of \$9,625 is contrary to the laws or Constitution of the State of Nevada, and whether it would be lawful to issue a warrant or warrants to reimburse the person or persons named in the Act for the several amounts specified.

OPINION

In Opinion No. 259, given you from this office on and dated April 27, 1927, you are advised that "The duty and responsibility of the final auditing and settlement of all claims * * * have been placed solely upon the State Controller," as held by the Supreme Court of this State in *State v. Doran*, [5 Nev. 399](#). You are further advised in that opinion that the section of the law there cited authorizes you to "examine witnesses under oath and to receive and consider documentary evidence in addition to that furnished him (you) by the Board of Examiners." You are further advised in that opinion that "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. 399](#).) You are further advised in that opinion that "It is the duty and the power of the State Controller to pass upon both the legality and *justness* of such claims," and that it is not the function of the office of Attorney-General to usurp any of the functions of the State Controller.

From the foregoing, you will see that the State Controller has the final duty of passing upon both the *legality* and *justness* of such claims. Since the Attorney-General is a member of the Board of Examiners and passes upon claims against the State as a member of that Board, and these claims come to the State Controller after they have been so passed upon by the Attorney-General, the evident purpose of placing in the hands of the State Controller the duty to pass upon "both the legality and justness" of such claims is to provide an additional safeguard against the allowance and payment of illegal and unjust claims.

It might be well and enlightening to consider the history of this legislation. The claim or claims upon which this Act is based was or were first presented to two members of the Board of Examiners, constituting a majority of that Board, and allowed or approved by them. The bill was then drawn and introduced in the State Senate, and finally passed by practically an unanimous vote of that body. It was then passed by practically an unanimous vote of the Assembly of this State. It is the duty of the Legislature of this State to establish the policy of the State, and to determine the justness of every Act passed by it, in so far as that body is concerned. The Legislature has practically unanimously established it as the policy of the State to pay these claims and the justness of them. Since this is a relief bill, it is the opinion of this office that this law is not irreconcilably repugnant to the so-called "Fairchild Law," or is not prohibited by that law. If the Legislature had authority to pass the so-called "Fairchild Law," it had just as much authority to amend, modify, or repeal that law. It was evidently the intention of the Legislature to pass Senate Bill No. 67, quite familiarly called "The Malone Relief Bill," notwithstanding the "Fairchild Law."

For the foregoing reasons, this opinion is limited to the question of the constitutionality of said Senate Bill No. 67. I do not know of, and my attention has not been called to, any provision of the Constitution which prohibits the Legislature of this State from making such an appropriation. For this reason, it is the opinion of this office that Senate Bill No. 67 is constitutional.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

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

SYLLABUS

OPINION NO. 31-15. Schools—Form of Bonds and Proceeds of the Board of County Commissioners.

1. The form of the bonds submitted are in legal form.
2. The proceedings of the Board of County Commissioners are legal with the exception of a resolution by the County Board of Education, showing the necessity of the expenditure of the funds to be raised by the proposed bonds.

INQUIRY

Carson City, April 1, 1931.

Your query as to whether the proposed bonds and proceedings of the Board of County Commissioners so far had in connection with the issuance thereof are legal, said bonds being authorized by and for the purposes mentioned in that certain Act of the Legislature entitled, "An Act to authorize the Board of County Commissioners of the county of Mineral, State of Nevada, to issue bonds to provide for the completion, equipment and furnishing of an addition to the high school building in the town of Hawthorne, Nevada, and authorizing the County Board of Education of said county to complete, equip and furnish said building, and other matters properly connected therewith," approved February 11, 1931, is answered as follows:

OPINION

It is the opinion of this office, from an examination of the form of bond annexed to your letter, that such bond is in due and legal form.

It is also the opinion of this office that the proceedings had in the matter of perfecting the issuance of said bonds by the Board of County Commissioners of Mineral County are regular and in legal form and sequence, save and except it does not appear from the record before us that a resolution showing the necessity of the expenditure of funds of the amount of the proposed bond issue and for the purposes mentioned in the statute had been adopted by the County Board of Education of Mineral County and delivered to the Board of County Commissioners. This resolution should appear in the record, and we suggest that the County Board of Education now adopt a resolution as mentioned above, and furnish proper certified copy thereof to the Board of County Commissioners for incorporation in its records.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

By: W.T. Mathews,
Deputy Attorney-General

Hon. Fred L. Wood,
District Attorney of Mineral County,
Hawthorne, Nevada

SYLLABUS

OPINION NO. 31-16. Motor Vehicles—Visitor’s Permit—Section 4375, Nevada Compiled Laws 1929.

Visitor may accept employment of indefinite duration and, until the three months’ period mentioned in section 4374, N.C.L. 1929, has expired, he is entitled to operate his car under visitor’s permit.

INQUIRY

Carson City, April 2, 1931.

Under section 4375, Nevada Compiled Laws 1929, should visitor’s permit be cancelled and registration required where person to whom issued accepts employment here of an indefinite duration?

OPINION

It is the opinion of this office that the visitor’s permit mentioned in your query should not be cancelled and registration required where the person to whom was issued such visitor’s permit accepts employment here of an indefinite duration. We think the language of section 4375, supra, is qualified by the language found in section 4374, to wit:

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

In our opinion a visitor may accept employment of an indefinite duration and, until the three months’ period has expired, such visitor is still entitled to operate his car under the visitor’s permit.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

By: W.T. Mathews,
Deputy Attorney-General

Hon. V.H. Vargas,
District Attorney of White Pine County,
Ely, Nevada

SYLLABUS

OPINION NO. 31-17. OFFICERS—INSPECTOR OF MINES—POWERS TO INSPECT THE UNDERGROUND WORKINGS AT BOULDER DAM SITE—CONFLICT BETWEEN THE STATE OF NEVADA AND UNITED STATES—CONFLICT OF STATE LAWS AND REGULATION WITH THE FEDERAL LAWS.

1. Inspector of Mines has, under the provisions of Chapter 167 of 1931 Statutes of Nevada, power to enter, inspect and examine any and all tunnels, drifts and other underground excavations and workings where men are employed at work, situated in the State of Nevada at Boulder Dam, and to recommend and enforce such changes and establish and enforce such rules and regulations as may be reasonably necessary for the safety of the employees working there.

2. No conflict exists between the provisions of Chapter 167 of 1931 Statutes of Nevada and the laws of United States, and no conflict should arise between the State of Nevada and the United States over the enforcement of said Act.

INQUIRY

Carson City, April 10, 1931.

In the following letter, which you handed me on 8th instant, you ask for the opinion of this office as to the extent of the powers conferred upon you by the law passed by the recent Legislature, approved by the Governor March 25, 1931, which is Chapter 167 of 1931 Statutes of Nevada, supplementing the Mine Inspector Law, so-called, as it applies to the work of constructing Boulder Dam or Hoover Dam, and other affiliated enterprises:

Carson City, April 7, 1931.

Hon. Gray Mashburn, *Attorney-General, State of Nevada, Carson City, Nevada.*

Dear Sir: Referring to an Act supplementary of an Act entitled "An Act creating the office of Inspector of Mines, fixing his duties and powers, etc., requiring certain reports and notices of accidents to be made to said Inspector, and defining the duties of the Attorney-General relating to suits, etc., and all Acts amendatory thereof and supplementary thereto, and extending the powers and provisions thereof to the examination and inspection of tunnels, drifts and other underground excavations and workings, where persons are engaged at work, etc., and to the duties, obligations, liabilities, and penalties imposed by the Act," which was passed and approved at the last session of our Legislature.

I am kindly asking your opinion as to whether or not I will have, under this Act, full power to enter upon the premises of the Boulder Dam and inspect all tunnels, drifts, and other underground excavations and workings, situated in the State of Nevada, where persons are employed at work; and to make examinations and inspections, and recommend the enforcement of all laws, which are being violated as set forth in this Act. What, if any, conflict might arise between the Government of the United States and the State of Nevada as to the enforcement of any laws, within this Act, which are being violated by the contractors of the Government?

Very truly yours,

A.J. Stinson,
Inspector of Mines.

Your points of inquiry, as I understand them, are in effect as follows:

1. Are you given full power, under the above-mentioned Act, to enter upon the property at Boulder Dam where "tunnels, drifts and other underground excavations and workings" are being constructed or excavated and where men are employed at work, situated in the State of Nevada,

and there to inspect and examine all such tunnels, etc., and to recommend changes for the safety of the men so employed and to recommend as to the enforcement of the laws relating to any such work?

2. What, if any, conflict exists between the provisions of said Act, as they relate to your office, and the Federal Laws because of the fact that the Dam or enterprise is to be constructed for the United States Government or an officer thereof; or what conflict may arise between the State of Nevada and the United States as to the enforcement of the provisions of this Act?

OPINION

1. As to the foregoing question No. 1, it is the opinion of this office that the supplementary Act, above referred to, gives you full power to enter the property at Boulder Dam within the State of Nevada where such work is being done, and to enter, inspect and examine any and all "tunnels, drifts and other underground excavations and workings," where men are employed at work situated in the State of Nevada, at Boulder Dam, and to recommend and enforce such changes and establish and enforce such rules and regulations as may be reasonably necessary for the safety of employees working there. You are expressly given by the Act all the authority and powers, "to enter, inspect and examine," and to regulate the work in, "tunnels, drifts and other underground excavations and workings" that you are given in the "Mine Inspector Law," so-called, with reference to mines. Exactly the same authority, duties and powers are extended to you, with reference to "tunnels, drifts and other underground excavations and workings" in Nevada, where men are employed at work, under the above-mentioned supplementary Act as you have under the "Mine Inspector Law" with reference to mines, the language of the supplementary Act as to extent and purpose of extending these powers and duties to you being as follows: "so as to authorize, empower and require the said Inspector of Mines to enter, inspect, and examine all tunnels, drifts and other underground excavations and workings in this State in the interest of the safety of persons so employed."

Since the supplementary Act about which you inquire refers to the "Mine Inspector Law," so-called, and gives you the same authority and powers with reference to entering, inspecting and examining tunnels, drifts and other underground excavations and workings where men are employed at work in Nevada as are given the Inspector of Mines in Nevada, and in order that you may have these duties, authority and powers specified and contained in this opinion. I here copy section 4212, Nevada Compiled Laws 1929 (section 4202, Revised Laws of Nevada, as amended in 1925 Statutes of Nevada, page 13) in which are specified your duties, authority and powers in this regard as follows:

Said state inspector shall have full power and authority at all hours, to enter and examine any and all mines in this state, and shall have the right to enter into any and all mines stopes, levels, winzes, tunnels, shafts, drifts, crosscuts, workings and machinery for the purpose of such examination; and the owner, lessor, lessee, agent, manager, or other person in charge of such mine or mines shall render the inspector such assistance as may be required by the inspector to enable him to make a full, thorough and complete examination of each and every part of such mine or mines; and whenever, as the result of the examination of any mine (whether such examination is made in consequence of a complaint, as hereinafter provided, or otherwise), the inspector shall find the same to be in unsafe condition, he shall at once serve, or cause to be served, and post or cause to be posted, in a conspicuous place upon the gallows frame, shaft house or other superstructure, at the collar of the shaft or at the entrance of the tunnel or at the main workings, of such mine, a written notice upon the owner, lessor, lessee, agent, manager, or other person in charge of such mine, stating in detail in what particular or particulars the mine is dangerous and insecure and shall require all necessary changes to be made, without delay, for the purpose of making said mine safe for the employees therein. Upon the neglect or refusal of any owner, lessor, lessee, agent, manager, or other person in

charge so notified to comply with the requirements stated in such notice so served and posted, such owner, lessor, lessee, agent, manager, or other person in charge of such mine shall be deemed guilty of a misdemeanor, punishable by fine or imprisonment, or both as prescribed in section 42 of this Act (section 4238 Rev. Laws); and in case of any criminal or civil proceedings at law against the party or parties so notified, on account of the loss of life or bodily injury sustained because of neglect or refusal to obey the inspector's requirements, a certified copy of the notice served by the inspector shall be prima-facie evidence of the culpable negligence of the party or parties so notified.

In a word, you have full authority and power to enter, inspect and examine any and all tunnels and other underground workings mentioned in the supplementary Act, at or connected with Boulder Dam or Hoover Dam, situated in Nevada, where persons are employed at work, and to regulate the work there for the safety of the men so employed. In fact, section 4211, Nevada Compiled Laws 1929 (sec. 4201, Revised Laws of Nevada) makes it your duty to do so. But your duties, authority and powers in this regard are confined to the Nevada side alone.

2. As to the forgoing question No. 2, it is the opinion of this office that there is no conflict between the provisions of said supplementary Act, as they relate to your office, and the Federal laws, to wit, the laws of the United States, because of the fact that the Boulder Dam and affiliated enterprises are to be constructed for the United States Government or an officer thereof; and it is also the opinion of this office that no conflict should arise between the State of Nevada and the United States as to the enforcement of the provisions of said supplementary Act.

This situation is particularly true because of the fact that Congress has not passed any laws establishing a United States reservation or conferring exclusive jurisdiction on the United States and its officers over the territory at and in the vicinity of boulder Dam or over the territory where the dam and affiliated enterprises are to be constructed. The mere fact that the land where the dam and affiliated enterprises are to be constructed is public land of the United States does not confer jurisdiction on the United States or its officers in regard to the performance of your duties or prevent the State of Nevada from inspecting the work being done there, for the very simple reason that the State has police power generally over public lands of the United States and in matters of civil and criminal jurisdiction.

In fact, the United States and its officers are not to engage in the actual work of construction. Contracts have been let to private concerns and companies. Your right to inspect and the law establishing that right are based upon the concern and interest of the State in the safety of the men employed and at work. These private concerns and companies are the actual employers, not the United States or its officer.

The contracts and dealings of the employees are with these private companies, not with the United States or its officers. You are charged with the duty of inspecting the work being done by these private companies. The employees have no dealings with the Federal Government. Your duties are, therefore, exactly the same as they would be if the United States Government had absolutely nothing to do with the affair.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

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

SYLLABUS

OPINION NO. 31-18. STATUTES—SECTION 41 OF THE NEVADA INDUSTRIAL INSURANCE ACT (SEC. 2723, N.C.L. 1929) AND ITS APPLICATION TO THE WORK TO BE DONE IN THE CONSTRUCTION OF HOOVER DAM—REMEDIES OF EMPLOYEES.

1. Section 41 of the Nevada Industrial Insurance Act covers employees working on that portion of the Hoover Dam project which is situated entirely in the State of Nevada and also those portions of it which are situated partly in Nevada and partly in Arizona, especially where the hiring takes place in Nevada and the employees live in Nevada.

2. Section 41 of the Nevada Industrial Insurance Act does not cover work which is to be done entirely within the State of Arizona and employees working entirely in that State.

3. The remedy of employees coming within the provisions of the first paragraph of section 41 is limited to the compensation for injury provided for by the Nevada Industrial Insurance Act, and such remedy is the exclusive remedy of such injured workmen.

4. The remedy of employees coming within the provisions of the second paragraph of section 41 is limited to the compensation for injury provided for by the Nevada Industrial Insurance Act, and such remedy is the exclusive remedy of such injured workman.

INQUIRY

Carson City, April 10, 1931.

You have referred me to section 41 of the Nevada Industrial Insurance Act, which is Nevada Compiled Laws section 2723, and have asked for the opinion of this office as to the application of that section of the law to the work to be done in the construction of Hoover Dam and affiliated enterprises, as it relates to industrial insurance under the Nevada Industrial Insurance Act.

This section of the law read as follows:

If a workman or employee, within the provisions of this act, who has been hired in this state, and whose usual and ordinary duties of such employment are confined to the state, is sent out of the state on business or employment of his employer, and receives personal injury by accident arising out of and in the course of such employment, he shall be entitled to receive compensation according to the provisions of this act, even though such injury was received outside of this state.

Any employer of labor in the State of Nevada and any employee thereof, whether hired in or out of the state and whose duties may be partially or wholly out of the state, may, by their joint election, elect to come under the provisions of this act in the manner following: Both the employer and the employee shall file with the commission a written statement that they accept the provisions of the Nevada industrial insurance act. When filed, such statement shall operate to subject them to the provisions of said act, and of all acts amendatory thereof, until such time as the employer or employee shall thereafter file in the office of the commission a notice in writing that he withdraws his election. After such joint election is made, any employee who receives personal injury by accident arising out of and in the course of such employment shall be entitled to receive compensation according to the provisions of this act, even though he was hired outside of this state and received such injury outside of this state.

The particular questions upon which you ask an opinion are as follows, as I understand them:

1. Whether or not the terms of section 41 are broad enough to cover employees working on the entire project, both the portion of the project situated entirely in the State of Nevada and the portion of it situated partly in Nevada and partly in Arizona.

2. Whether or not the terms of said section 41 are broad enough to cover the work on said project which is situated entirely within the State of Arizona and where employee works entirely in that State.

3. In cases coming within the provisions of the first paragraph of said section 41, is the remedy of the injured employee limited to compensation under the Nevada Industrial Insurance Act, that is to say, is the compensation provided for in the Act the exclusive remedy of such injured employee.

4. In cases coming within the provisions of the second paragraph of said section 41, is the remedy of the injured employee limited to the compensation provided for in the Nevada Industrial Insurance Act, that is to say, is the compensation provided for in that Act the exclusive remedy of such injured employee.

OPINION

Both of the paragraphs of said section 41 relate to and cover injuries received out of Nevada. The first paragraph thereof relates to and governs hiring or contracts of hire made in Nevada and where the employer has accepted the terms of the Nevada Industrial Insurance Act and the usual and ordinary duties (the principal duties) of the employment are to be performed in Nevada, but where the employer sends the employee out of Nevada on some business of the employer, and the employee is injured by accident arising out of and in the course of his employment outside of Nevada.

The second paragraph of said section 41 relates to and governs hiring or contracts of hire, no matter whether made in Nevada or out of Nevada, but where part of the duties are to be performed in Nevada and part of them are to be performed out of Nevada, and the employer and employee both elect to come under or accept the terms of the Nevada Industrial Insurance Act.

1. As to question numbered 1 above, it is the opinion of this office that the terms of said section 41 of the Nevada Industrial Insurance Act are broad enough to cover employees working on that portion of the project which is situated entirely in the State of Nevada, and also those portions of it which are situated partly in Nevada and partly in Arizona, especially where the hiring takes place in Nevada and the employee lives in Nevada. The overwhelming weight of authority, and practically all the recent authorities, on the point sustain this proposition of law.

2. As to question numbered 2 above, it is the opinion of this office that the terms of said section 41 are not broad enough to cover the work on said project which is to be done entirely within the State of Arizona and where the employee works entirely in that State. However, there is considerable respectable authority to the effect that, even in such cases, the terms of said section are broad enough to cover such work and employees, where such employees live in Nevada and travel from Nevada into Arizona to perform the duties of the employment in Arizona and then back to their homes in Nevada each day. But, in view of the attitude of the State of Arizona and the Supreme Court of that State as expressed in *Ocean Accident and Guaranty Corporation v. Industrial Commission*, 257 Pac. (Ariz.) 644, it is the opinion of this office that the State of Arizona would not recognize Nevada's right to cover such employees under the Nevada Industrial Insurance Act. In that case, the Supreme Court of Arizona refused to recognize the doctrine expressed in this paragraph and quite universally recognized. To undertake to cover such employees under the Nevada Industrial Insurance Act would simply be courting trouble with Arizona. It is, therefore, the opinion of this office that employees who work on the project entirely in Arizona should be eliminated from consideration in so far as covering such employees under the Nevada Industrial Insurance Act is concerned.

3. As to question numbered 3 above, it is the unqualified opinion of this office that the remedy of employees coming within the provisions of the first paragraph of said section 41 are limited to the compensation for injury provided for in the Nevada Industrial Insurance Act, and that the remedy so provided is the exclusive remedy of such injured employees. This paragraph of said section 41 applies to cases where the employer hires the employee in Nevada and the usual and ordinary duties of such employment are to be performed in Nevada, but the employer sends the employee out of Nevada on the employer's business and the employee is injured while

performing the duties of such business out of Nevada. In such cases the great and overwhelming weight of authority is to the effect that the employee is covered by such provisions as are included in the Nevada Industrial Insurance Act and that his compensation for such injury is limited to that provided for in the Act, and that such remedy is exclusive. In fact, practically all the recent cases and authorities hold that the remedy provided for in the Industrial Insurance Act is exclusive. Such cases and authorities assign many reasons for so holding, some of these reasons being; the fact that the hiring or contract of hire took place in the State providing for the compensation; that the relation is a contractual relation and stands upon the same footing as any other contract or policy of insurance; upon the theory that the contract of hire carries with it the agreement to accept the terms of the Industrial Insurance Act of the State where the contract is made; and upon the theory that the law of the place of the contract governs. Some of the cases sustaining this paragraph of this opinion are: *Quong Ham Wah Company v. Industrial Accident Commission of California et al.*, 192 Pac. (Cal.) 1021, particularly at page 1025; *State ex rel Chambers v. District Court*, 166 N.W. (Minn.) 185; 3 A.L.R. 1350, and note in 3 A.L.R. at page 1355, citing many cases. In *State ex rel Chambers v. District Court*, supra, as reported in 3 A.L.R. at page 1350, the Supreme Court of Minnesota uses the following language:

It is held that the employee could not maintain a common law action in Minnesota for the Wisconsin injury.

Other strong and well-reasoned recent cases sustaining this proposition are as follows: *Crane v. Leonard*, 18 A.L.R. (Mich.) 290-292, and note at page 292, citing many cases sustaining this theory; *Smith v. Vanoy Interstate Co.*, 35 A.L.R. 1413-1414 and note; *Altman v. North Dakota Workmen's Compensation Bureau*, 28 A.L.R. 1345; *Watts v. Long*, 59 A.L.R. (Neb.) 735, and annotation; *Pederzoli's Case*, 169 N.E. 425; *State v. Industrial Accident Board*, 286 Pac. (Mont.) 408.

In 59 A.L.R., page 739, there is an extensive index giving a list of cases by States sustaining the position here announced and showing that the great majority of the cases sustain this position.

4. As to question numbered 4 above, it is the opinion of this office that the terms of said section 41 are broad enough to cover the cases coming within the provisions of the second paragraph thereof, and that the remedy provided in the Nevada Industrial Insurance Act for the injured employee is limited to the compensation provided for therein, and that such compensation is the exclusive remedy of the injured employee. The cases falling within and covered by this second paragraph of section 41 are cases where both the employer and the employee elect to come under or accept the terms of the Nevada Industrial Insurance Act, no matter whether the hiring takes place in Nevada or out of Nevada, but where a part of the usual and ordinary duties (principal duties) of the employment are to be performed in Nevada and the remainder thereof out of Nevada, and where the injury takes place out of Nevada. As applied to this particular project and the work to be performed on it, the employees covered by this second paragraph of said section 41 are employees who live in Nevada, but who work part of the time on the Nevada side of the boundary line between Nevada and Arizona and the remainder of the time of the Arizona side of the boundary line. These would be employees who work on the construction of the dam proper, but live in Nevada and perform most of their duties in Nevada or on the Nevada side of the boundary line between the two States; this class of employees would be composed of those who work from the Nevada side. It is the opinion of this office that they would be covered by the Nevada Industrial Insurance Act under such circumstances, and that their exclusive remedy would be the compensation provided for in the Nevada Industrial Insurance Act.

In summing up, it is the opinion of this office that, since employees who work on the project entirely in Arizona should come under the Arizona Act, the pay roll of the employer could and should be segregated into two pay rolls, one containing the employees who work exclusively and entirely in Arizona, and the other pay roll containing all of the remainder of the employees, and that the Nevada Industrial Insurance Commission should collect premium only on the latter pay roll.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

Nevada Industrial Commission,
Carson City, Nevada

SYLLABUS

OPINION NO. 31-19. STATUTES—COURT COST—COST OF PUBLISHING SUMMONS AND REPORTERS' FEES.

The last sentence in section 4 of Chapter 46, 1931 Statutes, does not include the cost of publishing summons or court reporters' fees.

INQUIRY

Carson City, April 10, 1931.

In your letter of the 3d instant you ask the opinion of this office as to whether section 4 of Assembly Bill No. 13, being Chapter 46, 1931 Statutes of Nevada, approved March 3, 1931, covers all court costs in connection with suits filed by the Labor Commissioner of this State, including the publishing of summons, court reporters' fees, etc.

OPINION

It is the opinion of this office that the last sentence of said section 4, as amended by the above-mentioned Chapter 46, to wit:

No court costs shall be required from the labor commissioner in the prosecution of any claims or actions provided for under the labor laws of this state.

covers all court costs, except the expense or charges for the publishing of summons and court reporters' fees. It is the opinion of this office that the expression "court costs" does not cover the expenses of publishing summons and court reporters' fees, for the very simple reason that I do not believe it was the intention of the Legislature to require people engaged in business, such as publishers of newspapers, and court reporters who draw absolutely no salary, to render services without any compensation. In fact, it is my opinion that the Legislature has no authority to require any such services without compensation, as this would partake of the nature of confiscation of property or the taking of property without due process of law.

However, the expenses of publishing summons and court reporters' fees are readily recoverable as costs of suit at the trial, and can be legally assessed as costs and included in the judgment.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

Hon. William Royle,

State Labor Commissioner,
Carson City, Nevada

SYLLABUS

OPINION NO. 31-20. STATUTES—APPLICABILITY OF LABOR LAWS TO ALL WORK IN CONNECTION WITH THE CONSTRUCTION OF HOOVER DAM.

The labor laws of Nevada are and will be applicable to all work in the construction of Hoover Dam, and to all work in connection with or appurtenant to Hoover Dam construction.

INQUIRY

Carson City, April 10, 1931.

In your letter of the 3d instant you ask whether the Nevada labor laws will be applicable to all work in connection of the construction of Hoover Dam, and appurtenant works, on the Nevada side, to wit, in the State of Nevada.

OPINION

It is the opinion of this office that the labor laws of Nevada are and will be applicable to all work in the construction of Hoover Dam, and to all work in connection with or appurtenant to Hoover Dam construction.

The mere fact that the construction of Hoover Dam, and affiliated or appurtenant enterprises, is for the United States Government or an officer thereof, under contract with a private concern or company, does not take the work and construction out of the provisions of the Nevada labor laws or render such laws inapplicable. The actual work of construction is to be done by private concerns or companies. These private concerns or companies are the actual employers of the labor performed in the construction. The employees have no dealings with or relations to the Federal Government, the United States. Their relations, contracts and dealings are all with the private concerns or companies actually engaged in the construction. The same situation exists, in so far as your office and the labor laws of this State are concerned, as in any other case of employer and employee, and as if the United States had nothing at all to do with the matter.

This situation is especially true because of the fact that Congress has not passed any law giving the United States exclusive jurisdiction over the territory where Hoover Dam is to be constructed or where any of the work incident to the construction is to be performed. There is no Act of Congress declaring the territory involved to be a United States reservation. The mere fact that the work is to be done on public lands of the United States does not prevent the application of the Nevada labor laws, for the very simple reason that the State has full police power over all public lands and in matters generally involving either civil or criminal jurisdiction.

