

SYLLABUS

OPINION NO. 1936-197 School Property—Use for Purposes Other Than Those Connected with School Work.

The Board of Education cannot allow school busses to be used by students, or other persons, regardless of whether or not a fee is charged, for transportation in connection with activities which are not held under the auspices of the school and are not connected with the school program.

INQUIRY

CARSON CITY, January 11, 1936

The Board of Education of Educational District No. 1 of Clark County, Nevada, desires information regarding the use of school property for purposes other than those connected with school work.

I. Is the Board of Education within its rights in allowing school busses to be used free of charge to transport students to and from such entertainments as public moving picture shows, public dances, dramatic performances, religious worship and other meetings held for church purposes?

II. Is the Board of Education within its rights in allowing the use of the school busses if a charge is made for transporting school children to and from the above-mentioned activities?

III. Is the Board of Education within its rights in allowing the free use of school busses to transport persons other than students to and from such activities as mentioned in question No. I?

IV. Is the Board of Education within its rights in allowing the use of the school busses to transport persons other than students to and from such activities as mentioned in question No. I, if a charge is made for the use of the bus?

V. Is the Board of Education within its rights in allowing the use of the school busses for transporting students, or persons other than students, over the public highways from one town to another to attend such activities as mentioned in question No. I?

In all the cases mentioned above the activities attended by the persons or students are not held under the auspices of the school and are not connected with the school program.

OPINION

It is a cardinal rule of government and the public policy of this State that public moneys shall not be used for private purposes. It has been repeatedly held by the courts that funds derived from taxation shall only be used for the purpose for which the tax was levied and no other. It necessarily follows that public property, property that has been acquired with public moneys and for public purposes as provided by law, must be used for the very purpose for which acquired and no other, or violations of law and disregard of public policy will be had indirectly, if not directly.

School busses purchased by school trustees or boards of education with public moneys, that moneys of school districts are public moneys is beyond question, are public property and are to be used for the purpose for which acquired, and that purpose is to transport children to and from school. Secs. 5790, 5949, 5950, 5951, 6067, Nevada Compiled Laws 1929; chapter 140, Statutes of Nevada 1931. The sections of the law cited above undoubtedly establish the public policy and the law of this State to be that public money used or to be used in the transportation of children

to and from school shall only be used to that extent and no other and it follows that school busses acquired with such money shall be used for that limited purpose and no other.

Further, boards of school trustees and boards of education under the laws of this State possess only such powers as are granted them in and by the Acts of the Legislature pertaining to the public school system of the State. Nowhere in such Acts can be found the power granted to use school busses for the transportation of persons other than school children, or to make or allow to be made, a charge for transporting persons or school children to any place whatsoever.

It might be thought because Educational District No. 1 of Clark County was created by a special Act of the Legislature, that the public policy of the State and the law thereof limiting the use of public moneys with respect to school children might have been broadened, but such is not the case. Section 5 of such special Act, i.e., section 6067, Nevada Compiled Laws 1929 specifically provides that the Board of Education of such district shall have certain enumerated powers "subject always to the limitations of the general laws of the State," and in section 1 of said Act, i.e., section 6063, Nevada Compiled Laws 1929, "general laws of the State" are designated as laws pertaining to the public school system. Nowhere in said special Act is the Board of Education granted any power to transport, or cause to be transported, school children to or from any place excepting to and from school, or to transport, or cause to be transported, any person at all excepting school children.

Finding the law to be as above stated and entertaining the views above set forth, we are constrained to answer your queries numbered I, II, III, IV, and V in the negative.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

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

CHAUNCEY W. SMITH, *Superintendent of Public Instruction, Carson City, Nevada*.

SYLLABUS

OPINION NO. 1936-198 Notice of Sale of Bonds.

Section 5906, Nevada Compiled Laws 1929, requires notice of sale of the bonds to be published in four (4) successive issues of a newspaper of general circulation in the county.

INQUIRY

CARSON CITY, January 16, 1936

Does section 5906, Nevada Compiled Laws 1929, which reads in part as follows: "before any of the bonds provided for in this act are sold, notice of the proposed sale must be given by publication in a newspaper of general circulation in the county for at least three (3) weeks, inviting sealed bids to be made for said bonds * * *" require the notice to be published in four (4) successive issues of the paper or only in three (3) successive issues?

OPINION

The statute requires that the notice of sale must be given by publication "for at least three (3) weeks." It is the opinion of this office that this requires the minimum of twenty-one (21) days to intervene between the date of the first publication and the date of sale.

The general rule is that publication must be for the full period where it is required to be "for at least" a designated number of weeks. 62 C.J., paragraph 25, page 976, note 69, and authorities there cited.

Since the publication must be given "for at least three (3) weeks" and the notice is published in a weekly paper, this office is of the opinion that the notice must appear once each week for the full period. This would require four (4) insertions of the notice, or four (4) publications.

Respectfully submitted,
GRAY MASHBURN, *Attorney-General*.
By: W. HOWARD GRAY, *Deputy Attorney-General*
HON. GROVER L. KRICK, *District Attorney, Douglas County, Minden, Nevada*.

SYLLABUS

OPINION NO. 1936-199 Liquor Tax—Licenses.

The Liquor Tax Department cannot accept payment for a license after January 15, 1936, unless there is a five (5%) percent penalty added to the amount for renewal of a license to import or wholesale liquor, beer or wine.

INQUIRY

CARSON CITY, January 17, 1936

Under date of January 17, 1936, you propound the following question for an official opinion:

Can this department accept payment for a license after January 15, 1936, unless there is a 5% penalty added to the amount for renewal of a license to import or wholesale liquor, beer or wine?

OPINION

We gather from the foregoing inquiry that the license referred to was granted in the year 1935 and that you desire to know whether or not it is mandatory that you impose the 5% penalty for a renewal of licenses after January 15, 1936.

Chapter 160, 1935 Statutes of Nevada, in section 15 thereof provides as follows:

* * * License fees shall be due and payable on the first day of January of each year. If not paid by the fifteenth day of January of each year the license shall be automatically canceled.

Applications canceled for nonpayment of annual license charges may be renewed at any time by the payment of the same plus a five percent (5%) penalty thereon.

If any license is issued at any time during the year other than on the first day of January, except delinquent licenses, the licensee shall pay a proportionate part of the annual fee for the remainder of the year, which, in any event, shall not be less than twenty-five percent (25%) of the annual rate.

