

SYLLABUS

OPINION NO. 1933-95. Statutes—Constitutionality.

A statute enacted by the Legislature providing a moratorium for two years on foreclosure of mortgages and thereby extending the time of payment thereof a period of two years, although provision is made in such statute for the payment of interest during such period, would be unconstitutional.

INQUIRY

CARSON CITY, January 26, 1933.

Would a statute enacted by the Legislature providing a moratorium for two years on foreclosure of mortgages and thereby extending the time of payment thereof a period of two years, although provision is made in such statute for the payment of interest during such period, be a valid and constitutional statute?

OPINION

We are aware of the financial distress of many citizens of this State and we are cognizant of the fact that many, many homes, farms, ranches and businesses are heavily mortgaged and that great financial burdens and difficulties are placed upon and surround many good people of Nevada, and that it is the desire of every legislator to enact some law that will relieve the financial stress and situation so far as possible. We would be glad to help in this good work, but, much as we would like to answer the query propounded in the affirmative, an examination of the law convinces us that it will have to be answered in the negative.

Paragraph 1, section 10, article I of the Constitution of the United States provides, among other things, that

No state shall * * * pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts. * * *

And section 10, article I of the Constitution of Nevada contains the same prohibition in the following language:

No bill of attainder, ex post facto law, or law impairing the obligations of contracts, shall ever be passed.

It is elementary law that a mortgage is a contract of serious, solemn and binding effect. That in providing that no State should pass a law impairing the obligation of a contract the framers of our Federal Constitution had in mind the chaotic condition that would undoubtedly arise should no safeguard be placed around a solemn and binding obligation for the repayment of moneys and other like obligations. No obligor or obligee would know his rights or obligations or feel at all secure in entering into contracts of the nature of a mortgage or any other contract of such binding effect, unless he be secure in the belief that the law under which the contract was drafted, entered into and executed would not be so amended or set aside as to imperil his rights in the matter, as such rights were fixed and determined by the contract itself (mortgage in this case) and by the law at the time of entering into the contract, which law, under all the authorities, in effect becomes a part of the contract and fixes and determines the rights of the respective parties thereto. The framers of the Federal Constitution by providing, as they did, in the section thereof above quoted, did so for the very purpose of stabilizing and making secure the obligations of the respective parties to contracts exactly as they had specified them, insofar as the exercise of legislative power is or was concerned. They thereby have effectively prevented any State from passing any law changing and imperiling the rights and obligations of the respective parties to contracts as specified by themselves in their contracts. And the like provision quoted from the

Nevada Constitution is a prohibition upon the Legislature of this State to pass any law changing or impairing the obligations of contracts, mortgages in this case.

To enact a statute declaring a moratorium for two years on the foreclosure of mortgages, even though interest payments were provided for such period, would be such a law as is prohibited by the foregoing constitutional provisions. It would operate to extend the time of enforcement of the contract beyond the time fixed therein and deprive the obligee of his right to seek his remedy under the terms of the contract and the law in effect at the time of the execution thereof, and in effect cause a detriment to such mortgagee not contemplated by him, and without his consent and agreement thereto, which is an essential element of contract. No doubt such a statute as contemplated in the query would be of great benefit to the obligors and in a great many instances relieve distress, but in view of the plain constitutional prohibition we are sure no court would sustain such legislation.

The rule of law relative to this question is well stated in 6 Ruling Case Law, page 365, section 360, and reads as follows:

The general rule is that the law in force at the time a mortgage is executed, with all the conditions and limitations it imposes, is the law which determines the force and effect of a mortgage; and hence it is that changes in the laws, imposing conditions and restrictions on a mortgagee in the enforcement of his right, and which affect its substance, are invalid as impairing the obligation and cannot prevail. Following this rule the law will not permit changes to be made by statute which, as to pre-existing mortgages, extend or otherwise alter the period of redemption, even though a sale has not yet taken place; or direct that decrees be made on a longer period of credit than was allowed at the date of the mortgage; or alter the right of a mortgagee to sale on foreclosure subject only to the redemption provided for by the law in force when the mortgage was made. Under the sale rule a statute which authorizes the redemption of property sold upon foreclosure of a mortgage, where no right of redemption previously existed, cannot constitutionally apply to a sale under a mortgage executed before its passage.

It was held in *Fidelity State Bank v. North Fork Highway District*, 209 Pac. 449, 31 A.L.R. 781, that the remedy to enforce a contract is a part of the contract, and any subsequent law of the State which so affects that remedy as to substantially impair and lessen the value of the contract is such an impairment of the obligation of a contract as to bring it within the inhibition of sec. 10 of art. I, Fed. Const., and sec. 16, art. I, of the Constitution of this State (Idaho).

As further illustrative of the law upon this question we cite the case of *Bronson v. Kinzie et al.*, 1 How. 311, 11 L. Ed. 143, where the Supreme Court of the United States held, with respect to a mortgage, that

A State law, passed subsequently to the execution of a mortgage, which declares that the equitable estate of the mortgageor shall not be extinguished for twelve months after a sale under a decree in chancery, and which prevents any sale unless two-thirds of the amount at which the property has been valued by appraisers shall be bid therefor, is within the clause of the tenth section of the first article of the Constitution of the United States, which prohibits a State from passing a law impairing the obligation of contracts.

The foregoing authorities are illustrative of the mass of cases and authorities and the holdings thereof on the question of the right of a State Legislature to enact laws impairing the obligations of contracts; and they sustain the point that no such law is or would be valid or constitutional. It is our unqualified opinion that any such law as that proposed in the query would be in plain violation of the constitutional prohibitions above quoted; and, therefore, your query is and must be answered in the negative.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

By W. T. MATHEWS, *Deputy Attorney-General*.

HON. PHIL M. TOBIN, *State Senator, Humboldt County*.

SYLLABUS

OPINION NO. 1933-96. Motor Vehicle Carrier License Act of 1933.

A person who buys hides for himself throughout a county in this State and then transports them in a motor vehicle over a public highway to another county or out of the State and sells them is a "private motor carrier of property" as contemplated in the Motor Vehicle Carrier License Act of 1933, *i.e.*, chapter 165, Statutes of Nevada 1933.

INQUIRY

CARSON CITY, April 27, 1933.

Does a person who buys hides for himself throughout a county in this State and then transports them in a motor vehicle over the public highways to another county or out of the State and sells them, come within the definition of a "private motor carrier of property" as contemplated in the Motor Vehicle Carrier License Act of 1933, *i.e.*, chapter 165, Laws of Nevada 1933?

OPINION

The term "private motor carrier of property" is defined in section 2 of the above-mentioned Act as follows:

The term "private motor carrier of property" when used in this act shall be construed to mean any person engaged in the transportation by motor vehicle of property, when engaged in wholesale occupations and/or the distribution, receiving and delivery of property in producing and commercial enterprises.

The person mentioned in the above query, while perhaps not engaged in a wholesale occupation or a producing enterprise, is undoubtedly engaged in the distribution, receiving, and delivery of property in a commercial enterprise. Hides are property. The purchase and sale of the hides, as mentioned in the query, constitute a commercial enterprise, and the person buying the hides receives them and thus is undoubtedly receiving property in a commercial enterprise. Such person thereafter distributes the hides, or causes them to be distributed, by the delivery thereof to the person who buys them, and, in the said distribution and delivery of the hides, there is a transportation of property over the public highways of the State in a motor vehicle. The purchase and receipt of the hides in the first instance and the sale, distribution, and delivery of the hides thereafter constitute a gainful occupation within the meaning of section 1 of the Act in question, and the use of a motor vehicle in the transportation of the hides over the public highways of the State is in furtherance of the commercial enterprise and gainful occupation; thus, the element of the use of the public highways of the State by means of motor vehicles in a gainful occupation, for which use a reasonable compensation is provided for in said Act through the license fees contained therein, is manifest and determines the status of the person so engaged and so using the public highways of the State with respect to the law in question. It may be well to point out here that intercounty or interstate motor carriage, as mentioned in the query, has no bearing on the question here, and motor carriage confined wholly to one county in the State is within the Act as well as such carriage in intercounty and interstate transactions.

We think it is most clear and it is our opinion that the person mentioned in the foregoing query is a "private motor carrier of property" contemplated in the Motor Vehicle Carrier License Act of 1933, *i.e.*, chapter 165, Laws of Nevada 1933.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

By W. T. MATHEWS, *Deputy Attorney-General*.

HON. G. P. ANNAND, *Deputy District Attorney, White Pine County, Ely, Nevada*.

SYLLABUS

OPINION NO. 1933-97. Tax Statutes—Construction.

1. Statutes 1933, p. 120, does not operate to extend the time of payment of the second installment of 1932 taxes from the first Monday in June to the first Monday in August.
2. The 1933 amendment to section 6461, N.C.L. 1929, does not operate to extend the period of redemption on property sold for delinquent taxes in 1932.

INQUIRY

CARSON CITY, June 6, 1933.

1. Does Assembly Bill No. 111, Statutes of 1933, page 120, operate to extend the time of payment of the second installment of 1932 taxes from the first Monday in June to the first Monday in August?
2. Does the 1933 amendment to section 6461, N.C.L. 1929, operate to extend the period of redemption on property sold for delinquent taxes in 1932?

OPINION

Answering query No. 1, section 1 of Assembly Bill No. 111, the same being section 1 of chapter 99, Laws of Nevada 1933, amending section 6440, N.C.L. 1929, while providing that taxes may be paid in four equal quarterly installments, the last installment falling due on or before the first Monday in August, contains a provision which clearly indicates that the quarterly payment of taxes shall not be effective so far as the 1932 taxes are concerned. That provision is: "that said taxes may, from and after the first Monday in December, 1933, and thereafter, be paid in four equal quarterly installments * * *."

Sections 2, 3, 4 and 5 of said chapter 99 amended sections 6442, 6444, 6447 and 6453, N.C.L. 1929, which pertain to the proceedings after the notice of taxes due provided for in section 6440, *supra*; but such amendments were no doubt necessary in order that said proceedings and the time thereof would conform to the amendment contained in said section 1 of chapter 99 and do not extend time of payment of the second installment of the 1932 taxes beyond the first Monday in June, 1933.

The provision in section 1 of said chapter 99 quoted above qualifies the amendments contained in sections 2, 3, 4 and 5 of said chapter and, in our opinion, operates to make the quarterly payment of taxes effective only after the first Monday in December, 1933. Your query, therefore, is answered in the negative.

Answering query No. 2, section 7 of chapter 99, Laws of Nevada 1933, amends section 6461, N.C.L. 1929, by providing that the period of redemption in all sales of real estate sold for taxes shall be two years from and after the date of such sales instead of the one year period of redemption contained in the amended statute. Sales of real estate pursuant to law for delinquent taxes constitute a contract between the purchaser and the State, the obligation of which cannot be impaired to the disadvantage of the purchaser by subsequent legislation. The purchaser is entitled to insist that, as to matters of substance pertaining to the interest acquired by him and the right of redemption remaining in the owner, the law in force at the time of the sale shall govern. *Smith v.*

Spillman (Ark.), 1 A.L.R. 136 and note; Rott v. Steffens (Mich.), 38 A.L.R. 224 and note; 12 C.J. 1002; 26 R.C.L. 434, sec 390.

Section 15 of article I, Constitution of Nevada, provides:

No bill of attainder, ex post facto law, or law impairing the obligation of contracts, shall ever be passed.

Section 10 of article I of the Constitution of the United States provides:

No state shall * * * pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts * * *.

From the foregoing authorities, we think it most clear that an implied contract arises by virtue of a sale of real property for delinquent taxes and that one of the terms of such contract is provided by the statute containing the statutory right of redemption on the part of the delinquent owner; but the purchaser of the property at such sale undoubtedly has the right to believe that the delinquent owner's right to redeem shall be exercised within the time fixed by the statute in force at the time of the delinquent tax sale, and such purchaser's right to own and possess such property at the expiration of the period of redemption, the delinquent owner not having exercised his right to redeem, becomes fixed and vested at the expiration of such period by reason of the statute in force and effect at the time of the sale.

Any Act of the Legislature enacted after the sale of real property for delinquent taxes which attempts to extend the period of redemption with respect to such real property theretofore sold pursuant to law for delinquent taxes undoubtedly would prolong the time in which the purchaser could insist upon his right to have the title to such real property vested in him, which title he had a right to expect would be vested at the time provided by the law in force at the time of, and which became part of, his contract in the matter of the sale of the delinquent property to him. We think it most clear that such a law would impair the obligation of a contract, *i.e.*, the obligation of the State, through its representatives, to convey the title of the property by proper deed to the purchaser at the time provided by law in force at the time of the making of the contract.