For the foregoing reasons, it is the opinion of this office that the Nevada labor laws are applicable to all work incident to the construction of Hoover Dam and other affiliated enterprises.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

Hon. William Royle,

State Labor Commissioner,
Carson City, Nevada

SYLLABUS

OPINION NO. 31-21. GAMBLING LAW—DUTIES OF SHERIFF IN ISSUING LICENSES—MINORS LOITERING AND TRANSACTING BUSINESS WHERE GAMBLING IS CARRIED ON.

1. The Sheriff of a county cannot legally issue a license for a slot machine, game, or gambling device of any kind unless and until the applicant for such license exhibits a valid and subsisting license from the county, if the place where the gambling should be carried on is in the county, but outside of an incorporated city, provided the organic law of the county confers upon it the power to fix and levy a license tax.

2. If the gambling should be carried on in an incorporated city, unless and until the applicant exhibits a valid and subsistent license obtained from the city to carry on that particular gambling in the particular place named in the application, the Sheriff cannot issue a license under the statute, provided that the organic law of the incorporated city confers upon it the power to fix, levy, and collect a license tax.

3. The Sheriff is required to issue a license under the State Gambling Law to citizens of the United States who apply therefor, and the city law enforcement officers are charged with the duty to see that minors are not allowed to loiter in such places, and the Sheriff cannot refuse to issue a license because he knows that in the past minors have loitered in the particular place where the gambling is carried on.

4. Minors may enter business places to transact business though gambling is carried on therein, provided, however, they do not loiter.

5. The Nevada Gambling Act does not prevent minors from loitering in places where slot machines alone are operated.

INQUIRY

Carson City, April 13, 1931.

You have referred me to certain sections of the Nevada Gambling Law, being Assembly Bill No. 98, which will be Chapter 99, 1931 Statutes of Nevada, and have asked the opinion of this office on the following questions:

1. Can the Sheriff legally issue a license for gambling devices, under section 13b of the above-mentioned chapter, unless the applicant first exhibits to him a valid and subsisting license obtained from the county or an incorporated city located within the county, which question is again asked in this way:

If the County License Board, or if the City Council of an incorporated city in the county, fails to fix a license fee for gambling devices, is the Sheriff prohibited from issuing a license to the applicant under the terms of the above-mentioned law?

2. Can the Sheriff legally refuse to issue a license to any applicant for a gambling device, being sections 12 and 13 of the above-mentioned chapter, when the Sheriff knows of his own knowledge that the gambling device will be used in a room in which minors are allowed to loiter; or must the Sheriff issue the license to every applicant who is a citizen of the United States and, if minors are allowed to loiter in the room, is an arrest and conviction necessary before the license can be revoked?

3. Does the word "loiter," being section 12, mean a room or premises in which minors are allowed on other business such as drug stores and hotels lobbies, or does it mean a room or premises which minors might frequent and in which they might "hang around," as in a pool hall?

OPINION

It is interesting and probably enlightening to consider briefly some matters concerning the history of this legislation. The legislation was first introduced in the Assembly as Assembly Bill No. 98. In the original bill there was no section 13a or section 13b, but the bill was amended in the Assembly by inserting sections 13a and 13b. Section 13b of the bill as amended in the Assembly, in so far as it pertains to your inquiries and this opinion, was in the following language:

Nothing in this act shall be construed as prohibiting any county, city or town in the State of Nevada from enacting written ordinances conforming to this act, which may provide for additional revenue from gambling games and slot machines to that provided for herein and which additional revenue shall be set forth in said ordinance and become a part of the law of said county, city or town.

This Assembly Bill No. 98 was then printed with section 13b as above quoted. Many copies of this bill with this section 13b printed in it, as quoted above, were sent out, some of the copies of which reached this office, and one copy of which was used in furnishing you our telegraphic opinion dated April 6, 1931, upon the assumption that that was a true and correct copy of the bill as passed by the Legislature and signed by the Governor.

However, the copy of the bill we used in furnishing you this telegraphic opinion was not a correct copy of the bill as finally passed and approved, for, when the bill as amended in the Assembly and containing the above-quoted language from section 13b reached the Senate, the latter body substituted an entirely different amendment for the language above quoted as section 13b. This language so substituted by the Senate for said section 13b reads as follows:

Sec. 13b. Nothing contained in this act shall be deemed to affect the powers conferred by the provisions of the charter or organic law of any county or incorporated city in the State of Nevada to fix, impose and collect a license tax, and in all such counties or incorporated cities having such powers the sheriff shall not issue any such license for the operation of any such slot machine, game or device within the boundaries of such county or incorporated city until the applicant shall have first exhibited to him a valid and subsisting license obtained from such county or incorporated city, located within his county, permitting the operation of such slot machine, game or device at the location applied for within the boundaries of such county or incorporated city.

The bill was then returned to the Assembly, and the Senate amendment as last above quoted was concurred in by the Assembly. The last above-quoted language is section 13b of the Act as finally passed and approved, and is the law of this State.

The Senate amendment, as last above quoted, changed the entire meaning of section 13b. The first portion of that section down to and including the first word "tax," simply provides that where the charter of a city gives it the right and power to fix, impose, and collect a license tax in that city, nothing contained in the State Gambling Law, to wit, the above-mentioned Chapter 99, shall be deemed or construed so as to prevent such city from fixing, imposing, and collecting a city gambling license tax; and that where the organic law of any county confers upon the county the right and power to fix, impose, and collect a license tax, nothing contained in said Chapter 99 shall be deemed or construed so as to prevent the county from fixing, imposing, and collecting a county license tax for gambling to be carried on in that county but outside of incorporated cities, all in addition to the license tax imposed in the State Gambling Law. So far, the first above-quoted language constituting the Assembly amendment as section 13b and the language in the second quotation, substituted by the Senate, down to and including said first word "tax," have exactly the same effect, that is to say, the conferring of the right and power upon incorporated cities and counties, respectively, to fix, impose, and collect a license tax on gambling, within their respective boundaries, in addition to the State gambling license tax. But the remainder of

said section 13b, as substituted by the Senate, changes the entire original intention and purpose of the Act, to wit, the intention and purpose to enact a law to provide licensed gambling in all portions of the State, regardless of the will and wish of the particular county or city and without any action on the part of the county or incorporated city in the State, and renders the Act as finally passed and approved simply a local option law, by placing it within the right, power, and authority of the counties and incorporated cities to prevent the issuance of any State gambling license under the Act by simply failing or refusing to fix, impose, and collect a county gambling license tax to govern the issuance of gambling licenses in the county or in the incorporated city, as the case may be.

1. As to question numbered 1 above, it is the opinion of this office that the Sheriff of a county cannot legally issue a license under the State Gambling Law for a slot machine, game, or gambling device of any kind, unless and until the applicant for such license exhibits to him a valid and subsisting license from the county, if the place where the gambling is to be carried on is in the county but outside of an incorporated city, to carry on such gambling in the particular place covered by the application; and, if the gambling is to be carried on in an incorporated city, unless and until the applicant exhibits to him a valid and subsisting license obtained from the city to carry on that particular gambling in the particular place named in the application; provided, the organic law of the county or charter or organic law of the incorporated city, as the case may be, confers upon such county or city the right to fix, impose, and collect a license tax. The foregoing opinion, as expressed in this paragraph, makes it unnecessary to give an opinion on the second subdivision of your question numbered 1, for it is clear that, if the County License Board fails or refuses to provide for a license for gambling in the county, but outside of incorporated cities, then the Sheriff is prohibited from issuing a license to the applicant under the terms of the State Gambling Law for gambling to be carried on in the county but outside of the incorporated cities; and that, if the governing boards of incorporated cities fail or refuse to provide for a license for gambling in such incorporated cities, the Sheriff is prohibited from issuing a license to the applicant under the terms of the State Gambling Law for gambling to be carried on in such incorporated cities in the particular county. Where the word "gambling" is used in this paragraph of this opinion, it is intended to include both games, slot machines, and other gambling devices.

2. As to question numbered 2 above, it is the opinion of this office that Sheriffs are not to assume that minors will be allowed to continue to "loiter" in places where games are licensed or premises wherein any game provided for in the Act is operated or conducted, after a license is issued for such games in that place under a law which forbids the loitering of minors in that place, simply because minors had theretofore loitered in such place; and it is, therefore, the opinion of this office that the Sheriff is required, by the law, to issue a license, under the State Gambling Law, to citizens of the United States who apply therefor, and that the usual law-enforcement officers are charged with the duty to see that minors are not allowed to loiter in such places, and with the duty to arrest and prosecute licensees who fail or refuse to keep minors from loitering in such places after the Sheriff issues such license under the State Gambling Law. It is the further opinion of this office that, when licensees, under this law, permit minors to loiter in places where such games are operated or conducted, their licenses are subject to cancellation and revocation, and that such conduct upon the part of a licensee is good and sufficient cause for refusal to renew such license.

3. As to question numbered 3 above, it is the opinion of this office that section 12 of the State Gambling Law does not prohibit minors from entering business places to transact business, but does prohibit minors from "loitering" about the premises where any game provided for in the Act is operated or conducted. The word "loiter" has a distinct and well-defined meaning, and should be given its usual meaning in applying this law. In this connection it is the opinion of this office that the Act does not prohibit minors from going into drug stores, hotel lobbies, or other business places to transact ordinary business, even where the games provided for in the Act are operated and conducted in such places; provided, always, that minors are not allowed to "loiter" in such places.

In this connection, and as a general proposition, it is the opinion of this office that the prohibition against minors loitering in places where the games provided for in the

Act are operated and conducted, as contained in section 12 of the Act, does not apply to the loitering of minors in places where slot machines alone are licensed under the Act, as contained in section 13 of the Act. Section 12 relates to the loitering of minors in places where “games” are operated or conducted, while section 13 relates to the conduct of minors in places where slot machines alone are operated. It is significant to note that section 12 specifically and expressly prohibits the “loitering” of minors in places where the games provided for in the Act are operated or conducted, while section 13 does not mention the word “loiter” in connection with the relation between minors and slot machines and the places where slot machines are operated. If it were the intention of the Legislature to prohibit minors from loitering in places where slot machines alone are operated, it would have been an easy matter for it to use the same language in this connection that it used in section 12 in connection with the relation between the loitering of minors and places where games are operated or conducted. The above-mentioned difference between the language used in the two sections clearly indicates, in the opinion of this office, that the Legislature did not intend to prohibit minors from loitering in places where slot machines alone are operated.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

Merwyn H. Brown,
District Attorney,
Winnemucca, Nevada

SYLLABUS

OPINION NO. 31-22. GAMBLING LAW—ALIENS AND NONRESIDENTS OF THE COUNTY.

1. A license cannot be issued under the provisions of Chapter 99, 1931 Statutes of Nevada, for slot machines to be operated in a place owned and conducted by an alien.
2. The County License Board cannot legally require applicants for State gambling license to be residents of the county in which the license applied for is to be used.

INQUIRY

Carson City, April 14, 1931.

In your letter of the 13th instant, you ask the opinion of this office on the following questions:

1. Can a slot machine license be issued for a slot machine to be operated in a place owned and conducted by an alien, and where the party applying for the license does not reside in Mineral County?
2. Can the County License Board pass an ordinance requiring that all applicants for licenses under the State Gambling Law must be bona fide residents of the county in which the license applied for is to be used?

OPINION

1. As to question numbered 1 above, it is the opinion of this office that the State Gambling Law, to wit, Assembly Bill No. 98, being Chapter 99, 1931 Statutes of Nevada, approved March 19, 1931, expressly forbids the issuance of a gambling license, and also the operation or control

of any game or device so licensed, by an alien. If the slot machine is to be operated or controlled, either directly or indirectly, by an alien, then the gambling license therefor cannot legally be issued. Apparently, the slot machine is to be left in a place which is owned and conducted by an alien, and the alien is to look after and control the slot machine in the absence of the person applying for the license. This is especially true since you say the person applying for the license does not reside in Mineral County. The actual operation of a slot machine does not require much personal supervision or personal attention, except on the part of the person playing the machine: but, since the applicant does not reside in Mineral County, it is evident that whatever operation or control of the slot machine is required on the part of the licensee is to be done or exercised by the owner of the place, the person who conducts the place; and your question shows that this person who owns and conducts the place is an alien. Apparently, this is an attempt to evade the express provisions of the law by having some citizen of the United States apply for the license to operate a slot machine which is, in fact, to be operated or controlled by an alien. It is a familiar rule of law that a thing cannot be done indirectly which cannot be legally done directly. If the alien who owns and conducts the place is to have anything at all to do with the operation or control of the slot machine, then the license is expressly forbidden by the Act.

2. As to question numbered 2 above, it is the opinion of this office that a County License Board cannot impose a qualification on the issuance of a State gambling license which is not imposed by the Act itself. It is, therefore, the opinion of this office that the County License Board cannot legally require applicants for a State gambling license to be bona fide residents of the county in which the license applied for is to be used, as I find nothing in the Act itself requiring such a qualification.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

Hon. Fred L. Wood,
District Attorney,
Hawthorne, Nevada

SYLLABUS

OPINION NO. 31-23. COUNTY HOSPITAL—CARE OF POOR.

A poor person is entitled to enter the County Hospital and pay such amount as is possible toward such person's expenses where he does not have sufficient funds to enter a private institution.

INQUIRY

Carson City, April 15, 1931.

Can County Indigent Home and Hospital accept and care for patients who do not have sufficient funds to pay for their care in a privately owned hospital, and accept such pay as such patients are financially able to pay?

OPINION

Your query undoubtedly goes to the point of whether or not indigents or near-indigents can be legally cared for in County Indigent Homes and Hospitals when such indigents are sick but do

not possess sufficient means to pay for their care and keep in a privately owned and operated hospital.

It is the opinion of this office that such persons are entitled to be taken care of in the counties' institutions and that it is legal for the counties to accept payment therefor commensurate with the ability of such persons to pay. It is one of the primary duties of Boards of County Commissioners in the State of Nevada to take care of and provide for the indigent sick of the county in the manner, of course, as provided by law. (Section 1932, Nevada Compiled Laws 1929.) Also, such boards of County Commissioners are vested with the entire and exclusive superintendence of the poor in their respective counties (section 5137, Nevada Compiled Laws 1929), subject, of course, to the provisions of law requiring the designated relatives to support such poor persons, with the right in such Boards of County Commissioners to enforce this particular provision of the law. It is further provided in section 5142, Nevada Compiled Laws 1929, that, when any nonresident or any other person not coming within the definition of the pauper shall fall sick in any county of this State, not having money or property to pay his board, nursing, or medical aid, it shall be the duty of the Commissioners of the proper county, on complaint being made, to give or order to be given such assistance to such poor person as they may deem just and necessary; so that, under our statute, any person coming within the provisions of that statute, irrespective of whether such person is a pauper or is simply a poor person, is entitled to such aid as is necessary and that the Board of County Commissioners feel justified in giving; and, certainly, if such person has some money, but not in sufficient amount to pay for his care and keep in a private institution, such person may pay to the Board of County Commissioners or other proper officers of the county whatever sum he is financially able to pay, and such Board of County Commissioners or other proper officers may legally accept the same.

This office feels that the County Hospitals, with reference to your inquiry, are analogous to public charitable hospitals and institutions, and the weight of authority is that such public charitable hospitals may receive pay from patients who are able to pay for the hospital accommodations they receive. *O'Brien v. Physicians' Hospital Association*, 116 N.E. 975. However, regard must be given to the extent or the number of such pay patients so as not to exhaust the accommodations of such institutions that are necessary for the wholly indigent classes.

It is, therefore, the opinion of this office, in short, that a poor person who cannot pay the fees and charges required by a private hospital in a reasonable amount is entitled to enter the County Hospital and pay such amount as is possible towards such person's expenses.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

By: W.T. Mathews,
Deputy Attorney-General

Hon. W.A. Wilson,
District Attorney of Pershing County,
Lovelock, Nevada

SYLLABUS

OPINION NO. 31-24. MOTHERS' PENSIONS—ALIENS.

An alien, meeting other necessary statutory requirements, is entitled to receive a mother's pension under sections 5100-5108, Nevada Compiled Laws 1929.

INQUIRY

Carson City, April 15, 1931.

Whether an alien is entitled to receive a mother's pension under sections 5100-5108, Nevada Compiled Laws 1929.

OPINION

For the reasons hereinafter stated, your query is answered in the affirmative.

There is no provision in the Mothers' Pension Act requiring that the applicant for a mother's pension shall be a citizen of the United States, and the only residential qualification required is that of a residence in the county in which the application is made for at least two years prior thereto. Under the statute itself, an alien is not prohibited from receiving a mother's pension, provided all other conditions are met. This office knows of no other statute in this State that would prohibit an alien from receiving the benefits of the Mothers' Pension Law, and it is very probable that, if such a statute did exist, it would be unconstitutional.

The provisions of the Mothers' Pension Act are not intended primarily for the mother's benefit, but to provide a means of support for the welfare of a minor child and to prevent, so far as possible, squalid surroundings and insufficient support and maintenance that would tend to raise a minor child in ignorance and in crime. Ill nurture and squalid surroundings are likely to result in degeneracy of the child and thereafter necessitate commitment to a State institution; so that, under the liberal construction of the Mothers' Pension Act, which is specifically provided for in section 5106, Nevada Compiled Laws 1929, it certainly is to the best interests of the State to anticipate the necessity of placing such child in an institution, and it is far better to supply the child's needs at home and give it the advantages of a home and maternal care. In the state of organized society, the fundamental welfare of the child is of paramount concern to the State. Therefore, in brief, it is the opinion of this office that an alien, otherwise qualified and meeting the conditions as provided in section 5102, Nevada Compiled Laws 1929, is entitled to receive a mother's pension.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

By: W.T. Mathews,
Deputy Attorney-General

Hon. Adams F. Brown,
District Attorney of Esmeralda County,
Goldfield, Nevada

SYLLABUS

OPINION NO. 31-25. LICENSES TO OPERATE MOTOR VEHICLES—MARRIED WOMAN OVER 20 AND UNDER 21 YEARS.

Married woman over 20 years, but under 21 years, not being a minor, is entitled to an operator's or chauffeur's license.

INQUIRY

Carson City, April 16, 1931.

In your letter of the 13th instant, you ask the opinion of this office on the Substitute for Assembly Bill No. 42, recently passed and approved, and now effective in this State, on the following point:

Whether or not an operator's and chauffeur's license can legally be issued, under the above-mentioned law, and particularly section 5 thereof, to a married woman who is over twenty years of age but not twenty-one years of age, without the mother or father of the married woman signing (the application, apparently,) as her guardian before the issuance of the license.

OPINION

It is the opinion of this office that the woman in question is not a minor, but is over the age of majority; that, certainly, her father or mother is not either her legal or natural guardian, since she is a married woman; that it is not, therefore, necessary for either her father or mother to sign any paper as her guardian; and that the County Assessor is required, under the law, to issue her an operator's or chauffeur's license, upon proper application therefor, the license being subject to cancellation and revocation in the manner provided for in the Act.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

Hon. Fred. L. Wood,
District Attorney of Mineral County,
Hawthorne, Nevada

SYLLABUS

OPINION NO. 31-26. SCHOOLS—TRAVELING EXPENSES OF THE MEMBERS OF SCHOOL BOARDS—COMPENSATION TO MEMBERS OF SCHOOL BOARDS FOR LOSS OF TIME TO ATTEND DUTIES.

1. The County Board of Education or the Board of School Trustees cannot pay traveling or subsistent expenses to its members when called upon to attend meetings under conditions necessitating such expenditures.
2. Such boards do not have the authority to compensate their members for loss of time from their vocational or professional duties while attending board meetings.

INQUIRY

Carson City, April 28, 1931.

In your letter of 27th instant, you ask the opinion of this office on the following points:

1. Has the County Board of Education or a Board of School Trustees the power to pay travel and subsistence expense to its members when they are called upon to attend meetings under conditions necessitating such expenses?
2. Has such a Board the authority to compensate members for time lost from their vocational or professional duties while attending Board meetings?

OPINION

1. As to question numbered 1 above, it is the opinion of this office that the question must be answered in the negative, as I find no provision of the law permitting the payment of any such expenses out of school moneys.

2. As to question numbered 2 above, it is the opinion of this office that such a board has not the authority to compensate members for time lost from their vocational or professional duties while attending board meetings; and this question must, therefore, be answered in the negative, as there is no provision of the law allowing compensation to members of such boards, either for the time devoted to their duties as members of such boards or for the time lost from their vocational or professional duties while performing their duties as such board members, either in attending board meetings or otherwise.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

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

SYLLABUS

OPINION NO. 31-27. MOTOR VEHICLES ACT—TRAILER LICENSE.

Contractors are required to obtain a license for trailers under sections 4374, 4378 and 4383, Nevada Compiled Laws 1929.

INQUIRY

Carson City, April 30, 1931.

Should contractors be compelled to obtain licenses for trailers used in their work?

OPINION

Section 1 of the present Motor Vehicle Act, the same being section 4374, Nevada Compiled Laws 1929, among other things, defines a motor vehicle in the following language:

In all laws of this State regulating motor vehicles, the term "motor vehicle," except where otherwise expressly provided, shall include all vehicles propelled by any power other than muscular power, except traction engines, road rollers, fire wagons and engines, police patrols, city or town ambulances, city and government vehicles clearly marked as such, and such vehicles as are run only upon tracks or rails.

Under a statute nearly identical with the above, it was held that a number of trailers drawn by a tractor were construed to be motor vehicles. *Western Indemnity Company v. Wasco Land & Stock Company* (Cal.), 197 Pac. 390.

Nowhere in our Motor Vehicle Act is it expressly provided otherwise that a trailer is not a motor vehicle; but the statute further defines a trailer as "any vehicle which is at any time drawn

upon the public highway by a motor vehicle”; so it is clear that a trailer can be construed to be a motor vehicle by the term “any vehicle,” and it is clear that the intent of the Legislature, as expressed in section 5 of the Act, to wit, section 4378, Nevada Compiled Laws 1929, that a license fee shall be paid by the owner of a trailer and a license granted therefor; and, further, in section 10 of the Act, to wit, section 4383, Nevada Compiled Laws 1929, the license fees and the amounts thereof are fixed and specific mention is made of the license fees for trailers.

From the foregoing, it is the opinion of this office that contractors are required to obtain licenses for trailers used in their work; and we desire to point out that any person could use the highways of the State for the transportation and carriage of heavy and bulky articles of freight in a trailer, and, by attaching the trailer to a small truck or car, defeat the very purpose of our Motor Vehicle Act if such Act were construed to not require the payment of license fees on trailers.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

By: W.T. Mathews,
Deputy Attorney-General

D.B. Renear,
Chief Traffic Officer,
State Highway Department,
Carson City, Nevada

SYLLABUS

OPINION NO. 31-28. GAMBLING ACT.

All slot machines, other than nickel-in-the-slot machine operated solely for cigars or drinks, shall be licensed.

INQUIRY

Carson City, May 16, 1931.

Should all slot machines, except nickel-in-the-slot machines operated solely for cigars or drinks, be licensed?

OPINION

It is the opinion of this office that, under the Gambling Act of 1931, all slot machines, save and except the expressly designated nickel-in-the-slot machines operated solely for cigars or drinks, shall be licensed. The Act is clear and express upon this proposition and, unless such machines comes within the definition of the slot machines excepted from the provisions of the Act in section 10 thereof, then such machine may not be operated unless the proper license has been secured therefor.

Section 9 of the Act clearly provides that any slot machines played for money or for checks or tokens redeemable in money or property shall be licensed, as such section defines such slot machines as a game or games or devices licensed by the Act.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

By: W.T. Mathews,
Deputy Attorney-General

Hon. Adams F. Brown,
District Attorney of Esmeralda County,
Goldfield, Nevada

SYLLABUS

OPINION NO. 31-29. RAILROADS—MOTOR BUSES OPERATED UPON RAILROADS—TRAIN CREW.

Motor busses operated by the Tonopah and Goldfield Railroad Company do not come within the provision of the Full Crew Law of the State of Nevada.

INQUIRY

Carson City, May 19, 1931.

Whether motor bus operated on the Tonopah and Goldfield Railroad shall be manned by a full crew of not less than four persons.

OPINION

We understand, from the facts supplied in connection with the above query, that the motor bus in question is operated over the above-named railroad on alternate days with a steam train, to wit, the motor bus is operated over the line of railroad on one day and the steam train on an alternate day, and that the motor bus and train do not operate over the line of railroad on the same day.

Section 6318, N.C.L. 1929, requires a full crew of four persons when any freight or passenger train is operated along or over the railroad or tracks of any railroad common carrier when such train, exclusive of engine and caboose and tenders, consists of two cars or less, while sections 6319 and 6320 provide for additions to such crews when the number of cars are greater, to wit, up to fifty cars, and over fifty cars. However, section 6322, N.C.L. 1929, provides two exceptions to the application of the Full Crew Law, *i.e.*, railroads in the State of less than ninety-five miles in length; and railroads on which but one train a day is operated each day; such railroads not being subjected to the penalties provided for the violation of the law.

Without deciding whether the motor bus in question is a train within the meaning of the statute, we conclude that it is within the definition of a train in railroad practice. We also conclude that in the instant case the length of the Tonopah and Goldfield Railroad is immaterial, as the question is also governed by the number of trains operated over the line of railroad on any one day and thus comes within said section 6322, *i.e.*, the exception therein where only one train a day each way is operated.

The Supreme Court of this State held that where only one train a day each way was operated that such railroad was excepted from the provisions of the Full Crew Law. *State v. Nevada Northern Ry. Co.*, [48 Nev. 436](#).

It is, therefore, our opinion that the motor bus operated by the Tonopah and Goldfield Railroad Company does not come within the provisions of the Full Crew Law.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

By: W.T. Mathews,
Deputy Attorney-General

Hon. Fred L. Wood,
District Attorney,
Hawthorne, Nevada

SYLLABUS

OPINION NO. 31-30. TAXATION—JURISDICTION OVER THE AMMUNITION BASE RESERVATION AT HAWTHORNE, NEVADA—SERVICE OF PROCESS, ETC.

1. Personal property tax may be collected from enlisted personnel, officers, and civilian employees located or employed on the Ammunition Base Reservation at Hawthorne, Nevada.

2. The State of Nevada has not ceded absolute jurisdiction to the Federal Government over the land occupied by the Ammunition Base Reservation.

3. State and county officers have the right to serve all lawful process and writs of attachment, etc., within the reservation and State police power may be enforced within such reservation as now constituted.

INQUIRY

Carson City, May 19, 1931.

1. Have the Mineral County officials the right to collect personal property tax from officers, enlisted personnel, and civilian employees, located and employed on the Ammunition Base Reservation at Hawthorne, Nevada?

2. Has the State of Nevada ceded to the United States Government absolute jurisdiction over such reservation and all the lands in connection therewith?

3. Have the proper officers of the State of Nevada and Mineral County the right to serve process, writs of attachment, etc., or to enforce the police power of the State on such reservation?

OPINION

1. In answer to query No. 1, it is the opinion of this office that the Mineral County officials have the right to collect personal property tax from officers, enlisted personnel, and civilian employees, located and employed on the Ammunition Base Reservation at Hawthorne, Nevada, so long as the tax levied does not impair the usefulness of the property taxed in the proper functioning of the instrumentalities, if so used, for the governmental purpose. Such tax is not objectionable and may be collected (37 Cyc. 829).