It will be noted from the above statute that the license fees are due and payable on the first day of January of each year. Also, that if the license fees are not paid by the fifteenth day of January of each year, the license shall be automatically canceled. Furthermore, we direct your attention to the statute which provides that applications canceled for nonpayment of license charges may be renewed at any time upon the payment of the license fee plus a five percent (5%) penalty thereon. Again, we direct your attention to the fact that the statute above quoted provides that any license issued during the year other than the first day of January of each year shall be paid for by the licensee in a proportionate part of the annual fee, which in any event shall not be less than twenty-five percent (25%) of the annual rate, provided, however, that delinquent licenses are not included within this last-mentioned privilege.

From the foregoing it is evident that it was the intention of the Legislature that in the case of delinquent licenses, the licensee must pay the license fee plus five percent (5%) penalty in order to renew the same.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.
By: W. HOWARD GRAY, *Deputy Attorney-General*
WM. KELLY KLAUS, *Supervisor, Liquor Tax Department, Carson City, Nevada.*

SYLLABUS

OPINION NO. 1936-200 Retirement of Officers of National Guard of Nevada.

On January 2, 1936, a Colonel of the National Guard of Nevada, having served eight (8) years as a commissioned officer in said National Guard, made application for retirement with the rank held at the time of the filing of his application. Such applicant can be retired with the rank held by him at the time of his application, regardless of whether or not he has been on the active list during all of said time.

FACTS

CARSON CITY, January 22, 1936

An application has been filed seeking the retirement of a commissioned officer of the National Guard of the State of Nevada, with the rank held by such officer at the time of the filing of his application.

The applicant was appointed and commissioned a major on December 15, 1927. Subsequently, he was appointed colonel. He was then transferred, at his own request, from active duty to inactive duty on July 1, 1935. The records show that this officer completed eight years' service on December 14, 1935.

He made application on January 2, 1936, to be retired with the rank of colonel.

INQUIRY

Under the above state of fact, can the applicant be retired with the rank held by him at the time of his application?

OPINION

Subdivision 3 of Section 7235, Nevada Compiled Laws 1929, the same being subdivision 3 of section 121 of chapter 153 of the 1929 Statutes of Nevada, so far as the same is applicable in the present question, reads as follows:

Any commissioned officer who shall have served as such in the National Guard of this State for a period of eight years may upon his own application be placed upon the retired list and withdrawn from active service and command with the rank held by him at the time such application is made.

The fact that determines whether or not a commissioned officer may be retired upon his application with the rank he held at the time of his application is whether or not he has been a commissioned officer of the National Guard of the State of Nevada for a period of eight years. If he has been a commissioned officer for such a period of time, he is entitled to be retired with the rank he held at the time of his application. On the other hand, if he has not been a commissioned officer for the period of eight years, he is not entitled to be retired with the rank he held at the time of his application.

After diligent search of the State statute, we can find no official classification of commissioned officers as active or inactive until a commissioned officer has retired. As we view the statute governing the National Guard in the State of Nevada, a commissioned officer is subject to active service when and at such times the National Guard is called into service, and that duty continues as long as the officer's commission exists. Whether or not a commissioned

officer is or is not on the active list is immaterial so long as he has remained a commissioned officer and his commission has not been canceled, has not expired, or been otherwise terminated.

For the foregoing reasons, and upon the facts that the record shows that the officer completed eight years' service on December 14, 1935, we answer your inquiry in the affirmative.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

By: W. HOWARD GRAY, *Deputy Attorney-General*

JAY H. WHITE, *Brigadier General, NNG, The Adjutant General, Carson City, Nevada.*

SYLLABUS

OPINION NO. 1936-201 Special Election—Registration.

Failure to give the full thirty (30) days' notice by publication prior to the close of registration will not invalidate the special election provided for in section 2225, Nevada Compiled Laws 1929, as amended.

INQUIRY

CARSON CITY, January 24, 1936

In holding a special election, pursuant to section 2225, Nevada Compiled Laws 1929, as amended, would a failure to give thirty days' published notice of the date of the closing of registration invalidate the election?

OPINION

Sections 2225 to 2242, Nevada Compiled Laws, inclusive, the same being an Act approved March 27, 1929, provide a statutory method for the establishment and maintenance of a public hospital in a county. Section 2225, Nevada Compiled Laws 1929, was amended in 1931 (1931 Statutes, page 231). In the original Act as passed, and prior to the 1931 amendment, the question of whether or not a tax should be levied for the purpose of establishing and maintaining a public hospital by the county was to be submitted to the qualified voters of the county at a general election after a petition signed by thirty percent of the taxpayers of the county had been presented to the Board of County Commissioners. The 1931 amendment to section 2225, Nevada Compiled Laws 1929, provides for the submission of the question of levying a tax for the establishment and maintenance of a public hospital to the qualified electors at a general election upon a petition signed by thirty percent of the taxpayers of the county, or if the petition is signed by at least fifty percent of the taxpayers, the Board of County Commissioners shall call a special election for the purpose of submitting the question to qualified electors of the county. The 1931 amendment consisted principally of providing for a special election upon the question of a tax levy for the purpose of establishing and maintaining a public hospital.

Section 2225, Nevada Compiled Laws 1929, as amended, reads in part as follows:

* * * such board * * * of county commissioners shall call a special election for the purpose of submitting such question to the qualified electors of the county, to be held within forty days after the petition requesting the special election shall have been filed with said board, by first giving thirty days' notice thereof in one or more newspapers published in the county, if any be published therein, or posting written or printed notices in each precinct of the county * * *.

From the foregoing it can be seen that the special election shall be called within forty days after the filing of the petition signed by at least fifty percent of the taxpayers of the county.

Section 2376, Nevada Compiled Laws 1929 (section 17 of the Act governing the registration of voters for election), as amended in the 1935 Statutes, at page 113, reads as follows:

SEC. 17. The county clerk shall close all registration for the full period of twenty days prior to any election. Within three days after the closing of registration he shall transmit to the secretary of state a statement showing the number of voters registered in said county, approximating the number of registry cards not yet received at his office. The county clerk of each county must cause to be published in newspapers published within his county and having a general circulation therein, a notice signed by him to the effect that such registration will be closed on the day provided by law, specifying such day in such notice, and stating that electors may register for the ensuing election by appearing before the county clerk at his office or by appearing before a deputy registrar in the manner provided by law. The publication of such notice must continue for a full period of thirty days next preceding the close of registration for any election. At least fifteen days before the time when the register is closed for any election, the county clerk shall cause to be posted, in not less than five conspicuous places in each voting precinct, outside of incorporated cities, a copy of such election notice, stating the time when the official register will close for such election. As amended, Stats. 1935, 113.

The provisions of the above section, requiring that registration shall be closed for the full period of twenty days prior to any election, and that notice of the close of registration shall be published for thirty days and posted for fifteen days prior to the close of registration, were part of section 17 as passed in 1917 (1917 Statutes, page 425), and were in effect at the time section 2225, Nevada Compiled Laws 1929, was amended in 1931, providing for the special election within forty days after the filing of the petition referred to in that section.