Certain language in the amendment under discussion, *i.e.*, "The period of redemption herein provided shall not apply to tax sales made prior to the year 1932," may be susceptible to the construction that it was the intent of the Legislature that the statute should be retroactive to the year 1932 and extend the period of redemption as to tax sales had in that year. The intent and action of the Legislature in this respect may have been most laudable, and we would like very much to concur therein and hold other than we do here, but we cannot escape the effect of the constitutional provisions above quoted—and such provisions are binding on our Legislature as well—and the purchaser at a delinquent tax sale could well assert that his rights are protected by them.

Therefore, entertaining the views herein expressed and in view of the constitutional provisions quoted and the authorities cited, we are constrained to hold that section 7 of chapter 99, Laws of Nevada 1933, in so far as it relates to *sales* for delinquent taxes had prior to its enactment, would be a law impairing the obligation of a contract and ineffective to extend the period of redemption as to such sales so had by reason of the constitutional prohibitions quoted hereinabove.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

By W. T. MATHEWS, *Deputy Attorney-General*.

HON. V. H. VARGAS, *District Attorney, Ely, Nevada*.

SYLLABUS

OPINION NO. 1933-98. Ex-Service Men—Exemption.

An ex-soldier of the United States is exempt from taxation on property to the extent of \$1,000 where the total amount of property owned by him is less than \$4,000, and he may claim the exemption on two or more different parcels of property at different times.

INQUIRY

CARSON CITY, June 7, 1933.

An ex-soldier of the United States, for the purpose of exercising his right to a war veteran's exemption from taxation of property to the value of one thousand dollars, files the affidavit therefor required by law in connection with the valuation of an automobile for taxation purposes. The value of the automobile was less than one thousand dollars. Later in the same year claim was made by the same ex-soldier for further exemption of taxation on another automobile to the extent of the amount of the one thousand dollar exemption not used up in the valuation of the first automobile. Can such ex-soldier be allowed the claimed exemption on the second automobile?

OPINION

A claim of exemption from taxation by virtue of a statute is to be strictly construed. It must rest upon language in regard to which there can be no doubt as to the meaning, and the exemption must be granted in terms too plain to be mistaken. 26 R.C.L. 313, sec. 274.

To the same effect see: 61 C.J. 392, sec. 396.

But the rule of strict construction has no application in the absence of ambiguity or uncertainty in the words of the statute. 61 C.J. 395, sec. 396.

The language of the statute upon which the ex-soldier bases his right to the exemption claimed is:

The property, not to exceed the amount of one thousand dollars, of any person who has served in the army, navy, marine corps, or revenue marine service of the United States in the time of war and who has received an honorable discharge therefrom; *provided*, that such exemption shall be allowed only to claimants who shall make an affidavit annually before the county assessor to the effect that they are actual bona fide residents of the State of Nevada, that such exemption is claimed in no other county within this state, and that the total value of all property of affiant within this state is less than four thousand dollars. Statutes of Nevada 1931, p. 218.

We think this statute is clear, unambiguous, and certain in its terms and that an ex-soldier, coming within its provisions and complying with its requirements, would be entitled to an exemption of property for taxation purposes to the value of one thousand dollars and that, if the first automobile was not of that value at the time it was assessed and such soldier was not assessed on other property or possessed of other property sufficient in value to make up the full amount of the exemption, he was then entitled to be allowed the balance of such exemption on the second automobile mentioned in the query.

Your query is thus answered in the affirmative.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

By W. T. MATHEWS, *Deputy Attorney-General*.

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

SYLLABUS

OPINION NO. 1933-99. Public School Funds—Taxes.

In computing the amount of tax to be apportioned from the State School Reserve Fund, the amount apportioned should be determined by the actual amount of taxes collected in the county or counties pursuant to the tax levied according to law by such counties, and not from the county valuation.

INQUIRY

CARSON CITY, June 13, 1933.

Sections 4(a) and 4(b), section 5798, Nevada Compiled Laws 1929, provide for relief apportionment to districts when the county has levied a tax of 35¢ or more on each \$100 of valuation to provide funds for elementary schools and a 35¢ or more tax to provide for high schools. A question has arisen as to the interpretation of the clause, “if such levy does not bring in an amount of money equal to that required by law of such county for elementary school purposes, exclusive of bonds and interest thereon” in section 4(a) and the clause, “if such levy of 35 cents is not sufficient to provide the minimum sum determined in the manner hereinafter set forth” in section 4(b).

May I have your opinion as to what interpretation should be given these clauses in determining the amount provided by the tax—would it be the product of the county valuation multiplied by the 35¢ rate, regardless of the amount of taxes not collected, or the actual amount collected and reported by County Treasurers, which would mean that counties paying taxes in full were being imposed on for relief by counties where a large part of the tax was delinquent?

OPINION

The State School Reserve Fund is derived from the State Distributive School Fund (section 5798, Nevada Compiled Laws 1929). The State Distributive School Fund is derived from interest on the State Permanent School Fund, together with moneys derived from the State school tax (section 5784, *idem*). Thus, the money used to augment the funds derived from taxation in the counties, as provided in paragraphs 4(a) and (b) mentioned in the foregoing query, is taken from a State School Reserve Fund, the purpose of which is clearly apparent, *i.e.*, to assist the counties of the State or any one county thereof in the maintenance of schools therein in the event the tax levied therefor by the counties or county shall fail to bring in sufficient money to provide for the schools therein according to law.

Section 1, article XI of the Constitution of Nevada, provides that,

The legislature shall encourage, by all suitable means, the promotion of intellectual, literary, scientific, mining, mechanical, agricultural, and moral improvements * * *.

To carry out this mandate, schools are a vital necessity. To maintain these schools, money is the mainspring which keeps the machinery thereof in motion. The Legislature, in its wisdom, provided ways and means of securing this money and, while placing a large part of the burden thereof on the taxable property in the respective counties, recognized that taxation of property is not an inexhaustible fountain nor infallible. The Nevada Constitution provides an Irreducible School Fund, the interest on which is to be used for school purposes (sec. 3, art. XI, Const. Nev.); and the Constitution also provides for a State tax in addition to other means provided for the support and maintenance of the schools (sec. 6, art. XI, *idem*), thus placing in the hands of the Legislature means whereby the State itself could assist in the maintenance of its public schools in the uniform manner required by the Constitution (sec. 2, article XI, *idem*). So, we think that the Legislature, recognizing that taxation within the counties is not at all times infallible and knowing that the Irreducible School Fund and the State tax were for the very purpose of aiding in maintaining the schools in the State as a whole, intended that, in computing

the amount to be apportioned from the State School Reserve Fund, the amount apportioned should be determined by the actual amount of taxes collected in the county or counties pursuant to the tax levied according to law by such counties, and not from the county valuation.

The very language used in the statute cited in the query, *i.e.*, “if such tax levy does not bring in an amount of money equal to that required by law * * *,” par. 4(a), sec 5798, Nevada Compiled Laws 1929, and “if such levy of 35 cents is not sufficient to provide the minimum sum determined in the manner hereinafter set forth * * *,” is susceptible to the interpretation, and is to be interpreted, as stated above. To hold otherwise would tend to penalize our school children for the derelictions of taxpayers in the failure to pay taxes and of the tax collectors for failure to make proper collections where possible; and, in this connection, we think the people of this State by their Constitution and through their Legislature provided, so far as was and is possible, for this very contingency, *i.e.*, the failure of county taxation for school purposes, and intended that the State aid, as pointed out hereinabove, was and is to be used in augmenting the county funds when necessary and to the extent of the funds available for that purpose.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

By W. T. MATHEWS, *Deputy Attorney-General*.

MISS AMY HANSON, *Deputy Superintendent of Public Instruction, Carson City, Nevada*.

SYLLABUS

OPINION NO. 1933-100. Public Service Commission—Powers.

Section 10 of the Public Service Commission Act, *i.e.*, section 6109, N.C.L. 1929, which expressly provides that “the Commission can at any time call for information it deems necessary,” should be liberally construed to the end that the information desired by the Commission be obtained in an expeditious manner.

INQUIRY

CARSON CITY, June 14, 1933.

PUBLIC SERVICE COMMISSION OF NEVADA

ORDER

IT IS ORDERED, that beginning June 2, 1933, and not later than the 3rd day of each month thereafter, all utilities operating in the State of Nevada shall file with the commission a record of all complaints of patrons of the company received by the utility during the previous month.

By the commission,

Dated, May 3, 1933.
(SEAL)

LEE S. SCOTT,
Secretary.

Is the above order supported by the power granted the Public Service Commission by section 10 of the Public Service Commission Act, *i.e.*, sec. 6109, N.C.L. 1929?

OPINION

Section 10 of the Public Service Commission Act, the same being section 6109, N.C.L. 1929, provides for the rendition of annual reports by public utilities concerning their business to the

Commission in such form as is or shall be prescribed by the Commission, and for such other reports of their accounts as may be so prescribed; and, in addition thereto, said section contains the following provision:

The commission may at any time call for desired information omitted from such reports or not provided for therein, when in the judgment of the commission such information is necessary.

The Public Service Commission derives its power only from the statute providing for and granting its powers, and has no authority except as is expressly conferred upon it. *Chicago R.R. Co. v. Commerce Commission*, 67 A.L.R. 938.

On the other hand, it is held that the authority given a commission should be liberally construed. *Coplay Cement Mfg. Co. v. Pub. Ser. Comm.*, 16 A.L.R. 1214.

The court, in the case last cited, said:

In determining whether the exercise of a right such as are now discussed offends against the regulating control necessary for such concerns (in the interest of convenience, accommodation, and safety of the public), the authority given the commission should be liberally construed, and that incidentally necessary to a full exposition of the legislative intent be upheld as being germane to the law.

Whether the order in question here is necessary is no concern of ours. If the Commission deemed it advisable, in the interest of better service on the part of utilities, to be advised from time to time of complaints filed with or received by utilities from their patrons, we think it had and has ample authority provided by the statute cited and quoted from above. The statute expressly provides that the Commission can at any time call for information it deems necessary; and we think the statute should be liberally construed to the end that the information desired by the Commission be obtained in an expeditious manner.

Your query is answered in the affirmative.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

By W. T. MATHEWS, *Deputy Attorney-General*.

HON. J. F. SHAUGHNESSY, *Chairman Nevada Public Service Commission, Carson City, Nevada*.

SYLLABUS

OPINION NO. 1933-101. Tax Statute of 1933—Operation of Penalties.

This opinion explains the operation of the 1933 Tax Statute, same being chapter 99 of the 1933 Statutes of Nevada.

INQUIRY

CARSON CITY, June 26, 1933.

1. If the 1932 taxes are paid on or before the first Monday in August, 1933, what delinquent tax penalty, if any, is to be added or, if such 1932 taxes are not paid on or before said first Monday in August, 1933, what penalty, if any, is to be added?

2. Can the cost of advertising the delinquent tax list, as provided in sections 4 and 5 of chapter 99, Statutes of Nevada 1933, be audited and allowed by the Board of County Commissioners prior to sale of delinquent property, or will the newspaper making the publication have to wait until the cost of such publication has been collected through the sale of the delinquent property?

OPINION

In our Opinion No. 97, dated June 6, 1933, we held that section 1 of chapter 99, Statutes of Nevada 1933, while providing for quarterly payment of taxes, did not become effective for that purpose so as to extend the time of payment of the second installment of the 1932 taxes beyond the first Monday in June, 1933, because of express language contained in said section, *i.e.*, "that said taxes may, from and after the first Monday in December, 1933, and thereafter, be paid in four equal quarterly installments."

We think that the same holding applies to the computation, amount, and imposition of the penalties provided in and by said chapter 99 with respect to delinquent taxes—that is, that the penalties provided in said chapter do not become effective or operative as the statutory penalties upon delinquent taxes until the quarterly payment of taxes takes place, *i.e.*, from and after the first Monday in December, 1933, because the penalties provided in chapter 99 are based, and must be computed, upon taxes payable on a quarterly basis. We think a most chaotic result would be had if it were attempted to compute these penalties upon a semiannual tax. Therefore, we think it clear that the penalties upon delinquent taxes, as provided in said chapter 99, are not applicable to the 1932 tax delinquencies, but are only applicable to tax delinquencies occurring after the first Monday in December, 1933, and upon the tax then due.

The Legislature, in the enactment of chapter 99, was undoubtedly seeking to relieve delinquent taxpayers from unduly burdensome penalties and still preserve to the State the right to penalties to insure the payment of taxes. Evidence of the will of the Legislature to lessen the burden of delinquent tax penalties is found in chapter 59, Statutes of Nevada 1933, which exempted delinquent taxes of all penalties provided the tax was paid on or before June 1, 1933, and this exemption was carried over into section 6 of chapter 99, and the time of payment of the penalty-exempt tax was extended to the first Monday in June, 1933, and the lessening of the amount of penalties, as applied to the quarterly payment of taxes most clearly shows the legislative intent was that the taxpayer shall be more lightly burdened with penalties.