State may tax personal property of private individuals, other than Indians, located on Indian reservation (37 Cyc. 719; *Thomas v. Gay*, 169 U.S. 264, 42 L. Ed. 740), and on military reservations (Cyc., supra). The State may even tax the agencies of the Federal Government when no law of Congress forbids and when the effect of the taxation will not defeat or hinder the operation of the National Government. It is also held that a State tax upon the property of an agent of the Federal Government does not deprive such agent of his power to serve such Government nor hinder the efficient exercises of his duties, and may rightfully be collected (2 Cooley on Taxation, 1289, and cases cited; *Cassels v. Wilder*, 23 Hawaii 61).

The State of Nevada has reserved the right to serve all criminal and civil process of its courts in and upon any land acquired by the United States for the purposes of the Federal Government (secs. 2895-2898, N.C.L. 1929). A reservation of such a right was held to be sufficient authority for the State to levy and collect personal property tax in *Oscar Daniels Co. v. City of Sault Ste. Marie*, 175 N.W. 160.

The Federal statute, hereinafter cited, by virtue of which the President of the United States acted in promulgating the executive order virtually creating the Ammunition Base Reservation, does not contain any prohibition as to taxation of personal property by the State. Such tax is collectible by the proper officers of Mineral County.

2. In answer to query No. 2, it is our opinion that the State of Nevada has not ceded absolute jurisdiction to the United States Government over the Ammunition Base Reservation and all the lands connected therewith. The reservation in question was established by Executive Order of the President on or about the 27th day of October, 1926, withdrawing the public lands therein mentioned from settlement, location, sale, and entry by any person or persons, and holding such lands for the exclusive use and benefit of the United States Navy for development of a munition depot, under and by virtue of the Act of Congress of June 25, 1910, 36 Stats. 847, as amended by 37 Stats. 497. There is no express provision in the foregoing statutes taking away any of the jurisdiction over the lands in question theretofore exercised by the State, and we fail to find any statute in this State whereby the State ceded its jurisdiction over these lands; and, further, the provisions of section 2896, N.C.L. 1929, with respect to the filing of the accurate verified description and plat of State lands acquired by the Federal Government herein have not been complied with.

We conclude that the State of Nevada has not ceded absolute jurisdiction to the Federal Government over the lands involved in this question.

3. In answer to query No. 3, it is the opinion of this office that the proper officers of the State of Nevada and Mineral County have the right to serve all lawful process and writs of attachment, etc., within said reservation, and that the State police power may be enforced within such reservation as now constituted.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

By: W.T. Mathews,
Deputy Attorney-General

Hon. Fred L. Wood,
District Attorney,
Hawthorne, Nevada

SYLLABUS

OPINION NO. 31-31. STATUTES—APPROPRIATION ACT FOR ORPHANS' HOME EDUCATIONAL SUPPORT.

Under Act of 1911, as amended at page 285, Statutes of Nevada 1931, so long as such appropriation does not exceed the amount in the State Treasury which can be made available for such purpose, then any payment made to the Carson City School District at this time can legally be made.

INQUIRY

Carson City, May 25, 1931.

Does the failure of the Legislature to include in the General Appropriation Act a sufficient amount of money for State Orphans' Home educational support from January 1 to June 30, 1931,

prohibit the payment of the total amount due June 1, 1931, or is said payment or such portion thereof as may be necessary to make up the total amount due June 1, 1931, authorized by the Act of March 20, 1911 (sections 7599-7601, N.C.L. 1929), as amended by the Act of March 25, 1931 (Chapter 176, Stats. 1931)?

OPINION

Your query goes to the point of whether the amendment to “An Act to provide educational facilities for the children of the State Orphans’ Home and other matters properly connected therewith” of 1911, as found at page 285, Statutes of Nevada 1931, supersedes section 39 of the appropriation bill for the first six months of 1931, and whether or not payment of the allowance to the Carson City School District is to be made pursuant to the amendment aforesaid or the appropriation bill mentioned.

It will be noted that the amendment found at page 285, 1931 Statutes, was approved March 25, 1931, and that the appropriation bill mentioned was approved March 24, 1931—thus, the amendment must be taken as the latest expression of the legislative will. The Legislature is supreme in the matter of the appropriation of public funds and, so long as the legislative Act is within constitutional provisions, then such Act must be taken as the law with respect to the appropriation it purports to make. Nothing appears in the 1931 Act which would indicate that it is not constitutional.

The Act of 1911 directed the payment annually of a certain sum of money on the part of the State out of the General Fund of the State Treasury to the Carson City School District; and such Act, until repealed by the Legislature, undoubtedly created a continuing appropriation from year to year; and the appropriation so provided was entirely in the hands of the Legislature and could be abolished or changed in any way that the Legislature saw fit. It is true that the Legislature in the short appropriation bill of 1931 provided an item for the purpose of providing educational facilities for the children of the State Orphans’ Home, appropriating the sum of seven hundred fifty dollars therefor. This amount was to take care of the appropriation as provided by section 1 of the 1911 Act, which was changed by the enactment of the bill providing an amendment to such section 1, as found at page 285 of the 1931 Statutes; and this Act being the latest expression of the legislative will in this matter, in our opinion must govern; and, so long as such appropriation as provided in the amendment does not exceed the amount in the State Treasury which can be made available for the purpose, then any payment made to the Carson City School District at this time can legally be made under the provisions of the amendment as aforesaid.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

By: W.T. Mathews,
Deputy Attorney-General

Directors of the Nevada State Orphans’ Home,
Carson City, Nevada

SYLLABUS

**OPINION NO. 31-32. STATUTES—CHAPTER 236, STATUTES OF NEVADA 1931—
CONSTITUTIONALITY.**

1. Chairman of the Board of County Commissioners is the General Manager analogous to the General Manager of a corporation, and the Board of County Commissioners are analogous to the Board of Directors of the corporation.
2. Grave doubt exists as to the constitutionality of the statute in question.

INQUIRY

Carson City, May 26, 1931.

1. What are the powers, duties, and authority of the Chairman of the Board of County Commissioners of Mineral County as General Manager of the electric power system under the provisions of Chapter 236, Statutes of Nevada, 1931?
2. What is the authority of the other members of the Board of County Commissioners in the handling, control, and administration of said power system under said Act?
3. Is the above-mentioned statute unconstitutional?

OPINION

1. It is our opinion that the General Manager provided for in the 1931 Act occupies a position analogous to that of a General Manager of a corporation, that the Board of County Commissioners occupies a position analogous to a Board of Directors of a corporation, and that the Chairman of the Board of County Commissioners, as General Manager, has the powers expressly provided for such General Manager in the statute in question and, in addition thereto, has such implied powers as general managers of corporations commonly possess, subject, however, to the supervision and approbation of the Board of County Commissioners. This is apparent, for, under paragraph (a) of the statute, it is provided that the General Manager shall employ a qualified and competent engineer with the qualifications provided by the statute, subject, however, to the provision that such engineer shall be responsible for his actions concerning the operation of the power system to the board of County Commissioners; also, it is provided that said Board may employ a technical adviser as consulting engineer—more evidence of power to be retained in the Board to supervise. It is provided in paragraph (b) that the General Manager may employ additional necessary employees with the qualification, however, that such employees who handle money shall furnish bonds prior to assuming the duties of their positions, and such bonds must be approved by the Board of County Commissioners. Thus, it is apparent that the Legislature intended that the Board of County Commissioners should have reasonable supervision over the General Manager, and this is further evidenced by paragraph (c) which requires the General Manager to make a monthly report to the Board of County Commissioners, giving full details of all business transacted during the preceding month, including receipts and disbursements and matters relating thereto, and which also requires an annual report to be rendered to the Board of County Commissioners on the first Monday in January of each year, showing the condition of the system, including its finances in detail, and, further, that such General Manager shall keep such books and records as may be required by law or by the Board of County Commissioners, which shall show at all times the exact status of the power system.

The Act in question here purports to amend section 17 of the original Act of 1921. We find that section 17 was first amended in 1925 (Stats. 1925, page 60), and that there the Board of County Commissioners was directed to employ a General Manager; also, if the Board so desired, it might designate one of its members as General Manager of the power system. However, the General Manager was responsible for his actions concerning the system to the Board. Other sections of the original Act of 1921 and the amendatory Act of 1925 clearly show that the intent of the Legislature then was that the Board of County Commissioners was to have full control of the operation of the system. The Act of 1929, Stats. 1929, page 103, amended said section 17 and there provided that the Chairman of the Board of County Commissioners should be General Manager of the system in practically the same language of the 1931 Act, giving such General Manager express powers to employ a qualified and competent engineer who shall have complete

charge of the power system. The General Manager was also authorized to employ other necessary employees, in similar manner as is provided by the 1931 Act. However, the engineer so employed is, by the terms of the Act, made responsible to the Board of County Commissioners in the same manner as in the 1931 Act. We deem this provision significant in that it undoubtedly shows that the intent of the Legislature was that, in the final analysis, the Board of County Commissioners, in the exercise of its powers as conferred by other provisions of the entire Act, would have the power of controlling the acts of the engineer in direct charge of the system after such engineer was employed by the General Manager.

We conclude that the express powers of the General Manager, as provided by the Act in question, are: To employ the qualified and competent engineer; to employ necessary additional employees; and an implied power to exercise reasonable supervision over the power system and said employees, reporting each month to the Board of County Commissioners for its approval of his acts, as required by the statute. We also conclude that the Board of County Commissioners still possess all the powers heretofore granted it in the original Act of 1921 and Acts amendatory thereof, save and except the power and authority expressly granted to the Chairman of said Board as General Manager in the 1931 Act.

2. What we have heretofore said under query No. 1 will answer query No. 2.

3. Your request for an opinion as to whether or not the statute in question is unconstitutional.

It is not the province of the office of the Attorney-General to hold statutes unconstitutional, and wherever possible it is the policy of this office to construe statutes as constitutional; but, in the instant matter, we suggest that there is grave doubt as to the constitutionality of the statute in question, as it seems to contravene the provisions of section 20 of article IV, Constitution of Nevada.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

By: W.T. Mathews,
Deputy Attorney-General

Hon. Fred L. Wood,
District Attorney,
Hawthorne, Nevada

SYLLABUS

OPINION NO. 31-33. OFFICERS—SECRETARY OF STATE—FILING ARTICLES OF INCORPORATION.

1. The duties of the Secretary of State in filing certificates of incorporation or articles of incorporation are ministerial.

2. The use of the words "Investment Trust" or "Trust Company" in a name of a corporation which otherwise meets the statutory qualifications does not violate section 4 of the General Corporation Law of Nevada, 1925, as amended at page 224, 1931 Statutes of Nevada.

INQUIRY

Carson City, May 28, 1931.

Shall the Secretary of State refuse to file articles of incorporation wherein the words “Investment Trust” or “Trust Company” appear as part of the name, the body of the articles of incorporation in no way providing for a general or specific trust business and further stating that the corporation is to have and exercise all the powers conferred upon corporations formed under the General Corporation Law of Nevada of 1925?

OPINION

The general rule is, unless qualified by statute, that persons who desire to form a corporation under a general law may select any name they choose for the corporation, provided such name does not conflict with any other corporate name then in existence and filed in the office of the Secretary of State.

The duties of the Secretary of State with respect to filing certificates of incorporation or articles of incorporation are ministerial. His duties are pointed out and prescribed by statute, and, if such certificates of incorporation or articles of incorporation substantially comply with the statute, he has no discretion, but may be compelled by mandamus to file them. *State v. Brodigan*, [44 Nev. 212](#).

Section 4 of the General Corporation Law of Nevada, 1925, as amended, Statutes of Nevada 1931, at page 224, provides what a certificate or articles of incorporation shall contain. Nowhere in this particular section or elsewhere in said Act can be found express direction to the Secretary of State to exercise discretion in the filing of such certificates or articles of incorporation for the reason that the name of the corporation contained therein may contain words from which might be inferred a different business than that authorized by law.

So long as the name proposed by the incorporators otherwise complies with the statutes and is not in conflict with any other corporate name, we are of the opinion that no authority exists in the present Corporation Law of Nevada which would empower the Secretary of State to refuse to file articles of incorporation for the reasons set forth in the above query. We are further of the opinion that the body of the articles of incorporation, together with the statute, govern with respect to the affairs of the corporation, and that the mere use of the words “Investment Trust” or “Trust Company” in a name which otherwise meets the statutory qualifications does not violate the provision contained in said section 4 that no trust company, or building and loan association, or corporation organized for the purpose of conducting a banking business shall be organized under this Act.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General
By: W.T. Mathews,
Deputy Attorney-General

Hon. W.G. Greathouse,
Secretary of State,
Carson City, Nevada

SYLLABUS

OPINION NO. 31-34. GAMBLING LAW, LOITERING OF MINORS.

Minors loitering in a pool room separated from a gambling room by a partition 6 feet high with a doorway but no door, is a violation of section 12 of the Gambling Act of 1931.

INQUIRY

Carson City, June 2, 1931.

In a room partitioned off from a pool room by a board partition approximately six feet high, not reaching to the ceiling of the main pool room, and which contains a doorway but no door or shutter, gambling games are conducted under the Gambling Act of 1931.

Does the allowance of the loitering of minors in the pool hall but outside of the above-mentioned room used for gambling constitute a violation of section 12 of the Gambling Act of 1931?

OPINION

It is the opinion of this office that unless a door or shutter is maintained in the doorway of the aforesaid partition, completely shutting off the view to the gambling games conducted and operated in the room partitioned off, as aforesaid, and kept closed during all of the time that the gambling games in such room are in operation, the allowing of minors to loiter in the pool hall would constitute a violation of the provisions of said section 12.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

By: W.T. Mathews,
Deputy Attorney-General

Hon. J.L. Clark,
District Attorney,
Elko, Nevada

SYLLABUS

OPINION NO. 31-35. COUNTY LICENSE BOARD—METHOD OF FIXING LICENSE.

1. License fees should be fixed by ordinance, as it is the better method.
2. License fees may be fixed by either ordinance or resolution.

INQUIRY

Carson City, June 4, 1931.

Shall a county license board fix and impose licenses by ordinance or resolution?

OPINION

There is no express provision in the Act creating a County License Board, to wit, Stats. 1923, page 62, which provides that such board shall fix the license fees authorized by such statute by ordinance or by resolution, so that either mode might be deemed legal. However, it is our opinion that in the fixing of license fees, even under the above-mentioned statute, it should be done by way of ordinance.

There is considerable distinction between a resolution and an ordinance. It is held that a resolution is an informal enactment of a temporary nature providing for the disposition of a particular piece of administrative business; it is not a law, and there is, in substance, no difference between a resolution and a motion. (19 R.C.L. 895, section 194.) On the other hand, an ordinance is a regulation of a general, permanent nature, enacted by the governing council or board of a municipal corporation, and Boards of County Commissioners and license boards of counties are analogous to such governing boards. There are certain formalities required in the enactment of an ordinance to guard against too hasty and ill-considered action. (19 R.C.L. 895, section 194.)

The fixing of license fees under the above-mentioned statute is necessarily of permanent duration, and, in order to give due notice to all concerned, it is our opinion that an ordinance should be enacted in the matter and given full publication.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

By: W.T. Mathews,
Deputy Attorney-General

Hon. Adams F. Brown,
District Attorney,
Goldfield, Nevada

SYLLABUS

OPINION NO. 31-36. COUNTY LICENSE BOARD—POWERS TO FIX LICENSE FEES FOR TRADES AND BUSINESSES.

The power to fix license fees for businesses and trades is limited to those specifically mentioned in section 2137, Nevada Compiled Laws 1929.

INQUIRY

Carson City, June 4, 1931.

Have county license boards the power to license businesses, trades, and callings not mentioned in section 2037, Nevada Compiled Laws 1929?

OPINION

It is the opinion of this office that County License Boards provided for in the Act to create a County License Board, found at Statutes 1923, p. 62, do not possess the power to fix and impose licenses upon amusements, entertainments, or other places of business, trades, or callings not enumerated in the above-mentioned section. The law provides that the power of imposing licenses and occupation taxes may be delegated by the Legislature to political subdivisions of the State, such as counties. In such cases, however, the power to license or tax is not inherent in such political subdivision, but is wholly dependent upon and limited by the statute delegating such power, and such statute must be construed strictly. When the occupations, amusements, trades, etc., which may be licensed or taxed are enumerated in the statute, the power to tax others is denied by implication. 37 C.J. 175; *County Commissioners v. Griswold*, [23 Nev. 183](#).

We conclude that a County License Board has no power to license and tax any other trades, professions, callings, or businesses not enumerated in the above-mentioned statute.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

By: W.T. Mathews,
Deputy Attorney-General

Hon. Fred L. Wood,
District Attorney,
Hawthorne, Nevada

SYLLABUS

OPINION NO. 31-37. COUNTY OWNED REAL PROPERTY—SALE OF.

Real property purchased by the County Treasurer for the county, after the period of redemption has expired, shall be sold to the highest and best bidder.

INQUIRY

Carson City, June 4, 1931.

Can county-owned real property, purchased at a tax sale by the County Treasurer and upon which the right of redemption has expired, be now sold for taxes and penalty accrued, or must such property be offered for sale as other county property, subject to the highest and best bid offered?

OPINION

The right of redemption not being existent, due to the lapse of time, as provided by law, real property purchased at a tax sale by the County Treasurer becomes county-owned property, and is thereafter offered for sale, upon authority of the Board of County Commissioners, after being duly advertised by such Board of County Commissioners; and the purchase price thereof, if accepted by the Board of County Commissioners, is that offered by the highest and best bidder. The right to purchase such property for taxes and penalty does not exist after the right of redemption is exhausted.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

By: W.T. Mathews,
Deputy Attorney-General

Hon. Fred L. Wood,
District Attorney,
Hawthorne, Nevada

SYLLABUS

OPINION NO. 31-38. PUBLIC SERVICE COMMISSION—USE OF MONEY APPROPRIATED BY THE LEGISLATURE.

Money appropriated by the Legislature can only be used for the specific purpose for which it is appropriated; hence, money appropriated for traveling expenses cannot be used for other than traveling expenses.

INQUIRY

Carson City, June 19, 1931.

This office has your request for an opinion on the following inquiry:

In the event that traveling expenses of the commissioners do not consume the above amount in full, and assuming that the expenses for the support of the commission is in excess of \$15,350 above named, is there any inhibition in law against the commission using such portions of the entire above-stated amount of \$19,350 for support of the commission, such as the employment of court reporters, experts and attendants, and for use in defraying court costs?

OPINION

You direct our attention to the appropriation bill for the period covering June 30, 1931, to July 1, 1933, and particularly to section 14 of that appropriation bill, which provides an appropriation for the support of the Public Service Commission, and wherein provision is made for salaries, traveling expenses, and general support of the commission. The amount specified for traveling expenses of the commissioners is \$4,000, and that set forth for general support of the commission is \$15,350.

Your inquiry lumps or adds these two sums, making a total of \$19,350, and indicates that you consider the entire amount of \$19,350 as an appropriation "for support of the commission." In effect, you ask whether the \$4,000 appropriated for "traveling expenses of the commissioners," or at least a portion thereof, may be used for general support "such as the employment of court reporters, experts and attendants, and for use in defraying court costs."

It is the opinion of this office that you cannot use any portion of the \$4,000 appropriated to pay traveling expenses of the commissioners for any other purpose than for actual traveling expenses of the commissioners, and that no portion thereof can be diverted from that purpose to pay court reporters, experts and attendants, court costs or for any other support of the commission. Under the law of this State, and particularly the Budget Law of the State, moneys appropriated can only be used for the purposes specified in the budget and in the law specifically making the appropriation.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

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

SYLLABUS

OPINION NO. 31-39. BUILDING AND LOAN ASSOCIATION—POWER TO WITHDRAW SECURITIES.

The 1931 Building and Loan Act, at page 63, Statutes of Nevada 1931, repeals the 1929 Act, and section 8 of 1931 Act governs the right of withdrawals of securities.

INQUIRY

Carson City, July 2, 1931.

A building and loan association licensed to do business in Nevada and having deposited its securities with the State Treasurer in accordance with law now desires to withdraw such securities, in accordance with section 5 of "An Act pertaining to resident and nonresident joint-stock companies, associations and corporations doing a building and loan business or other similar business within the State of Nevada, and repealing all Acts or parts of Acts in conflict herewith," approved March 18, 1929, the same being Chapter 69, Statutes of Nevada 1929, for the reason that for two years last past such building and loan association has not been operating in the State of Nevada. Application for withdrawal of such securities was made after the approval of the 1931 Act pertaining to building and loan associations, etc., had become effective.

1. Did the 1931 Act, so far as the matter of withdrawal of securities is concerned, repeal the 1929 Act and other prior statutes relating thereto?
2. When is such building and loan association entitled to a return of all securities deposited with the State Treasurer?

OPINION

With respect to query No. 1, it is the opinion of this office that the 1931 Building and Loan Act, approved March 4, 1931, and found at page 63, Statutes of Nevada 1931, repeals the 1929 Act and other prior statutes relating to the same subject matter; and, further, that, with respect to the withdrawal of securities of the building and loan association, as mentioned above, the provisions of section 8 of the 1931 Act govern as to the right to withdraw such securities and specify when such right may be exercised.

Answering query No. 2, a building and loan association, or any other similar association, coming within the provisions of the 1931 Act or prior Acts, is not entitled to withdraw, or to a return of, all securities heretofore deposited with the State Treasurer under the provisions of the 1931 Act or other prior Acts of similar import until two years after all liabilities of the association making application for such withdrawal to the resident investors of this State have been satisfied to the satisfaction of the State Treasurer and the State Bank Examiner. Section 8, Building and Loan Association Act of 1931, 1931 Statutes of Nevada, 63, provides how reductions in the amount of securities of such associations can be made, and when, and then provides for the final withdrawal as above pointed out. This section of the 1931 statute is clear in its terms and provides a definite mode of security to the residents of Nevada; and it is our opinion that the association mentioned, desiring to discontinue doing business in Nevada and to withdraw its securities in toto, must comply with its provisions.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

By: W.T. Mathews,

Deputy Attorney-General

Hon. George B. Russell,
State Treasurer,
Carson City, Nevada

SYLLABUS

OPINION NO. 31-40. STATUTES—PUBLIC WORKS CONTRACTORS.

1. All individuals, firms, corporations, associations, organizations, or any combination thereof that have been awarded public work contracts to be performed within the State of Nevada by any branch of Federal Government, even though the State of Nevada has no part in such contracts, are subject to the provisions of Chapter 212, Statutes of Nevada 1931.
2. The statute is not retroactive.

INQUIRY

Carson City, July 2, 1931.

“An Act providing for the registering of public works contractors, and defining the term ‘public works contractors,’ providing the method of obtaining licenses to engage in the business of public works contracting, and fixing the fees for such licenses; providing the method of suspensions and cancellation of such licenses; and prescribing the punishment for violation of the provisions of this Act,” approved March 27, 1931. Chap. 212, Stats. Nev. 1931.

1. Are firms or individuals that have been awarded contracts by any branch of the Federal Government, wherein such work is not in cooperation with the State of Nevada, subject to the above statute?

2. If the above contracts have been awarded prior to the approval of the above statute, would any firm or individual awarded such contract or contracts be subject to the provisions of the statute?

OPINION

1. Answering query No. 1, section 2 of the statute in question contains the definition of the term “public works contractor,” and provides, among other things, that “A public works contractor within the meaning of this Act is herein defined to be any person, firm, copartnership, corporation, association or other organization, or any combination of any thereof, who submits a proposal for or who enters into a contract * * * *with any other public board, commission, or otherwise*, charged with the letting of public works construction contracts, or who *proposes or undertakes any other public works construction within the confines of this State* * * *.” It is also provided in said section that the term “public works contractor” shall include any subcontractor who performs any part of any public works construction contract, where the amount of such subcontract exceeds the value of ten thousand dollars, which is also the amount in value of the contract in the first instance requiring a licensed contractor.

The statute is undoubtedly broad enough in its terms to embrace all forms and kinds of public works construction within the State of Nevada, and such construction works are not limited to those proposed by the State, its subdivisions and municipalities. The requirement is that the public works construction be within the confines of the State, and it may be inaugurated by any other public board or commission having the power, of course, to erect or construct public works within this State.

The Federal Government, when it has legally acquired the right to institute public works within the State and has duly authorized the proper branch thereof to proceed with such works, undoubtedly has the power to let or cause to be let contracts to individuals, firms, etc., to perform the work necessary for the completion of such public works; but the individuals, firms, etc., that receive such contracts from the Federal Government, or any of its branches, do not thereby become such a part of or an arm of the Federal Government as would preclude the applicability of State laws and regulations as to them, upon the ground that a State may not tax or license the Federal Government and its instrumentalities. The public works contractor, to all intents and purposes, upon assuming the contract concerning the public work contracted from the Federal Government, becomes an independent contractor and, while within the State in the performance of his contract, is subject to the provisions of the State laws applicable thereto, even though the State is not a party to the contract in the first instance.

The rule is that States *may even tax agencies* of the Federal Government when no law of Congress forbids, and when the effect of State taxation will not defeat or hinder the operations of the Federal Government. We are not aware of any enactment of Congress forbidding the licensing by States of those persons who may obtain government contracts for public works instituted by the Federal Government within a State. The fact that a State may require that public works contractors obtain a license and pay a reasonable fee therefor in order to engage in such work, or to act in the capacity of a public works contractor, cannot be said to defeat or hinder the operation of the Federal Government—rather, it is an additional protection to the Federal Government and such branches thereof interested in the public works, and to all citizens and residents of the State.

Firms, individuals, corporations, associations, etc., residing and operating without this State, interested in and contracting with respect to public works instituted by the Federal Government within this State, without question compete with such firms, individuals, etc., concerning such contracts, who reside and operate within this State. All of such contractors should and must be placed upon an equality with respect to such contracts; and to permit a public works contractor foreign to this State to escape the reasonable public works contractor's regulation provided by the statute aforesaid and compel the Nevada contractor to come within its provisions, even though it relates to a public work sponsored by the Federal Government, would be to deny, in effect, the equal protection of the law which is a fundamental provision of our scheme of government.

We conclude that all individuals, firms, corporations, associations, organizations, or any combination thereof, that have been awarded public works contracts, to be performed within the State of Nevada by any branch of the Federal Government, even though the State of Nevada has no part in such contracts, are subject to the provisions of the statute hereinbefore referred to.

2. Answering query No. 2, the statute in question is not retroactive. Any contracts concerning public works within the provisions of the statute awarded prior to such statute becoming effective are not affected thereby, and the contractors awarded such contracts and operating solely with reference thereto are not subject to its provisions.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

By: W.T. Mathews,
Deputy Attorney-General

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

SYLLABUS

OPINION NO. 31-41. OFFICERS—POWER OF COUNTY TAX RECEIVERS TO RETAIN COMMISSION FOR PUBLIC TAX.

County Treasurers and Tax Receivers cannot charge or retain a commission for collecting a tax provided for by sections 4 and 5 of Chapter 82, Statutes of Nevada 1919.

INQUIRY

Carson City, July 14, 1931.

Have County Treasurers or Tax Receivers the authority to charge or retain a commission for collecting and forwarding the Special Sheep Inspection Fund taxes collected under the provisions of sections 4 and 5 of Chapter 82, Stats. 1919?