Section 2389, Nevada Compiled Laws 1929 (section 30 of the Registration Law), provides that the word "election," as used in the registration law, where not otherwise qualified, shall be taken to apply to general, special, primary nomination, and municipal elections.

While it is obviously the intent of the Legislature to make the statutes relating to the registration of voters apply to special elections, it is clear that the provisions of section 2225, Nevada Compiled Laws 1929, as amended, and section 2376, Nevada Compiled Laws 1929, cannot both be complied with. If section 2376, Nevada Compiled Laws 1929, were complied with, the election could not be held short of fifty days' time. On the other hand, section 2225, Nevada Compiled Laws 1929, as amended, required the special election to be held within forty days after the filing of the petition calling for a special election.

The Supreme Court has held that a special election for the purpose of removing a county seat must be held within the time provided for in the statute, notwithstanding the statute providing for the special election conflicts with a prior law pertaining to registration of voters. *State v. Washoe County*, 6 Nev. 104.

The rule announced in this case, we believe, is applicable to the question under consideration.

Legislative enactments relating to the same subject should be harmonized as far as possible. Public policy requires that all who are qualified to vote should be permitted to vote, and to register so that under the law they have the right to vote. With these rules of law in mind, this office is of the opinion that the voters who are qualified but not registered should be given such opportunity to register as the law will permit. It would follow that registration should be opened as soon as possible after the filing of the petition, and kept open until twenty days prior to the election, and that such notice thereof should be given as the circumstances and the law permit. This office is of the opinion that failure to give the full thirty days' notice by publication prior to the close of registration will not invalidate the special election provided for in section 2225, Nevada Compiled Laws 1929, as amended.

Your inquiry is, therefore, answered in the negative.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.
By: W. HOWARD GRAY, *Deputy Attorney-General*
MERWYN H. BROWN, *District Attorney, Humboldt County, Winnemucca, Nevada.*

SYLLABUS

OPINION NO. 1936-202 Liquor Taxes—Refunds.

1. The State of Nevada cannot refund to a wholesaler, retailer or importer the State stamp tax on liquor.
2. The State of Nevada cannot refund to the Civilian Conservation Corps the State stamp tax which has been passed on to it by a wholesaler, retailer or importer.

INQUIRY

CARSON CITY, February 3, 1936

1. Can the State of Nevada refund to a wholesaler, retailer, or importer the State stamp tax on liquor?
2. Can the State of Nevada refund to the Civilian Conservation Corps the State stamp tax which has been passed on to it by a wholesaler, retailer, or importer?

OPINION

Section 16 of chapter 160 of the 1935 Statutes of Nevada reads in part as follows:

No person shall sell or offer to sell any liquor in the State of Nevada unless there be affixed to the original package, bottle, keg, barrel, case or container, State of Nevada adhesive liquor stamps * * *.

By reason of this section, it is mandatory that the adhesive stamps be affixed to the original package, bottle, keg, barrel, case or container containing liquor.

Subdivision (c) of section 1 of said Act includes beer as being within the meaning of the word liquor as used in the Act.

Under the law, the stamps are affixed either by the importer or wholesaler, and these are the parties required to pay the State of Nevada for such stamps.

There is no provision under the Act by which any refund can be made by the State for the amount of the tax either to a consumer, retailer, wholesaler or importer.

Therefore, both inquiries are answered in the negative.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

By: W. HOWARD GRAY, *Deputy Attorney-General*

WM. KELLY KLAUS, *State Inspector, Carson City, Nevada.*

SYLLABUS

OPINION NO. 1936-203 School District Funds.

A school district which has two resident school children in actual attendance may retain the school district funds which are in excess of the current year's need for the purpose of continuing the school for the two children in actual attendance during the next succeeding year, if the balance to the credit of the school district is \$350 per apportionment teacher or less. In the event such balance is greater than the said \$350, the excess above said \$350 shall revert to the County Reversion Fund,

unless the Board of Trustees certify that the excess is necessary for purposes set forth in section 5800, Nevada Compiled Laws 1929, and the Superintendent of Public Instruction is satisfied of the necessity and reasonableness of the request.

INQUIRY

CARSON CITY, February 7, 1936

May a school district, which has two resident school children in actual attendance, retain the school district funds which were in excess of the present year's needs for the purpose of continuing the school for the two children in actual attendance during the next succeeding year?

OPINION

Section 5746, Nevada Compiled Laws 1929 (section 97, 1911 Statutes, page 183, as amended in 1917 Statutes, page 391), provides that a school district having less than three resident school children in actual attendance shall be abolished by the Board of County Commissioners on notice from the Deputy Superintendent of Public Instruction; *provided, however*, that where there are sufficient funds to the credit of the district, or in its treasury, to meet the actual expense attendant on the continuation of the school, and there are at least two resident children in actual attendance, the district may be continued and the school maintained as long as such funds so exist.

Section 5747, Nevada Compiled Laws 1929 (section 98, 1911 Statutes, page 183, as amended 1925 Statutes, pages 167, 168), provides that moneys to the credit of a legally abolished school district shall revert to the County School Reversion Fund of the county in which the school district is situated.

Section 5800, Nevada Compiled Laws 1929 (section 152½, 1911 Statutes, page 183, as amended 1919 Statutes, page 157; 1925 Statutes pages 280, 284); provides that the Superintendent of Public Instruction shall, on receipt of the County Auditor's Report, revert to the County School Reversion Fund all sums of money remaining to the credit of each school district at the time the County Auditor's Report is made, which are in excess of \$350 for each apportionment teacher. It is provided, however, that money acquired by the district other than from apportionments from the State or county distributive funds shall not be reverted. The section further provides:

If the trustees of any school district shall certify to the superintendent of public instruction that a new school building, or repairs on an old school building, are necessary to the district, and that the trustees have been authorized by vote of the district, if a vote is required, to build such new school building, or to make such needed repairs, or that the balance in the funds of the district is necessary for the maintenance of school in the district, and that the trustees have estimated that the cost of such new school building, needed repairs, or school maintenance is to be _____ dollars, the superintendent of public instruction shall make whatever investigation he may deem best, and if he shall become satisfied that such new building or repairs are necessary in the district, or that the balance of the funds in the district is necessary for the maintenance of school in the district, and that the amount estimated to be spent for such new building, repairs, or maintenance of school is a reasonable amount to be set aside for the purpose mentioned, he shall not make the deductions as provided in this section, but he shall make such deductions as will leave the funds in the district an amount equal to the estimated amount to be spent for such new building, repairs, or maintenance of school, together with three hundred fifty dollars for each apportionment teacher assigned to that district.