One of the principles of our form of government is that penalties and forfeitures are not favored, and this principle has been firmly established by the Supreme Court of Nevada, *i.e.*, that penalties and forfeitures are not favored in the law, and the rule is that penalties will not be imposed unless the statute imposing them clearly so provides and there is no doubt that the penalty should be imposed. We think this principle of law is applicable to delinquent tax matters and that there should be no doubt as to the amount of such penalty and when it is to apply. The 1933 Legislature has left this particular matter so shrouded in doubt that it is most questionable whether *any* penalties can now be assessed and collected on delinquent 1932 taxes. The matter of tax penalties, we think, is subject to strict construction against the State and to liberal construction as to the taxpayer, with a resolving of the doubt in favor of the taxpayer, because the provisions of our tax and revenue laws relative to the imposition of penalties are penal in nature and are to be construed as above stated.

The Legislature, in the enactment of chapter 99, provided for quarterly payment of taxes, but deferred such quarterly payment until from and after the first Monday in December, 1933; and, in the same chapter, the Legislature provided penalties for nonpayment of such taxes, based upon such quarterly tax payments; and we think the penalties so provided are so inapplicable to the 1932 taxes, levied and assessed under a different law, as to preclude the application of such penalties to the 1932 tax, for the result, if such application were attempted, would be chaotic, to say the least. But the Legislature, aside from the effective date of the quarterly payment of taxes, directed that said chapter 99 shall be effective immediately upon its passage and approval (section 9 thereof), and, in section 8 of said chapter, definitely provided that all Acts and parts of Acts in conflict with this chapter are repealed. Thus, the Legislature, inadvertently, no doubt, so shrouded the matter of delinquent tax penalties in doubt as to now require the application of the principles of law with regard to penalties hereinabove stated.

The computation and the application of penalties provided by the law in effect prior to the enactment of chapter 99 cannot be reasonably or at all computed and applied under the provisions of the penalty provisions of chapter 99. We think that the penalty provisions of such

prior law are so irreconcilable with the provisions relative thereto in chapter 99 as to preclude the application of the rule of construing these statutes in pari materia and that, therefore, the prior law on this question is now repealed by a most evident implication. Further, we are of the opinion that chapter 99 is so far in conflict with the prior law relative to tax penalties as to repeal chapter 68, Statutes of Nevada 1931, providing the penalty that attached at the failure of the payment of the first installment of the 1932 tax in December, 1932, because we must give effect to the intent of the Legislature, in construing statutes, wherever possible, when such intent can be gathered from the statutes on the question; and the very fact that the 1933 Legislature exempted all penalties on delinquent taxes (see chap. 59, 1933 Stats., and sec 6 of said chap. 99), provided the tax was paid on the date specified, evidences the intent to do away with the penalties provided by the prior law, and, not having expressly revived such penalties as had accrued under the prior law, either by express reference thereto, a savings clause, or by an inference so clear as to admit of no doubt in said chapter 99, we think precludes the valid imposition of such penalties as were provided by the prior law, under the law as is now evidenced by chapter 99. No savings clause, saving the imposition of penalties applicable under the prior law, appears in chapter 99. No definite indication of the legislative will with respect to penalties is conveyed by said chapter other than that the delinquent tax penalties therein provided are to be made applicable to quarterly payment of taxes effective in the future.

We are, therefore, constrained to hold that chapter 99 provides no delinquent tax penalties that can be imposed, without grave doubt as to their validity, against delinquent taxpayers and their property prior to the time and the tax to be then collected as is provided by section 1 of said chapter 99, and that, as to the 1932 tax now delinquent, no penalties can be legally imposed either before or after the first Monday in August, 1933, save and except, of course, that interest and cost will attach to the amount necessary to redeem delinquent property sold on the second Monday in September, 1933.

This opinion, however, is not to be construed as exempting the delinquent taxpayer of publication cost in the event payment of the delinquent tax is made after publication of the delinquent property list, nor the payment of interest and cost provided by the said chapter in the event the delinquent property has been sold at the delinquent tax sale, or pursuant to judgment in a suit for delinquent taxes, and it is sought to redeem such property. Neither is anything herein contained to be construed as holding that delinquent property is not to be sold on the second Monday in September, 1933, as provided in said chapter 99, as the abrogation of penalties as to the 1932 delinquent tax does not in any manner prevent the advertising of delinquency and the sale of the property at the time now provided in chapter 99.

We are cognizant of the fact that the imposition of penalties for nonpayment of taxes is for the very purpose of insuring the payment thereof; but, if the Legislature so leaves the imposition of such penalties shrouded in such doubt as to raise a most serious question as to the validity of such penalty, we cannot do otherwise than to construct the law strictly against the State and in favor of the taxpayer under the rule of statutory construction that obtains in this State.

It is the opinion of this office that the provision in section 4 of chapter 99, Statutes of Nevada 1933, providing that the cost of publication of the delinquent tax notice and giving of notice of the time and place of sale of delinquent property shall in each case be charged against the delinquent taxpayer, but in no case be a charge against the State or county, while containing language which might be construed as precluding the payment of publication cost in the first instance by the State or county, still contains sufficient authority for the payment of the printing cost by the county in the first instance, when presented by the publisher according to law and in the proper amount. Publication of this notice is mandatory wherever there is a newspaper published in the county, in order to give the due and legal notice of delinquency, and, no doubt, the publisher is entitled to his reasonable publication charges, and the failure to obtain them promptly might result in there being no legal notice of tax delinquency given as would sustain a sale of tax delinquent property. Further, the submitting of the delinquent list to the publisher,

with directions to publish the same, undeniably creates an implied contract on the part of the State and county to pay publication cost, and, unless there is an agreement between the State and county and the publisher to the effect that such publisher shall await the recovery of the publication cost by means of sale of the property, we think the State and county would be bound to pay the reasonable cost of such publication in the first instance and be reimbursed therefor from the proceeds of the tax sales thereafter.

We think that the language of this provision of the law is susceptible to the construction that no publication charge shall be made against the State and county that is not to be repaid from the proceeds of the sale of delinquent property or repaid from cost assessed therefor against the delinquent taxpayer who pays before sale but after the publication costs have been incurred. The statute itself provides that the publication cost shall be charged to the delinquent taxpayer; and, providing as it does for the sale of delinquent property to recover taxes, penalties, and costs, the statute clearly contemplates the repayment of money expended by the State or county in perfecting the sale.

Therefore, we think that the Board of County Commissioners *may* audit and allow claims of publishers for cost of publishing notices of delinquency, reimbursing the county from proceeds of tax sales or payments from delinquent taxpayers as above pointed out. The same holding will apply to publication charges incurred under section 5 of said chapter.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

By W. T. MATHEWS, *Deputy Attorney-General*.

HON. JAMES DYSART, *District Attorney, Elko, Nevada*.

SYLLABUS

OPINION NO. 1933-102. Personal Property—Assessments.

When an Assessor assesses livestock or equipment or other personal property with the land of an owner, which lands are mortgaged but the personal property is either clear or mortgaged to another mortgagee, and because of this method of assessment, it operates that the mortgagee is forced to pay the taxes upon property in which he has no interest and no opportunity to reimburse himself, the Assessor cannot, at the request of either one or both parties concerned, assess this property separately so that the taxes can be collected separately.

INQUIRY

CARSON CITY, June 28, 1933.

When an Assessor assesses livestock or equipment or other personal property with the land of an owner, which lands are mortgaged but the personal property is either clear or mortgaged to another mortgagee, and, because of this method of assessment, it operates that the mortgagee is forced to pay the taxes upon property in which he has no interest and no opportunity to reimburse himself, can the Assessor, at the request of either or both parties concerned, assess this property separately so that the taxes can be collected separately?

OPINION

Under the revenue laws of Nevada it is incumbent upon the Assessor to assess all taxable property, real or personal, to the owners thereof, if known (section 6421, N.C.L. 1929), save and except that mortgaged personal property may be assessed to the person in possession thereof at the time of the assessment (section 6429, N.C.L. 1929). It has been held that, where property tax is assessed to a person not the owner of record, such assessment is void (26 R.C.L. 358).

In this State, the statute makes the tax on personal property a lien upon the real property of the same owner, and this lien is not extinguished until the tax is paid (section 6416, N.C.L. 1929). The intent of this provision is clear, *i.e.*, to insure the payment of all taxes and to provide the State with available property upon which to enforce the collection of its taxes levied on personal property where the owner thereof owns real property; and we think that, even though no express provision is found in the law prohibiting the assessment of personal property and the assessment of real property, for the purpose of relieving the real property mortgagee of payment of the tax on such personal property in which he may have no interest in the manner mentioned in your query, it would not avail the said mortgagee anything were the Assessor to assess this property separately, for the reason that the lien of the personal property tax would still attach to the land covered by his mortgage, and no good purpose would be served by such mode of assessment. Therefore, we are constrained to answer your query in the negative.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

By W. T. MATHEWS, *Deputy Attorney-General*.

W. D. ATKINSON, *Deputy, Nevada Tax Commission, Carson City, Nevada*.

SYLLABUS

OPINION NO. 1933-103. Motor Vehicle Fuel—Taxes.

Where any person, firm or corporation imports motor vehicle fuel into the State of Nevada and uses such fuel after it reaches the State, such motor vehicle fuel is subject to tax in accordance with section 6563, N.C.L. 1929.

INQUIRY

CARSON CITY, July 11, 1933.

If or when any firm, corporation, or person imports motor vehicle fuel into the State of Nevada and uses such fuel after it reaches the State of Nevada, is such motor vehicle fuel subject to tax in accordance with section 6563, N.C.L. 1929?

OPINION

The above query presents the question, in substance, of whether any person who imports into the State of Nevada motor vehicle fuels *for use* can refuse, in the first instance, to pay the motor vehicle fuel tax, commonly known as the gasoline tax, fixed and levied by the Legislature in the Motor Vehicle Fuel Tax Act, *i.e.*, sections 6562 to 6570, inclusive, Nevada Compiled Laws 1929, or whether such person must pay the tax in question and thereafter exercise his right to an exemption from such tax, if any such exemption he has, by securing a refund thereof.

Persons seeking exemptions from licensing and taxation must present a clear case and one free from doubt.

Those who seek shelter under an exemption law must present a clear case, free from all doubt, as such laws, being in derogation of the general rule, must be strictly construed against the person claiming the exemption and in favor of the public. 17 R.C.L. 522, sec. 42; 27 C.J. 237, sec. 91; *Erie Ry. Co. v. Pennsylvania*, 21 Wall, 492; 22 L. Ed. 595; *Railway Co. v. Philadelphia*, 101 U.S. 528, 25 L. Ed. 912; *Camas Stage Co. v. Kozer*, 209 Pac. at p. 99.

The term “dealer” as defined in paragraph (c) of section 1 of the Motor Vehicle Fuel Tax Act, *i.e.*, sec. 6562, N.C.L. 1929, unquestionably takes in the “firm, corporation, or person” mentioned in the query, and defines the term “dealer,” among other things, to mean any person,

firm, or corporation *who imports or causes to be imported the motor vehicle fuels therein mentioned, for use*, distribution, or sale in, and after the same reaches the State of Nevada. Thus, it is clear that the Legislature intended that the *use* of motor vehicle fuel was to be considered in the assessment of the excise tax thereon as well as sale and distribution thereof. We make this observation for the reason that it may be claimed that section 2 of the Act (sec. 6563, N.C.L., supra) contains language indicative of the legislative will that *use* of such fuels was not to be taxed when the *use* was had by the dealer or importer importing the said fuel into Nevada.

Said section 2 reads as follows:

That, in addition to the taxes now provided for by law, each and every dealer, as defined in this act, who is now engaged or who may hereafter engage in his own name, or in the name of others, or in the name of his representatives or agents in this state, in the sale or distribution, as dealers and distributors, of motor-vehicle fuel as herein defined, shall, not later than the fifteenth day of each calendar month, render a statement to the Nevada tax commission of all motor-vehicle fuel sold or used by him or them in the State of Nevada during the preceding calendar month, and shall pay an excise tax of four cents per gallon on all motor-vehicle fuel so sold or used, as shown by such statement in the manner and within the time hereinafter provided.

It will be noted that the first part of the section refers to each and every dealer as defined in the Act who is engaged in or who may thereafter engage in the sale or distribution of motor vehicle fuel shall do certain things, *i.e.*, “not later than the fifteenth day of each calendar month, render a statement to the Nevada tax commission of all motor-vehicle fuel sold or used by him * * * in the State of Nevada during the preceding calendar month.” So, it may be claimed that, if the person importing the motor vehicle fuel imported it for use only and not for sale or distribution, such person was not liable for the tax and, therefore, would not have to pay it; but the remainder of said section of the Act clearly states that the tax shall be paid on the fuel imported for use, the remainder of the Act reading as follows:

and shall pay an excise tax of four cents per gallon on all motor-vehicle fuel so sold or *used*, as shown by such statement in the manner and within the time hereinafter provided. (Italics ours.)