OPINION

County Treasurers in the State of Nevada are designated Tax Receivers by section 6439, Nevada Compiled Laws 1929, and, as such receivers, are empowered to collect and receive taxes authorized by the laws of this State. The Special Sheep Inspection Fund is created by taxes upon sheep under the provisions of "An Act regulating the sheep industry in the State of Nevada, creating a State Board of Sheep Commissioners," etc., the same being Chapter 82, Statutes 1919; and the County Treasurers, as Tax Receivers, collect such taxes and thereafter forward to the State Treasurer the taxes so collected; but no provision is made under this statute for the charging or retention of a commission for so doing, and we fail to find any statute which would empower County Treasurers and Tax Receivers to charge or retain a commission for the collection of the taxes going to make up the Special Sheep Inspection Fund.

It may be that, in the event of a delinquency in the payment of the taxes provided by the above-mentioned Act, and the same being a tax upon personal property, the Assessor, in endeavoring to collect such personal property tax, might be entitled to such a commission under and by virtue of section 2062, Nevada Compiled Laws; but, as to this, we do not now decide. In any event, the last-mentioned statute would not be applicable to County Treasurers and Tax Receivers. *State v. Boyd*, [19 Nev. 356](#).

We conclude that there is no statutory authority empowering County Treasurers and Tax Receivers to charge or retain a commission for collecting the taxes mentioned in your query.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

By: W.T. Mathews,
Deputy Attorney-General

Robert Dill,
Ex Officio Secretary,
Board of Sheep Commissioners,
Reno, Nevada

SYLLABUS

OPINION NO. 31-42. SCHOOLS—RECALL OF SCHOOL TRUSTEES—SUFFICIENCY OF RECALL BALLOT.

1. Ballot should contain a statement of the officer who is being subjected to recall election in justification in his course of action (section 9, article 2, Constitution of Nevada).
2. Where the officer is misled as to his rights concerning the statement, the election is illegal.

INQUIRY

Carson City, July 14, 1931.

Ballot used in recall election recalling School Trustees, failed to have printed thereon such Trustee's justification of his course in office as is provided by section 9, article II, Constitution of Nevada, notwithstanding that the ballot contained the recall petition verbatim, setting forth the reasons for the recall of the Trustee. The School Trustee in question was advised by the Clerk of the Board of Trustees, in writing, of the fact that a recall petition had been filed and that "the law provides that, if you do not offer your resignation within five days from the filing of this petition, a special election shall be ordered." Later, and before the printing of the ballot, the said Clerk advised the Trustee that nothing but the names of Trustee sought to be recalled and the candidates for such office would appear on the ballot, thereby misleading the Trustee in question relative to his justification. A recall election was held, using the ballot aforesaid, and resulted in a recall.

1. Were the constitutional rights of the Trustees in question, with respect to his right to have printed on the ballot his justification of his course in office, invaded?
2. Was the recall of the School Trustee in the recall election above stated a legal recall?

OPINION

Answering query No. 1. From a reading of the foregoing statement, it is apparent that the School Trustee in question was not properly advised concerning his right to have printed on the ballot used in the school district recall election a statement justifying his course in office. Of course, it may be said that ignorance of the law excuses no one; but, where it appears that such officer was not advised as to his right to set forth to the electorate his reasons for his course of conduct in office in opposition to the reasons set forth for his recall, even though the person advising such officer or rather, failing to advise such officer of his rights did not do so intentionally, still sufficient appears in the statement to indicate that the School Trustee was undoubtedly misled and thereby deprived of a constitutional right to set before the people directly interested reasons which might have changed the result of the election.

Section 9, article II, Constitution of Nevada, provides for the recall of public officers in the State of Nevada, including members of the Boards of School Trustees, and, in this section, is contained a mandatory provision, to wit: "On the ballot at said election shall be printed verbatim, as set forth in the recall petition, the reasons for demanding the recall of said officer, *and in not more than two hundred words, the officer's justification of his course in office.*"

It seems to us, providing the above-mentioned statement is correct, that the Clerk of the Board of School Trustees in this matter signally failed to fully apprise the Trustee of this constitutional provision. Whether such failure was intentional is beside the question, if it did result in the Trustee in question being misled as to what would really appear on the ballot; and, if such Trustee was misled by the statement of the Clerk and by reason thereof failed to have incorporated on the ballot used at the election his reasons for the conduct in office complained of, then, unquestionably, the ballot used at such election was an illegal ballot and did invade the constitutional right of the Trustee in question.

In this connection, we desire to call attention to section 4867, Nevada Compiled Laws 1929, which is section 4 of "An Act to provide for the recall of public officers in the State of Nevada,"

and particularly to the last four words of such section, the same being as follows: "if furnished by him." I may be that this particular statute was consulted in the proceedings leading up to the recall election in question, and the particular words quoted relating to the officer, subject of the recall election, may have influenced the Clerk of the Board of Trustees and caused him to believe that it was incumbent upon said Trustee to furnish a statement to be placed upon the ballot. We do not believe that this last matter would be a justification for the failure to include the recalled officer's statement on the ballot, for the reason that the constitutional provision mentioned above is self-executing and does not contain the qualification mentioned in the statute. The constitutional provision in this particular matter, being self-executing, must control.

Answering query No. 2. For the reasons contained in the opinion rendered in answer to question No. 1, above set out, it is our opinion that the recall of the School Trustee in question was not a legal recall.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

By: W.T. Mathews,
Deputy Attorney-General

Miss Amy Hanson,
Office Deputy, Department of Education,
Carson City, Nevada

SYLLABUS

OPINION NO. 31-43. LABOR LAWS AND ALL CIVIL LAWS OF THE STATE OF NEVADA—THEIR FORCE AND EFFECT WITHIN THE SO-CALLED "BOULDER CANYON PROJECT FEDERAL RESERVATION."

1. The Nevada labor laws, tax and revenue laws, Industrial Insurance Act, State Mine Inspector's Act, Public Contractors' Action, and all other civil laws of the State of Nevada still apply and should be enforced within the so-called "Boulder Canyon Project Federal Reservation."

2. Criminal laws of the State of Nevada should also be enforced, inasmuch as the reservation was not legally created and established.

INQUIRY

Carson City, July 21, 1931.

We have your letter of July 16, 1931, as follows:

"We would appreciate your opinion as to whether or not the labor laws of this State are in full force and effect on work in connection with the construction of Hoover Dam and appurtenant works since the filing of a map in May, 1931, by the Interior Department."

We understand by the foregoing that you desire the opinion of this office as to whether the labor laws of this State should be enforced within the so-called "Boulder Canyon Project Federal Reservation" since the filing of the map and affidavit of Honorable Ray Lyman Wilbur, Secretary of the Interior of the United States, in the office of the Governor of this State on May 26, 1931, purporting to comply with Chapter 23 of the 1921 Statutes of Nevada, page 27, being Nevada Compiled Laws 1929, sections 2895-2898.

OPINION

The effect of the creation or attempted creation of the so-called "Boulder Canyon Project Federal Reservation" by the Secretary of the Interior in the manner above mentioned, and whether the Nevada State law or the laws of the United States, as distinguished from each other, apply, are questions which have been occupying the minds of both the State and Federal officers and have caused considerable discussion ever since the filing of the above-mentioned plat and affidavit of Secretary Wilbur in the office of the Governor of this State on May 26, 1931. These questions have caused considerable discussion and the expression of many conflicting opinions on the part of both laymen, lawyers, and State and Federal officers. However, the contractors engaged in the actual construction of the dam and affiliated enterprises within the so-called reservation have willingly, readily, and apparently cheerfully complied with the State civil laws generally, so far as we have had authentic information, until recently. They have not only cooperated with the Labor Commissioner of this State in complying with the labor laws of this State until their reported attempt to establish a monthly pay day instead of a semimonthly pay day, but have actually asked the Labor Commissioner to establish a branch office at Boulder City within the so-called reservation. They have also willingly, readily, and cheerfully complied with all suggestions and recommendations made by the Deputy State Mine Inspector charged with the duty of enforcing the use of safety devices, appliances, and methods in the work of construction within the so-called reservation. They have not only come within the Nevada Industrial Insurance Commission Act and paid their premiums as required by law, but even sought the opportunity to do so. The District Attorney of Clark County, Nevada, within which this so-called reservation is situated, has spent two days in conference with the Attorney-General and his Deputy at Carson City, Nevada, concerning the matter of the enforcement of the State civil laws within the so-called reservation; and, at that conference, a full and complete plan of procedure was agreed upon to be enforced by the District Attorney of that county; and, so far as this office is informed, the District Attorney of Clark County is proceeding to carry out the plan adopted. This plan was adopted for the enforcement of all the civil laws of the State of Nevada within the so-called reservation; and said District Attorney was informed at that conference that it is the opinion of this office that all civil laws still apply within the so-called reservation, notwithstanding the filing of the plat and affidavit with the Governor by the Secretary of the Interior.

Many of the State officers who are entitled by law to the official opinion of this office, and some private individuals and companies, have asked the Attorney-General and Deputy Attorney-General orally whether, in their opinion, the State laws still apply within the so-called reservation, but have not asked for or expected the written opinion of this office on the point; and they have consistently been told that, in the opinion of this office, all of the State civil laws still apply, notwithstanding the attempted reservation, and that the criminal laws of this State also still apply and should be enforced, unless the so-called reservation was legally created. Your above-mentioned letter is the first request this office has had for a written opinion as to whether the laws of the State still apply within the so-called reservation; and it has not, therefore, been necessary or considered advisable or proper for this office to give an official written opinion prior to the receipt of your letter. There is an apparent conflict between the views of the legal representative of the Federal Government at Las Vegas and this office as to whether the State laws still apply; and, inasmuch as the contractors and those engaged in the construction were complying with the State laws, it did not seem advisable or good policy to bring about an open conflict by the giving of an official written opinion by this office.

However, since the contractors are now apparently attempting to evade the law of this State requiring a semimonthly pay day, it seems both proper and necessary for this office to give its written official opinion on the points involved. This opinion will, therefore, apply to both the labor laws of this State and all other State laws.

Having devoted much thought, study and consideration to the questions involved, this office is of the unqualified opinion that all of the labor laws and all other civil laws of the State of Nevada do apply and should be enforced within the so-called reservation, notwithstanding the filing of

the plat and affidavit of the Secretary of the Interior with the Governor of this State in an attempt to create a Federal reservation of the territory within the so-called "Boulder Canyon Project Federal Reservation."

This opinion is based upon the following facts and circumstances and the hereinafter cited law:

That the plat and affidavit filed with the Governor by the Secretary of the Interior of the United States on May 26, 1931, do not comply with the law of the State of Nevada under which it was attempted to create the above-mentioned Federal reservation, and are not sufficient to result in the creation of such reservation, and do not, therefore, cede to the Federal Government jurisdiction over the lands described in the plat and affidavit.

It must be remembered that the filing of this plat and affidavit purported to be in pursuance of Chapter 23 of the 1921 Statutes of Nevada, page 27, being Nevada Compiled Laws 1929, sections 2895-2898. Outside of this Nevada statute, we find no authority of law for the creation of any such reservation as was here attempted by the Secretary of the Interior. In so far as the Federal laws, to wit, the laws of the United States, as distinguished from the laws of the State of Nevada, are concerned, we find no authority vested in the Secretary of the Interior of the United States to create any such reservation. In the affidavit of the Secretary of the Interior accompanying the above-mentioned plat, he expressly bases his attempt to create such a reservation upon the above-mentioned statute of the State of Nevada and the provision of the Constitution of the United States which is not self-executing. We must, therefore, look to the provisions of the Nevada statute, to wit, Chapter 23 of the 1921 Statutes of Nevada, page 27, which we find in Nevada Compiled Laws 1929, sections 2895-2898. Let us see what the provision of this law is, especially as it relates to the filing of such a plat and affidavit. This Nevada law reads as follows:

Section 1. The consent of the State of Nevada is hereby given, in accordance with the seventeenth clause, eight section of the first article of the constitution of the United States, to the acquisition by the United States, by purchase condemnation or otherwise, of any land in this state which has been, or may hereafter be, acquired for sites for customhouses, courthouses, post offices, arsenals, or other public buildings whatever, or for any other purpose of the government.

Sec. 2. The exclusive jurisdiction in and over any land so acquired by the United States shall be, and the same is hereby, ceded to the United States for all purposes, except the service upon such sites of all civil and criminal process of the courts of this state, but the jurisdiction so ceded shall continue no longer than the said United States shall own such lands; *provided*, that an accurate description and plat of such lands so acquired, verified by the oath of some officer of the general government having knowledge of the facts, shall be filed with the governor of this state.

Sec. 3. The jurisdiction hereby ceded shall not vest until the United States shall have acquired the title to the said lands by purchase, condemnation or otherwise; and so long as the said lands shall remain the property of the United States when acquired as aforesaid, and no longer, the same shall be and continue exempt and exonerated from all state, county and municipal assessment, taxation or other charges which may be levied or imposed under the authority of this state.

Sec. 4. Those certain acts entitled "An act ceding the jurisdiction of this state over certain lands owned by the United States," approved January 18, 1883, and "An act ceding the jurisdiction of this state over certain lands to be acquired by the United States," approved February 23, 1885, are hereby repealed.

It will be noted from the provision at the end of section 2 above quoted that the plat must contain "an accurate description * * * of such lands so acquired, verified by the oath of some officer of the general government having knowledge of the facts * * *."

Now let us see what the plat and affidavit of the Secretary of the Interior contain. It is the opinion of this office that the plat does not contain an accurate description of the lands within the so-called reservation. The only accuracy of the plat is the starting point, not the starting point of the land contained within the so-called reservation, but the starting point taken from which the Secretary of the Interior proceeds to arrive at the starting point of the boundary of the land contained in the so-called reservation. Taking this definite point and then running a certain distance south and a certain distance east, the Secretary of the Interior arrives at what appears to be the southeast corner of the so-called reservation. He then establishes a line 11 miles long extending easterly from the southeast corner of the so-called reservation and arrives at what is designated "Corner No. 2" and seems to be the southwest corner of the so-called reservation. The plat then shows a meandering western boundary line as the western boundary of the so-called reservation and then a straight northerly boundary line which extends almost to the Colorado River. The boundary line then extends south to the Colorado River and then follows the meanderings of the Colorado River to the point of beginning. It will be observed from this general description of the plat that there is no attempt to describe the lands included in the so-called reservation accurately or by legal subdivisions. Accompanying this plat and endorsed on it is the following affidavit of Ray Lyman Wilbur as Secretary of the Interior:

District of Columbia, ss:

I, Ray Lyman Wilbur, Secretary of the Interior, having knowledge of the facts, do hereby certify that this diagram is a true and accurate representation of the area constituting the Boulder Canyon Project Federal Reservation of the United States in Nevada; that except as to certain lands in private ownership hereinafter referred to, the title to the area shown upon this diagram is in the United States, and that said area so owned by the United States is set apart and reserved by the United States for its use in the construction of the Hoover Dam, the Power Plant and the incidental works authorized by the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057); and that said area so owned by the United States is described as follows:

Beginning at corner No. 1, at a point in the middle of the channel of the Colorado River which is east of a point four miles south of the corner of Ts. 22 and 23 S., Rs. 64 and 64 E., M.D.M., Nevada; thence from said corner No. 1, west eleven miles to corner No. 2, the southwest corner of the reservation; thence north three miles and twenty chains to corner No. 3; thence east two miles to corner No. 4; thence north nine miles and sixty chains to corner No. 5, the northwest corner of the reservation; thence east twelve miles to corner No. 6, the northeast corner of the reservation; thence south to corner No. 7, at a point in the middle of the channel of the Colorado River; thence down the middle of said channel to corner No. 1, the place of beginning.

The lands in private ownership are described as follows: Lode mining claims, Last Chance No. 2, Last Chance No. 3, Last Chance No. 4, Last Chance No. 5, Bluebell, as described in that certain patent from the United States to Patrick J. Sullivan, dated May 11, 1923, Carson City series 013949, Patent No. 906059, and recorded in office of County Recorder of Clark County, Nevada, in Book 9 of Deeds, at page 283, and Blue Point lode mining claim as described in that certain patent from the United States to Patrick J. Sullivan, dated Nov. 27, 1922, Carson City series 013560, Patent No. 886583, and recorded in office of County Recorder of Clark County, Nevada, in Book 9 of Deeds, at page 123; and, right of way for Los Angeles and Salt Lake R.R., from a point on the west boundary of the Reservation to the town of Boulder City, and for station grounds at Boulder City, under Act of March 3, 1875 (18 Stats., 482), map approved August 30, 1930, and on file in the General Land Office.

Ray Lyman Wilbur,

Secretary of the Interior.

Subscribed and sworn to before me a Notary Public in the District of Columbia this 19th day of May, A.D. 1931.

[seal]

W.H. Richards, *Notary Public.*

From the foregoing, it will be observed that neither the plat nor the affidavit contains an accurate description of the land embraced within the so-called reservation. It will also be observed that there is no showing in the affidavit of any facts of which the Secretary of the Interior has knowledge. The only attempt to comply with this portion of the above-mentioned provision of section 2 is a mere statement of the Secretary of the Interior at the beginning of the affidavit to the general effect that he has knowledge of the facts. There is no attempt to state what facts he has knowledge of. It is the opinion of this office that the affidavit should be full and complete and state the facts in detail relied upon by the Secretary of the Interior to entitle him to create such a reservation in the manner provided for in the above-mentioned sections 2896-2898 of the Nevada laws. We submit that the affidavit does not contain such facts.

In addition to the above-mentioned objection, we call attention to the fact that the above-quoted Nevada law simply gives the consent of the State of Nevada to acquire "sites" for the buildings and purposes of the Federal Government specifically mentioned in section 1 of the Act. This Act specifically provides for the acquiring of these sites for specific purposes, and grants jurisdiction to the United States over these "sites." This Act consents to the exercise by the Federal Government of specific power and authority; provided the Federal Government will do certain specific things. This special power and authority must be exercised in accordance with the exact provisions of this statute. It certainly does not confer upon the Federal Government authority and power not specifically and specially granted and enumerated in the Act itself. The consent given by the State and the power and authority conferred by the Nevada Act is simply the acquisition of "sites" for the buildings and other purposes of government mentioned in the Act itself. It does not confer or consent to the exercise of power, authority, and jurisdiction by the Federal Government over the land surrounding or in the vicinity of such "sites." The chief purpose of the project of the Federal Government is the construction of Hoover Dam and the tunnels incident to the operation of such dam and the power plant connected therewith; and the affiliated enterprises of the Government are the establishment of Boulder City for the accommodation of the employees engaged in the construction of the dam and tunnels and power plant, and the necessary railroads and other facilities along the Colorado River to convey material and workers from the terminus of the Union Pacific Railroad branch line at Boulder City to the site of the dam and other construction works. It will be observed from the plat that the territory attempted to be reserved and included in the so-called reservation is 11 miles wide at the south boundary line and 12 miles at the north boundary line, and at least 13 miles in length from north to south. As shown by the plat, Boulder City occupies a very small and insignificant portion of the territory included in the so-called reservation. As compared with the entire territory included within the reservation, the territory for the site of the dam and power plant and tunnels comprises a very small and insignificant portion of the so-called reservation. Let it be kept in mind that the consent given by the State is a consent to the acquisition of "sites" for the enumerated purposes of the Federal Government. Certainly, it cannot be successfully contended that the immense territory included within the so-called reservation is necessary for "sites" for the governmental purposes enumerated in the Nevada Act or contemplated by the Federal Government or the provision of the United States Constitution. We do not believe that even the Federal Government or any of its officers will contend that this immense territory can possibly be within the provisions of the Nevada law, or that this immense territory can possibly come within the terms "sites" for government purposes enumerated in the Act.

Having considered the extent of the land which may be acquired by the United States for the governmental purposes, to wit, "sites" for governmental buildings and purposes, let us now consider the method of such acquisition and the extent of the authority of the United States over the lands to be acquired in compliance with the Nevada Act of 1921. It is evident that the method to be pursued and the extent of the power and authority of the Federal Government over the lands

so acquired must be construed in connection with the provision or clause of the Constitution of the United States mentioned in the Nevada Act itself, for the reason that, at the very beginning of section 1, Nevada Act, it is definitely stated that the consent of the State is given for the United States to acquire this land for "sites," and the United States is to exercise jurisdiction in and over such land "in accordance with the seventeenth clause, eighth section of the first article of the Constitution of the United States," and for the additional reason that all power, authority, and jurisdiction of the Federal Government is a delegated power, authority, and jurisdiction.

In this connection, let us consider the situation out of which the Constitution of the United States arose. Immediately after the independence of the thirteen Colonies was established, there was no centralized federal government having jurisdiction, power, or authority over the Colonies as a whole. The nearest approach to such a centralized government was the Articles of Confederation, which were found to be weak, ineffective, and useless. There were thirteen Colonies, afterwards States. It was found necessary to have a centralized or National Government to deal with such problems as related to the mutual interests of these Colonies or States, or problems which concerned their interrelation with each other. From this situation and to meet this need, the National Government of the United States was established. In establishing this national or centralized government, it was deemed necessary and expedient to have a constitution expressing and limiting the power, authority, and jurisdiction of the National Government. It must be remembered that the Constitution was adopted by the States constituting the National Government, to wit, the United States of America; and that, therefore, all the power, authority, and jurisdiction of the United States was delegated to the Federal Government by the States. In other words, this power, authority, and jurisdiction originally reposed in the States and that Federal Government has only such power, authority, and jurisdiction as was given or delegated to it by the States. From this, it follows that the power, authority, and jurisdiction of the United States is limited by the Constitution of the United States.

Keeping in mind that the 1921 Act of the Legislature of this State specifically provided that the acquisition of land by the Federal Government and the exercise of its jurisdiction over such land is to be "in accordance with the seventeenth clause, eighth section of the first article of the Constitution of the United States," now let us see what this clause and provision of the United States Constitution is. For this purpose we quote from the Constitution of the United States as follows:

17. To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings. Constitution of the United States, article 1, section 8, paragraph 17.

In considering this paragraph or clause of the Constitution of the United States, we call attention particularly to the power and authority delegated to the Federal Government, as expressed in the last-above quotation, to wit, "to exercise exclusive *legislation*." From this, it follows that the only power, authority, and jurisdiction delegated by the States to the Federal Government, or to Congress, in the Constitution of the United States, is the power, authority, and jurisdiction to *legislate*. This paragraph seventeen of section eight, article one of the Constitution of the United States should be considered in connection with and as a part of paragraph eighteen of the same section and article. This paragraph eighteen expressly provides that this authority granted to Congress by the States is "to make * * * laws * * *."

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof. Constitution of the United States, article 1, section 8, paragraph 18.

It is true that section 2 of the 1921 Nevada law consents that the United States shall have “the exclusive jurisdiction” in and over the land acquired; but “jurisdiction” simply imports the power and authority to legislate and to enforce such legislation after it has become effective. The power and authority to exercise “jurisdiction” imports only the power and authority to legislate within the territory and to enforce such legislation. From this, it follows that jurisdiction depends upon and is a result of legislation.

United States v. Cornell, 2 Mason 60; Federal Cases No. 14,861; *United States v. Unzeuta*, 74 Law Ed. (U.S.) 761.

The last above-mentioned case was decided at the October, 1929, term of the United States Supreme Court; and the case carries quite an extensive and comprehensive annotation.

The above-mentioned paragraphs or clauses seventeen and eighteen show conclusively that the power, authority, and jurisdiction of the United States over lands so acquired is purely and solely the power, authority, and jurisdiction to legislate or make laws for the government of the lands so acquired and the people inhabiting such lands. The first portion of said paragraph seventeen relates only to what is now the District of Columbia, “the seat of the government of the United States.” But the remainder of said paragraph delegates to the National Government or Congress the power, authority, and jurisdiction “to exercise *like* authority over all places, *purchased* (by the United States) by the consent of the Legislature of the State in which the same shall be.” In addition to limiting the power, authority, and jurisdiction of the Federal Government to the right to legislate concerning places “purchased” by the consent of the State Legislature, the above-quoted paragraph seventeen further limits the purposes for which these “places” are to be used, to wit, the erection of forts, magazines, arsenals, dock-yards, and other needful *buildings*. Certainly, it cannot be successfully contended that the immense area included in the so-called reservation, to wit, 100 square miles or more, is necessary or can be used or will be used for the purposes mentioned either in paragraph seventeen, section 8, article 1 of the Constitution of the United States or in the 1921 Act of the Legislature of the state of Nevada.

It is the opinion of this office that the power, authority, and jurisdiction of the Federal Government and of Congress is limited to the very purposes mentioned in the above-quoted paragraph seventeen. Even the 1921 Act of the Legislature of Nevada, above quoted, expressly provides that the consent of the State of Nevada is given for the acquisition of such territory and the exercise of jurisdiction over it by the United States Government only to such extent as will be “in accordance with the seventeenth clause, eighth section of the first article of the Constitution of the United States,” as above quoted. The power, authority, and jurisdiction of the United States so given by said paragraphs seventeen and eighteen, above quoted, is only the power, authority, and jurisdiction to legislate. Since Congress has not legislated or made civil laws governing the interrelation of people within the so-called reservation, then it has not exercised the power, authority, and jurisdiction consented to by the State of Nevada in the 1921 Act of the Legislature of this State, in so far as the labor laws, the tax laws, the Industrial Insurance Act, the Mine Inspector Act, or any of the other civil laws of the State of Nevada are concerned. In making this statement of our opinion as to what the law is on this point, we have in mind the fact that section 2 of the 1921 Act of the Nevada Legislature cedes to the United States “*for all purposes*” exclusive jurisdiction in and over the land acquired by the United States in the manner specified in the Act and “in accordance with” the above-mentioned provision of the Constitution of the United States. The expression “for all purposes,” mentioned in said section 2, simply means, in our opinion, all purposes which are in accordance with the above-mentioned constitutional provision, to wit, the exercise of legislative power and for the purposes there named.

It is the opinion of this office that, under the constitutional provisions and the 1921 Act of the Legislature of this State, above quoted, the Congress would have power, authority, and jurisdiction to legislate or make Federal laws governing the so-called reservation if legally created. But Congress has not yet legislated or made civil laws governing the same subject matters contained in the labor laws, tax and revenue laws, Industrial Insurance Law, State Mine Inspector Law, and other civil laws of the State of Nevada involved in these questions. It is our

opinion, therefore, that, until the National Government legally creates such reservation and makes civil laws governing these matters and governing contractors generally within the reservation, the State civil laws governing these questions do apply and should be enforced. It is our opinion also that the mere fact that the contractors are engaged in the construction of a Federal project by contract with the Federal Government does not exempt them from the provisions of the State law governing contractors on public works generally. In this regard, we are mindful of the fact that the Federal Government has entered into a contract with certain contractors for the construction of the Hoover Dam, power plant, and affiliated enterprises, and that these contractors have employed many employees. These employees are undoubtedly the employees of such contractors and not of the Federal Government. They stand in the relation to their employers, to wit, these contractors, upon exactly the same basis as if these contractors were not contracting with the Federal Government but were engaged in public works being constructed otherwise than by the Federal Government. The rights of these employees are governed, in our opinion, by the State laws and exactly as if the Federal Government were not involved in the matter.