Construing these sections together, it is evident that it was the intention of the Legislature that all the money remaining to the credit of a school district should not be reverted to the County

Reversion Fund unless a school district were legally abolished. A school district having two resident children in actual attendance cannot be abolished when there is sufficient money to the credit of the district to continue the school until the funds are exhausted. Therefore, according to the two sections first referred to in this opinion, there could no reversion of school district money to the County Reversion Fund unless there were less than two resident children in actual attendance and the district had been legally abolished.

However, your inquiry involves the carrying forward from one school year to the next of a balance to the credit of a school district which has only two resident children in actual attendance.

According to the provisions of section 5800, Nevada Compiled Laws 1929, all sums of money acquired by a school district from State or county apportionments above \$350 per each apportionment teacher shall revert to the County Reversion Fund unless the Board of Trustees certify that the excess is necessary for certain purposes and the Superintendent of Public Instruction becomes satisfied of the necessity. By virtue of the last-quoted section, if there is a sum greater than \$350 per each apportionment teacher to the credit of a school district, and such money was acquired from apportionments from the State and county, the excess must be reverted to the County Reversion Fund unless the Board of Trustees certify that the funds are necessary for the purpose mentioned in section 5800, Nevada Compiled Laws 1929, and the Superintendent of Public Instruction is satisfied that such sum is necessary for such purposes. However, if the balance to the credit of the school district is less than \$350 per each apportionment teacher, such balance would not revert and would be available to the district for as long as it was sufficient to maintain the school while there were two resident children in actual attendance.

Therefore, your inquiry is answered in the affirmative if the balance to the credit of the school district is \$350 per apportionment teacher or less. In the event that the balance is greater than \$350 per each apportionment teacher, the excess above the \$350 per each apportionment teacher should be reverted to the County Reversion Fund, unless the Board of Trustees certify that the excess is necessary for purposes set forth in section 5800, Nevada Compiled Laws 1929, and the Superintendent of Public Instruction is satisfied of the necessity and the reasonableness of the request.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General.*

By: W. HOWARD GRAY, *Deputy Attorney-General*

CHAUNCEY W. SMITH, *Superintendent of Public Instruction, Carson City, Nevada.*

SYLLABUS

OPINION NO. 1936-204 Transfer of County Funds.

Under the provisions of sections 3010-3025, Nevada Compiled Laws 1929, as amended, Boards of County Commissioners are not permitted or authorized to transfer county funds from one fund to another.

STATEMENT OF FACT

CARSON CITY, March 13, 1936

The minutes of a meeting of a Board of County Commissioners contain the following:

At a recessed regular meeting of the Board of County Commissioners, held Monday, June 10, 1935, it was ordered, upon motion duly made, seconded and carried, that monies from certain county funds be transferred to the indigent fund, as follows:

All of the monies now in the estates of deceased.

All of the monies from the Experimental Farm sale.
All of the monies from the Emergency Loan Fund, and
All of the monies from the C.H. Add and New Jail.
The sum of One Thousand Dollars to be transferred from the publicity fund; and
All of the monies from the Motor Vehicle Fund.

INQUIRY

Can a Board of County Commissioners transfer funds from one fund to another in the manner indicated in the above-quoted order?

OPINION

Your attention is called to Attorney-General's Opinion No. 2, 1923-1924, in which it was held that County Commissioners are not authorized to transfer surplus money from one fund to another. Such has been the uniform holding of this office. In Attorney-General's Opinion No. 260, 1927-1928, it was held that County Commissioners have no authority to transfer money from the General Fund to purchase land or erect buildings for county indigents.

The foregoing opinions were based upon sections 3010-3025, Nevada Compiled Laws 1929, as amended and commonly called the "Budget Act." Since these opinions have been written no amendments have been made to the foregoing Act which would permit or authorize the transfer of county funds from one fund to another by the Board of County Commissioners. Our opinion, therefore, is that the Board of County Commissioners possesses no authority to transfer funds from one fund to another.

However, the Legislature may authorize such a transfer of funds by a specific enactment.

Referring to the first item mentioned in the order, such funds should be paid to the State Treasurer, if the deceased person leaves no heirs (sections 9873, 9874, Nevada Compiled Laws 1929). Such money belongs to the State School Fund (section 5783, Nevada Compiled Laws 1929).

The second item involves funds which have been carried in a special fund, and in view of this fact such fund could not be transferred to any fund without legislative action.

There is no authority whatsoever for transferring moneys in the fund mentioned in the third item (section 3016, Nevada Compiled Laws 1929).

The surplus moneys mentioned in the fourth item should have been transferred to the General Fund by virtue of a special Act (1933 Statutes, page 2).

The funds mentioned in item number five are not subject to transfer to any fund whatsoever, having been accumulated by a tax levy which was authorized to raise money for a specific purpose (sections 2027-2028, Nevada Compiled Laws 1929).

Moneys mentioned in the sixth item were paid to the county for the purpose of paying the expense of performing the duty required of the County Assessor by the Motor Vehicle Law. These moneys should be placed in a special fund and used for no other purpose than that which is specifically authorized by statute (subdivision (c), sec. 30, 1931 Statutes, page 322, as amended, 1931 Statutes, page 340). There is no special enactment authorizing the Board of County Commissioners to transfer these funds to the County Indigent Fund.

Your inquiry is answered in the negative.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General.*

By: W. HOWARD GRAY, *Deputy Attorney-General*

D. G. LARUE, *Superintendent of Banks, Carson City, Nevada.*

OPINION NO. 1936-205 School Funds.

Under the provisions of section 5796, Nevada Compiled Laws 1929, funds received by a school board from a settlement received from fire insurance cannot be transferred from the County Treasurer to the Clerk of the school board for deposit in a bank in a savings account, the deposit to be made in the name of the board and subject only to withdrawal by a check signed by the Clerk of the board.

INQUIRY

CARSON CITY, March 13, 1936

Can funds received by a school board from a settlement received from fire insurance be transferred from the County Treasurer to the Clerk of the school board for deposit in a bank in a savings account, the deposit to be made in the name of the board and subject only to withdrawal by a check signed by the Clerk of the board?

OPINION

Subdivision 1 of section 5796, Nevada Compiled Laws 1929, provides that it shall be the duty of the County Treasurer of each county *to receive and hold* as a special deposit all public school moneys either received by him from the State Treasurer or raised by the county for the benefit of the public schools, *or from any other source*, and to keep separate accounts thereof and of their disbursements.

Subdivision 3 of the same section also provides that it shall be the duty of the County Treasurer of each county *to pay over* all public school moneys received by him *only on warrants of the County Auditor issued upon orders of the board of school trustees* for the respective school districts.