To hold that the language used in the first part of said section 2 even implies an exemption from payment of the tax would be to defeat the very purpose of the Act and most seriously interfere with the orderly collection of revenues provided by the Act of the Legislature; and we think the Act is to be construed as a whole for the purpose of gathering the intent of the Legislature and, if it can be said that any ambiguity or obscurity exist therein by reason of the language so used in the first part of section 2, it is evident from the rest of said section and the entire Act that the Legislature intended to permit of no exemption by reason of the importation of motor vehicle fuels into the State for use only, except as provided in section 4 of the Act and then only by means of refunds.

All parts of the same Act must be considered together, and if one part, standing alone, is obscure, its meaning may be disclosed by another, and consideration of the entire act may expand or restrict the terms of a particular clause. *Ex Parte Prosole*, 32 Nev. 378.

In construing statutes, courts must preserve a legislative intendment of reasonable operation of all parts of the act. *Nye County v. Schmidt*, 39 Nev. 456.

It will not be assumed that one part of a legislative act will make inoperative or nullify another part of the same act, if a different and more reasonable construction can be applied. *Nye County v. Schmidt*, supra.

No exemption of the payment of the tax in question in the first instance is provided in the Act, save and except that in section 4 thereof, *i.e.*, sec. 6565, N.C.L., *supra*, it is provided that the Nevada Tax Commission shall provide rules and regulations for the sale of motor vehicle fuel “free of excise tax” to the Government of the United States. Thus, additional evidence is furnished by the Act itself that the Legislature intended to permit of no exemptions to “dealers,” save such exemptions as were made possible by means of the refunds authorized by said section 4.

Applying the well-settled rule of law, that those who seek shelter under an exemption law must present a clear case, free from all doubt, etc., hereinbefore quoted, to the situation disclosed by the query, we hold that such firm, corporation, or person who imports motor vehicle fuels into this State and thereafter uses such fuel in this State is liable for the motor vehicle fuel tax and must pay the same in the first instance; and, if such firm, corporation, or person is entitled to any exemption, it must be claimed and exercised in the manner provided by the statute, *i.e.*, the claiming of and proving the right to a refund thereof as provided in section 4 of the Act.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

By W. T. MATHEWS, *Deputy Attorney-General*.

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

SYLLABUS

OPINION NO. 1933-104. Circuses and Tent Shows—Licenses.

Statutes of Nevada 1933, chapter 80, p. 94, repeals by implication all prior laws relative to the licensing of circuses and tent shows.

INQUIRY

CARSON CITY, July 11, 1933.

The following inquiries are made concerning the laws under which various places of amusement are licensed within the county of Humboldt, State of Nevada:

1. What licenses should be collected from circuses and tent shows exhibiting within the corporate limits of the city of Winnemucca?
2. What licenses should be collected from circuses and tent shows exhibiting outside of the corporate limits of the city of Winnemucca and in the county of Humboldt?
3. Is an ordinance passed by the County License Board for the licensing of circuses and tent shows, pursuant to sections 2037-2040, inclusive, N.C.L. 1929, valid?
4. What laws apply to the licensing of circuses and tent shows exhibiting within the county of Humboldt?
5. Do 1933 Statutes of Nevada, chapter 80, page 94, operate to exempt national organizations of ex-service men from any and all license fees where the local post or unit is to participate in the circus or tent show or the proceeds thereof?
6. Is it mandatory that the County Commissioners of Humboldt County enact an ordinance for the licensing of circuses and tent shows, pursuant to 1933 Statutes of Nevada, chapter 80, page 94?
7. Should the Sheriff collect the license fee provided for in the second subdivision of section 6664, N.C.L. 1929, from a theater operating within the corporate limits of the city of Winnemucca?

OPINION

Where such show is exhibited within the corporate limits of an incorporated city, the license to be collected is the fee which must be provided by the County Commissioners of the county pursuant to 1933 Statutes of Nevada, chapter 80, page 94, plus any such license that may be provided by ordinance in such incorporated municipality, city, or town of the county, and no other license fee.

2

Where such a show is exhibited outside of the corporate limits of an incorporated municipality, city, or town and within the county, the license to be collected is that provided for by the County Commissioners of the county pursuant to 1933 Statutes of Nevada, chapter 80, page 94, and no other license fee.

The proviso of the second subdivision of section 6664, N.C.L. 1929, relating to the licensing of circuses, caravans, or menageries or collections of animals, is repealed by implication by 1933 Statutes of Nevada, chapter 80, page 94.

3

An ordinance passed by the County License Board providing for the licensing of circuses and tent shows, pursuant to sections 2037-2040, inclusive, N.C.L. 1929, is invalid and unenforceable. Section 2037, N.C.L. 1929, reads, in part, as follows:

Every person, firm, association of persons or corporation wishing to engage in the business of conducting a billiard or pool hall, dancing-hall, bowling alley, theater, soft-drink establishment, gambling game or device permitted by law, *or other place of amusement, entertainment, or recreation*, outside of an incorporated city or incorporated town, etc.

Circuses and tent shows are not enumerated in this section and are not included in the general words "*or other places of amusement, entertainment, or recreation*," as, according to the doctrine of ejusdem generis, these general words are limited by the specific words which precede them. A circus or tent show is not, in the opinion of this office, of the same class of amusement as those enumerated in this section. See, *Petition of Johnson*, 167 Cal. 142, at 145 and 146; and 23 California Jurisprudence 755, section 130.

4

The only law applicable to the licensing of circuses or tent shows, whether within or outside of the corporate limits of an incorporated or unincorporated city or town, is 1933 Statutes of Nevada, chapter 80, page 94.

5

Yes, if application is made by an executive officer of the local post or unit and the exhibition is held outside of the corporate limits of an incorporated municipality, city, or town; but the County Commissioners have no right to control the action of the legislative body of such incorporated municipality, city, or town in this regard or to exempt such shows from license fees when held in such municipality, city, or town, insofar as the city license is concerned.

6

It is mandatory that the County Commissioners of the county enact an ordinance providing for the licensing of circuses and tent shows, pursuant to 1933 Statutes of Nevada, chapter 80, page

94, it appearing from said Statute that such was the intent of the Legislature. See, *Eddy v. Board of Embalmers*, 40 Nev. 329; 163 Pac. 245.

7

A theater operating within the corporate limits of Winnemucca should be taxed according to the second subdivision of section 6664, N.C.L. 1929, Winnemucca having polled three hundred or more votes at the last general election.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

By JULIAN THRUSTON, *Deputy Attorney-General*.

HON. MERWYN H. BROWN, *District Attorney, Winnemucca, Nevada*.

SYLLABUS

OPINION NO. 1933-105. State Engineer—Distribution of Waters.

It is not within the legal authority of the State Engineer to continue the distribution of the waters of Silver Creek and its tributaries, where the funds for the payment of the Water Commissioner are voluntarily contributed by one or more of the water users of the stream or stream system, in accordance with the provisions of 1915 Statutes of Nevada, chapter 253, section 38, or any other law.

INQUIRY

CARSON CITY, July 18, 1933.

Is it within the legal authority of the State Engineer to continue the distribution of the waters of Silver Creek and its tributaries in accordance with the provisions of section 38, chapter 253, Statutes of 1915, where funds for the payment of the Water Commissioner are voluntarily contributed by one or more of the water users of the stream or stream system?

OPINION

It is not within the legal authority of the State Engineer to continue the distribution of the waters of Silver Creek and its tributaries, where the funds for the payment of the Water Commissioner are voluntarily contributed by one or more of the water users of the stream or stream system, in accordance with the provisions of 1915 Statutes of Nevada, chapter 253, section 38, or any other law.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

By JULIAN THRUSTON, *Deputy Attorney-General*.

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

SYLLABUS

OPINION NO. 1933-106. Bonds—County Commissioners, Powers.

It is within the power of the Board of County Commissioners to legally issue bonds provided for in 1931 Statutes of Nevada, chapter 146, pp. 235-237, notwithstanding the time which has elapsed since the passage and approval of the law and the date when it became effective.

INQUIRY

CARSON CITY, July 19, 1933.

May the Board of County Commissioners of White Pine County now legally issue the bonds provided for in 1931 Statutes of Nevada, chapter 146, pages 235-237, under and pursuant to the authority granted said board in that chapter of the law, notwithstanding the time which has elapsed since the passage and approval of the law and the date when it became effective?

OPINION

Yes, the Board of County Commissioners of White Pine County, Nevada, may even now legally issue said bonds.

This law does not make it mandatory that the Board of County Commissioners of that county should issue any such bonds at all, either immediately after the date on which said law became effective or at any other time or at all. It simply gave the board authority and power, in its discretion, to issue such bonds. This authority is included in section 1 of the Act. The board was left entirely free to exercise its own best judgment in the entire matter as to whether it would issue these bonds.

This law provides that the Board of County Commissioners may, in its discretion, issue bonds in a sum not to exceed fifteen thousand dollars, to run for a period of twenty years, not from the time of the approval or effective date of the Act, but "from the date of the issuance" of said bonds, in denominations of one thousand dollars each, and to bear interest at a rate not to exceed six percent per annum, said interest to be payable semiannually. There is still ample time to issue said bonds and for provision for their redemption within the period of twenty years expressed in the law.

The provision in section 7 of the Act as to the time of the levy of tax for the payment of the principle and interest on said bonds is again merely authority and power given the board to levy taxes for that purpose. While the Act empowers and authorizes the board to levy for that purpose in the year 1931, it also authorizes the board to levy such tax "annually thereafter." The law does not make it mandatory that this tax be levied, but simply authorizes and empowers the board to levy such tax, leaving both the matter of the issuance of the bonds and the levy of the tax entirely to the discretion of the board. Of course, when the bonds are issued, the board is required to levy a tax to provide for the payment of both the principle and interest on said bonds, or the redemption of the bonds.

Since this entire matter is left to the discretion of the Board of County Commissioners of White Pine County, Nevada, the other provisions and language of the Act must be held to be merely directory, not mandatory.

From the above-mentioned considerations, it is the opinion of this office that the answer to the above-mentioned inquiry must be in the affirmative.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

HON. V. H. VARGAS, *District Attorney, Ely, Nevada*.

SYLLABUS

OPINION NO. 1933-107. Indians—Poll Taxes.

The Assessor, under the laws of Nevada, can legally collect poll tax from a male Indian residing on an Indian Reservation within the State, such Indian being over 21 years and less than sixty years of age.

INQUIRY

CARSON CITY, July 19, 1933.

Can a County Assessor, under the laws of Nevada, legally collect poll tax from a male Indian residing on an Indian Reservation within the State, such Indian being over twenty-one years and less than sixty years of age?

OPINION

From a most exhaustive examination of the authorities, we are inclined to believe that the above query presents a question heretofore not decided by any court and is one of the first impression. We can find no case in point.

Article II, section 7 of the Constitution of Nevada reads as follows:

The legislature shall provide by law for the payment of an annual poll tax, of not less than two nor exceeding four dollars, from each male person resident in the state between the ages of twenty-one and sixty years (uncivilized American Indians excepted), to be expended for the maintenance and betterment of the public roads.

Pursuant to the above constitutional provision, the Legislature provided "by law" for the payment of poll tax, as follows:

Each male resident of this state, over twenty-one and under sixty years of age (uncivilized American Indians excepted), and not by law exempt, shall pay an annual poll tax, for the use of the state and county, of three dollars; and for the purposes of this act, any person shall be deemed to be a resident of this state, who shall reside in this state, or who shall be employed therein upon any public or private works, for a period exceeding ten days; *provided*, that any person who has paid a poll tax in any other state or territory and has in his possession a receipt therefor, shall not be required to pay a poll tax in this state for the year represented by such poll-tax receipt issuing in another state or territory. Sec. 6505, N.C.L. 1929.

No statute of Nevada exempts any male Indian over twenty-one years and less than sixty years of age from the payment of the poll tax so provided by law, unless such Indian be uncivilized (sec. 6505, *supra*). Further, we have been unable to find a Federal statute prohibiting the collection of poll taxes from male Indians who may be deemed wards of the Federal Government; and the mere fact that such Indian may be residing on an Indian Reservation within the State, in our opinion, does not operate to exempt him from the payment of poll tax. We think that if Congress desired to exempt Indians who are wards of the Federal Government from the payment of poll taxes assessed by a State, it would have said so long ago in the same manner in which it prohibited State taxation of such wards' land and personal property which had been furnished to the wards by the United States. Since no Federal statute expressly prohibiting the assessment of poll taxes to male Indians who are wards of the Federal Government has been enacted, we think, at the very least, this indicates that Congress intends that such wards shall assume some of the burdens as well as the benefits of State Government.