For the purposes of this opinion only, it may be considered that the United States was and is the owner of the land comprising the alleged reservation, and was such owner prior to the erection of Nevada into a State, and has continued to own such land and to exercise certain control over it only as a proprietor thereof and in the same manner as a private individual. Over such land all the laws of Nevada obtain and were enforceable thereon at least until the exercising of the right of legislation therefor and concerning such reservation by the United States Government, allegedly in compliance with the Nevada statute of 1921 by the filing of an alleged correct map of such reservation with the Governor of Nevada. It is clearly apparent that the Federal Government has not acquired the land by purchase with the consent of the Legislature of the State of Nevada; but that, if any Federal reservation whatever has been erected and comprising the lands hereinbefore discussed, it must be in the mode pointed out in the case of *Fort Leavenworth Railroad v. Lowe* (U.S.), 29 Law Ed. 264; and, inasmuch as the sufficiency of the map and its attendant verification is questioned, we are of the opinion that the mode sanctioned by the Supreme Court of the United States in the last-mentioned case has not been fully carried out by the Federal Government. But, even if we should consider that the Federal Government has complied fully with the provisions of the 1921 Act of the Nevada Legislature and also with the mode sanctioned by the Supreme Court of the United States concerning the establishment of a Federal reservation where the land has not been purchased by the Government with the consent of the Legislature of the State, still no Federal laws, save and except criminal laws, are in force and effect within or concerning the so-called reservation. The situation in the instant matter is analogous to the Federal Government's acquiring land and the right to legislate therefor by means of conquest or by cession from a foreign government; and the law is well established that, as to the law which regulates the intercourse and general conduct of individuals on such land, it is the law of the former sovereignty in force at the time of the cession to the Federal Government which applies.

The American Insurance Co. etc. v. 356 Bales of Cotton and David Canter (U.S.), 7 Law Ed. 242; *Chicago, Rock Island and Pacific R.R. Co. v. McGlenn*, 29 Law Ed. 242 (U.S.); *Crook-Horner & Co. v. Old Point Comfort Hotel Co.* (C.C.A.), 45 Fed. 604.

At this point, we believe the following quotation taken from *Crook-Horner & Co. v. Old Point Comfort Hotel Co.*, supra, page 611, is appropriate:

Subject to these limitations, it results that the laws of Virginia of a general character, such as do not conflict with the purposes for which the United States hold the land at Fortress Monroe, are in force there, especially in the places, like the Chamberlin Hotel, which have been appropriated to other than the military purposes for which only they were ceded by Virginia. If these conclusions be not true, then, except state laws more than half a century old, the hundreds of inhabitants engaged in civil pursuits and residing at Old Point Comfort are living in

a No-Man's Land, and, except in a criminal sense, are as complete outlaws as if they were at Botany Bay.

Certainly, it was not the intention of the Federal Government to have the people living within this so-called reservation living in a veritable "No-Man's Land." If we eliminate the State civil laws from application within this so-called reservation, then there is no civil law governing the relation of the people residing there with each other, no law relating to the transfer of property, the recording of instruments of transfer, the taxation of property, the contractual relation of the parties to contracts, or any of the other multitude of situations which are bound to arise between people residing in this so-called reservation.

In this connection, we quote as follows from the case of *Barrett v. Palmer*, 31 N.E. (N.Y.) 1017, a case following the law as laid down in the *McGlinn* case, supra:

The power of the federal government to acquire lands within a state for governmental purposes cannot be so exercised as to dismember the state, and separate a part of its territory from its jurisdiction. When the lands are acquired by the exercise of the power of eminent domain, the United States becomes simply an ordinary proprietor, and the jurisdiction and authority of the state over the lands remain unchanged, except so far as their use for the purpose of executing the powers of the general government necessarily removes them from the domain of the state authority. But it has been held that the state may cede to the general government political jurisdiction over such lands, and then Congress has the power to legislate in regard to them. We are not disposed to hold that even then the judicial power of the courts of this state would be powerless to redress private injuries committed thereon, or that the injured party would be compelled to seek justice in some other jurisdiction. The state did cede such political authority to the federal government with respect to the lands in question, with certain reservations. *Congress has not, however, made any new regulations touching the administration of justice in civil cases with respect to actions arising therein, and until some such regulations have been made the municipal law of the state for the protection and enforcement of private rights through the courts remain unchanged.* *Railroad Co. v. McGlinn*, 144 U.S. 542, 5 Sup. Ct. Rep. 1005; *Railroad Co. v. Lowe*, 114 U.S. 525, 5 Sup. Ct. Rep. 995. The cession of territory by one sovereignty to another does not abrogate the laws in force at the time of the cession for the administration of private justice. Not, at least, until the new sovereignty has abrogated or changed them, do such laws cease to operate, except possibly so far as they may be in conflict with the political character, institutions, and constitution of the government to which the territory is ceded. Mr. Justice Field, in the supreme court of the United States, in the case of *Railroad Co. v. McGlinn*, supra, stated the rule of international law on this subject as follows: "It is a general rule of public law, recognized and acted upon by the United States, that whenever political jurisdiction and legislative power over any territory are transferred from one nation or sovereign to another, the municipal laws of the country, that is, the laws which are intended for the protection of private rights, continue in force until abrogated by the new government or sovereign." As nothing has been done by Congress to displace the laws of this state and the jurisdiction of its courts in regard to private rights and remedies with respect to the lands ceded for the purpose of a navy yard in Brooklyn, these matters remain unaffected by the act of cession. The judgment should therefore be affirmed. All concur.

In this connection, it is interesting to note the result of a complete application of the 1921 Act of the Nevada Legislature, especially in view of the fact that that Act provides that any "officer of the general government (the United States) having knowledge of the facts" may file a map and verification provided for in that Act. It is a matter of common knowledge that about eighty-seven per cent of all the land

situated within the State of Nevada belongs to the Federal Government, or is United States land. Under the provisions of the 1921 Nevada Act, any officer of the United States, no matter how inferior his office may be, has just as much power and authority to file the map and verification mentioned in the Act as Ray Lyman Wilbur, the Secretary of the Interior. It is also a matter of common knowledge that, in hundreds of instances within the State of Nevada, there are isolated ranches and instances of privately owned land, in canyons and on small streams of this State, completely surrounded by United States land. If the 1921 Nevada Act can be made to apply as the Federal Government seems to apply it, and as it has been attempted to be made to apply in this particular instance, it is amusing to contemplate the result if some officer or officers of the Federal Government, having knowledge of the facts, should file maps and affidavits, as did the Secretary of the Interior in this particular instance, covering all Federal land in this State. The very absurdity of the situation is so apparent as to be conclusive, or practically conclusive, of the fact that the Legislature of this State had no intention whatever of giving the Act the application or construction apparently contended for by the Federal Government in connection with this so-called reservation.

Throughout this opinion reference is made to the fact that, if the so-called reservation has been legally established, then the criminal laws of this State do not apply within such reservation, the reason being that heretofore Congress has enacted a code of Federal criminal laws, and, with the possible exception of some common-law crimes not provided for in such Federal code, then, upon all legally created Federal reservations, the Federal code of criminal laws applies in lieu of State criminal laws. However, if the so-called reservation has not been legally established, the State criminal laws have full application thereon.

We herewith cite cases establishing the principles of law upon which this opinion is based, and herewith incorporate brief reference thereto.

The proposition that the State of Nevada only consented to the Federal Government's acquiring lands in this State and the right of exclusive jurisdiction thereon in accordance only with the seventeenth clause, eighth section, article one of the Federal Constitution, which said proposition is hereinbefore fully discussed, is upon the authority of *In Re Kelly* (C.C.A.), 71 Fed. 545.

Our position that strict compliance with the Nevada statute of 1921, ceding jurisdiction to the Federal Government, is mandatory, is sustained by *Gill v. State*, 210 S.W. 637.

The method of establishing Federal reservations in accordance with the constitutional provision and otherwise is most fully set out and the law settled with respect thereto in *Fort Leavenworth R.R. v. Lowe* (U.S.), 29 Law Ed. 264.

That the law is well established in the United States that the laws regulating the intercourse and general conduct of individuals in force in a sovereignty at the time of cession of territory and jurisdiction thereon from that sovereignty to another remain in full force and effect until altered by the newly created sovereignty, is fully sustained in *The American Insurance Co. v. 356 Bales of Cotton and David Canter* (U.S.), 7 Law Ed. 242; *Chicago, Rock Island, and Pacific R.R. Co. v. McGlinn* (U.S.), 29 Law Ed. 270; *In Re O'Connor*, 19 Am. Rep. 765.

That all State laws relating to civil rights and intercourse of individuals in force and effect upon Federal reservations at the time of the establishment thereof remain in full force and effect and are enforceable thereon until superseded by some legislation on the part of the Federal Congress, is well established and the law well settled, is shown by: *Chicago, Rock Island and Pacific R.R. Co. v. McGlinn* (U.S.), 29 Law Ed. 270; *Barrett v. Palmer*, 31 N.E. 1017; *Crook-Horner & Co. v. Old Point Comfort Hotel Company*, 54 Fed. 604; *Gill v. State*, 210 S.W. 637; *Steele v. Halligan*, 229 Fed. 1011.

With reference to the last-stated proposition, it is held in *People v. Lent*, 2 Wheeler Criminal Cases (N.Y.), 548, with respect to the exercising of jurisdiction by the Federal Government that legislation is first needed before jurisdiction can be exercised.

Basing our conclusions upon the points and authorities hereinbefore stated and cited, it is the opinion of this office that, in any event, the Nevada labor laws, tax and revenue laws, Industrial Insurance Law, State Mine Inspector Act, Public Contractors' Act, and all other civil laws of the State of Nevada still apply and should be enforced within the so-called reservation; and that, as to the criminal laws of the State of Nevada, they also apply and should be enforced within the so-called reservation, inasmuch as it is the opinion of this office that the so-called "Boulder Project Federal Reservation" was not legally created and established.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

W.T. Mathews,
Deputy Attorney-General
Hon. Wm. Royle,
State Labor Commissioner,
Carson City, Nevada

SYLLABUS

OPINION NO. 31-44. TAXATION—IRRIGATION DISTRICT TAX.

1. The County Tax Receiver can legally receive the State and county taxes and allow the special district tax for the irrigation district to go delinquent.
2. Delinquent irrigation district taxes are satisfied in the same manner that State and county taxes are satisfied (section 8041 and 8042 N.C.L. 1929).

INQUIRY

Carson City, July 24, 1931.

A ranch is located within an irrigation district, and a tax was levied against said ranch for the purpose of paying for the maintenance and to meet the bond interest and redemption requirements of this district. The owner or taxpayer wishes to pay all taxes levied against this ranch, except the tax for irrigation district purposes.

1. Can the County Tax Receiver legally accept the other taxes and allow this special district tax to become delinquent, or must he demand payment for all taxes, and, if not paid, will the entire levy become delinquent?
2. If the Tax Receiver may legally allow the district tax to become delinquent, by what process of law can this tax be collected?

OPINION

Answering query No. 1, it is the opinion of this office that the County Tax Receiver can legally accept the taxes tendered by the taxpayer and allow the special district tax to become delinquent. A citizen always has the right to pay the amount of any one tax listed against him

while refusing or omitting to pay other taxes also listed. 37 Cyc. 1164. Whether the owner of real estate will pay all taxes, or pay one kind and not another, or let his lands go to sale for all or part of his taxes, are questions for the taxpayer to determine and not for the collector. *Colt v. Claw*, 28 Ark. 516.

Where tax bill contained fourteen items separately assessed, taxpayer could pay part, leaving one item unpaid, *State ex rel. Sedalia Water co. v. Harnsberger*, 14 S.W. (2d) 554.

If taxpayer pays all taxes assessed against him, save and except the irrigation district tax, the irrigation district tax only becomes delinquent, and this delinquency only is a lien against the land, including statutory penalties.

Answering query No. 2, it is the opinion of this office that the process of law, *i.e.*, the procedure for the collection of such delinquent tax, is the same procedure provided for the collection of other delinquent taxes, inasmuch as sections 29 and 29 1/2 of the Irrigation District Act of 1919, to wit, sections 8041 and 8042, N.C.L. 1929, so provide.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

By: W.T. Mathews,
Deputy Attorney-General

Nevada Tax Commission,
Carson City, Nevada

SYLLABUS

OPINION NO. 31-45. MOTOR VEHICLE LAW.

The Motor Vehicle Law of the State of Nevada consists of Chapter 202, Statutes of Nevada 1931; sections 25 and 30 of said Act, as amended by Chapter 203, Statutes of Nevada 1931; section 23 of Chapter 122, Statutes of Nevada 1925; and all other parts of said 1925 Act not in conflict or inconsistent with the said Act of 1931; Chapter 174, Statutes of Nevada 1925; Chapter 166, Statutes of Nevada 1925; Chapter 186, Statutes of Nevada 1929, except where inconsistent with the 1931 Act.

INQUIRY

Carson City, July 25, 1931.

The 35th Session of the Legislature of the State of Nevada enacted a general Motor Vehicle Law, supposedly to take the place of all vehicle laws previously enacted. Section 39 of the above Act reads, "All Acts or parts of Acts in conflict or inconsistent with this Act are hereby repealed." Section 40 reads, "This Act shall take effect from and after midnight on the 30th day of November, A.D. 1931."

I call your attention to the following laws: Chapter 81, Stats. 1931, amending section 23, 1925 Act; Chapter 203, Stats. 1931, an Act amending sections 25 and 30 of the 1931 Act, approved March 27, 1931; Chapter 122, 1925 Act; Chapter 174, 1925 Act; Chapter 166, 1925 Act; and Chapter 186, 1929 Act.

I respectfully request your opinion as to what constitutes the vehicle laws under which the Motor Vehicle Commission will operate after November 30, 1931.

OPINION

The Supreme Court of Nevada many years ago laid down cardinal rules of statutory construction, among them being a rule that a repeal of a statute by implication is not favored, and that statutes in pari materia, where no express repeal is contained in the later statute, are to be construed together and all given effect where an irreconcilable conflict does not appear.

Having this rule of statutory construction in mind, it is the opinion of this office, in reply to the above query, that, subject to the hereinafter stated exceptions, all prior statutes pertaining to your department in the administration of motor vehicle licensing Acts and kindred matters, not expressly repealed by the Motor Vehicle Act of 1931, to wit, Chap. 202, Stats, Nev. 1931, or which are not irreconcilably in conflict or inconsistent therewith, constitute the motor vehicle laws under which the Vehicle Commission will operate after November 30, 1931.

Further answering your query, it is the opinion of this office that sections 25 and 30 of the said 1931 Act were amended by Chap. 203, Stats. Nev. 1931; that Chap. 122, Stats. Nev. 1925, stands repealed in so far as the provisions thereof are in conflict and inconsistent with the said Act of 1931, save and except section 23 of said 1925 Act, as amended by Chap. 81, Stats. Nev. 1931, for the reason that said section 23 is not in conflict or inconsistent with the 1931 Act; that Chap. 174, Stats. Nev. 1925, is not affected by the 1931 Act; that Chap. 166, Stats. Nev. 1925, is not affected by the Act of 1931; that Chap. 186, Stats. Nev. 1929, the same being the so-called "Uniform Motor Vehicle Anti-theft Act," is not repealed by the said Motor Vehicle Act of 1931, save and except to the extent that any of the provisions thereof that are modified or amplified by the provisions of the 1931 Act should be construed accordingly and effect given to both Acts in accordance with the rule above stated, but with effect given to the 1931 Act in the event of such inconsistency as makes for irreconcilable conflict between the provisions of the respective Acts.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

By: W.T. Mathews,
Deputy Attorney-General

Hon. W.G. Greathouse,
Secretary of State,
Carson City, Nevada

SYLLABUS

OPINION NO. 31-46. STATE BOARD OF EMBALMERS—POWER TO GRANT LICENSE TO PRACTICE.

The State Board of Embalmers cannot legally give examination to applicant for license to practice embalming in this State when such applicants are not graduates of a recognized school of embalming of class A type.

INQUIRY

Carson City, July 29, 1931.

Can the State Board of Embalmers legally give examinations to applicants for licenses to practice embalming in this State when such applicants are not graduates of a recognized school of embalming of class A type?

OPINION

The Legislature of Nevada has delegated to the State Board of Embalmers the power to examine and license those who desire to practice embalming in this State, and has expressly provided the qualifications of such persons and the requirements necessary before a license will be granted to practice the profession. Unless the State Board of Embalmers is given the power to exercise its discretion as to the admission of applicants by the terms of statute creating it and defining its power and duties, then it can only exercise its powers and perform its duties in accordance with the law.

Section 5 of the Act establishing the State Board of Embalmers, as amended in 1931, Stats, Nev. 1931, provides the qualifications of the applicants for license to practice embalming in Nevada, and among these qualifications is an express requirement that the applicant shall have completed a full course of instruction in a recognized school of embalming, which implies graduation therefrom, the language pertinent to the question here being, “* * * and if applicant to become an embalmer shall * * * have completed the full course of instruction in a school of embalming of class A type as rated by the conference of embalmers’ examining board of the United States.” It is clear that the Legislature intended that the foregoing qualification of an applicant should be mandatory upon the State Board, as it used the words “shall have completed the full course of instruction,” etc. No discretion is vested in the State Board. The language is clear and unambiguous. The unambiguous language of a statute cannot be construed contrary to its clear meaning. *Eddy v. State Board of Embalmers*, [40 Nev. 239](#).

We conclude that the above query must be answered in the negative.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

By: W.T. Mathews,
Deputy Attorney-General

Mrs. Edna T. Eddy,
Secretary Nevada State Board of Embalmers,
Winnemucca, Nevada

SYLLABUS

OPINION NO. 31-47. STATE OFFICERS—DUTIES AND AUTHORITY AND POWERS OF SURVEYOR GENERAL IN SURVEYING COUNTY BOUNDARIES—CHAPTER 122, STATUTES OF NEVADA 1931.

1. Chapter 122, Statutes of Nevada 1931, is inoperative and void, because it does not contain specific directions to the Surveyor General directing how the boundaries between Eureka and Lander Counties shall be established.
2. Sections 1917 to 1923, N.C.L. 1929, are general in character and govern the manner in which county boundaries should be determined.

3. As the Act in question empowers the Surveyor General to make a survey of the boundaries between Eureka and Lander, section 2 thereof would empower him to employ such assistance as would be necessary.

STATEMENT

Carson City, July 31, 1931.

The office of the Surveyor General of the State of Nevada is desirous of obtaining an opinion on the following questions relative to that certain Act of the 35th Session of the Legislature of Nevada, entitled "An Act requiring the Surveyor General to establish the boundary line between Eureka and Lander Counties, providing how and when such boundary line shall be established and providing for the expense of the survey, and other matters relating thereto," approved March 24, 1931, the same being Chapter 122, Statutes of Nevada 1931.

1. The title of the above Act contains a provision of how the boundary line shall be established, but there are no provisions in the body of the Act describing the manner or the procedure for the establishing of said boundary line. It appears that the title of the Act clearly indicates that it was the intention of the Legislature to enact some provision providing how said boundary line shall be established, but nowhere in the Act can be found any provision indicative of the legislative will.

INQUIRY

Does the failure to provide in the body of the Act provisions clearly indicated by the title and undoubtedly vital in the administration of the Act make such Act unconstitutional? If not, what effect does it have thereon?

STATEMENT

2. An Act approved March 20, 1865, the same being sections 4347 to 4354, Revised Laws of Nevada 1912, provided a general law concerning the duties of the Surveyor General and contained a provision authorizing and empowering the Surveyor General to survey and establish county boundary lines. However, the Act was repealed by an Act approved February 20, 1923, Chapter 30, Statutes 1923, this later Act being an express repeal of the 1865 Act, thereby taking away from the Surveyor General the power to survey and establish county boundary lines.

INQUIRY

In the absence of a general law upon the question of the survey and establishment of county boundary lines, is the Act of 1931, requiring the Surveyor General to establish the Eureka-Lander County boundary line, unconstitutional, upon the ground that said Act is a special Act concerning county and township business?

STATEMENT

3. By reason of Chapter 113, Statutes of Nevada 1929, the Surveyor General of Nevada is only empowered to appoint one deputy and one typist.

INQUIRY

Does the 1931 Act requiring the Surveyor General to establish the boundary line between Eureka and Lander Counties empower the Surveyor General to employ such assistants as will be necessary to perform the work of establishing the boundary line.

OPINION

Before answering the queries above set out, it will be interesting to briefly note the history of the boundary line in question, for the reason that other counties besides Lander and Eureka may be involved, due to the fact that a certain point, to wit, the point indicating the northwest corner of Lander County seems to be the point of beginning, with reference to the boundary line in question here, and also several other boundary lines affecting Elko, Humboldt, Lander and Eureka Counties, and unless the Legislature of the State of Nevada has expressly signified its intention that this particular point shall be changed, then we doubt whether there is any authority in the Act of 1931 empowering the Surveyor General, or any person, to establish the boundary line in question.

The boundary lines of the counties hereinbefore mentioned have been designated by the Legislature and undoubtedly surveyed and established pursuant to the legislative will. At the time of the passage of the law creating Eureka County, the north line of Lander County and its northeast and northwest corners had been established. The statute creating Lander County designated the 40th meridian as its western boundary. This meridian is also the eastern boundary of Humboldt County. In the year 1870, the position of this boundary line was established by a joint survey of the County Surveyors of Humboldt and Lander Counties. Subsequently the northwest corner of Lander County was established by the County Surveyors of Humboldt and Lander Counties, and this point was accepted by the County Surveyor of Elko County, and the south boundary line of Elko County, which is the north line of Lander County, commences at this corner. This line and corner were established in order that certainty could be attained in questions touching the territorial jurisdiction of courts, or the right of taxation and other matters of public nature, and, having been established for the information and guidance of public officers and private citizens, this location was a matter of public knowledge.

In 1873, the Legislature, in an Act entitled An Act to create the County of Eureka, created and defined the boundaries of Eureka County and fixed the boundary line between Lander County and Eureka County and provided how this boundary line was to be established, and did so in the following language:

Beginning at a point on the north boundary line of Lander County equidistant between the northeast and northwest corners of said Lander County, thence running due south from said initial point to the south boundary line of Lander County.

Lander County at that time comprised all the territory now making up Eureka County, and, pursuant to the Act creating Eureka County, the boundary lines of Eureka County were surveyed and established, with respect to the northwest corner of Lander County as then created and established, which said northwest corner of Lander County was and is the common point between Elko, Humboldt and Lander Counties, so that it is apparent that any change of location of this particular point would naturally affect the boundary lines between Elko and Humboldt Counties, as well as between Lander and Humboldt Counties, and between Lander and Eureka Counties, so that it becomes more apparent that the Legislature, in the event the establishment of this particular county boundary line be had, must take into consideration the changes that might affect the other counties, and undoubtedly must expressly provide how such boundary line shall be established.

The controversy between Lander and Eureka Counties over this particular boundary line is of long standing, and was once submitted to the Supreme Court of Nevada under statutes then in force and now in force, which created and fixed the boundary lines of these particular counties, as well as the other counties. It seems in this case that the northwest corner of Lander County had theretofore been established and the boundary line between Lander and Eureka Counties established, with reference to this point. However, it was claimed that this particular common point was not correctly located, and that the northwest corner of Lander County was one and one-half miles east of the true location of such point, and by reason thereof the boundary line between Eureka and Lander Counties was one and one-half miles easterly of where it should be. However, the Supreme Court in this case, to wit, *Eureka v. Lander County*, [21 Nev. 144](#), held that Eureka

County was created with reference to the fixity of the northwest corner of Lander County as then established by statute, and that the intention of the Legislature must be ascertained from the facts existing at the time it created Eureka County, and not from facts which arose after.

Until the Legislature, by legislative enactment, changes the location of the northwest corner of Lander County and the boundary lines relative thereto, we think the decision of the Supreme Court of this State has set at rest the location of the boundary line between Lander and Eureka Counties, unless it can be shown that this boundary line is not correctly located so as to conform to the location fixed by the statute and sustained by the Supreme Court.

Answering query No. 1:

The general rule of law is that a statute may be valid although its title is broader than the Act itself, so that the title to the Act in question containing a provision of how the boundary lines shall be established would not for that reason alone make the Act unconstitutional or void for uncertainty, if it could be determined from the body of the Act what was really intended by the Legislature.

A law imperfect in details not void unless execution thereof impossible. Ex Parte Anderson, [49 Nev. 208](#).

On the other hand, a law may be void where it is so general as to give no information whatever, or to be so misleading as to clearly contravene the requirements of the Constitution. 36 Cyc. 1032.

Also, where an Act of the Legislature is so vague, indefinite and uncertain that the courts are unable to determine with any reasonable degree of certainty what the Legislature intended, or is so incomplete, or is so conflicting and inconsistent in its provisions that it cannot be executed, it will be declared inoperative and void. 25 R.C.L. 810.

From the title of the Act in question and from the body thereof, it is clear that it was the intention of the Legislature that the Surveyor General of Nevada *establish* the boundary line between Eureka and Lander Counties. The title of the Act provides how this boundary line shall be established, but the body of the Act signally fails to give the Surveyor General, or any person, any information, advice or direction as to how this boundary line shall be established. The word "establish" means to originate and secure the permanent existence of; to found; to institute. Webster's Unabridged Dict.

The unambiguous language of a statute cannot be construed contrary to its clear meaning. *Eddy v. State Board of Embalmers*, [40 Nev. 329](#).

The 1931 Act requiring the Surveyor General to establish that boundary line between Eureka and Lander Counties fails to provide how such boundary line shall be established, unless such Act is to be construed in *pari materia* with the prior statutes creating Lander and Eureka Counties and their boundary lines; but if so construed, no result could be forthcoming, for the reason that the boundary line between Lander and Eureka Counties has been established by legislative action and by surveys thereafter sustained by the Supreme Court of this State, and unless the Legislature directed the Surveyor General to change such boundary line as established, we conclude that the Act in question is inoperative and void. *State v. Partlow*, 49 Am. Rep. 652.

Answering query No. 2:

There may be some question as to the constitutionality of the Act in question, in that it might contravene the provisions of sections 20 and 21 of article IV, Constitution of Nevada, which provides, first, that the Legislature shall not pass local or special laws * * * regulating county and township business; second, that in all cases where a general law can be made applicable, all laws shall be general and of uniform operation throughout the State. However, in view of our answer to query No. 1, we do not at this time decide this question. However, we desire to point out that there is a general law applicable to the establishment of the boundary line between Lander and Eureka Counties, to wit, an Act authorizing the survey and establishment of boundaries between the several counties of the State, approved February 26, 1866, the same being sections 1917 to 1923, N.C.L. 1929. This Act is now in force and effect and applicable to boundary disputes between counties. *Lyon County v. Storey County*, [34 Nev. 243](#). And it is our opinion that this said Act provides sufficient machinery concerning the disputed boundary line, and also provides that such surveys as may be necessary are to be authorized by the Boards of County Commissioners

of the counties affected, and empowers the County Surveyors of the counties affected to jointly make such surveys as may be necessary.