Section 5718, Nevada Compiled Laws 1929, provides that it shall be the duty of the Clerk of the Board of Trustees in each district subject to the direction of said board to draw all orders for the payment of the moneys belonging to his district, and such orders, when signed by the President and Clerk of the board, or by a majority of the members of the Board of Trustees, shall be valid vouchers in the hands of the County Auditor for warrants on the County Treasurer to be paid out of the funds belonging to such district.

Section 5719, Nevada Compiled Laws 1929, provides that all such orders shall be accompanied by an itemized statement of the purpose or purposes for which the order is issued. This section also provides that if the Clerk of the Board of School Trustees of any district shall draw any order for the payment of school moneys in violation of the laws of the State, the members of the Board of School Trustees of such district shall be jointly and severally liable for the amount of such order.

The foregoing cited sections point out the method provided by the statutes in which the moneys belonging to a public school shall be handled. The only lawful manner in which public school moneys may be expended is by an order of the Board of Trustees accompanied by an itemized statement of the purpose or purposes for which the order is made. The County Auditor may then draw his warrant on the County Treasurer for the amount of such order. If the moneys are not in the hands of the County Treasurer such a procedure cannot be followed. Such statutory method is exclusive and mandatory. It follows then that all moneys belonging to a school district must be turned over to the County Treasurer and disbursements of public school moneys in any other manner than provided by statute would be in violation of the law.

The statute very specifically points out the officer; *i.e.*, County Treasurer, whose duty it is to receive and hold the money; and in view of the fact that there is no specific statutory provision permitting public school moneys to be held in a bank deposit by the Clerk of the school board, it is evident that such a procedure is contrary to the law.

The 1931 amendment to section 5716, Nevada Compiled Laws 1929 (1931 Statutes, page 77), provides that funds accumulating to the credit of any school district from the tax provided for by that section, or from moneys received in fire insurance settlements may be placed upon interest

until needed by the school district under such arrangements as are approved by the State Board of Finance. Under this section, as amended, such funds could only be placed at interest under the name of and by the County Treasurer, and the State Board of Finance could not approve such an arrangement as suggested in your inquiry.

Your inquiry is, therefore, answered in the negative.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

By: W. HOWARD GRAY, *Deputy Attorney-General*

D. G. LARUE, *Superintendent of Banks, Carson City, Nevada*.

SYLLABUS

OPINION NO. 1936-206 Absent Voters—Federal Employees.

1. Duly registered voters employed in various governmental departments of the Federal Government may vote by absent voters' ballots.
2. County Clerk not authorized to cancel registration of a person who votes by absent voter's ballot while employed in the military, naval, or civil service of the United States.

INQUIRY

CARSON CITY, May 12, 1936

1. Are Nevada residents who are duly registered and who are holding clerical positions in the various governmental departments of the Federal Government in Washington, D.C., or elsewhere, eligible to vote by absent voter's ballot?
2. After a person who is employed in the military, naval or civil service in the United States has voted by means of an absent voter's ballot, is it necessary for such person to reregister to be entitled to vote at the next succeeding election?

OPINION

No person shall be deemed to have lost a residence by his absence while employed in the service of the United States. Sec. 2, art. II, Constitution of Nevada.

Section 2361, Nevada Compiled Laws 1929, the same being section 2 of "An Act regulating the registration of electors for general, special, and primary elections," 1917 Statutes 425, specifically provides that no person shall be deemed to have lost his or her residence by reason of his absence while employed in the military, naval or civil service of the United States. Registration and residence are two of the necessary prerequisites that constitute an elector. Section 2360, Nevada Compiled Laws 1929.

Any qualified elector of the State of Nevada having duly registered may vote at an election by means of an absent voter's ballot when by reason of his vocation or business he expects, on the day of election, to be absent from the county in which he is a qualified voter. Section 2553, Nevada Compiled Laws 1929.

Section 2566, Nevada Compiled Laws 1929, reads in part as follows:

Any person who has been physically and corporeally absent from his or her place of residence in the precinct in which he or she last registered and voted, for a period of six (6) months immediately preceding the date on which the election for which the absent voter's ballot is applied for (excepting, however, state and federal officers and attachés and members of their immediate families and persons mentioned in section 2 of an act entitled "An act regulating the registration of electors for general, special, and primary elections," approved March 27, 1917),

shall not be entitled to receive such ballot until and unless said person shall have appeared personally at the office of the county clerk or deputy registrar as provided by law and shall have registered; * * *.

This section of the statute, by means of the exception clause, provides that all said officers and attachés and members of their immediate families and such persons who are employed in the military, naval or civil service of the United States may vote by absent voter's ballot notwithstanding their absence from the State, county and precinct for a period of six (6) months or more immediately preceding the date of the election.

It is clear from the foregoing statutes and constitutional provisions that an elector of the State of Nevada who holds a clerical position in the employ of one of the Federal Government departments and is absent or expects to be absent from the county in which he is a qualified voter on the day of election, may vote by means of an absent voter's ballot, and that his absence from the State while he is employed in the military, naval or civil service of the United States Government does not deprive him of his residence so as to preclude him from his right of voting. However, the elector who desires to make use of an absent voter's ballot must, like the voter who votes in person, be properly registered. It is, therefore, the opinion of this office that inquiry No. 1 should be answered in the affirmative.

Answering inquiry No. 2, attention is directed to section 2375, Nevada Compiled Laws 1929, the same being section 16, 1917 Statutes, page 425, Election Laws of 1936, page 11, which provides that the County Clerk of each county shall remove from the official register the registry cards of all electors who have failed to vote at such election and those who have voted by absent voter's ballot except State and Federal officers and attachés and members of their immediate families; and also to section 2566, Nevada Compiled Laws 1929, being section 15 of "Absent Voter's Law," which provides that all persons excepting State and Federal officers and attachés and members of their immediate families who have voted by absent voter's ballot at the last preceding general election shall not be entitled to receive an absent voter's ballot unless reregistered in person and also that the registration of all persons voting by absent voter's ballot shall be canceled, excepting, however, State and Federal officers and attachés and members of their immediate families.

The foregoing sections expressly provide for the cancellation of the registration of all persons who have voted by absent voter's ballot, unless such persons were State or Federal officers, attachés and members of their immediate families.

The question involved in inquiry No. 2 is who comes within the exception mentioned in the two sections of the law last referred to; *i.e.*, who are Federal officers, attachés and members of their immediate families.