We think the Supreme Court of the United States so views the intent of Congress and the Federal Government, for, in a recent case, the Court said, with respect to the right of the Federal Government to collect income tax from an Indian who was, in effect, with respect to the original source of the property from which income was derived upon which the Federal Government claimed the right to collect such income tax, a ward of such Government:

The language of sections 210 and 211(a) subjects the income of "every individual" to tax. Section 213(a) includes income "from any source whatever." The intent of Congress was to levy the tax with respect to all residents of the United States and upon all sorts of income. The act does not expressly exempt the

sort of income here involved, nor a person having petitioner's status respecting such income, and we are not referred to any other statute which does.

But it is said that as to the income here taxed petitioner is exempt because of his status as an Indian. This assertion requires a reference to the policy of the government with respect to the Indians. No provision in any of the treaties referred to by counsel has any bearing upon the question of the liability of an individual Indian to pay tax upon income derived by him from his own property. The course of legislation discloses that the plan of the government has been gradually to emancipate the Indian from his former status as a ward; to prepare him for complete independence by education and the gradual release of his property to his own individual management. This plan has included imposing upon him both the responsibilities and the privileges of the owner of property, including the duty to pay taxes. *Choteau v. Burnet*, 283 U.S. 691, 75 L. Ed. 1353.

We think, in view of the language of the Supreme Court of the United States above quoted with respect to a situation analogous to the question under consideration here, that to deny to the State the right to collect poll taxes from Indians residing on Indian Reservations in this State would be most far-fetched, indeed.

All Indians now residing within the State of Nevada are citizens of the United States, made so by an Act of Congress (sec. 3, tit. 8, U.S.C.A.), whether residing on or off an Indian Reservation. Since at least the year 1926, Indians residing on Indian Reservations in this State, as well as those residing elsewhere in the State, have been deemed citizens of Nevada and accorded the right to vote at all elections, and polling places were there provided for them. Also, all other rights and benefits accorded by the laws of this State are and have been extended to the Indians wherever they may reside in Nevada; and we think it is only equitable that they assume some of the burdens as well as the benefits of State Government.

Under the laws of this State, the only exemption from payment of poll tax accorded an Indian is that he be uncivilized. We think that no uncivilized Indians may now be found within the State of Nevada. In 1923 this office so held. See Opinion of the Attorney-General No. 57, 1923-1924 Report of the Attorney-General. The rule of law governing exemptions from taxation is:

Those who seek shelter under an exemption law must present a clear case, free from all doubt, as such laws, being in derogation of the general rule, must be strictly construed against the person claiming the exemption and in favor of the public. 17 R.C.L. 522, sec. 42; 27 C.J. 237, sec 91; *Erie Ry. Co. v. Pennsylvania*, 21 Wall, 492, 22 L. Ed. 595; *Railway Co. v. Philadelphia*, 101 U.S. 528, 25 L. Ed. 912; *Camas Stage Co. v. Kozer*, 209 Pac. at p. 99.

Thus, the burden is on those who seek to escape taxation to show and prove their right to be exempted from the payment thereof.

Entertaining the views above set forth, we are constrained to answer your inquiry in the affirmative.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

By W. T. MATHEWS, *Deputy Attorney-General*.

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

SYLLABUS

OPINION NO. 1933-108. Automobiles—Personal Property Taxes.

An automobile purchased between July 1, 1933, and the second Monday in July, 1933, is legally subject to personal property tax for the year 1933.

INQUIRY

CARSON CITY, July 20, 1933.

Is a new automobile purchased after July 1, 1933, or after July 1 of any other year, legally subject to personal property tax for that year?

OPINION

If the automobile was within the State of Nevada at any time between January 1 and the second Monday in July of the same year, it is legally subject to personal property tax for that year; and, if within the State of Nevada during that period of time, it is the duty of the Assessor of the county to assess and collect the personal property tax on such automobile from the person who was the owner of it during that period of time, whether the owner thereof be a dealer or a private owner of the automobile. If the owner has not sufficient real estate to be worth the amount of the tax levied against both the real estate and personal property of the owner, then it is the imperative duty of the Assessor to demand the tax on the automobile and, if not paid immediately, then to assess and sell the automobile. If the owner has sufficient real estate to pay the entire tax on both the real and personal property of the owner, including, also, the automobile, then the Assessor may assess the automobile to the owner thereof with the real estate; and, in that event, the personal property tax on the automobile may be collected in installments at the same time as the tax is legally collected on the real estate.

Answering your particular question, it is the opinion of this office that, if the owner purchased the automobile between July 1, 1933, and the second Monday in July, 1933, and the personal property tax had not already been paid on the automobile, then it is legally subject to personal property tax for the current year. Attorney-General's Opinion No. 188, 1925-1926; No. 157, 1923-1924; No. 90, 1917-1918; 1923 Statutes of Nevada, 359, section 8, "An Act to amend an act entitled 'An act to provide revenue for the support of the government of the State of Nevada, and to repeal certain acts relating thereto,' approved March 23, 1891." being Nevada Compiled Laws 1929, section 6421; State of Nevada v. Eastabrook, 3 Nev. 173; State of Nevada v. Earl, 4 Nev. 394; State of Nevada v. C. & C. Railroad Company, 29 Nev. 487.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General.*

HON. V. H. VARGAS, *District Attorney, Ely, Nevada.*

SYLLABUS

OPINION NO. 1933-109. Motor Carrier License Act, 1933.

1. Chapter 165 of the 1933 Statutes of Nevada is at the present time in force and effect.
2. Under chapter 165 no license fees can be imposed upon the motor vehicles upon which the fee was paid for the year 1933 under the prior law.
3. In view of the provisions of section 17 of chapter 165, motor carrier operators who secured their 1933 motor carrier licenses under the 1929 Act are not entitled to a refund of the fees paid therefor.
4. Chapter 165 now is in force and effect as to motor carrier operators who have not secured 1933 licenses under the 1929 Act.

INQUIRY

CARSON CITY, July 26, 1933.

In view of the provisions contained in section 17, chapter 165, Laws of Nevada 1933, an opinion is desired as to the effect of said section with respect to the administration and enforcement of said chapter 165 during the year 1933, and the following queries are herewith submitted:

1. Is said chapter 165 in force and effect at the present time?
2. If said chapter 165 is now in full force and effect, is it effective as to those motor carrier operators who secured licenses for the year 1933 pursuant to the Motor Carrier Licensing Act of 1929?
3. If said chapter 165 is now in full force and effect, then, in view of the provisions of section 17 thereof, are motor carrier operators who secured their 1933 motor carrier licenses under the 1929 Act entitled to a refund of the fees paid therefor?
4. Is chapter 165 now in force and effect as to motor carrier operators who have not secured 1933 licenses under the 1929 Act?

OPINION

Chapter 165, Laws of Nevada 1933, is the Motor Carrier License Act of 1933, and pertains to the licensing and regulation of common carriers by motor vehicles of persons and/or property, and the licensing of contract carriers by motor vehicles of persons and/or property, and the licensing of private carriers by motor vehicles of property over and along the public highways of the State. The purpose and the policy of the Legislature in enacting this law is most fully stated in section 1 of the Act, following the reasons therefor contained in the preamble. The preamble and section 1 read as follows:

WHEREAS, The operation of motor cars and vehicles for hire on the public highways of the state is known to materially increase the cost of maintenance of highways, and in many cases to introduce elements of danger to the traveling public; and

WHEREAS, It is necessary for the enforcement of good order and for the protection of highways constructed by this state that large sums of money be spent for the regular supervision of such highways and for repairing damage done to said highways, whether or not such vehicles are operated in interstate commerce; and

WHEREAS, This act is necessary for the preservation of safety, the protection of the public and in providing funds for proper maintenance of said highways; now, therefore.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. It is hereby declared to be the purpose and policy of the legislature in enacting this law to confer upon the public service commission of Nevada the power and authority, and to make it its duty to supervise, regulate and license the common motor carrying of property and/or passengers for hire, and to supervise for licensing purposes the contract motor carrying of property and/or of passengers for hire, and to supervise for licensing purposes the private motor carrying of property when used for private commercial enterprises on the public highways of this state, hereinafter defined, so as to relieve the existing and all future undue burdens on such highways arising by reason of the use of such highways by motor vehicles in a gainful occupation thereon, and to provide for reasonable compensation for the use of such highways in such gainful occupations, and enable the State of Nevada, by a utilization of the license fees hereinafter provided to more fully provide for the proper construction, maintenance and repair thereof, and thereby protect the safety and welfare of the traveling and shipping public in their use of the highways. This

act is not to be construed as a motor vehicle registration act, but that the license fees provided herein are in addition to the motor vehicle registration license fees that are now or may hereafter be required under the laws of this state.

Thus, it is clearly apparent that the Legislature intended that all of the classes of motor carriers mentioned in said section 1 were to be licensed for the reasons and purposes above stated, subject, of course, to such exceptions and/or exemptions provided later in the Act. We have then the reasons for and the purposes of the Act expressly stated by the Legislature; and this, we think, clearly evidences the legislative intent that all persons, firms, or corporations coming within the terms of the Act are to be licensed thereunder and according to the provisions thereof, and be subject to such restrictive and administrative provisions as are contained therein. Particularly is this intent made clear when the other sections of the Act are read in connection with the preamble and section 1 of the Act.

The Motor Carrier License Act of 1933 became effective upon its passage and approval (sec. 29). It was approved March 23, 1933. It contains an express repeal of the prior Motor Carrier License Act of 1929 (sec. 27); and this repealing section contains no savings clause as to any act performed or license secured or granted under the prior licensing Act; neither does it contain any provision for continuing the 1929 Act in effect beyond the effective date of the 1933 Act; and no other section of the Act contains any such provision unless it can be said to be contained in section 17 of such Act. Section 17 of the 1933 Act reads as follows:

Every person, as defined in this act, operating motor vehicles, as defined in this act, in the carriage of persons and/or property for hire, or as private carrier, as defined in this act, shall, before commencing the operation thereof and annually thereafter, secure from the public service commission of Nevada a license for each and every such motor vehicle to be operated, and make payments therefor as hereinafter provided. The license herein provided shall be secured and the fee therefor paid on or before the first day of January of each year, commencing January 1, 1934; *provided*, no person shall be deemed delinquent who has procured and paid for a license under the provisions of this act for and during the preceding year, until the first day of February of the new year; *and provided further*, that the provisions of this act shall be deemed in force and effect during the year 1933 against all persons who, at the time this act takes effect, shall not have obtained and paid for a license or licenses required by the provisions of prior carrier licensing laws of this state.

Was it the intent of the Legislature to postpone the effective date of the 1933 Act until January 1, 1934? Is such intent manifested by the language of said section 17? Was it the intent of the Legislature to make said Act ineffective as to those who had secured their carrier licenses under the 1929 Act for the year 1933, and make it effective at once as to all others coming within the terms of the Act, or was it the intent of the Legislature to simply absolve all who had secured and paid for their carrier licenses for 1933 under the 1929 Act from payment of any further fees during the year 1933 upon the same motor vehicles used in the carrier service?

The intent of the Legislature in this regard will not be gathered from the language of section 17 alone; rather it is to be gathered from a reading of the entire Act.

Legislative acts should be construed so as to make all parts thereof harmonious, if a reasonable construction can accomplish the result. *Nye County v. Schmidt*, 39 Nev. 456.

Statutes should be construed so that, as far as possible, effect may be given to all the language of an act. *Ex Parte Smith*, 33 Nev. 466.

The whole act should be construed together to remove or explain any ambiguity in a particular statute. *State v. Eggers*, 36 Nev. 364.

If the will of the legislature is apparent, the court should give it force and not nullify its manifest purpose. *Ex Parte Prosole*, 32 Nev. 378.

To the same effect see *State v. Martin*, 32 Nev. 198.

All parts of the same act must be considered together, and if one part standing alone is obscure, its meaning may be disclosed by another, and consideration of the entire act may expand or restrict the terms of a particular clause. *Ex Parte Prosole*, *supra*.

To the same effect see *State v. Reno Brewing Company*, 42 Nev. 397.

We have shown hereinbefore that the legislative intent was and is, in the enactment of the 1933 Act, to license all persons, firms, and corporations coming within its purview and that the intent was that the Act should become effective upon its passage and approval, and further, as indicative of the legislative intent in this respect, that an express repeal of the 1929 Carrier License Act was incorporated in the 1933 Act. We think, if the Legislature had intended that the 1933 Act was not to become effective until January 1, 1934, it would have said so and not clearly indicated its intent that the 1933 Act become effective at once. The Legislature in 1933 was bringing within the terms of the Act many carriers and different classes of carriers not licensed under the 1929 Act; and its expression of legislative will that the Act should become effective immediately upon its passage and approval clearly indicates its will that the Act should be effective as to all the new classes of carriers brought within the Act as well as all others, for one reason, if it can be said that section 17 of the Act contains provisions showing a contrary intent, that the section providing for the immediate effectiveness of the Act is a later expression of the legislative intent.