Answering query No. 3:

It is the opinion of this office that, if the Act in question empowered the Surveyor General to establish the boundary line between Eureka and Lander Counties, section 2 of such Act would be sufficient authority for the Surveyor General to employ such assistants as might be necessary in the surveying necessary for the establishment of the boundary line, as the Act of 1929 providing the assistants in the Surveyor General's office relates to the office of Surveyor General and the duties therein carried on, and not to duties imposed by statute relating to particular counties.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

By: W.T. Mathews,
Deputy Attorney-General

Hon. T.A. Lotz,
Surveyor General,
Carson City, Nevada

SYLLABUS

OPINION NO. 31-48. TOWN AND CITY GOVERNMENT—SUFFICIENCY OF PETITIONS REQUESTING BOARD OF COUNTY COMMISSIONERS TO ACT.

A petition filed in accordance with the terms of section 1246, N.C.L. 1929, to confer jurisdiction upon the board of County Commissioners to further proceed in the matter, to be sufficient, does not need to contain signatures of agents of a foreign railroad company.

STATEMENT

Carson City, August 7, 1931.

Section 16 of an Act providing for the government of towns and cities, approved February 26, 1881, the same being section 1246, Nevada Compiled Laws 1929, provides as follows:

Sec. 16. None of the powers or jurisdiction in this act authorized or required, shall be exercised in any town or city until there shall have been filed in the clerk's office of the county in which the same is situated, a written petition for the application of the provisions of this act to said town or city, signed by a majority of the actual residents thereof, representing at least three-fifths of its taxable property, except in the case of any disincorporated town or city, or towns having a voting population of six hundred or more, no such nor any petition need be filed, but all the provisions of this act shall immediately apply thereto. When a petition is filed the genuineness of its signatures and the qualification of its subscribers shall be established by the affidavits of reliable taxpayers of said town or city filed with such petition. As amended, Stats. 1887, 117.

INQUIRY

In the event the majority of the actual residents of a proposed town under the above statute represents approximately 57 per cent of the taxable property within the proposed town limits, and a corporation organized and existing under and by virtue of the laws of another State, to wit, a railroad company, owns approximately 43 per cent of the taxable property in such proposed town, does the failure of a petition presented to the Board of County Commissioners under the provisions of the above statute to contain the signature or signatures of agents signifying the railroad company's approval of such petition cause such petition to be insufficient to confer jurisdiction upon the Board of County Commissioners to further proceed in the matter of perfecting a government of and for the town under the Act above mentioned?

OPINION

A sufficient petition substantially comply with the statute above set forth is undoubtedly required before the Board of County Commissioners will have jurisdiction to proceed further in the matter of perfecting a government of and for a town, pursuant to the Act above mentioned. This petition is in fact the machinery setting in motion those things which give the Board of County Commissioners the jurisdiction to act, and it has been held that the filing of a sufficient petition and affidavit showing the sufficiency of such petition were jurisdictional facts, and that in case of insufficiency of such petition or affidavit, there was a total want of jurisdiction. *Morgan v. Eureka County Commissioners*, [9 Nev. 360](#).

However, the section above quoted provides that a written petition for the application of the provisions of the act is to be signed by a *majority of the actual residents thereof*, representing at least three-fifths of its taxable property. Thus we find the statute making the main qualification in this matter to be that of an actual residence, so that, in any event, a nonresident signature would have no effect upon the sufficiency or insufficiency of the petition, unless the further qualification, to wit, representing at least three-fifths of its taxable property, is to be construed as authorizing a nonresident property owner signing the petition, which would be in conflict with the qualification, "actual residents thereof," so that the word "actual," as used in the statute, describes and defines the kind and class of residents, as well as the property qualification, and if the signers of the petition must represent three-fifths of the taxable property within the proposed town before such petition will be sufficient, likewise such resident must be the kind or class of resident described in the statute, to wit, and actual resident. *Palmer v. Town of Farmington*, 179 Pac. 227.

In a well-considered case, that of *Kimmerle v. City of Topeka*, 128 Pac. 367, concerning a statute which made improvements of a street dependent upon the action of such of the owners of the abutting property as were residents of the city, which is analogous to the situation here, the court held that a foreign railroad corporation whose principal offices are in another State cannot be regarded for the purpose of such statute as a resident of a city in Kansas by virtue of the location there of offices from which are controlled the operations of the railroad throughout a district which included Kansas, notwithstanding it had been granted all the privileges conferred by the laws of Kansas upon domestic railroad corporations, and the court further held that, within the meaning of the statute in question here, a railroad corporation is not to be deemed a resident of any other city than that in which its chief offices and principal place of business were located.

In *McQueen v. City of Moscow*, 152 Pac. 799, wherein the court construed a statute relating to assessments for public improvements which required a petition to be signed by 70 per cent of the resident owners of property within the improvement district before further proceedings in connection with the improvements could be had, it was held that foreign corporations owning property in such district subject to assessments and taxation ought not to be counted either for or against the improvement district. This case was likewise well considered, and is in point with the question under consideration here. To the same effect is *Marchall v. City of Leavenworth*, 24 Pac. 975; and, also, *Sullwold v. City of St. Paul*, Ann. Cas. 1918e, 835.

It has been held that a public corporation, owning property abutting upon a street wherein public improvements were being made pursuant to a statute requiring a petition signed by the

resident owners of one-half of the property fronting upon such street, is not a competent signer of such a petition. *Dunsworth v. City of Hutchinson*, 199 Pac. 89.

The railroad company in question is undoubtedly a foreign corporation, and does not have its place of residence within the proposed town, although it may own property there and operate its railroad into and through such town, so, in view of the language of the section of the statute above set forth, and in view of the holdings of the authorities above cited, it is the opinion of this office that a petition, filed in accordance with the terms of the above statute, to confer jurisdiction upon the Board of County Commissioners to further proceed in the matter to be sufficient does not need to contain signatures of the agents of such railroad company.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

By: W.T. Mathews,
Deputy Attorney-General

Hon. Fred L. Wood,
District Attorney,
Hawthorne, Nevada

SYLLABUS

OPINION NO. 31-49. STATUTES.

Section 1 of the original Contractors' Act of 1931, by Chapter 208, Statutes of Nevada 1931, at page 355, does not repeal, supersede, or affect sections 7 1/2(b) and 7 1/2(c) of the Nevada Industrial Insurance Act.

INQUIRY

Carson City, August 11, 1931.

Do the provisions of section 1 of an Act making original contractors upon contracts for all works in this State liable for the wages and fulfillment of the requirements of the Nevada Industrial Insurance Act by subcontractors upon such work, providing penalty for the violation of this Act, and other matters properly relating thereto, approved March 27, 1931, repeal or supersede the provisions of sections 7 1/2(b) and 7 1/2(c) of the Nevada Industrial Insurance Act?

OPINION

Section 7 1/2(b) of the Nevada Industrial Insurance Act does not contemplate the intervention of an intermediary between the owner, or the person having the work executed, and the workmen engaged to perform or execute such work who have associated themselves under a partnership agreement, the principal purpose of which is the performance of the labor on the particular piece of work. Under the terms of section 7 1/2(b) the workmen associating themselves together under a partnership agreement, contract directly with the owner or person having such work executed, and, in our opinion, there should be no occasion for the making of any one of such workmen an original contractor liable to the other partners for the requirements imposed by the Nevada Industrial Insurance Act.

The provisions of section 1 of the 1931 original Contractors' Act cited above clearly contemplates the requiring of every person, firm, voluntary association, and private corporation, including any public service corporation, to assume and be held liable for the requirements imposed by said Industrial Insurance Act, where such person, firm, voluntary association, and private corporation, etc., have or has any person in service under any appointment or contract of hire as provided in section 7 1/2 of the Nevada Industrial Insurance Act, for the reason that under this section such person, firm, voluntary association, and such like, are contemplated as acting as an intermediary between the owner of the project or work under consideration and the persons employed to do the actual labor thereon, thus making such persons, firms, voluntary associations, etc., original or independent contractors, who are generally liable for the wages of those employed and the proper execution of the work to be done.

We think the same distinction applies to the workmen as mentioned in section 7 1/2(c) of the Nevada Industrial Insurance Act, and that the provisions of the original Contractors' Act of 1931 does not apply as to such leasers.

Entertaining the views as stated above, it is the opinion of this office that the provisions of section 1 of the original Contractors' Act of 1931 do not repeal, supersede or affect sections 7 1/2(b) and 7 1/2(c) of the Nevada Industrial Insurance Act.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

By: W.T. Mathews,
Deputy Attorney-General
D.J. Sullivan,
Chairman Nevada Industrial Insurance Commission,
Carson City, Nevada

SYLLABUS

OPINION NO. 31-50. HIGHWAY BOND REDEMPTION FUND.

Funds received from registration of motor vehicles or other sources deposited in the Nevada Highway Bond Redemption Fund according to statute and Chapter 203, Statutes of Nevada 1931, should be used to redeem highway bonds and pay interest thereon pursuant to Chapter 200, Statutes of Nevada 1931.

INQUIRY

Carson City, August 28, 1931.

May the funds derived from the registration of motor vehicles or other sources, as now deposited in the Nevada Highway Body Redemption Fund according to existing statutes, be used for the purpose of the redemption of highway bonds and the payment of interest thereon, said bonds being issued pursuant to Chapter 200, Statutes of Nevada 1931?

OPINION

Your inquiry requires the construction of statutes providing for the issuance of highway bonds in the past in connection with the motor vehicle licensing Acts of this State.

The first Act of the Nevada Legislature authorizing the issuance of bonds for the purpose of constructing State highways was enacted in 1919, and is found at page 300, 1919 Statutes. In this Act, provision was made for the creation of the Nevada Highway Bond Redemption Fund. At the same session of the Legislature, an Act to amend certain sections of the then existing law with respect to the licensing of motor vehicles was enacted, which provided that fees received by the Secretary of State for motor vehicle licenses should be placed by him in the Nevada Highway Bond Redemption Fund for the purposes of paying the interest on outstanding highway bonds and the redemption of such bonds. In 1927 the Legislature amended three sections of the 1919 Highway Bond Act, which amendments may be found at pages 28 and 29 of Statutes of Nevada 1926-1927; but none of the amendments in the 1927 Act changed the provisions of section 6 of the 1919 Bond Act, but left the Nevada Highway Bond Redemption Fund in existence. The 1927 Bond Act increased the highway bond issue from one million dollars to one million three hundred thousand dollars, and such bond issue was to be used for the purpose of providing money to pay a portion of the cost of constructing the State highway system.

The legislative intent, with respect to the disposition of the moneys derived from the sale of motor vehicle licenses, has always been to use such moneys in the retirement of Nevada highway bonds, and the latest expression of the legislative will prior to the 1931 legislative session is found at section 4399, Nevada Compiled Laws 1929, which provides that, to meet the requirements of the Nevada Highway Bond Redemption Fund, as defined by section 6 of the 1919 Bond Act, the moneys collected from the sale of motor vehicle licenses, with certain exceptions, be paid into this Bond Redemption Fund; so that, at the time of the convening of the 1931 Legislature, the legislative will was clearly apparent in that, to provide for the redemption of the Nevada highway bonds, the funds derived from the sale of motor vehicle licenses, and perhaps from other sources not material here, were to be used in the retirement of highway bonds and the payment of interest on such bonds.

The 1931 session of the Legislature of this State enacted an Act authorizing the Board of Examiners to issue and sell bonds to provide money to pay the cost of constructing certain portions of the State highway system and providing for the payment of such bonds; and, in such Act, designated the State highway routes upon which the money derived from the sale of the bonds provided by the Act was to be expended. However, in section 6 of the 1931 Act is found the same provision for a redemption fund as is found in the 1919 Bond Act—in fact, the sections of the respective Acts are identical in language. The intent of the Legislature being that, so long as any moneys are derived from the sale of motor vehicle licenses, they are placed in the Nevada Highway Bond Redemption Fund, and whatever highway bonds are outstanding are to be redeemed by such moneys.

The legislative will in this regard is further evidenced by the language found in Chapter 203, Statutes of Nevada 1931, at page 340, where the Legislature, in the 1931 Motor Vehicle Licensing Act, provided as follows:

To meet the requirements of the “Nevada Highway Bond Redemption Fund,” as defined by section 6 of an act entitled “An act authorizing the board of examiners to issue and sell bonds to provide money to pay a portion of the cost of constructing a state highway system, and providing for the payment of said bonds,” approved March 28, 1919, and all subsequent acts relating thereto, the state controller is hereby authorized and directed to make the necessary transfer.

We think that the 1931 Bond Act, providing for a loan of six hundred thousand dollars, is to be construed in *pari materia* with the 1919 Highway Bond Act and the amendments thereto of 1927, for the reason that the 1931 Highway Bond Act simply provides an additional six hundred thousand dollar bond issue to pay the cost of certain designated highway routes as mentioned in section 9 of said Act, and that the provisions of our motor vehicle licensing Acts are also to be construed in *pari materia*, thus providing a means whereby the State Controller is duly authorized to make the necessary transfers to the Nevada Highway Bond Redemption Fund. The provision in the 1931 Bond Act for the levying of an ad valorem tax of one and one-half cents on each one

hundred dollars of valuation, etc., in our opinion is for the purpose of further securing the faith and credit of the State of Nevada in the event that the funds derived from other sources would be insufficient to take care of the bond redemptions and interest payments in any one year or more, and the redemption of the 1931 bonds is not wholly dependent upon such tax levy.

It has long been the rule of statutory construction in this State that repeals by implication are not favored, and that separate Acts covering the same subject matter should be construed so as to allow the separate Acts to stand where the language is consistent and plain. *Presson v. Presson*, [38 Nev. 203](#); *State v. Nevada Tax Commission*, [38 Nev. 112](#); *State v. Esser*, [35 Nev. 429](#); *Kondas v. Washoe County Bank*, [50 Nev. 181](#).

The intention of the Legislature, when not in conflict with the Constitution, is to govern in the construction of statutes. *State v. Boerlin*, [38 Nev. 39](#); *Mighels v. Eggers*, [26 Nev. 364](#); *Ex Parte Smith*, [33 Nev. 466](#), *State v. Hamilton*, [33 Nev. 418](#).

The various Acts of the Legislature above mentioned and in existence with respect to the instant matter clearly showing the legislative intent, and being construed in *pari materia* according to the rules of statutory construction, and effect being given to all of the statutes, as was undoubtedly intended by the Legislature, it is the opinion of this office that the funds derived from the registration of motor vehicles or other sources deposited in the Nevada Highway Bond Redemption Fund, according to existing statutes, and, also, as will be so deposited according to the provisions of Chapter 203, Statutes of Nevada 1931, may be and should be used for the purpose of the redemption of highway bonds and payments of interest thereon issuing pursuant to Chapter 200, Statutes of Nevada 1931; provided, of course, that sufficient moneys are so deposited from such sources as will take care of existing highway bond redemptions and interest payments during the life thereof and the bonds provided by the 1931 Act. The funds derived as above stated to be used first for the retirement of the present issue of highway bonds and, if sufficient, to also be used for the redemption and interest payments of bonds issuing pursuant to the 1931 Act.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

By: W.T. Mathews,
Deputy Attorney-General

Hon. S.C. Durkee,
State Highway Engineer,
Carson City, Nevada

SYLLABUS

OPINION NO. 31-51. MOTOR VEHICLE ACT—LICENSES.

1. Operators of motor vehicles who are paid by the hour, day, or month for the use of the motor vehicle are liable for the license required under Chapter 197, Statutes of Nevada 1929.
2. Operators of motor vehicles who are classified contract carriers, and who are paid on the basis of per cubic yard or per ton or per yard-mile or per ton-mile are liable for the license required by Chapter 197, Statutes of Nevada 1921.

3. Operators who carry mixed loads for several parties and who are under contract with each party are not subject to the provisions of section 36 1/2 of the Public Service Commission Act, sections 6100 and 6106, N.C.L. 1929.

INQUIRY

Carson City, August 29, 1931.

1. Are operators of motor vehicles who are paid by the hour, day, or month liable for the license required by Chapter 197, Statutes of 1929?

2. Are operators of motor vehicles who are classified contract carriers, and who are paid on the basis of per cubic yard or per ton or per yard-mile or per ton-mile, liable for the license required by Chapter 197?

3. Are operators who carry mixed loads for several parties, and are under contract with each party, subject to the provisions of section 36 1/2 of the Public Service Commission Act, as amended in 1925, which requires the operator to secure a certificate of public convenience from the Commission?

OPINION

With respect to queries numbered 1 and 2, your inquiry goes to the question of the right of the Legislature to provide for the licensing of motor vehicles for hire over the public highways of the State.

In 1929, the Legislature enacted into a law a bill requiring every corporation, company, individual, or association operating motor vehicles for hire over any public highway in the State of Nevada to annually secure from the Public Service Commission of Nevada a license therefor, and to make payments for such licenses as provided in the statute. This statute can be found at sections 4404-4413, inclusive, Compiled Laws of Nevada 1929. The statute requires every corporation, company, individual, or association operating motor vehicles for hire over the highways of this State to secure a license so to do, and such license is to be secured annually. The purpose of the Act is fully set forth in the preamble thereto, and there is no question but what the Act is a revenue measure for the purpose of maintenance of the public highways, and the revenue so derived is, no doubt, obtained from persons obtaining great benefits from the use of the public highways.

In our opinion, the Act is a constitutional exercise of the taxing power on the part of the Legislature, and it does not violate section 1, article X, of the State Constitution. There is no constitutional prohibition or restriction upon the Legislature with respect to a law of this character, and, in the absence of any such constitutional prohibition or restriction, the Legislature may, either in the exercise of the police power or for the purposes of revenue, levy license taxes on occupations or privileges within the limits of the State.

The questions presented here have been passed upon by the Supreme Court of this State with respect to an occupation tax levied upon attorneys at law, which involved the same principles as are presented in your question, and, in an able and exhaustive opinion, the Supreme Court upheld validity of such a tax. *Ex Parte Dixon*, [43 Nev. 196](#).

We assume that your query No. 1 means that operators of motor vehicles are paid by the hour, day, or month for the use of the motor vehicle in question. If so, your inquiry is answered in the affirmative, as we are of the opinion that such operators are liable for the licenses required under the statute.

With respect to query No. 2, the same reasoning applies and such operators are liable for the licenses required.

Answering your inquiry No. 3, it is the opinion of this office that operators who carry mixed loads for several parties and who are under contract with each party are not subject to the provisions of section 36 1/2 of the Public Service Commission Act, the reason being that the Public Service Commission Act relates exclusively to public utilities and, as applied to carriers, relates to common carriers. Sections 6100 and 6106, Compiled Laws of Nevada 1929. The

operators mentioned in your query do not come within the definition of a common carrier, for the reason that such operators are not required to carry for all who choose to employ them, whereas a common carrier is one who undertakes to transport the goods of all who choose to employ him for hire and reward from place to place and, also, one who undertakes to carry for all people indifferently and who is regarded in this respect as a public servant—in other words, a public utility. 4 R.C.L. 546.

Your inquiry No. 3 is answered in the negative.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

By: W.T. Mathews,
Deputy Attorney-General

Public Service Commission of Nevada,
Carson City, Nevada

SYLLABUS

OPINION NO. 31-52. APPROPRIATIONS.

Moneys appropriated by Chapter 133, Statutes of Nevada 1931, for the support of the Agricultural Society cannot be used to place an exhibit in the California State Fair at Sacramento, California.

INQUIRY

Carson City, August 31, 1931.

Can the money appropriated by the Legislature by section 42 of the General Appropriation Act for the fiscal years 1931-1933, Chap. 133, Stats. Nev. 1931, in the item thereof entitled, "For support of the agricultural society.....\$2,500," be used for the purpose of advertising the resources of Nevada by means of an exhibit at the State Fair at Sacramento, California?

OPINION

No money shall be drawn from the treasury but in consequence of an appropriation made by law. Sec. 19, Art. IV, Constitution of Nevada.

The sums appropriated for the various branches of expenditure in the public service of the State shall be applied solely to the objects for which they are respectively made, and no others. Sec. 6931, N.C.L. 1929.

Section 42 of the Appropriation Act of 1931-1933 provides an appropriation of \$2,500 for the support of the Agricultural Society and \$10,000 for the support of the State Fair, an organization and an institution created and existing by virtue of Acts of the Legislature in 1873, 1885, and 1907, secs. 310-326, N.C.L. 1929, for the purpose of fostering the agricultural development of the State. The money in question was undoubtedly appropriated for the support of this society to enable it to function during the years 1931-1933, and was appropriated for specific purpose, to wit, *the support of the Agricultural Society*.

We doubt whether the placing of an exhibit in the State Fair at Sacramento, California, is in the nature of support of or for the Agricultural Society. The object of the appropriation was to enable the society to function and carry out its purposes in this State, and, in view of the constitutional provision and statute above cited, the moneys so appropriated must be expended for the specific purpose for which the appropriation was made.

To constitute an appropriation there must be money placed in the fund applicable to the designated purpose. *State v. LaGrave*, [23 Nev. 25](#).

By a specific appropriation we understand an act by which a named sum of money has been set apart in the treasury and devoted to the payment of a particular claim or demand. *Idem*.

We conclude there is no legal authority for the use of the fund mentioned in the query other than for the purpose for which specifically appropriated.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

By: W.T. Mathews,
Deputy Attorney-General

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

SYLLABUS

OPINION NO. 31-53. EMBALMING AND HEALTH LAWS—ENFORCIBILITY IN THE BOULDER CANYON PROJECT FEDERAL RESERVATION AND THE HAWTHORNE NAVAL DEPOT—TRANSPORTATION OF DEAD BODIES.

1. The State Embalming Laws and the State Health Laws of Nevada apply to the Boulder Canyon Project Federal Reservation and the Hawthorne Naval Depot.
2. Transportation companies are precluded from accepting the shipment of dead bodies which have not been prepared for shipment by a regular licensed embalmer of the State of Nevada. (Sec. 2674, N.C.L. 1929.)
3. The enforcement of the laws is secured by requesting the District Attorney of the county to prosecute.

INQUIRY

Carson City, September 2, 1931.

1. Do the State Embalming Laws and State Health Laws of Nevada apply to the Boulder Canyon Project Federal Reservation and the Hawthorne Naval Depot?
2. Can transportation companies within our State accept for shipment bodies prepared by embalmers not licensed by the State of Nevada?
3. If the State of Nevada has jurisdiction over the above-mentioned reservations and violations of statutes relating to the embalming of bodies of deceased person occur, what procedure should the State Board of Embalmers take to enforce such statutes?

OPINION

Answering query No. 1, this office, on July 21, 1931, rendered an opinion concerning the Boulder Canyon Project Federal Reservation and the applicability of State laws thereon. In this opinion, this office questioned the legality of the establishment of the so-called reservation and held that, if such reservation had not been legally established in compliance with the Act ceding the jurisdiction of this State over certain lands owned or to be acquired by the United States (the same being sections 2895-2898, Nevada Compiled Laws 1929), such reservation had not been legally established according to law and that, in that event, all State laws of the State of Nevada were in force on such so-called reservation and could legally be enforced by the proper authorities of Nevada. This office further held in this respect that, if the so-called reservation had been legally established in compliance with the statutes and laws relative thereto, all civil laws of the State of Nevada would still apply and be enforceable thereon, but that the criminal laws of the United States would supersede the criminal laws of the State of Nevada. We are not advised of any Federal statutes concerning the embalming of dead bodies, and, in the absence of legislation upon this subject by the Federal Congress, the State laws would apply upon such reservation even though such reservation was legally established according to law, and, naturally, such State laws would be in full force and effect if such reservation were not legally established.

With respect to the Hawthorne Naval Depot and the so-called reservation thereabouts, it is our opinion that no Federal reservation has been created there, as there has been no compliance with the Nevada statute above cited; and all State laws are applicable in that territory, including the State laws relative to the embalming of dead bodies and the State Health Laws. The State laws with respect to embalming and the State Health Laws are peculiarly enforceable by the State, for the reason that such laws are enacted for the purpose of preserving the health and welfare of the inhabitants of the State and are wholly within the police power of the State.

Holding the above views, it is the opinion of this office that the State Embalming Laws and the State Health Laws of Nevada apply to the Boulder Canyon Project Federal Reservation and the Hawthorne Naval Depot.

Answering query No. 2, it is the opinion of this office that transportation companies within the State of Nevada are precluded from accepting for shipment dead bodies which have not been prepared for shipment by a regularly licensed embalmer of the State of Nevada. Such is the prohibition of the statute, to wit, section 2674, Nevada Compiled Laws 1929.

Answering your query No. 3, it is the opinion of this office that the procedure on the part of the State Board of Embalmers of the State of Nevada necessary to enforce the Nevada Embalming Laws is to report any violations of the Embalming Laws to the District Attorney of the county in which such violation occurs, and, if required by such District Attorney, to furnish whatever evidence the State Board may have, and request a prosecution of the alleged violator. Section 2671, Nevada Compiled Laws 1929.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

By: W.T. Mathews,
Deputy Attorney-General

Silas E. Ross,
President, Nevada State Board of Embalmers,
Reno, Nevada

SYLLABUS

OPINION NO. 31-54. CORPORATIONS—FILING FEES FROM NONPROFIT.

All nonprofit corporations having capital stock, other than any religious or charitable society or educational associations having no capital stock, are required to pay filing fees the same as other corporations. (Sec. 1577, N.C.L. 1929; Chapter 195, Statutes of Nevada 1929, page 355; sec. 77 of the General Corporation Law of 1925, as amended at page 424, Statutes of Nevada 1931.)

INQUIRY

Carson City, September 4, 1931.

Are any filing fees required of a nonprofit corporation having capital stock?

OPINION

Nonprofit cooperative corporations may be formed under the laws of this State, sec. 1575, N.C.L. 1929, and may have capital stock, sec. 1576, supra, as amended by 1931 Stats. of Nev. p. 199. The articles of incorporation of such corporations “shall be filed in the office of the Secretary of State *in all respects in the same manner* as other articles of incorporation are filed,” sec. 1577, N.C.L. 1929.

The uniform fee bill for the office of Secretary of State, Chap. 195, Stats. Nev. 1929, p. 355, as well as the amendment to sec. 77 of the General Corporation Law of 1925, found at page 424, Stats. of Nevada 1931, provides the filing fees for corporations with respect to capital stock having par value and capital stock without par value, and each of the foregoing Acts contain this provision: “*provided*, that no fees shall be required to be paid by any religious or charitable society, or educational association having no capital stock.” Also, it is provided in said Acts that foreign corporations shall pay the same fees to the Secretary of State as are required to be paid by corporations organized under the laws of this State.

From the foregoing statutory provisions, it is clearly apparent that the Legislature intended that all corporations having capital stock should pay the filing fees designated by the statutes; and, in our opinion, nonprofit corporations having capital stock are required to pay filing fees the same as any other corporation, save and except those corporations or associations specifically exempted from such payment in the statutes cited above. The rule of statutory construction, “the expression of one thing is the exclusion of another,” is applicable here. The Legislature, by expressly including religions or charitable societies and educational associations, and no others, excluded all other nonprofit corporations and associations from the exemption. Ex Parte Arascada, [44 Nev. 30](#).

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

By: W.T. Mathews,
Deputy Attorney-General

Hon. W.G. Greathouse,
Secretary of State,
Carson City, Nevada

SYLLABUS

OPINION NO. 31-55. IRRIGATION DISTRICT ACT—POWER TO BORROW MONEY—DEBT LIMITATION.