Registration of voters is required for the purpose of ascertaining who are entitled to exercise the political privilege of voting. The Constitution of the State of Nevada has very definitely determined who shall be entitled to vote. Besides citizenship, residence is the primary qualification necessary to constitute a qualified elector of the State of Nevada. The Constitution and Legislature have provided that residence for the purpose of voting shall not be lost by reason of absence from the State and county when the elector is in the employ of the military, naval or civil service departments of the United States, or of the State of Nevada.

The constitutional provision herein referred to reads in part as follows:

For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, nor while engaged in the navigation of the waters of the United States or of the high seas; * * *. Sec. 2, art. II, Nevada Constitution.

The statutory provision herein referred to reads in part as follows:

No person shall be deemed to have gained or lost such a residence by reason of his presence or absence while employed in the military, naval, or civil service of

the United States, or of the State of Nevada; * * *. Section 2361, Nevada Compiled Laws 1929.

Since residence is not lost by virtue of absence from the State when a person is employed in the military, naval or civil service of the United States, there would be no purpose served by having the person's registration canceled for the reason that he used an absent voter's ballot in voting at an election.

It is a familiar canon of statutory construction that no legislative enactment will be construed to effect an idle purpose.

Our Supreme Court has said that the great constitutional right of suffrage is not to be taken from the voter upon any doubtful construction of a statute. *Lynip v. Buckner*, 22 Nev. 439.

It is the opinion of this office that when the Legislature used the words "State and Federal officers, attachés and members of their immediate families" in section 2375, Nevada Compiled Laws 1929, and section 2566, Nevada Compiled Laws 1929, they did not intend to use them in their restrictive technical sense, but rather that it was intended that all persons included in the general words used in the Constitution and in section 2361, Nevada Compiled Laws 1929, should be embraced within their meaning.

We are, therefore, of the opinion that any qualified elector employed in the military, naval or civil service of the United States who voted at the last preceding election by means of an absent voter's ballot should not be required to reregister before the next ensuing election, and that the County Clerk is not authorized to cancel from the official registry the registration card of such a person.

The same conclusion was arrived at in Attorney-General's Opinion No. 149, 1923-1924.

For the foregoing reasons inquiry No. 2 is answered in the negative.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

By: W. HOWARD GRAY, *Deputy Attorney-General*

HON. KEY PITTMAN, *United States Senator, Washington, D.C.*

SYLLABUS

OPINION NO. 1936-207 Budget Law—School Districts.

The budget of a school year made up for the calendar year 1936, pursuant to chapter 44, 1935 Statutes, page 70, supersedes the budget of the same school district made in the year 1935 for the fiscal year 1935-1936.

INQUIRY

CARSON CITY, May 29, 1936

Does the budget of a school district made up for the calendar year 1936, pursuant to chapter 44, 1935 Statutes, page 70, supersede the budget of the same school district made in the year 1935 for the fiscal year 1935-1936?

OPINION

An Act entitled "An Act regulating the fiscal management of the counties, cities, towns, school districts, and other governmental agencies," was enacted in 1917, (1917 Statutes, 249; section 3010 to section 3025, Nevada Compiled Laws 1929). Pursuant to this Act, and the 1930 amendment to section 1 of article IX of the State Constitution, school districts made up their budgets between the first Monday of January and the first Monday of March for the fiscal year beginning July 1 next succeeding.

At the legislative session of 1935, the "Budget Act" was amended in certain particulars. (1935 Statutes, 70.)

In section 6 of the amendatory Act, the word "year" is defined as follows:

The word year in this Act shall mean calendar year. (Section 6, chapter 44, 1935 Statutes, 74.)

Section 2 of the amendatory Act, which amends section 3018, Nevada Compiled Laws 1929, directs that between the first Monday of January and the first Monday of March of each year, the governing body of each school district shall prepare a budget for the current year and for the next following year.

Construing section 6 and section 2 of chapter 44, 1935 Statutes, together, it is evident that it is the duty of the governing boards of school districts to prepare their budgets between the first Monday of January and the first Monday of March of each year for the current calendar year, which would be the year beginning as of January 1.

The amendatory Act of 1935 was approved March 13, 1935, and after the governing boards of school districts had prepared and filed their budgets which had been prepared pursuant to section 3018, Nevada Compiled Laws 1929, as it stood prior to the 1935 amendment. The school budgets so prepared between the first Monday of January and the first Monday of March 1935, were for the fiscal year beginning on July 1, 1935, and ending on June 30, 1936.

The school budgets prepared between the first Monday of January of 1936 and the first Monday of March 1936, were for the calendar year of 1936.

Unless the school budget as prepared in 1936 for the calendar year 1936 supersedes the 1935 budget made for the fiscal year 1935-1936, there are two budgets in existence which govern the expenditures of the school district between the first day of January 1936, and the first day of July 1936. This would be an absurdity and it will not be presumed that the Legislature contemplated the existence of such a situation. The only logical conclusion is that the Legislature contemplated that the 1936 budget should supplant and supersede the budget made in 1935 insofar as the 1935 budget apportioned funds to be expended in 1936. The amendatory Act of 1935 makes no provision for the creation of a budget for less than a full calendar year, and inasmuch as the 1936 budget was made in pursuance to and in accordance with the latest legislative enactment, we can arrive at no other conclusion but that the 1936 budget must supersede the 1935 budget. Any other construction placed upon the Act would be in effect a setting aside of the express terms of chapter 44, for the reason that it would be a holding to the effect that the budget made in 1936 would be for a shorter period of time than a calendar year.

From the foregoing, it is clear that the expenditures of a school board since January 1, 1936, should be governed by the 1936 budget and not by the 1935 budget.

Your inquiry, therefore, is answered in the affirmative.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

By: W. HOWARD GRAY, *Deputy Attorney-General*

CHAUNCEY W. SMITH, *State Superintendent of Public Instruction*.

SYLLABUS

OPINION NO. 1936-208 Motor Vehicle Fuel Tax—Refund.

Users of motor vehicle fuel are not entitled to claim refunds of tax on motor vehicle fuel used on highways open to use of the public.

INQUIRY

CARSON CITY, May 29, 1936

Upon what classes of roads would a user of motor vehicle fuel be entitled to claim a refund under section 5 of chapter 74, 1935 Statutes of Nevada?

OPINION

Under the provisions of the 1935 Motor Vehicle Fuel Act, it is beyond question that it was the intention of the Legislature to levy and collect an excise tax upon all motor vehicle fuel used in the propulsion of motor vehicles upon a highway as defined by the Act.

The definition of "highway," as used in the Act, is most clear. Every way or place of whatever nature open to the use of the public for purposes of surface traffic constitutes a highway. (Subdivision (h), section 1, chapter 74, 1935 Statutes of Nevada).

Whether or not a given way or place constitutes a highway is a question of fact to be determined after due investigation. If such a way or place is open to the use of the *public* for purposes of surface traffic, then such way or place is a highway within the meaning of the Act and the user of motor vehicle fuel upon said way or place is not entitled to a refund of the excise tax.