When two provisions of a statute are not reconcilable, the last one controls, as being the latest expression of the legislative will. *Ex Parte Smith*, *supra*.

However, we are of the opinion that the language contained in said section 17, when read and construed together with the language contained in the entire Act, is not irreconcilable with the provisions of section 29 providing for the immediate effectiveness of the Act, and when viewed in the light of the rules of statutory construction adopted by the Supreme Court of the State of Nevada, cited hereinbefore. The Legislature undoubtedly knew that many, if not all, motor carriers coming within the terms of the 1929 Act must, if they had not already done so, secure and pay for the 1933 licenses before the 1933 Act could be made effective as to license fees as applied to them for the year 1933 (see sections 4404 and 4405, N.C.L. 1929). We think the Legislature had this very situation in mind at the time of the enactment of the 1933 Act. That a most anomalous condition with respect to the payment, collection, and adjustment of license fees would have followed had the Legislature not had this matter in mind, and legislated with respect to it, goes without saying; and we think that this was and is all that is meant by the Legislature in the enactment of section 17, *i.e.*, that, to provide a more expeditious and convenient method of collection and payment of the license fees, all fees collected under the 1929 Act should serve as and for the fees provided in the 1933 Act, provided the license had been paid prior to the effective date of the 1933 Act, and in order to bring about uniformity in the imposition and collection of the license fees on all carriers within the purview of the Act, both those who came under the 1929 Act and had paid their fees and the new and additional classes brought under the licensing laws by the 1933 Act. We think that the reason which dictated the enactment of section 17 was, no doubt, to avoid the chaotic condition that would have followed if no disposition of the fees already paid had been provided. Perhaps the Legislature could have chosen more apt language to convey its meaning; but we think it made its meaning clear, particularly in the last proviso of the section, and that this meaning and intent is most clearly evidenced by the language of the entire Act. To hold otherwise would, in effect, attribute an absurdity to the Legislature in that it had provided a most complete licensing law with respect to the subject covered, made it effective immediately, repealed all prior laws on the subject, and then, in effect, killed the Act for the year 1933 by so legislating as to make the Act ineffective for the year 1933—at least as to those who had already paid fees for 1933. The 1933 Act contains provisions of an administrative and supervisory character applicable to those who had already obtained their 1933 license as well

as to the new classes, separate and apart from the licensing features; and the Legislature had the power and, in our opinion, evidenced its intention to make such provisions effective at once as to all classes.

Any reasonable construction which the phraseology of a statute will bear, must be drawn to avoid an absurd meaning. *Carson v. Steamboat Canal Co.*, 43 Nev. 185.

Entertaining the views above set forth, we are of the opinion and so hold that the entire 1933 Act is to be construed to gather the intent of the Legislature with respect to when and in what manner the Act became effective, and that such construction clearly shows that the intent of the Legislature was that, save and except as to those motor carriers within the purview of the Motor Carrier License Act of 1929, for the purposes of collection and payment of license fees thereunder only, and who had paid such fees prior to the effective date of the 1933 Act, the Motor Carrier License Act of 1933 should become effective immediately upon its passage and approval and, ever since the 23d day of March, 1933, has been and is the law on the subject in this State.

Query No. 1 is, therefore, answered in the affirmative.

As to query No. 2, said Act is effective as to the carriers therein mentioned, save and except that no license fees can be imposed upon the motor vehicles upon which the fee was paid for the year 1933 under the prior law.

Query No. 3 is answered in the negative. No provision was made by the Legislature for any refunds of license fees paid.

Query No. 4 is answered in the affirmative.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

By W. T. MATHEWS, *Deputy Attorney-General*.

THE PUBLIC SERVICE COMMISSION OF NEVADA, *Carson City, Nevada*.

SYLLABUS

OPINION NO. 1933-110. Drainage Districts—Taxes.

Under sections 8028 and 8038, N.C.L. 1929, the supervisors of a drainage district can lawfully continue to assess the property within the district belonging to a person who has paid his assessment in full and obtained a receipt therefor, notwithstanding the fact that the same is covered on the record by a receipt showing such taxes to be paid in full.

INQUIRY

CARSON CITY, August 2, 1933.

1. When a drainage district is organized and the bonds are sold and the property owner within such district has paid in full the amount assessed to him and has a receipt therefor, is such property owner liable for a shortage of funds caused by the delinquencies of other property owners within the said district?

2. Can the supervisors of the drainage district lawfully continue to assess the property that is covered on the record by a receipt showing such taxes to be paid in full, as provided in paragraph 2 of section 8130, N.C.L. 1929?

OPINION

1. Yes.

2. Yes. It is our opinion that sections 8028 and 8038, N.C.L. 1929, are the only sections which are applicable and these sections do control. The law provides that the supervisors of the drainage district can lawfully continue to assess the property within the district belonging to a person who has paid his assessment in full and obtained a receipt therefor, notwithstanding the fact that the same is covered on the record by a receipt showing such taxes to be paid in full. We believe that the case of *In Re Lovelock Irrigation District*, 51 Nev. 215, 273 Pac. 982, and the cases therein cited sustain this view.

It may seem unfair to the person who has paid his irrigation district tax in full as levied upon his property for the entire bond issue to be compelled by the delinquency of some other taxpayer in the district to submit to another levy of tax on his property and to pay his portion of this delinquency again when he has a receipt showing that he has paid his share of the tax and bonds in full, and we dislike to so hold; but the law, since the 1925 amendment of said section 8038, so provides and the Supreme Court so held in the case of *In Re Lovelock Irrigation District*, supra.

It is not, of course, within the power of this office to make laws and we must bow to and abide by the decision of our Supreme Court, as all good citizens should do; so we must answer both of these questions in the affirmative.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

By JULIAN THRUSTON, *Deputy Attorney-General*.

HON. W. A. WILSON, *District Attorney, Lovelock, Nevada*.

SYLLABUS

OPINION NO. 1933-111. Taxes—Publication of Notice.

One publication in a newspaper of the notice of taxes due, provided for in section 6440, N.C.L. 1929, as amended at p. 120, Statutes of Nevada 1933, constitutes a legal and sufficient publication thereof.

INQUIRY

CARSON CITY, August 7, 1933.

Is one publication in a newspaper of the notice of taxes due, provided in section 6440, Nevada Compiled Laws 1929, as amended at page 120, Laws of Nevada 1933, a sufficient and legal publication thereof?

OPINION

The language of the statute providing for the giving of notice that taxes will be due at the time provided by law, so far as is necessary for the purposes of this opinion, is as follows:

Upon receiving the assessment roll from the auditor, the ex officio tax receiver shall proceed to receive taxes, and shall forthwith give notice, by publication in some newspaper published in his county, and if none be so published then by posting in three public and conspicuous places in the county, * * *. Section 6440, N.C.L. 1929, as amended by 1933 Stats. Nev. 120.

The general rule of law with respect to the publication of notices required by law to be published in a newspaper is that the statute providing for such publication must be strictly followed and the notice published not less than the number of times provided in the statute. Nearly all statutes providing for publication of notices specify either the number of times the notice shall be published or specify that the notice shall be published for a stated length of time—thus no difficulty is encountered in arriving at the validity of the notice with respect to

time of publication. The statute under consideration here provides no length of time the notice shall be published, neither does it provide for a specified number of publications; and, not so providing, we think, evidences the intent of the Legislature that one publication of the notice is all that is required to provide a legal giving of the notice by the ex officio Tax Receiver. That this was and is the intent of the Legislature is evidenced by the provisions of section 6447, N.C.L. 1929, as amended 1933 Stats. 122, providing for the publication of the delinquent tax list. It will be noted that this section provides publication for at least once a week from the date of such list until the time of sale. We think that if the Legislature had intended that more than one publication of notice of taxes due should be had, it would have said so. Further, we think that failure of the taxpayer to see the published notice, or even the posted notice for that matter, will not excuse the taxpayer from payment of taxes or of penalties incurred thereby. The law itself, being a public law, is deemed notice of the time of payment of taxes and every person is presumed to know the law. The payment and the collection of taxes under our revenue laws do not depend upon the giving of notice of taxes due by the ex officio Tax Receiver. We think that such notice was only provided as a convenience and to call the taxpayers' attention to the fact that taxes are or will be due, and, while more than one publication might be of greater convenience, such is not expressly required by the statute.

We conclude that one publication of the notice provided by the statute in question is all that is required and constitutes a legal and sufficient publication thereof.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

By W. T. MATHEWS, *Deputy Attorney-General*.

HON. MERWYN H. BROWN, *District Attorney, Winnemucca, Nevada*.

SYLLABUS

OPINION NO. 1933-112. Branding and Marking Sheep and Goats.

Statutes of Nevada 1923, chapter 26, section 17, pp. 30 and 31, does not repeal "An Act to regulate marks and brands of stock," approved February 27, 1873, insofar as the same relates to the marking and branding of sheep and goats.

INQUIRY

CARSON CITY, August 7, 1933.

1. Does 1923 Statutes of Nevada, chapter 26, section 17, pages 30 and 31, repeal "An Act to regulate marks and brands of stock," approved February 27, 1873, insofar as the same relates to the marking or branding of sheep and goats?

2. If not, does the 1873 law still apply to the marking and branding of sheep and goats?

OPINION

1. Section 17, the repealing section of the 1923 Act of the Legislature above cited, expressly repeals certain prior Acts, including the Act approved February 27, 1873, only insofar as it or they relate to horses, mules, asses, cattle, and hogs where such prior Act or Acts are in conflict with said 1923 Act. The words "sheep" and "goats" are enumerated in the 1873 Act but are omitted from this repealing statute; therefore, applying the doctrine of *expressio unius est exclusio alterius*, this omission is legally the same as an express legislative mandate that the prior Act or enumerated Acts be not repealed insofar as it, they, or any of them relate to sheep and goats.

It is, therefore, the opinion of this office that said 1873 Act is not repealed insofar as it relates to sheep and goats. It has been held that "The enumeration of certain things in a statute is an

exclusion of all things not mentioned therein,” under the rule of construction above quoted. *Ex Parte Arascada*, 44 Nev. 30, 189 Pac. 619.

2. We are unable to find any law repealing or superseding the 1873 Act insofar as it relates to sheep and goats; and we are, therefore, of the opinion that said Act is at this time in effect only insofar as it relates to said sheep and goats.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

By JULIAN THRUSTON, *Deputy Attorney-General*.

HON. MERWYN H. BROWN, *District Attorney, Winnemucca, Nevada*.

SYLLABUS

OPINION NO. 1933-113. Health Officer—Inoculation.

A health officer, under the laws of Nevada, does not have the power to compulsorily enforce inoculation for typhoid for the purpose of preventing a further spread of such disease.

INQUIRY

CARSON CITY, August 14, 1933.

Has a health officer, under the laws of Nevada, the power to compulsorily enforce inoculation for typhoid for the purpose of preventing a further spread of such disease?

OPINION

The preservation of the public health is one of the duties devolving upon the State as a sovereign power. In fact, among all of the objects sought to be obtained and secured by governmental laws, none is more important than the preservation of public health and an imperative obligation rests upon the State, through its proper instrumentalities or agencies, to take all necessary steps to promote this object. Laws may be passed under the police power of the State for the effective preservation of the public health; and statutes authorizing compulsory vaccination, when such may be necessary for the preservation of the public health, have been sustained (12 R.C.L. 1264 and 1287).

It may be that the inoculation for typhoid is analogous to vaccination and that, therefore, compulsory inoculation is enforceable for that reason; but health officers and boards, while enjoying broad powers with respect to public health, are, nevertheless, creatures of the statute bringing them into existence and providing their powers and, unless it appears clearly that the Legislature has empowered such officers or boards to do certain things, then, we think, they cannot legally do those things.

Boards of health, being creatures of statute, have only such powers as statute confers. *Rock v. Carney*, 22 A.L.R. 1178; 29 C.J. 248, sec. 29; *ibid.*, sec. 32.

While the statute conferring powers on officers and boards of health is to be liberally construed, still such rule of construction is not an unlimited or unqualified rule, but, to the contrary, is to be applied to the powers in fact conferred by the Legislature in the statute containing the grant of power.

As was well said in *Crayton v. Larabee* (N.Y.), 116 N.E. 355:

Among all the objects to be secured by governmental laws, none is more important than the preservation of the public health. As a potent aid to its achievement, the state creates or authorizes the creation of local boards of health or

health officers. The character or nature of such boards is administrative. In determining whether or not powers derogatory of common-law rights are conferred upon them by statutory enactment, the rule of strict construction must be applied, and the bestowal must clearly appear. The powers in fact conferred upon them by the legislature or by virtue of legislative authority, in view of the great public interest intrusted to them, have always received from the courts a liberal construction.