Under section 14 of the Nevada Irrigation District Act of 1919 (sec. 8025, N.C.L. 1929), an irrigation district may borrow money so long as the aggregate debt does not exceed thirty thousand dollars (\$30,000), provided authority has been given by the State Board of Irrigation District Bond Commissioners.

INQUIRY

Carson City, September 8, 1931.

Under section 14 of the Irrigation District Act, being sec. 8025 N.C.L. 1929, can the Washoe County Water Conservation District borrow money from time to time, pay off portions of the loans so made, and then borrow again, so long as the outstanding loans do not exceed \$30,000, always, of course, presuming that authority for such loans has been given by the State Board of Irrigation District Bond Commissioners?

OPINION

Assuming that you are authorized to request an opinion upon the above query by the State Board of Irrigation District Bond Commissioners, we are addressing this opinion to you.

Your query has to do with the debt limit provision of section 14 of the Nevada Irrigation District Act of 1919, the same being sec. 8025, N.C.L. 1929. This section contains language which, in our opinion, clearly shows the legislative intent to permit the boards of directors, or other officers of irrigation districts organized under the provisions of the Act, to incur at any time debts or liabilities for the purpose of organization, or for any of the purposes of the Act, so long as such debts or liabilities do not exceed in the aggregate the sum of thirty thousand dollars at any one time.

In our opinion, by the use of the word “aggregate” the Legislature intended that debts and liabilities could be incurred by the boards of directors, or other officers, from time to time so long as the debt limit was not exceeded at any particular time—in brief, no debts or liabilities to be in existence at any one time that in the aggregate would amount to more than the limit imposed by the statute. We think to hold otherwise would defeat the very purpose of the Act as expressed in its title, particularly the construction, operation, and maintenance of works for the diversion, storage, distribution, collection, and carriage of water, so vital to the welfare of this State. The terms of the Act clearly import a continuing process of development of necessary resources which requires the expenditure of money from time to time and which, undoubtedly, would soon reach the limit expressed in the statute and curtail further development until at least the debt incurred was fully paid. The Legislature intended otherwise, as above pointed out.

Your query is answered in the affirmative.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

By: W.T. Mathews,
Deputy Attorney-General

Hon. Lester D. Summerfield,
Attorney for Washoe County Water Conservation District,
Reno Nevada

SYLLABUS

OPINION NO. 31-56. FUNDS—STATE ENGINEER’S REVOLVING FUND.

The State Engineer has authority to advance money made available by Chapter 107, Statutes of Nevada 1929, to pay stenographic services, court reporters and other incidental expenses in connection with adjudication proceedings on any stream system on the assumption that such advances will be returnable to said fund through an assessment to be levied by the court under whose jurisdiction the proceedings are had.

STATEMENT

Carson City, September 10, 1931.

The hereinafter queries relate to “An Act authorizing the establishment of a revolving fund for the State Engineer, and other matters in connection therewith,” approved March 25, 1929, the same being Chapter 107, Statutes of Nevada 1929.

INQUIRY

1. Has the State Engineer authority to advance money from this fund for the payment of stenographic services, court reporting, and other incidental expense in connection with adjudication proceedings, on any stream system, on the assumption that such advances will be returnable to said fund through an assessment to be made by the court under whose jurisdiction the proceedings are held?

2. With specific reference to the Humboldt River adjudication, has the State Engineer authority to advance money from the fund for payment of stenographic and other incidental expenses incurred by the Special Deputy Attorney-General in the preparation of proposed findings of fact, conclusions of law, and decree, on the assumption that such advance will be returnable to said fund through an assessment made by the court of jurisdiction?

OPINION

In 1925 the Legislature of the State of Nevada provided for the payment of costs for the Humboldt River litigation by making an appropriation of six thousand dollars. This appropriation was to be used exclusively in payment of stenographic fees and similar costs in the litigation concerning the Humboldt River alone, this Act being found at page 181, Statutes of 1925. Later, the Legislature caused such Act to be superseded by an Act providing for costs of water litigation and creating what is known as the “Adjudication Emergency Fund,” which Act now constitutes sections 8251-8254, N.C.L. 1929. In this later Act a revolving fund in the sum of six thousand dollars was created and was to be used for the purpose of advancing and paying for stenographic work, transcripts required by law or order of court, or for cost of witness fees, or expenses incurred by the Attorney-General and the State Engineer in any litigation affecting any order of determination concerning the waters of any stream system in the State of Nevada. The Act in question here provided a revolving fund of not to exceed ten thousand dollars, which said sum may be used for the payment of emergency bills and expenses and for no other purpose.

It is the opinion of this office that the Adjudication Emergency Fund of the 1927 Act is to be used in all cases of litigation concerning the water rights wherein the State is a party, and that, so long as any money is in this fund, the revolving fund of 1929 cannot be used for this purpose; however, if the Adjudication Emergency Fund is exhausted and litigation is going on in the courts wherein the State of Nevada is a party and the State Engineer’s office is involved in the litigation, then, in order to take care of stenographic work, court reporting, and other incidental expenses in connection with such proceedings, the revolving fund of 1929 may be used. The

legislature saw fit, in the 1929 Act, to provide that such revolving fund may be used for the payment of such emergency bills.

It is held, upon good authority, that the term "emergency," as used in the statute authorizing the borrowing of money to meet an emergency on the authorization of the advisory board of a town, is an event or occasional combination of circumstances which calls for immediate action or remedy, the word being synonymous with "pressing necessity" or "exigency." *Mallon v. Board of Water Commissioners*, 128 S.W. 764; also, *U.S. v. Sheridan, etc. Contract Company*, 149 Fed. 809.

The necessity of taking care of the court expenses during adjudication suits, undoubtedly, is an emergency within the meaning of the term as set forth in the statute.

Entertaining the views above set forth, we answer your queries Nos. 1 and 2 in the affirmative.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

By: W.T. Mathews,
Deputy Attorney-General

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

SYLLABUS

OPINION NO. 31-57. GAMBLING ACT—REVOCATION OF LICENSE AND BY WHOM.

1. Licenses granted under the provision of the Gambling Act of 1931 may be revoked for violation of section 6 of said Act without the necessity of a criminal prosecution and conviction being first had.
2. The Board of County Commissioners of the several counties are the proper boards and have the power to revoke licenses issued under the Gambling Act of 1931 for the causes mentioned in section 6 thereof.

INQUIRY

Carson City, October 2, 1931.

1. In case of violation of section 6 of the 1931 Gambling Act, can the license theretofore issued to the party or parties conducting such games in violation of the Act be revoked without first securing a conviction of the violator in the criminal court?
2. What officer or board has the authority to revoke the license provided for by the 1931 Gambling Act?

OPINION

The above queries present some difficulty for the reason that no officer or board is specifically mentioned in the 1931 Gambling Act as having the power to revoke the licenses provided for by the Act, although it is provided in section 7 that such licenses are to be immediately revoked upon the violation of any of the provisions of the Act. The Sheriff is the officer from whom

persons desiring to maintain a gambling establishment or operate the games and devices provided for shall obtain the necessary license, and it is made incumbent upon said Sheriff to demand that all persons, firms, associations, and corporations required to procure licenses under the terms of the Act shall secure them and pay the necessary fees therefor. It is also provided that no license money paid under the Act shall be refunded in case a license has been revoked. Thus, it appears that the administrative officer, under the Act, is the Sheriff of the county, and, in administering the Act, he acts as such Sheriff—in fact, our Supreme Court has so decided. *State v. Dunkle*, 1 Pac. (2d) 108. It is clear that the intent of the Legislature was to have the counties, as an arm of the State, have some part in the administration of the Gambling Act. This being true, it devolves upon us to ascertain what position counties occupy in our scheme of government.

The principal purpose in establishing counties is to make effectual the political organization and civil administration of the State, in respect to its general purposes and policy which require local direction, supervision, and control, * * * and, in large measure, the administration of public justice. 7 R.C.L. 925, sec. 4.

A county is a governmental agency of its principal, the *State*. *West v. Coos County*, 237 Pac. 961; *Cook County v. Chicago*, 31 A.L.R. 442.

A county may be defined to be an involuntary political or civil division of the State, created by general laws to aid in the administration of government. *Schweiss v. District Court*, 23 Nev. 226.

From the foregoing authorities, it appears that the counties are an arm of the State and created, among other things, for the purpose of assisting in the administration of the State government and to aid in the enforcement of State laws, according, of course, to the powers given the counties by Acts of the Legislature. In the administration of the 1931 Gambling Act, therefore, in our opinion, the counties play an important part and, of course, the officers thereof are the agents in fact upon whom rests the responsibility of the enforcement of this Act. However, it is the law, beyond question, that the power to revoke a license must be expressly given, inasmuch as the power in the first instance to grant a license reposes in the Legislature; and, while the Legislature may delegate the administrative work with respect to licenses, still it must be done in an *express* manner, and as such express delegation of the power to revoke is not found in the 1931 Gambling Act, it does not exist as to licenses under this Act unless the power can be found elsewhere.

In 1903, the Legislature enacted an Act empowering Boards of County Commissioners, Town Trustees, or City Boards to revoke and discontinue business licenses under certain conditions. This Act is found at page 80, Statutes of Nevada 1903. Later, this particular Act was incorporated in an Act to provide revenue for the support of the government of the State of Nevada, and can be found at sections 6687-6689, N.C.L. 1929. We think this particular statute is to be construed in *pari materia* with the 1931 Gambling Act and that its provisions are applicable to the instant situation and queries.

Section 6687, N.C.L. 1929, provides that Boards of County Commissioners of the several counties of this State are authorized to revoke, withdraw, and discontinue any business licenses granted or issued by the Sheriff or other proper officer of their respective counties where there is reason to believe that such business is a nuisance, a menace to public health, or detrimental to the peace or morals of any community in the county in which such business may be conducted; and provides further that such licenses shall be revoked only by the unanimous consent of the members of the board.

Section 6688, *supra*, provides a means whereby such licenses may be revoked upon petition filed with the Board of County Commissioners by at least ten percent of the resident freeholders of a school district; while section 6689, *supra*, makes the statute applicable to all licensing officers, Town Boards, and City Trustees of any incorporated city, town, etc. Thus, the Legislature has, by express provision, delegated the power to revoke licenses issued by the Sheriffs to the Boards of County Commissioners; and the Legislature, being presumed to know the state of law at the time it legislated upon any question, must have had this statutory provision

in mind when it provided for the revocation of licenses in the 1931 Gambling Act. In fact, this very statute has been invoked to revoke the licenses granted under a city charter and ordinances, and the Supreme Court upheld the authority of the statute and held that the revocation of the license in that case was proper, although intimating that, while no provision appeared in the statute for the giving of notice of the intent to revoke to the licensee, still it would be better practice to give such notice. *Wallace v. City of Reno*, [27 Nev. 71](#).

It is our opinion that sufficient statutory authority for the revocation of licenses issued under the Gambling Act of 1931 is in existence. It remains to determine whether the Board of County Commissioners may revoke licenses granted under the 1931 Gambling Act for violation of the provisions of that Act.

Before taking up this phase of the question, we will answer query No. 1. It is the opinion of this office that licenses granted under the provisions of the Gambling Act of 1931 may be revoked for violations of section 6 of said Act without the necessity of a criminal prosecution and conviction being first had, for the reason that, where the State has the power to prohibit the doing of an act altogether, it has the power to permit the doing of the act upon any condition or subject to any regulation however arbitrary or capricious it may be, and may lawfully delegate to executive or administrative officers an uncontrolled discretion as to the granting or revoking of permits or licenses (*Thompson v. Smith*, 71 A.L.R. 604); and boards or officers having the power to revoke licenses may do so upon proper cause being shown, irrespective of any penal conditions the statute contains (*Miller v. Johnson*, 202 Pac. 619).

Further answering your queries, it may be said that what is hereinafter stated may apply to query No. 1 as well as to query No. 2, for the reason that the law in the matter surrounds both queries.

The general rule in American courts is that authorities authorized by law to grant a retail liquor license have the power, for good cause shown, to revoke the same. *Hevren v. Reed*, 58 Pac. 536.

It has long been the practice of the courts of this country to distinguish between a calling which is lawful in itself and a calling which is permitted only by the express provision of the law, and the business of selling intoxicating liquors has always been regarded by our courts as a business or calling more or less frowned upon and subject to stringent provisions of the law with respect to the police power of the State. Our Supreme Court, in the case of *State v. Board of Commissioners of the City of Las Vegas*, 1 Pac. (2d.) 570), placed the business of gaming or gambling in the same class as the selling of intoxicating liquors in respect to its deleterious tendency—thus placing more stringent provisions around and upon the business of gambling in this State. This being true, it follows that the rule stated in *Thompson v. Smith*, supra, provides sufficient law for the revocation of gambling licenses, provided the power is lodged in some board or officer to so revoke. The rule stated in *Thompson v. Smith* is sustained by *Bungalow Amusement Company v. Steel*, 60 A.L.R. 166, and numerous other cases throughout the United States.

We think that the provisions of the Gambling Act of 1931 did not repeal sections 6687-6689, N.C.L. 1929, and the rule of construction in this State is that repeals by implication are not favored; and another rule of statutory construction is that of construing statutes in pari materia where no express repeal is found in a later statute.

It is, then, our opinion that the Boards of County Commissioners of the several counties of this State are the proper boards and have the power to revoke licenses issued under the Gambling Act of 1931 for the causes mentioned in section 6 thereof. We are further of the opinion that the County License Boards provided for the sections 2037-2040 do not possess the power to revoke licenses issued under the 1931 Gambling Act, save and except such licenses as may be issued by such County License Boards as county licenses, pursuant to section 13b of the Gambling Act, for the reason that the rule is that a power to revoke must be expressly granted by the Legislature, and the power granted the County License Boards only relates to county licenses, whereas the licenses provided by the 1931 Gambling Act are such licenses as are contemplated by the 1903 Act empowering Boards of County Commissioners, etc., to revoke licenses and as are contemplated by sections 6687-6689, N.C.L. 1929.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

By: W.T. Mathews,
Deputy Attorney-General

Hon. J.L. Clark,
District Attorney,
Elko, Nevada

SYLLABUS

OPINION NO. 31-58. FUNDS OF THE STATE—SECURITY FOR DEPOSIT.

United States bonds and bonds of this State or of the counties or municipalities of this State and other bonds issued in this State and mentioned in the law which are acceptable to the Board of Examiners and State Treasurer may lawfully be deposited with the State Treasurer for deposits made in any bank in the State, provided that the provision of Chapter 34, page 63, Statutes of Nevada 1928-1929, as amended at page 220, Chapter 135, Statutes of Nevada 1931, and Chapter 35, Statutes of Nevada 1931, at page 41, are complied with.

STATEMENT

Carson City, October 12, 1931.

The State of Nevada now has on deposit in First National Bank, in Reno, Nevada, as a part of the funds of the University of Nevada, the sum of \$25,000 of State moneys, deposited in that bank pursuant to an Act of the Nevada Legislature which was approved and, by the language thereof, became effective on February 6, 1928 (Statutes of Nevada 1928-1929, Chapter 34, page 63), and which Act has been a part of the law of the State of Nevada since that time. The above-mentioned bank has given the State of Nevada the usual deposit bond of one of the substantial surety companies doing business in this country as security for the payment of this sum of money when demanded, as provided for in the above-mentioned law. There are many other deposits of State moneys in many of the other banks in this State, both National banks and other banks, under similar circumstances and conditions, and all pursuant to that law. This opinion, therefore, applies to all such deposits in all banks in this State, with the same force and effect and in the same manner as it does to said First National Bank, and this opinion should be so taken and understood.

This First National Bank, and other banks in this State carrying such deposits, now desire to deposit United States bonds, or bonds of this State, or of the counties or municipalities of this State, and other bonds issued in this State and mentioned in said law, with the State Treasurer of Nevada as security for the payment of such deposits, pursuant to the provisions of said Act as amended in 1931 (Statutes of Nevada 1931, Chapter 135, page 220), and pursuant to the provisions of Chapter 35, 1931 Statutes of Nevada, page 41, in lieu of such deposit bonds of such surety companies. Therefore, the said First National Bank and the Board of Regents of the University of Nevada have requested of the State Treasurer of this State permission to substitute such United States bonds and bonds of this State and the other bonds issued in this State, mentioned in said law, for and in lieu of said deposit bond of said surety company, as security for the payment to the State of Nevada of said sum of \$25,000 so deposited in that bank, and the

State Treasurer has asked this office for an opinion as to whether this may be lawfully done in the following question:

INQUIRY

Can the State Treasurer lawfully comply with this request?

OPINION

Yes. It is the opinion of this office that such United States bonds and bonds of this State or of the counties or municipalities of this State, and the other bonds issued in this State and mentioned in said law, or either or any of them, which are acceptable to the Board of Examiners and State Treasurer, may lawfully be deposited with the State Treasurer of this State to secure and as security for the payment to the State of Nevada, when demanded, of said deposit of \$25,000, or of other deposits made in the banks of this State under similar circumstances; *provided always*, that the terms, conditions and provisions of said Act of the Nevada Legislature so approved on February 6, 1928 (Statutes of Nevada 1928-1929, Chapter 34, page 63), as amended in 1931 (1931 Statutes of Nevada, Chapter 135, page 220), and of Chapter 35, 1931 Statutes of Nevada, page 41, are strictly complied with. It is also the opinion of this office that such United States bonds, and bonds of this State, and of the counties or municipalities of this State, and other bonds issued in this State and mentioned in said law, may be lawfully deposited with the State Treasurer of this State in lieu of said deposit bonds of such surety companies, upon a strict compliance with the above-mentioned Acts of the Nevada Legislature.

In connection with the above-mentioned compliance with said Acts of the Nevada Legislature, we desire to call attention to the fact that these laws require that, before such bonds can be lawfully accepted by the State Treasurer, such officer must have the written consent and approval of both the Board of Examiners and of the State Treasurer of this State; and that such approval must be both of the bonds themselves and of the deposit thereof with the State Treasurer and the acceptance thereof as such security. In this connection, attention is also called to the fact that not more than one-fourth of the total amount of the moneys of the State available for deposit, and so deposited, shall be deposited in any one bank, and that no deposit in any one bank shall be greater than the entire capital of such bank; *provided, however*, that where the State Treasurer uses a bank or banks at the State Capital for the purpose of collecting revenue checks, remittances, and income to the State, the State Treasurer may deposit in such bank or banks, to be designated by him, State moneys not to exceed twice the amount of the capital and surplus of such depository bank or banks situated at the State Capital.

We further desire to call attention to the fact that it is not compulsory on the Board of Examiners and State Treasurer to accept as such security United States bonds, or bonds of this State, or of the counties or municipalities of this State, or other bonds issued in this State and mentioned in said law; but that it is optional with the Board of Examiners and State Treasurer as to whether they will accept such bonds or collateral or require such bank or banks to give the deposit bond of some substantial surety company.

The above-mentioned Act of the Legislature of 1931 (1931 Statutes of Nevada, Chapter 135, page 220) somewhat enlarges the kinds of bonds which may be accepted by the Board of Examiners and State Treasurer as such security, by adding to the list of bonds which may be accepted as such security, as specified in said 1928 Act, bonds issued under authority of the United States, and bonds listed on the New York Stock Exchange, and limits the latter, to wit, bonds listed on the New York Stock Exchange to 25 per cent in value of the bonds so deposited by a depository bank. Therefore, if bonds listed on the New York Stock Exchange, other than United States bonds and the bonds of this State mentioned in said 1928 Act, should be offered for deposit with the State Treasurer as such security, it will be necessary for the State Board of Examiners and State Treasurer to keep the above-mentioned limitation in mind, and to limit such security to 25 per cent in value of such bonds so listed on the New York Stock Exchange and so offered for deposit as such security.

Some question has been raised as to whether these State laws of the State of Nevada apply to National banks conducting a banking business in this State. This office is of the unqualified opinion that these laws do apply to National banks conducting a banking business in this State. The 1928 Act of the Nevada Legislature, so approved February 6, 1928 (Statutes of Nevada 1928-1929, Chapter 34, page 63), specifically mentions "National Banks" in the State of Nevada as one of the kinds of banks which may be used as such depository banks, the language used being as follows:

All moneys under the control of the State Treasurer * * * belonging to the State may be deposited by the State Treasurer to the credit of the State on open account * * * in any state or *national bank* or banks in the State of Nevada. 1928 Statutes of Nevada, pages 63-64, section 1.

Of course, the State of Nevada could not pass any law concerning National banks which would conflict with the laws of the United States relating to and governing National banks, as National banks are peculiarly creatures of the laws of the United States as distinguished from the laws of the State. But we find nothing in the laws of the United States which conflicts with this law of the State of Nevada; and it is unquestionably true that a State may enact and enforce laws relating to and controlling National banks within such States which do not conflict with the laws of the United States creating and governing National banks. 7 C.J., page 760, section 585; 7 C.J., page 783, sections 646 and 647; 7 C.J., page 807, section 726; National Banking Act, section 24 (12 U.S. Code Ann., title 12, page 13); 7 C.J., page 816, sections 750, 751, and 753.

National banks have authority to give security for deposits made in such banks by giving bonds as security. This is especially true where such security is required by State law to secure the payment of public moneys deposited in such banks. 7 C.J., page 817, section 753; *Interstate National Bank v. Ferguson*, 30 Pac. 237; *Nebraska v. Orleans First National Bank*, 88 Fed. 947.

For the foregoing reasons, it is the opinion of this office that the above-mentioned laws of the State of Nevada apply also to National banks doing a banking business in this State, and that National banks in this State are authorized to deposit their United States bonds, and the other bonds mentioned in the Nevada law, as security for the payment of moneys of this State deposited in such banks.

Inasmuch as the above-mentioned 1928 Act of the Legislature of Nevada (Statutes of Nevada 1928-1929, Chapter 34, page 63) authorizes the deposit of United States bonds, and bonds of this State, and of the counties and municipalities of this State, and other bonds issued in this State and mentioned in that Act, as well as the giving of deposit bonds of such surety companies by banks in this State as security for deposits made in such banks by the State Treasurer of this State, some have found it difficult to understand why such banks have heretofore been limited to the giving of deposit bonds by such surety companies as security for such deposits. The above-mentioned 1928 Act of the Legislature provided that the Board of Examiners and State Treasurer might use their discretion as to whether they would accept as such security United States bonds and the other bonds mentioned in that Act or require such banks to secure such deposits by deposit bonds made by such surety companies. However, the Banking Law of this State specifically provided that, "No bank official shall give preference to any depositor or creditor by pledging the assets of the bank (its bonds and other collateral) as collateral security or otherwise," prior to March 2, 1931. (See section 35 of the State Banking Law; Nevada Compiled Laws 1929, section 684). The deposit of the United States bonds and other bonds mentioned in the 1928 Act of the Legislature of this State by banks in this State as security for such deposits of State moneys did constitute the giving of preferences by such banks by pledging the assets thereof, and such deposit did, therefore, constitute a violation of the law up until March 2, 1931. However, the 1931 Nevada Legislature passed a law, which was approved March 2, 1931, specifically providing that banks in this State might deposit or pledge acceptable assets of such banks as collateral security for the payment of moneys deposited with such banks by the United States, the State of Nevada, or counties of the State of Nevada. This amendment has the effect of permitting banks in this State to give preferences for moneys belonging to the United States, the

State of Nevada, or counties of this State deposited in such banks, by pledging such securities. The law as amended, in so far as it relates to the matters involved in this opinion, reads as follows:

No bank official shall give preference to any depositor or creditor by pledging the assets of the bank as collateral security or otherwise; *provided, however*, that any bank may secure funds deposited with such banks by the United States, State of counties of the State, by pledging acceptable assets of the bank as collateral security. 1931 Statutes of Nevada, Chapter 35, page 41.

It was specifically provided in the last above-mentioned Act that it was to take effect and be in force from and after its passage and approval, to wit, from and after March 2, 1931.

From the foregoing, it is not lawful, and has been lawful ever since March 2, 1931, for the banks in this State, both National banks and other banks, to give such preferences, in so far as funds deposited with such banks by the United States, the State of Nevada, and the counties of the State, by depositing and pledging with the State Treasurer their acceptable assets as such security; although it was not lawful for such banks to create such preferences in that way prior to March 2, 1931.

For the foregoing reasons, it is the unqualified opinion of this office that the First National Bank, in Reno, Nevada, may lawfully be permitted to deposit with the State Treasurer of this State United States bonds, and bonds of this State and of the counties and municipalities in this State, and the other bonds mentioned in said 1928 Act of the Nevada Legislature, as amended by said 1931 Act, or either or any of them, as security for the payment of said sum of \$25,000 so on deposit in said First National Bank in lieu of said deposit bond of such surety company; also, that such collateral securities may be lawfully deposited and pledged as security for the payment of other deposits of State moneys in that or any other bank in this State, all upon the written consent and approval of the State Board of Examiners and State Treasurer of this State, and in strict compliance with the other provisions of the above-mentioned 1928 Act of the Legislature of this State as so amended in 1931.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

Hon. George B. Russell,
State Treasurer,
Carson City, Nevada

SYLLABUS

OPINION NO. 31-59. STATE MINE INSPECTOR LAW—USE OF GASOLINE TRUCKS IN TUNNELS ON THE SO-CALLED BOULDER CANYON PROJECT FEDERAL RESERVATION.

Trucks propelled by gasoline cannot be used lawfully inside of the tunnels and in construction thereof on the Boulder Dam site.

INQUIRY

Carson City, November 2, 1931.

This office has been referred to section 4229, Nevada Compiled Laws 1929, and asked for an opinion on the following question, in view of the very plain and positive provisions of that section of the Nevada Law:

May the contractor or contractors engaged in the construction or running of the tunnels in connection with the construction of Hoover Dam lawfully use trucks propelled by gasoline inside such tunnels in such work?

OPINION

We realize that to prohibit the use of gasoline propelled trucks in removing the earth and rock from such tunnels in the construction thereof would place a considerable burden and expense upon the contractor or contractors engaged in constructing such tunnels; and we have no desire to place any unnecessary burden or expense upon the contractor or contractors engaged in such work. However, the opinion of this office must be based upon and in exact accordance with the law as we see it; and it is also our earnest desire to protect the health and lives of the men working in these tunnels.

With these matters in mind, it is our unqualified opinion that trucks propelled by gasoline cannot be lawfully used inside of such tunnels in the construction thereof. The law is very clear and positive in prohibiting the use of gasoline in underground workings in this State, except in the two instances mentioned in section 22 of the Mine Inspector Act, which is Nevada Compiled Laws 1929, section 4229. This section of the law reads as follows:

Sec. 4229. Use of gasoline underground is forbidden, except as follows: Gas engines of not more than eight horsepower may be operated not more than one hundred feet below the surface, providing said engine exhausts into a pipe which extends to the surface; or to a depth of two hundred fifty feet below the surface, providing the exhaust from said engine is attached to a pipe through which air is drawn by means of a suction fan, or otherwise, to the surface. All engines and their method of installation as provided in this section shall be subject to the approval of the inspector of mines of the State of Nevada.

The above-mentioned section of the law, in the exact language above mentioned, has been the law of this State ever since the amendment of the section in 1913 (Statutes of Nevada 1913, Chapter 224, page 315).