Exemption from taxation is to be strictly construed and is to be carefully scrutinized and not permitted to extend in scope or duration beyond what the terms of the concession clearly require or allow. (61 C.J., paragraph 396, page 392.)

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

By: W. HOWARD GRAY, *Deputy Attorney-General*

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

SYLLABUS

OPINION NO. 1936-209 Water Law.

Construction of portion of "Bartlett Decree" relating to relative rights of Old Channel, Union, and Southwest ditches.

STATEMENT OF FACT

CARSON CITY, June 3, 1936

A controversy has recently developed over the distribution of the water of the Humboldt River in the Lovelock District, particularly over the amount of water the Old Channel ditch is entitled to receive by virtue of the Humboldt River decree and a certain agreement entered into on the 8th day of September 1910, between the Old Channel Ditch Company, a corporation, and owners of the water rights in the Union and Southwest Ditch Companies, unincorporated. The decree referred to herein is the decree entered by the Hon. George A. Bartlett on the 20th day of October 1931, and commonly referred to as the "Bartlett Decree." The decree allows 82 second-feet to the Union Canal and Southwest ditch, and 39.34 second-feet to the Old Channel ditch. The agreement of September 8, 1910, provides for the division of water as follows: 55 second-feet to the Union Canal and Southwest ditch; the next 110 second-feet of water to the Old Channel ditch, and all in excess thereof to be divided equally between the parties. The division of water by the State Engineer in the past has been as follows: 55 second-feet to the Union Canal and Southwest ditch, and 66.34 second-feet to the Old Channel ditch.

The flow of the river at Callahan's Gaging Station, situated about nine miles above the Rye Patch Dam, recently increased so that after transportation losses had been deducted the flow would more than fulfill the demand, in cubic feet per second continuous flow, of the lands having decreed or permitted rights situated in the Lovelock Valley below the Rye Patch Dam.

Request has been made to by-pass 44 second feet of water, or the difference between 66.34 second-feet and 110 second-feet, through the Rye Patch Dam for the benefit of the Old Channel

ditch and the water appropriators claiming water by, through, or under the said Old Channel ditch. This request was refused by the parties in charge of the Rye Patch Dam.

INQUIRY

1. Should the surplus water to the amount of 44 second-feet be by-passed through the Rye Patch Dam and delivered to the Old Channel ditch?

OPINION

Waters delivered for the owners of water rights who are served by means of the Old Channel ditch and the Union and Southwest ditches are diverted from the Humboldt River into the Old Channel ditch. The Union and Southwest ditches connect with the Old Channel ditch and the water-right owners under said ditches are served with water diverted from the Old Channel ditch.

The decree of the Hon. George A. Bartlett, filed on the 20th day of October 1931, and commonly referred to in the Humboldt River Adjudication as the "Bartlett Decree," decreed that the owners of water rights who were served by means of or through the Union Canal and Southwest ditch were entitled to receive for beneficial use 82 second-feet of water and that those water-rights owners served by means of or through the Old Channel ditch were entitled to receive for beneficial use 39.34 second-feet of water.

On the 8th day of September 1910, an agreement was entered into by and between the Old Channel Ditch Company, as party of the first part, and the Union Canal Ditch Company and the Southwest Ditch Company, both unincorporated, as parties of the second part.

Those portions of the said agreement which are pertinent to the question herein involved read as follows:

IT IS ALSO FURTHER AGREED AND STIPULATED that at any time when 2,750 miner's inches, measured under a 4-inch pressure, the equivalent of 55 cu. ft. per second of water, the amount of water specified and named in the judgment, and decrees of the District Court of Humboldt County, in favor of said Union, Canal, Lakeshore, Reed ditches and Southwest ditch, as against said Old Channel Ditch Company, and its predecessors in interest, are by the said parties of the second part, diverted and flowing in their ditch at the junction thereof with said main ditch, that said parties of the second part will waive all claim and right as against said party of the first part to the flood water of said Humboldt River, to the extent and amount of 5,500 miner's inches, measured under 4 inches of pressure, and the equivalent of 110 cu. ft. of water per second of time; and it is further agreed and stipulated that all water in excess of said 2,750 and 5,500 inches as above specified, shall be equally divided between the party of the first part and the parties of the second part, either by rotation or other manner as may be most advantageous to both of said parties. The division of all of said water as herein specified, when necessary, to be made under the joint control and by means of proper weirs and headgates wherever required.

IT IS EXPRESSLY AGREED AND UNDERSTOOD, however, that the division of water under the terms of this contract shall apply only to the normal flow of water in the Humboldt River, and shall in no manner be intended to include or pass any right to any water that may be by any person or persons stored elsewhere on said river, and conserved by them, intended to be diverted at said Old Channel Dam; and it is further expressly agreed and understood that any such person or persons may, with the consent of the Old Channel Ditch Company, divert such water from the said river at the Old Channel Dam and through the Old Channel ditch or otherwise.

The agreement, a portion of which is set forth herein, was found to be a valid contract, and that the distribution of water is to be made pursuant to the terms and conditions thereof. Finding of Fact No. 11, pages 11 and 12, of the "Bartlett Decree" reads as follows:

11. Old Channel Ditch Company, Union Canal Ditch Company, Southwest Ditch Company.

I find that on September 10, 1910, a contract was entered into between Old Channel Ditch Company, Union Canal Ditch Company, et al., and the Southwest Ditch Company et al., for the distribution of water from the said Humboldt stream system as between themselves, to wit:

The said Old Channel Ditch Company and those diverting water from said Humboldt River stream system by and through said Old Channel dam and ditch, and the said Union Canal Company and those diverting water from the Humboldt River stream system by and through said Union canal and ditch, and the said Southwest Ditch Company and those diverting water from said Humboldt River stream system by and through said Southwest dam and ditch, that each and every year subsequent to the execution and delivery of said contract, water was diverted from the Humboldt River and prorated, divided, and distribution under the terms, conditions, and agreements contained in said contract, and that said contract is a valid contract and the distribution of water is to be made pursuant to the terms and conditions thereof.