Further, it is held that health authorities cannot, by the operation of their rules and regulations, enlarge or vary the powers conferred upon them by the law creating them and defining their powers; and any rule or regulation, which is inconsistent with any such law or which is inconsistent therewith or antagonistic thereto, is invalid. 29 C.J. 249, sec. 32.

We have examined the statutes of Nevada pertaining to the public health and the powers and duties of health officers and boards in relation thereto; and, while very broad powers are granted both to local health officers and to the State Board of Health in all matters respecting the public health, still we fail to find therein express power granted to any health officer or board to enforce inoculation for typhoid compulsorily; neither do we feel that such power can be said to be granted by implication. To the contrary, we think that the language of the statutes excludes the granting of such power by implication.

We direct attention, without quoting (for such would unduly prolong this opinion), to sections 5259-5260, 5262, 5264, 5265, Nevada Compiled Laws 1929, which said sections contain the grant of power to the health officers and boards of this State, both local and State. It will be noted that the broadest power granted, with respect to the control over the individual, is that of restraint for purpose of quarantine and disinfection of the individual; but nowhere does it appear that an invasion of the individual's person for the purpose of inoculation can be had; and the Legislature's providing that restraint for quarantine and disinfecting purposes may be had, we think, excludes any implication that a health officer has the power to compulsorily invade the person of an individual for purposes of inoculation. We think that the Legislature has so enumerated the things which can be done by health officers; and, not having included "inoculation," expressly or by a most clear implication, intended such power was not to be exercised compulsorily.

The enumeration of certain cases in a statute is an exclusion of all cases not mentioned, under the rule of construction, "Expressio unius est exclusio alterius." *Ex Parte Arascada*, 44 Nev. 30.

We express no opinion as to the power of the Legislature to so legislate, but we think that, unless such power is either clearly expressed in the statute granting powers to health officers and boards or so clearly implied as to admit of no doubt in the matter, such power cannot be assumed by such officer or board. To so hold would be to sanction a delegation of legislative power and would be contrary to constitutional government. The Legislature cannot delegate its power to legislate to any administrative officer or board. *Ginnochio v. Shaughnessy*, 47 Nev. 129.

Entertaining the views herein expressed, we are constrained to answer the query in the negative.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

By W. T. MATHEWS, *Deputy Attorney-General*.

DR. E. E. HAMER, *State Health Officer, Carson City, Nevada*.

SYLLABUS

OPINION NO. 1933-114. Banks and Banking.—License.

1. It is mandatory that a bank which had closed its doors and thereafter has been reopened for limited operations, pursuant to the provisions of sections 79 and 80 of the Banking Act of 1933 and with the approval of the District Court, and being under the direct supervision of the Superintendent of Banks, secure and pay for the State license authorizing such bank to use the name and transact the business of a bank, as provided by section 47 of said Act, such bank having no capital structure and making no profit.

2. In such case the license fee to be collected should be the minimum fee fixed in section 47 of the Act.

INQUIRY

CARSON CITY, August 17, 1933.

1. Is it mandatory that a bank which had closed its doors and thereafter has been reopened for limited operations, pursuant to the provisions of sections 79 and 80 of the Banking Act of 1933, and with the approval of the District Court, and being under the direct supervision of the Superintendent of Banks, secure and pay for the State license authorizing such bank to use the name and transact the business of a bank, as provided by section 47 of said Act, such bank having no capital structure and making no profit?

2. If such license is required, what is the amount of the fee?

OPINION

The provisions of section 47 of the Banking Act of 1933 with respect to the licensing of banks are clear; and it is provided therein that "The transacting of any banking business without such authority shall constitute a gross misdemeanor."

It is most apparent, therefore, that a bank may not operate in this State, except such banks as are doing business in Nevada under the laws of the United States, which are excepted by section 47, without the securing of the license provided for in the section without incurring a heavy penalty for any of its officers whose duty it is to secure such license.

Sections 79 and 80 of the Banking Act of 1933 provide a means whereby a crippled bank which is in the hands of the Superintendent of Banks may be permitted to reopen for business and transact a banking business, restricted in scope, perhaps, but nevertheless a banking business. The fact that all of its transactions and business remain under the direct supervision of the Superintendent of Banks does not, in our opinion, make such transaction and business any the less banking transactions and banking business. The bank is open to the public and receives and pays out money, and whether or not it makes a profit is beside the question and is not at all an element to be considered in the imposition of the license.

The Legislature wrote no exemption from licensing into the law relative to a bank reopened under sections 79 and 80, or otherwise; and we think no implied exemption is contained in the statute. The rule is, that persons seeking exemptions from licensing and taxation must present a clear case and one free from doubt. 17 R.C.L. 522, sec. 42; 27 C.J. 237, sec. 91; *Erie Ry. Co. v. Pennsylvania*, 22 L. Ed. 595; *Railway Co. v. Philadelphia*, 101 U.S. 528, 25 L. Ed. 912; *Camas Stage Co. v. Kozar*, 209 Pac. at p. 99.

In view of the mandatory language contained in section 47 with respect to the securing of the license therein provided, coupled with the severe penalty provided for the transacting of banking business without securing such license, we think that any implied exemption that might be contained in said section by reason of the bank in question here not having a capital structure is so shrouded in doubt that we are constrained to apply the rule of law above cited to the question presented here and construe said section with respect to the method of computing the license fee on the amount of capitalization to mean, as applied to the bank in question here, that such bank, for the purpose of licensing, be deemed to have the minimum amount of capital permitted by the Banking Act of 1933. To hold otherwise would be to read into the Act an exemption clearly not intended by the Legislature.

Entertaining the views above set forth, we are constrained to answer query No. 1 in the affirmative; and, as to query No. 2, we would advise that the license fee should be the minimum fee fixed in section 47 of the Act.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

By W. T. MATHEWS, *Deputy Attorney-General*.

HON. E. J. SEABORN, *Superintendent of Banks, Carson City, Nevada*.

SYLLABUS

OPINION NO. 1933-115. Chapter 47 Of 1933 Statutes of Nevada Unconstitutional.

Chapter 47, 1933 Statutes of Nevada, p. 42, which designates a class of persons which it empowers to perform marriage ceremonies and confers certain privileges on certain members of the class, establishes and places certain burdens on other members of the same class, but not on the entire class, is a discriminatory, special law or "class legislation," and is therefore void and unconstitutional as violative of sections 20 and 21 of article IV of the State Constitution.

INQUIRY

CARSON CITY, August 24, 1933.

Is chapter 47, 1933 Statutes of Nevada, page 42, valid and constitutional?

STATEMENT

This Act, by its terms, assigns certain persons as a class of persons who are authorized to perform marriage ceremonies. The same designates all ordained Ministers of the Gospel who have obtained the necessary license therefor, all Justices of the Supreme Court of this State, all Judges of the District Courts of this State, and all Justices of the Peace within their respective counties as the one and only class of persons who are empowered by the terms of the Act to perform marriage ceremonies. This law further provides substantially as follows: That any Justice of the Supreme Court or Judge of a District Court who shall charge or collect any fee or receive or accept any fee, gift, emolument or perquisite for the performance of any marriage ceremony, or any Justice of the Peace whose total compensation from all sources equals two hundred dollars per month or more who accepts such fee, etc., to his own use, shall be guilty of a crime, to wit, a misdemeanor. The other persons coming within the class empowered by this law to perform marriage ceremonies are not, by the terms of this or any other law, prohibited from charging or accepting any such fee.

OPINION

Sections 20 and 21 of article IV of the Nevada State Constitution are inhibitions against the passage by the Legislature of what are usually referred to as "Special Laws," or "Class Legislation." Section 21 of said article provides, in substance, that "In all cases where a general law can be made applicable, all laws shall be general and of uniform operation throughout the State."

A law to be general, and of uniform operation throughout the State, must operate, not upon individuals as such, but upon defined classes. No matter how much it may be deemed to the interest of the State to exempt individuals from the operation of any provision of the law, the legislature has no power to exempt them except *by defining a class* which will comprise *them* and exempting the whole

class. In that case, not only the individuals intended, but every other individual comprised under the same definition, would be entitled to the exemption. *State of Nevada v. California Mining Company*, 15 Nev. 235 at 251.

In applying the test between general and special laws within the purview of these sections, the Supreme Court, in the case of *State of Nevada v. California Mining Company*, supra, at page 249, uses the following language:

* * * whenever the question has been presented in this court or any other court, so far as our observation has extended, it has always been agreed that a law which applies only to an individual or to a number of individuals selected out of the class to which they belong, is a special and not a general law. *Clarke v. Irwin*, 5 Nev. 120, 121; opinion of Chief Justice Lewis in *State ex rel. Stoutmeyer v. Duffy*, 7 Nev. 348; opinions of Justices Belknap and Hawley in *Youngs v. Hall*, 9 Nev. 217, 226; and *Ex Parte Spinney*, 10 Nev. 319.

The Court continues:

In several of these cases the definitions of the text-writers and the decisions of other courts were thoroughly reviewed; and, to the extent to which they are here relied upon, they are undoubtedly sustained, not only by the weight or authority, but by all authority.

Another excerpt from the case of *State of Nevada v. California Mining Company*, supra, defines a special law as “one which affects only individuals and not a class—one which imposes special burdens, or confers peculiar privileges upon one or more persons in nowise distinguished from others of the same category.” This latter definition, given by our Supreme Court, of a special law is one we deem particularly applicable here by reason of the fact that this Act affects certain individuals of the class it defines by making such individuals guilty of a crime and allowing other individuals of the same class the peculiar privilege of doing identically the same thing with impunity, or, in other words, exempts certain members of the class from the operation of the misdemeanor provisions of the Act.

This law could have been made general and of uniform operation throughout the State by defining the class of persons whom it empowers to perform marriage ceremonies, which it does do; and by then conferring the same privileges and benefits and placing the same burdens and penalties upon all of the persons coming within the class it defines. This, it does not do. This Act obviously establishes the class of persons who are authorized to perform marriage ceremonies, and then discriminates between members of the class it so establishes.

It is, therefore, the opinion of this office that this Act is unconstitutional and void by reason of the fact that the same is a discriminatory, special, and not general law of uniform operation throughout the State and hence is clearly violative of the said sections 20 and 21 of article IV of the Nevada State Constitution.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

By JULIAN THRUSTON, *Deputy Attorney-General*.

HON. MELVIN E. JEPSON, *District Attorney, Reno, Nevada*.

SYLLABUS

OPINION NO. 1933-116. Fish and Game—Powers of Commissioners.

The State Fish and Game Commissioners have the authority to fix an open season for the hunting of deer and other game for a less period than that prescribed

in the Fish and Game statute, and they also have the power to pay compensation to State Game Wardens.

INQUIRY

CARSON CITY, August 24, 1933.

1. Do the State Fish and Game Commissioners have the authority to fix an open season for the hunting of deer and other game for a less period than that prescribed in the Fish and Game Statute?
2. Have such Commissioners the authority to pay the salaries of State Game Wardens?

OPINION

1

The State Fish and Game Commissioners compose an administrative board, created for the purpose of administering the Fish and Game Law. As such board, they have only such powers as are granted in the statute creating such board and defining and providing their duties and powers; and, unless the power is granted in express language in the statute, or by a most evident implication contained therein, to fix a shorter open season for the hunting of deer and other game than the period fixed by the Legislature, then such power does not exist.

An examination of the fish and game statute disclosed that it was the intent of the Legislature, without doubt, to grant the power to shorten or close the open season on game to the Boards of County Commissioners of the respective counties. Witness the language in section 64 of the statute (sec. 3098, N.C.L. 1929) relative to the open season on wild duck, etc.: "*provided, however,* that the boards of the county commissioners of the respective counties may shorten said season or designate certain days on which shooting shall be allowed in their respective counties," and, again, the language contained in section 67 of the statute (sec. 3101, N.C.L. 1929), which reads as follows:

The state fish and game commissioners are hereby authorized to divide the State of Nevada into such districts as they may find expedient with reference to hunting or fishing, and fix the dates for hunting or fishing in each of said districts within the limits provided in this act; *provided,* that the county commissioners of any county in this state may shorten or close the season entirely; and it shall be unlawful for any person to hunt or fish in any such district or county on any other day or days than may be designated by the fish and game commissioners of any county affected.

We think the language quoted above clearly shows that it was the intent of the Legislature that Boards of County Commissioners were to have the power to shorten or close the open season on fish and game.

Did the Legislature, by reason of the language contained in section 66 of the statute (sec. 3100, N.C.L. 1929), provide the same power for the Fish and Game Commissioners?

Section 66, so far as is pertinent here, reads as follows:

It shall be unlawful to hunt deer at any time during the year other than during such thirty (30) day period, to be known as the open season, between October 1 and November 15 of each year, as may hereafter be designated for the respective counties by the board of fish and game commissioners, under the provisions of this act * * *.