The above-quoted section of the law positively forbids the use of gasoline in any form or in any manner underground or in underground workings, unless provision is made for the carrying away of the exhausts from the engine by pipe extending to the surface, or by pipe and suction fans, or otherwise, to the surface in certain instances. The only condition under which gasoline can lawfully be used in underground workings in this State is in gasoline engines of not more than eight horsepower situated and operated not more than one hundred feet below the surface, and even then such gasoline engines must be equipped with a pipe extending from the engine to the surface to convey the exhausts from such engine to the surface; or to a depth of two hundred and fifty feet below the surface in cases where the exhaust from such engine is attached to a pipe through which air is drawn by means of a suction fan, or otherwise, to the surface. Under no circumstances can a gas engine of more than eight horsepower be operated in underground workings of this nature in this State. If the place where such gasoline engines of not more than eight horsepower are operated is not more than one hundred feet below the surface, it is lawful to operate such engines of such capacity, if such engines are so equipped that they exhaust into a pipe which extends to the surface; but, if the place where such gasoline engines of such capacity are operated is more than one hundred feet below the surface and not more than two hundred fifty feet below the surface, such engines of such capacity must be equipped so that the exhaust from such engines is attached to a pipe through which air is drawn by means of a suction fan, or otherwise, to the surface. Without such equipment, it is unlawful in this State to operate any kind of gasoline engine or use gasoline for any purpose in such underground workings. The use of gasoline is absolutely and positively forbidden underground, except in gasoline engines of not more than eight horsepower equipped as above set forth; and, even if the depth at which such

gasoline engines of not more than eight horsepower are operated is less than one hundred feet below the surface, they must be equipped so that such engines will exhaust into pipes which extend to the surface.

In order words, there is no condition under which gasoline may lawfully be used in such underground workings, except in gasoline engines of eight horsepower or less; and even then, such gasoline engines must be equipped by pipes extending to the surface and, if below one hundred feet, and not more than two hundred fifty feet below the surface, by such pipes and suction fans. There is no condition under which gas or gasoline engines or trucks propelled by gasoline can lawfully be used at a depth of more than two hundred fifty feet below the surface; and down to the depth such engines must be equipped as hereinbefore stated.

It is true that the above-mentioned section 4229, Nevada Compiled Laws 1929, was originally enacted to apply to mines and the underground workings in mines; but in 1931 a law was enacted by the Legislature of this State, and approved by the Governor of this State on March 25, 1931, making the provisions of the Mine Inspector Law and of the above-mentioned section 4229 apply to all “tunnels, drifts and other underground excavations and workings, where persons are engaged at work, and to the constructors, contractors, subcontractors and others engaged or employed therein or in the operation thereof, and to the duties, obligations, liabilities and penalties imposed by that Act.” (1931 Statutes of Nevada, Chapter 167, pages 274-275). This Act was especially made effective from and after its passage and approval, and became a law of this State upon its approval on March 25, 1931, and has been the law of this State ever since that time.

The purpose of both the Mine Inspector Law and the 1931 law was the protection of the health and lives of the men employed in such underground workings. Experience had demonstrated that it was dangerous to the health and lives of men employed in such underground workings to allow the use of gasoline and gasoline engines in such underground workings. The purpose of these laws was, therefore, wholesome and salutary. Where the health and lives of men are involved and a law exists for the protection of their health and lives, it is impossible for a money consideration or a consideration of the expense involved to be any reason, or even excuse, for ignoring the plain and positive provisions of the law.

For the foregoing reasons, it is the positive opinion of this office that trucks propelled by gasoline cannot lawfully be used inside the tunnels being constructed in connection with the construction of Hoover Dam.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

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

SYLLABUS

OPINION NO. 31-60. Officers—County Commissioners—Power to Create a Municipal Court.

The Board of County Commissioners does not have the power or authority to create a municipal court within and for a town governed by such board.

INQUIRY

Carson City, November 4, 1931.

Has a Board of County Commissioners the right, power, or authority to create a municipal court within and for a town governed by such board, under and by virtue of the provisions of “An

Act providing for the government of the towns and cities of this State,” approved February 26, 1881, the same being sections 1231-1247, Nevada Compiled Laws 1929?

OPINION

It has long been held in this State that Boards of County Commissioners can only exercise such powers as are expressly granted them by the Legislature, or such powers as are necessarily implied to carry out the express powers so granted, as is shown by many decisions of our Supreme Court.

With respect to the powers exercised by a Board of County Commissioners in the government of a town under the provisions of the above-entitled Act, commonly known as the “Town Government Act of 1881,” the Supreme Court has held that all the powers and jurisdiction exercised and all the duties performed by the Board of County Commissioners under such Act are exercised and performed by such board as a Board of County Commissioners and not as a Board of Trustees or Aldermen of the town. *State v. Shearer*, [23 Nev. 76](#).

The general rule of law is that a tribunal for the transaction of judicial business can be created only by the supreme power of the State, and a court is not of competent jurisdiction unless it is provided for in the Constitution of the State or created by the Legislature. 7 R.C.L. 976.

No express provision is contained in any statutory law of this State pertaining to Boards of County Commissioners, or to the courts of the State, granting the power to the Boards of County Commissioners to create a municipal court. Neither can such power be said to exist by implication, or that such power is necessary to carry out the express powers of such boards, for the reason that the power to create and establish courts is not essential to the declared object and purpose of Boards of County Commissioners, inasmuch as the Constitution and Legislature of this State have provided for all necessary courts.

The Constitution of the State provides for the creation of such courts as are not created by the Constitution itself. In section 9 of article VI of the Constitution is found the provision for the creation of municipal courts by law, *i.e.*, by enactment of the Legislature. Pursuant to this constitutional provision, the Legislature provided for a municipal court in incorporated cities and towns, section 8370, N.C.L. 1929, denominating such court a “Recorder’s Court,” and fixed the jurisdiction thereof; but no provision was there made, nor can we find provision elsewhere in the law of this State, empowering a Board of County Commissioners to create and establish a court, municipal or otherwise.

Cities and towns governed under the provisions of the Town Government Act of 1881 are not incorporated cities and towns; however, it is clearly apparent from the Act itself that the Legislature has provided a court for such towns, section 10 of the Act, to wit, section 1240, N.C.L. 1929, provides as follows:

Any justice of the peace within said town or city shall have jurisdiction of all violations of ordinances applicable thereto under the provisions of this act, and may render final judgment, hold to bail, fine, or commit to prison any offender, in accordance with the provisions thereof. All commitments of imprisonment shall be directed to the sheriff of the county, and all fees or fines collected be paid to the county treasurer of the proper county, to be by him distributed to the proper fund of said town or city.

Thus, the Legislature has by law constituted the Justice’s Court of the township in which the town is situated as the municipal court in and for such town, and no other court can be legally created there save by Act of the Legislature.

Entertaining the views set forth above, we are constrained to answer your query in the negative.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

By: W.T. Mathews,
Deputy Attorney-General

Hon. Fred L. Wood,
District Attorney of Mineral County,
Hawthorne, Nevada

SYLLABUS

OPINION NO. 31-61. OFFICERS—DUTIES OF COUNTY COMMISSIONERS TO PROVIDE ASSISTANCE FOR ASSESSOR IN ADMINSTRATING THE MOTOR VEHICLE LAW.

The Board of County Commissioners may furnish the necessary clerical assistance to the Assessor to insure the prompt administration of the Motor Vehicle Registration Law and pay the expenses thereof, later reimbursing the county so far as possible from the funds made available to the county by section 30 of 1931 Act.

INQUIRY

Carson City, November 10, 1931.

Is it the duty of Boards of County Commissioners of the various counties of Nevada to provide the Assessor thereof with clerical help needed in the registration of motor vehicles, as is provided by section 5 of the 1925 Motor Vehicle Act, in the administration of the 1931 Motor Vehicle Act, Chapter 202, Statutes 1931?

OPINION

In a former opinion by this office, to wit, Opinion No. 45, dated July 25, 1931, we held that the Motor Vehicle Act of 1925 (Chap. 122, Stats. 1925) was repealed by the Motor Vehicle Act of 1931 (Chap. 202, Stats. 1931) in so far as the provisions of the 1925 Act are in conflict and inconsistent with the 1931 Act, there being no express repeal of the 1925 Act contained in the 1931 Act. Opinion No. 45 was based upon the rule of statutory construction many times declared by our Supreme Court, that is, that repeals by implication are not favored and that statutes in pari materia, where no express repeal is contained in the later statute, are to be construed together and both given effect where possible.

Section 5 of the 1925 Act Contains the following provision: "It shall be the duty of the County Commissioners of each county to provide the Assessor with such clerical help as he may require in carrying out the provisions of this Act," clearly showing the intent of the Legislature to provide adequate assistance to the Assessors to insure proper and prompt administration of the Motor Vehicle Registration Law, with the expense of such assistance being borne by the county.

Section 30 of the 1931 Act, as amended by Chap. 203, Stats. 1931, contains the following provision relating to the payment of expenses incurred by the Assessors in the registration of motor vehicles:

In addition to the foregoing the department will at the end of the year certify claims to the board of examiners in favor of each and every county of the state to the amount of fifteen cents for each and every registration issued in that county; the amount to be placed

in a special fund by the treasure; said fund to be applied to the payment of expenses incurred by the assessor in carrying out the provisions of this act, to be paid as all other claims against the county are paid.

In this last provision, the Legislature made provision for payment of the expenses incurred by the Assessors in the registration of motor vehicles from the moneys secured from such registration, but such money is not available to the county until the end of the year in which the registration is had. The Assessors in the administration of the Act, so far as their duties are concerned, must act with promptness and dispatch in order to register the motor vehicles required to be registered by them, as such is the intent of the law; and to do so it is, no doubt, necessary in many, if not all, the counties of the State that clerical assistance be had by the Assessors. We do not believe that the Legislature intended such assistants as might be required by the Assessors should wait approximately a year for their pay. The Legislature is presumed to have knowledge of the state of the law upon the subject upon which it legislates (*Clover Valley Land & S. Co. v. Lamb*, [43 Nev. 325](#)), and, knowing the state of law on the question here and not expressly repealing the 1925 Act and at the same time requiring prompt and efficient administration of the law in the registration of motor vehicles by the Assessors, the legislators, in our opinion, did not repeal section 5 of the 1925 Act by the 1931 Act.

Applying the rule of construction heretofore pointed out, we conclude that section 5 of the 1925 Act is to be construed in *pari materia* with section 30 of the 1931 Act, and effect must be given to both. Therefore, it is our opinion that the Boards of County Commissioners may furnish the necessary clerical assistance to the Assessors to ensure the prompt administration of the motor vehicle registration law and pay the expenses thereof, later reimbursing the county, so far as possible, from the funds made available to the county by section 30 of the 1931 Act.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

By: W.T. Mathews,
Deputy Attorney-General

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

SYLLABUS

OPINION NO. 31-62. ATTORNEY'S FEE—COLLECTION OF SAME FOR DISTRICT ATTORNEY IN PROSECUTING WAGE CLAIM FOR THE LABOR COMMISSIONER.

District Attorney who represents the Labor Commissioner in a suit for the collection of a labor claim is entitled to an attorney's fee when a recovery is had in the suit, the attorney's fee to be assessed as costs against the defendant.

INQUIRY

Carson City, December 1, 1931.

You have asked this office for an opinion as to whether the District Attorney may legally collect attorney fees when acting as attorney for the Labor Commissioner in the collection of labor claims in cases where it is necessary to commence suit for the collection of such claims, especially in view of the fact that the 1931 Statutes of Nevada, Chapter 46, section 4, page 55, requires the District Attorney to appear and act as attorney for the Labor Commissioner in the enforcement of such claims.

OPINION

It is the opinion of this office that a District Attorney who represents the Labor Commissioner in a suit for the collection of a labor claim is entitled to an attorney fee when a recovery is had in the suit, the attorney fee to be assessed as costs against the defendant; however, the attorney fee can be collected by the District Attorney only in the event a recovery is had on the judgment. In other words, the District Attorney is not entitled to an attorney fee unless he wins the suit and a judgment is entered against the defendant; and, even then, he must look to the defendant for the collection of his attorney fee. In this connection, the court costs, including the attorney fee, are to be paid as the first items out of the money collected on the judgment; and, if more money is recovered on the judgment than is necessary to pay the costs and attorney fees, then the judgment for the plaintiff should be satisfied to the extent of the remainder of the money recovered. The expression "recovery had," in this connection, refers to money actually recovered from defendant on the judgment, either by payment of the judgment by the defendant or by execution and sale. In other words, unless money is actually recovered from defendant by suit, the District Attorney is not entitled to an attorney fee.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

Hon. Lowell Daniels,
District Attorney,
Tonopah, Nevada

SYLLABUS

OPINION NO. 31-63. CORPORATION—FILING FEES TO BE COLLECTED.

When corporation amend their articles of incorporation to increase capitalization, the fee is computed upon the increased shares irrespective of what the first filing fee may have been.

INQUIRY

Carson City, December 1, 1931.

This office has been asked for an opinion on the following statement of facts and query:

A corporation files articles giving a capitalization of \$150,000. Under section 77 of the Corporation Law the filing fee would be 10¢ per \$1,000 or \$15, provided it shall not be less than \$25. The computed amount, according to law, is, therefore, \$25, which is paid.

Later the corporation amends its articles giving a capitalization of \$600,000. The filing fee at 10¢ per \$1,000 would be computed according to law at \$60. The difference between the original

fee as computed by law and the final fee would be \$35, being an amount greater than the statutory minimum for filing amendments, \$25.

Question: Is \$35 the proper amount or should it be \$45, the difference between \$15, computed according to the original sliding scale and disregarding the amount actually computed at the minimum of \$25, and the amount computed on \$600,000 for the total capitalization? We refer to Attorney-General's Opinion No. 330 for 1929-1930, as having some bearing on the point.

OPINION

This opinion is, of course, limited to the situation as stated in the foregoing statement and query, and to situations of the same nature. The facts involved in the above-mentioned opinion of this office, No. 330, and facts upon which that opinion was based, are entirely different from the facts included in the above statement and query.

In this opinion, we assume that the amendment mentioned in the second paragraph of the above statement provides for an increase in the capital stock having a par value, and that par value of the capital stock of the corporation as amended in \$600,000.

It is the opinion of this office that the legal fee to be paid to the Secretary of State for the filing of such amended articles of incorporation increasing the capital stock of said corporation to a par value of \$600,000 is \$45.

This opinion, as above expressed, is based upon the theory that, when the sum of \$25 was paid as the filing fee for the original articles of incorporation of said company, the transaction, as to that corporation and the filing fee charged by the Secretary of State for the filing of said articles of incorporation, was a closed transaction.

The law governing the amount of filing fees to be charged by the Secretary of State for the filing of original articles of incorporation of a corporation organized under the laws of this State, and the fee to be charged by him for the filing of amendments of certificates or articles of incorporation increasing the authorized capital stock of the corporation, is contained in section 77 of the 1925 Corporation Act, as amended in Chapter 224 of the 1931 Statutes of Nevada, page 424. The portion thereof relating to the fees to be charged for the filing of original certificate or articles of incorporation reads as follows:

The fee for filing an original certificate of incorporation shall be computed on the basis of ten cents for each one thousand dollars of par value of stock authorized up to and including one million dollars, five cents for each one thousand dollars of par value of stock authorized in excess of one million dollars, up to and including ten million dollars, and two cents for each one thousand dollars of par value authorized in excess of ten million dollars; ten cents per thousand shares of authorized capital stock without par value; *provided, however*, that in no case shall the amount paid be less than twenty-five dollars.

The portion thereof governing the amount to be charged by the Secretary of State for filing amendments to the certificate or articles of incorporation reads as follows:

The fee for filing a certificate of amendment of certificate of incorporation increasing the authorized capital stock of a corporation shall be in an amount equal to the difference between the fee computed at the foregoing rates upon the total authorized capital stock of the corporation, including the proposed increase, and the fee computed at the foregoing rates upon the total authorized capital stock, excluding the proposed increase; *provided, however*, that in no case shall the amount be less than twenty-five dollars.

The minimum to be charged by the Secretary of State for the filing of the original articles of incorporation has not been changed by the amendment, but has remained at \$25 during all the

time involved in the statement and query and this opinion. It is evident that it was the legislative intent that \$25 was and is the reasonable amount to be charged in any event and for every corporation, regardless of the amount of the capital stock of the corporation. In other words, it was considered by the Legislature that the work and other matters incident to the filing of articles of incorporation in the office of the Secretary of State were reasonably worth \$25, no matter how small the capitalization of the corporation might be. When the original articles of incorporation in this particular corporation were filed in the office of the Secretary of State and the corporation paid \$25 therefor, the matter was a closed transaction and the Secretary of State had received and the corporation had paid what the Legislature deemed a reasonable amount therefor.

The original capitalization was \$150,000, and the amendment increased this capitalization to \$600,000. The difference between the capitalization of the company as originally incorporated and that of the company when its articles had been amended is \$450,000. The last above-mentioned quotation from the law provides that the filing fee for this increase in capital stock shall be ten cents per thousand dollars. Figuring this additional \$450,000, the increase of the par value of the capital stock under the amendment, at ten cents per share, we find that the legal fee to be charged by the Secretary of State for this amendment so increasing the capitalization of said corporation is \$45.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

Hon. W.G. Greathouse,
Secretary of State,
Carson City, Nevada

SYLLABUS

OPINION NO. 31-64. TAXATION—DEPOSIT OF SUM PAID UNDER PROTEST.

Taxes paid under protest under section 6552, subdivision (c), N.C.L. 1929, when no suit is started, are distributed and not placed in a special deposit.

INQUIRY

Carson City, December 4, 1931.

You call the attention of this office to the fact that the Southern Pacific Company has paid its December, 1931, installment of taxes, amounting to \$60,099.73, under protest, "claiming the tax imposed upon it is illegal, discriminatory, arbitrary, excessive, and disproportionate to the tax burden on other property, claiming an excessive amount paid of \$6,683.50," This being one-half of their taxes in your county for the year 1931. Concerning the above-mentioned statement of facts, you ask the following query:

Kindly give opinion as to whether the treasurer should place the entire sum received in a special account or just the sum claimed in said protest as excessive.

OPINION

It is the opinion of this office that this matter is covered by Nevada Compiled Laws 1929, section 6552, but that the facts stated do not bring this case within subdivision (a) of that section, said subdivision (a) being the only portion of said section 6552 which provides for the treating of

any portion of taxes paid as a “special deposit” or, as you designate it, a “special account.” The reason why the case stated by you does not fall within subdivision (a) is that no suit has been commenced, according to your statement, by the Southern Pacific Company for redress, and for the additional reason that the entire matter relates to the December installment of taxes, and the law as expressed in said subdivision (a), providing for the “special deposit,” relates only to the June installment.

It is the opinion of this office that the case, as stated by you in your above-mentioned statement, falls within subdivision (c) of said section 6552, which provides that the taxes may be paid as they become due “under protest,” and that the taxpayer may then commence a suit against the State and county for the difference between what he claims to be a fair and just tax and the amount paid by him, that is to say, for the excess or overplus claimed by the taxpayer. The last paragraph of section 6552 provides that nothing in the section or in any remedy granted thereby “shall prevent the distribution or apportionment of the taxes so paid into the various funds of the State and county.” From this, you will see that the law provides that the money paid as taxes under this subdivision (c), or any portion thereof, is not held by the County Treasurer “as a special deposit or undisbursed special deposit” or “undisbursed.” In fact, it specifically provides that the section does not “prevent the distribution or apportionment of the taxes paid.”

For the foregoing reasons, it is the opinion of this office that no portion of the taxes so paid as the December installment by the Southern Pacific Company shall be held by the County Treasurer as “a special deposit” or, as you say, “a special account.”

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

Hon. W.A. Wilson,
District Attorney,
Lovelock, Nevada

SYLLABUS

OPINION NO. 31-65. HIGHWAY DEPARTMENT—DUTIES WHEN CLAIMS ARE FILED AGAINST CONTRACTORS—”STOCK NOTICE.

1. The Highway Department is not by law required to recognize the so-called “stock notices” coming from private individuals.
2. The Highway Department is authorized to withhold only the “retents” until the completion of the contract and thirty days thereafter.

INQUIRY

Carson City, December 4, 1931.

You ask this office, through Mr. Holcomb of your department, in a letter dated November 30, 1931, for an opinion as to whether your department should recognize so-called “stock notices” is, and whether your department may at any time withhold payment to contractors without an assignment from the contractor himself.

OPINION

It is the opinion of this office that the Highway Department is not required by law to recognize these so-called “stock notices” coming, as they do, from private individuals or concerns and not from courts. In this connection, you should recognize only writs of attachment or execution or garnishment or restraining orders or injunctions, all issued by the courts.

As to the status of “stock notices,” such notices are not recognized at all under the law of this State.

As to withholding payments to contractors, the only payments your department is authorized to withhold under the law are the “retents” recognized by the law as the portions of the contract price or bid which the law, and more particularly section 17 of the State Highway Law, authorizes your department to withhold until the completion of the contract and for thirty days thereafter.

It is true that the above-mentioned section of the law provides for the filing of claims against the contractor with the Highway Department, but the law does not authorize the Highway Department to withhold moneys to cover the claims so filed. It simply allows thirty days after the completion of the contract within which claimants may file claims against the contractor and permits the claimants to bring suit against the surety on the bond of the contractor within six months after the “filing of the claim.” In other words, the filing of a claim with the Highway Department starts the statute of limitations governing the period of time within which a claimant may commence suit against the surety on the bond of the contractor to collect his claim to run. The filing of the claim with the Highway Department does not in any way obligate that department for the claim or indebtedness, nor impose any responsibility on the Highway Department to protect the claimant.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

Hon. S.C. Durkee,
State Highway Engineer,
Carson City, Nevada

SYLLABUS

OPINION NO. 31-66. HIGHWAY DEPARTMENT—FILING CLAIMS.

A claimant may file a claim before the contract is completed, but it cannot be made the basis of a suit, and the department should notify the claimant and refer him to the law.

INQUIRY

Carson City, December 4, 1931.

You ask this office, through Mr. Holcomb of your department, in a letter dated November 30, 1931, for an opinion as to whether a claimant may file a claim against a contractor under a contract with your department for highway construction prior to the completion of the contract.

OPINION

There is nothing in the law to prevent a claimant from filing with the department a claim at any time; but he cannot make a claim filed before the completion of the contract the basis of a suit commenced within six months after filing the claim, as this might, in case of a long-time contract, enable the claimant to sue before the completion of the contract and give him an unfair advantage over other claimants. There is nothing in the law which authorizes the Highway Department to reject a claim filed before the completion of the contract.

It is, therefore, the opinion of this office that you should hold a claim so presented and notify the claimant that you have received the claim and call his attention to the law as contained in section 17 of the State Highway Law which provides only for the filing of a claim within thirty

days from the completion of the contract with the Department of Highways, if he desires to make his claim the basis of a suit commenced against the surety on the contractor's bond. This will leave it to the discretion and good judgment of the claimant as to whether he desires the claim filed before the completion of the contract, and then take a chance on whether he will be allowed by the courts to make a claim so filed the basis of a suit against the surety.

Respectfully submitted,

GRAY MASHBURN,
Attorney-General

Hon. S.C. Durkee,
State Highway Engineer,
Carson City, Nevada

SYLLABUS

OPINION NO. 31-67. Licenses to Operate Trucks for Hire from the Public Service Commission.

An operator of trucks cannot avoid the securing of a license for the operation thereof from the Public Service Commission by means of leasing the said trucks to another party, corporation, or association.

INQUIRY

Carson City, December 7, 1931.

The opinion of this office is asked on the following statement of facts and query:

On October 9, 1931, Lang Transportation Company, 5501 Sante Fe Avenue, Los Angeles, California, signed and executed an instrument in writing with Pacific Iron & Steel Company, Ltd., 11,701 South Alameda, Los Angeles, California, purporting to be a lease, by the terms of which said lessor, Lang Transportation Company, purported to lease to Pacific Iron & Steel Company, Ltd., certain trucks for a period of six months to haul steel from Los Angeles, California, to Boulder City, Nevada, and vicinity at eight dollars per ton, and wherein said Lang Transportation Company agreed to furnish the drivers and gasoline and oil for the trucks, and to keep the trucks in repair, and to furnish substitutions for such of the said trucks as should become in bad repair and not in good workable order.

By this instrument, Pacific Iron & Steel Company, Ltd., lessee, was required to do only two things, to wit, to purchase at its own expense Nevada and California plates for said trucks and to pay eight dollars per ton for the steel hauled by the use of the trucks, drivers, and gasoline and oil for the trucks, and for keeping the trucks in repair and furnishing said substitutions.

These trucks are now being operated and are engaged in the hauling of steel between Los Angeles, California, and Boulder City, Nevada, and that vicinity, over a highway of the State of Nevada.

On the foregoing statement of facts, we are asked the following query:

May the contract-for-hire operator so avoid the provisions of the road license provided for by Chapter 197, Statutes of 1929, page 360, which provides that every corporation, company, individual or association operating a motor vehicle "for hire" over any public highway in the State of Nevada shall annually secure from the Public Service Commission of Nevada a license therefor, and make payments as provided for in said Act? In other words, may it so disable itself

by a purported lease between itself and a commercial or industrial corporation as to avoid the provisions of the Act in question?

OPINION

It is the unqualified opinion of this office that the “operator” may not avoid the payment of the road license provided for by 1929 Statutes of Nevada, Chapter 197, page 360, in this way. Section 1 of the above-mentioned Chapter 197 reads as follows:

Every corporation, company, individual or association operating motor vehicles for hire over any public highway in the State of Nevada shall annually secure from the public service commission of Nevada a license therefor and make payments as hereinafter provided.

From the above-quoted section of the law, it is clear that every operator of motor vehicles for hire over any public highway of this State must secure and pay for a license to use such vehicles over such highway, and that such licenses must be secured from the Public Service Commission of this State.

It is clear, from the above-mentioned instruments so made and entered into between Lang Transportation Company and Pacific Iron and Steel Company, Ltd., that the instrument, a copy of which I have before me, is simply a contract of hire, and that Lang Transportation Company is the real “operator” of these trucks. It furnishes the trucks, the drivers and the gasoline and oil for the trucks, keeps them in repair, and furnishes the necessary substitutions. It does everything that a real operator of trucks would be required to do, except the mere matter of procuring the license plates mentioned in the last paragraph of the instrument. The mere fact that Pacific Iron & Steel Company, Ltd., is to furnish these license plates is not sufficient evidence of ownership of the trucks, and does not show that it is the real “operator” of the trucks.

It is the opinion of this office that you should follow the regular course in the collection of the license provided for in the above-quoted section 1 of said Chapter 197. The license provided for in this section is entirely different from the “plates” mentioned in the last paragraph of the instrument.

Neither the State of Nevada nor the Public Service Commission of this State is concerned as to what the understanding was between Lang Transportation Company and Pacific Iron & Steel Company, Ltd. The trucks cannot legally be operated over any public highway in this State without the payment of the license. If the license is not paid upon demand, then the persons “operating” the trucks should be arrested and dealt with in the manner provided for in said Chapter 197.

Respectfully submitted.

GRAY MASHBURN,
Attorney-General

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