This language, we think means only that the Board of Fish and Game Commissioners may fix the open season for the hunting of deer during some thirty-day period between the dates fixed in

the statute and nothing else; and we think it is mandatory that, so far as this section of the law is concerned, a thirty-day period be fixed between the limits provided in the statute by such Board and, the section not providing that this period may be shortened by such Board and no other section of the law so providing, such Board possesses no express power to shorten such period. It follows that, the Board not being granted such express power in any other section of the law, but, to the contrary, such power being lodged in the Boards of County Commissioners by express language, no implied power can be said to have been granted the Board of Fish and Game Commissioners to shorten open seasons on game. The same reasoning applies to other sections of the statute providing open seasons on game.

As to whether the dual control of fish and game by the Fish and Game Commissioners and the Boards of County Commissioners, as is provided in the statute, is wise and for the best interests of the State, or whether it reflects the best policy, we express no opinion; neither are we concerned therewith. Our only duty lies in interpreting the law; and, being cognizant of the rule of law that, in grants of power by the Legislature, nothing passes except that which is expressly granted, and in view of the fact that the inquiry concerns the grave question of the delegation of legislative power which requires strict construction, we are constrained to answer the query in the negative.

2

The State Fish and Game Commissioners are expressly empowered to appoint such game wardens as they may deem necessary to enforce the provisions of the Act. Sec. 12 (sec. 3046, N.C.L. 1929), as amended, 1933 Stats., page 282. While no express provision can be found in the law directing the payment of the salaries of such wardens, still we think it can be implied with certainty, from section 13 of the Act (sec. 3047, N.C.L. 1929), that a reasonable salary could be paid. The Commissioners are granted the power, individually and collectively, to enforce all laws of the State respecting the protection of fish and game (sec. 12, supra). They are empowered to secure the payment of expenses incurred in the prosecution of offenders against such laws and of all other necessary expenses incurred in the propagation and protection of fish and game (sec. 13, supra).

We think the above powers, coupled with the power to appoint game wardens, whose duty it no doubt is to ferret out, arrest, and prosecute offenders, undoubtedly empowers the Commissioners to authorize and pay a reasonable compensation therefor. The query is answered in the affirmative.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

By W. T. MATHEWS, *Deputy Attorney-General*.

STATE FISH AND GAME COMMISSIONERS, *Reno, Nevada*.

SYLLABUS

OPINION NO. 1933-117. Fish and Game—State and Federal Statutes.

1. Where the State law sets the maximum daily bag limit at fifteen ducks and the Federal law sets the same at twelve, the Federal law controls in this State.

2. Where the State Fish and Game Commission, by proclamation through the press, increases the "possession" proviso contained in 1933 Statutes of Nevada, section 9, p. 285, from 15 to 24 ducks if 12 are killed on one day and 12 are killed on another, the same is a valid and binding proclamation.

3. The county and State Game Wardens do not possess the power to arrest a person having in his possession more than 15 and not more than 24 ducks where not more than 12 of the same are killed on any one day, provided, the proclamation heretofore referred to is duly made by the Fish and Game Commission.

INQUIRY

CARSON CITY, September 18, 1933.

1. Where the Federal law sets the maximum daily bag limit at twelve ducks and the State law sets the same at fifteen, which controls in this State?
2. If the State Fish and Game Commission by proclamation through the press increases the "possession" proviso contained in 1933 Statutes of Nevada, section 9, page 285, from fifteen to twenty-four ducks, provided that twelve are killed on one day and twelve are killed on another day, would the same be a valid and binding proclamation?
3. Do the county and State Game Wardens possess the power to arrest a person having in his possession more than fifteen and not more than twenty-four ducks, where not more than twelve of the same were killed on any one day?

STATEMENT

The Department of Agriculture secured its right to regulate and protect migratory birds pursuant to the Migratory Bird Treaty Act between the United States and Great Britain, entered into on December 8, 1916, and the Congressional Act of July 3, 1918, enacted to give effect to this treaty and being title 16, chap. 7, sections 701-709, both inclusive, United States Code Annotated. These laws were held valid and constitutional by the United States Supreme Court in the case of *Holland v. Missouri*, 252 U.S. 416. These laws do not, however, confer exclusive jurisdiction upon the Federal Government to regulate migratory birds or to prevent the States from enacting laws and regulations which are binding within their respective jurisdictions so long as the same do not exceed the Federal regulations (title 16, section 708, U.S. Code Ann.), expressly reserving to the State the power to regulate migratory birds by any legislation not repugnant to the Federal regulations. See *Ex Parte Crosby*, 38 Nev. 389, which was decided prior to the above-mentioned treaty and the Federal Act.

OPINION

1. The Federal maximum daily bag limit of twelve ducks, being a lesser number than the amount allowed by the State law, controls in this State, the same superseding the said State law. The State law may decrease the Federal maximum, but cannot increase the same.
2. Yes. The second proviso of 1933 Statutes of Nevada, section 9, page 285, reads as follows:

provided further, that in the event of any change in the federal game law wherein the bag limit may be increased, the fish and game commission may, by proclamation through the press, increase the limits herein provided within the limitations of the federal law.

The intent of this proviso is to allow the Fish and Game Commission to issue any proclamation relative to the possession of any of the game enumerated in said section 9 so as to be in conformity with the Federal law or regulation.

3. If the proclamation heretofore referred to is duly made by the Fish and Game Commission through the press, the county and State Game Wardens will not thereafter possess the power to arrest a person having in his possession more than fifteen and not more than twenty-four ducks, where not more than twelve of the same were killed on any one day.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

By JULIAN THRUSTON, *Deputy Attorney-General*.

NEVADA FISH AND GAME COMMISSION, *Reno, Nevada*.

SYLLABUS

OPINION NO. 1933-118. Taxes—Application of Penalties.

1. Explains how the tax penalties provided by 1933 Statutes of Nevada, chapter 99, p. 120, apply.
2. The purchaser at a delinquent tax sale should pay all taxes due thereon.
3. Where such is the case the purchaser, on redemption, is entitled to receive from the redemptioner all taxes, penalties and costs, together with interest thereon at the rate of 10 percent per annum from the date of said sale until paid.

INQUIRY

CARSON CITY, October 28, 1933.

1. How are the tax penalties provided by 1933 Statutes of Nevada, chapter 99, page 120, to be applied?
2. In the event the owner of property sold on September 11, 1933, for delinquent 1932 taxes as provided by law does not redeem the property prior to the delinquent date for the first installment of the 1933 taxes, may the purchaser at the delinquent sale pay said 1933 taxes in order to avoid delinquent penalties?
3. If your answer to inquiry No. 2 is in the affirmative, is the purchaser entitled to any interest on the amount so paid, if and when the owner redeems the property from the purchaser at the delinquent tax sale?

OPINION

1. The tax penalties provided by the above-mentioned statute are to be applied, in our opinion, as follows:

(a) Where the first installment of taxes is paid on or before the due date thereof and the second installment is not paid on or before the due date for the said second installment, a penalty of 2 percent is to be collected on said second installment only.

(b) Where the first and second installments are paid on or before the respective due dates of same and the third installment is not paid on or before the due date of the said third installment, a penalty of 5 percent is to be collected on the third installment only.

(c) Where the first, second and third installments are paid on or before the respective due dates of same, and the fourth and final installment is not paid on or before the due date of said fourth and final installment, a penalty of 5 percent is to be collected on the said fourth and final installment only.

(d) Where the first installment is not paid on or before the due date of same, a penalty of 1 percent is to be collected on said first installment.

(e) Where the first and second installments are not paid on or before the due date of the second installment, a penalty of 2 percent is to be collected on the said first and second installments plus the accumulated penalty of 1 percent on the first installment.

(f) Where the first, second and third installments are not paid on or before the due date of the third installment, a penalty of 5 percent is to be collected on said first, second and third installments plus the accumulated penalties on the first and second installments.

(g) Where the first, second, third and fourth installments are not paid on or before the due date of the fourth installment, a penalty of 5 percent is to be collected on the entire amount of the taxes plus the accumulated penalties on the first, second and third installments.

2. Section 6448, N.C.L. 1929, provides that the property sold at a delinquent tax sale shall, until the period of redemption has expired, be assessed to the person named in the certificate of sale. The purchaser should, therefore, pay such taxes until said period of redemption has expired, and the tax collector should, therefore, collect the same from said purchaser during this period.

3. Yes. It is provided by section 6448, N.C.L. 1929, and by section 4 of the 1933 Statutes of Nevada, chapter 99, at page 123, that the purchaser at the delinquent tax sale is entitled to collect from the owner at the time of redemption all taxes, penalties and costs, together with interest thereon at the rate of 10 percent per annum from the date of said sale until paid.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

By JULIAN THRUSTON, *Deputy Attorney-General*.

HON. MELVIN E. JEPSON, *District Attorney, Reno, Nevada*.

SYLLABUS

OPINION NO. 1933-119. Legal Residence—Poor Laws.

1. The fact that a citizen is a pauper does not prevent him from establishing a “legal residence” in Nevada.

2. The question of the intention of the person to remain permanently in this State, as the same applies to “legal residence” must be determined from the facts and circumstances of each particular case.

STATEMENT

CARSON CITY, October 28, 1933.

A woman and her children went to Washoe County, Nevada, and remained there slightly more than one year, during all of which time she and her children were cared for by public relief funds. They then left Washoe County, Nevada, and went to Los Angeles County, California. We now have a letter from the Los Angeles County Welfare Board stating these facts and requesting our permission to return them to Washoe County, Nevada, where they will again become a public charge of said county and State.

INQUIRY

1. Will you please give a ruling on whether a pauper can establish a legal residence in Washoe County, Nevada?

2. Should we, under the above statement of facts, according to our law, give permission for the return of this woman and her children to Washoe County, Nevada?

OPINION

1. Yes. Any person, regardless of financial condition, who comes to any county in Nevada, with the intention of making this State his or her permanent home, and who does actually make such home within a county thirty days and within the State six months, maintaining such intention during all of such time, thereby becomes a qualified voter and resident of this State and of the county in which he or she may reside.

2. The intention of the person to remain permanently within this State must in every case be determined from the facts and circumstances of the particular case. The facts and circumstances related in the above statement make it plain and evident that this woman and her children came into the State of Nevada and Washoe County with no intention to remain permanently or to make it their permanent home; but came to said State and county solely for the purpose of obtaining relief. They never did, therefore, become legal residents of the State of Nevada or of Washoe County. Accordingly, permission to return them to any county within the State of Nevada should be refused.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

By JULIAN THRUSTON, *Deputy Attorney-General*.

HON. MELVIN E. JEPSON, *District Attorney, Reno, Nevada*.

SYLLABUS

OPINION NO. 1933-120. Fish and Game Laws—Powers of County Commissioners.

The County Commissioners do not have the power or authority to designate the sex of the game birds or animals which may be killed during an open season thereon.

INQUIRY

CARSON CITY, December 11, 1933.

Have the County Commissioners of the various counties of the State the authority to designate the sex of the game birds or animals which may be killed during an open season thereon?

OPINION

The inquiry presents a question dealing with delegation of legislative power. The Legislature cannot delegate legislative power, *i.e.*, the power to decide and express what the law shall be on the subject of legislation, as this is the exclusive province of the Legislature. However, the Legislature may delegate the power to determine some fact and state of things on which the law enacted by the Legislature makes its own operation depend. *Giocchio v. Shaughnessy*, 47 Nev. 129. In order, however, that the delegation of the power to determine the facts upon which the law will operate may be effective, the completeness of the statute when it leaves the Legislature is involved, *i.e.*, that the Legislature does not leave to the officer or administrative board to whom the power under consideration is granted the right to say what the law on the subject shall be when the facts are determined upon which the law shall operate.

Whether or not male game birds or animals only are to be killed during an open season is a legislative matter and within the purview of legislative powers only, and it may not be delegated to any board or officer by the Legislature. The Legislature could delegate to the Boards of County Commissioners the power to ascertain and determine whether, in order to protect and propagate game birds and animals, it was necessary to limit the killing thereof to the males of the species, provided it so legislated as to write into the statute that, if the Boards of County Commissioners so found and determined the facts to be that a limiting of the right to kill to the killing of the males of the species was necessary for the protection or propagation thereof, then it should be unlawful to kill the females, and authorize such Boards to so declare.

An examination of the Fish and Game statutes of this State fails to disclose that the Legislature delegated to the Boards of County Commissioners the power to ascertain and determine any facts pertaining to the killing of game birds and animals with respect to the classification by sex and the power to prohibit the killing of either sex. The Legislature itself has not so legislated, save and except as to deer.

Entertaining the views above stated, we are constrained to answer the inquiry in the negative.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

By W. T. MATHEWS, *Deputy Attorney-General*.

STATE FISH AND GAME COMMISSION, *Reno, Nevada*.