The court arrived at the following conclusions of law concerning the said contract:

That, by reason of the facts hereinabove found, the said appropriators of, or claimants to, the waters of said Humboldt River stream system, by, through or under said Old Channel dam and ditch or ditch system, as alleged in said order of determination and in the findings herein determined, are appropriators of the waters of said Humboldt River stream system, with the priorities as in said order of determination alleged, the date of priority of the year 1888 commencing with November 30, 1888; and

That said appropriators of, or claimants to, the waters of said Humboldt River stream system, by, through or under said Old Channel dam and ditch or ditch system, are entitled to judgment and decree adjudicating and decreeing that said contract, dated September 10, 1910, hereinabove mentioned, is in full force and effect, and that the State Engineer of the State of Nevada, in distributing the waters of said Humboldt River stream system, shall distribute, divide and apportion the waters of said Humboldt River stream system as between said appropriators or claimants to such waters by, through, or under said Old Channel dam and ditch, and said Union canal dam and ditch or ditch system, and said Southwest dam and ditch or ditch system, in accordance with and pursuant to the terms, conditions and agreements set forth in said contract, of date September 10, 1910, insofar as the rights of the parties affected by such contract and decrees herein mentioned or referred to are concerned.

It was found by the court that the said contract was entered into on September 10, 1910, between the parties thereto for the distribution between the said parties of water diverted from the Humboldt River stream system. It is further found that in each and every year subsequent to the execution of the said contract, water from the Humboldt River stream system had been diverted, prorated, divided, and distributed, under the terms, conditions, and agreements contained in said contract, and that said contract was valid and that the distribution of water is to be made pursuant to the terms and conditions thereof.

By virtue of the conclusion of law above quoted, the court arrived at the conclusion that the said contract is in full force and effect and that the State Engineer of the State of Nevada in distributing the waters of the said Humboldt River stream system shall distribute, divide, and

apportion the waters as between said appropriators, or claimants, to such waters, by, through or under the said Old Channel ditch, Union Canal ditch and Southwest ditch in accordance with, and pursuant to, the terms, conditions, and agreements of said contract insofar as the rights of the parties affected by such contract are concerned.

It is evident that while the contract of September 10, 1910, was held to be a valid and subsisting contract, it was only to be followed in distributing, and prorating, and dividing the waters of the Humboldt River between the parties to said contract. There is nothing in the language used by the court to lead one to infer that the court found as a fact, or decreed as a matter of law, that the parties to the contract were entitled to the quantities of water referred to in the said contract, for there is no language indicating that the quantities of water mentioned in the contract should be diverted from the river for the use or benefit of any of the parties to the contract. The language of the court is clear to the effect that the State Engineer shall distribute, divide, and apportion the waters as between the parties to the contract in accordance with that instrument. That is as far as the court goes. The court later found and decreed to each of the parties or persons claiming water by, through or under any of the three ditches, Old Channel, Union, and Southwest, just so much water. The water so decreed must be apportioned according to the contract.

The "Bartlett Decree" allows 82 second-feet to the Union Canal and Southwest ditch, and 39.34 second-feet to the Old Channel ditch, making a total of 121.34 second-feet to be diverted from the Humboldt River stream system into the Old Channel ditch.

The contract provides for the distribution of water diverted from the Humboldt River into the Old Channel ditch as follows: After the Union and Southwest ditches have received 55 second-feet, the said Union and Southwest Ditch Companies waive, as against the Old Channel Ditch Company, all claim to the flood water to the extent of 110 second-feet, after which all water shall be divided equally between the parties to the contract. By this provision the contract does not limit the amount of water which may be diverted from the river or distributed between the parties. Obviously, if sufficient water were diverted from the Humboldt River to provide for the distribution of the water as outlined in the said contract, all appropriators subsequent in time to the parties of the contract would have their rights seriously impaired, and in the event that more water than a total of 121.34 second-feet of water were diverted from the Humboldt River stream system into the Old Channel ditch, the water right owners claiming water by, through or under any of the three ditches would be obtaining water in excess of the specific amounts which had been decreed that they were entitled to for beneficial use. According to the contract, provision is made for the distribution of 165 second-feet of water. However, as heretofore pointed out, the decreed rights of all of the parties to the contract total only 121.34 second-feet.

There is no provision of the decree, as we construe it, which gives to the Old Channel ditch the right to divert from the Humboldt River stream system the difference between 121.34 second-feet of water and 165 second-feet of water, or 44 second-feet. In our opinion, to by-pass for the use of the Old Channel ditch, or for those claiming water by or through it, any water in excess of 66.34 second-feet of water, or the difference between 55 second-feet and 121.34 second-feet, would be a serious interference with the rights of appropriators, or water users, who are not parties to the contract in question.

For the foregoing reasons, your inquiry is answered in the negative.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

By: W. HOWARD GRAY, *Deputy Attorney-General*

HON. ALFRED MERRITT SMITH, *State Engineer, Carson City, Nevada*.

SYLLABUS

OPINION NO. 1936-210 Taxation—Net Proceeds of Mines.

Royalties are not deductible items in determining net proceeds of mines.

INQUIRY

CARSON CITY, June 8, 1936

When the lessee of a mine pays royalties to the owner thereof for the privilege of extracting ore from such a mine, are such royalties allowable deductions from the gross yield of such lessee as set forth in the semiannual statements required to be sent to the Nevada Tax Commission?

OPINION

Section 6580, Nevada Compiled Laws 1929, the same being section 3 of an Act entitled "An Act to provide for the assessment and taxation of net proceeds of mines and repealing all Acts and parts of Acts in conflict herewith," approved March 15, 1927, prescribes the method of determining the net proceeds of mines for taxation purposes by specifying the different items that are deductible from the gross yield. Returns are made by the mine operators for each six months' period, and section 6580, Nevada Compiled Laws 1929, reads, in part, as follows:

The net proceeds shall be ascertained and determined by subtracting from the gross yield the following deductions for costs incurred during six months' period and none other: * * *.

In view of this express, clear and unambiguous language, royalties are not deductible unless they fall within one of the deductible items set forth in this section. The items of cost which the statute specifically provides are deductible are as follows:

1. The actual cost of extracting the ore from the mines.
2. The actual cost of transporting the product of the mine to the place or places of reduction, refining and sale.
3. The actual cost of reduction, refining and sale.
4. The actual cost of marketing and delivering the product and the conversion of the same into money.
5. The actual cost of maintenance and repairs of:
 - (a) All mine machinery, equipment, apparatus and facilities.
 - (b) All milling, smelting and reduction works, plants and facilities.
 - (c) All transportation facilities and equipment except such as are under jurisdiction of the public service commission as public utilities.
6. The actual cost of fire insurance on the machinery, equipment, apparatus, works, plants and facilities mentioned in subdivision 5 of this section.
7. Depreciation at the rate of not less than six percent nor more than ten percent per annum of the assessed valuation of the machinery, equipment, apparatus, works, plants and facilities mentioned in subdivision 5 of this section. The percentage of depreciation shall be determined for each mine by the tax commission; and in making such determination the commission shall give due weight to the character of the mine and equipment and its probable life.
8. All moneys expended for premiums for industrial insurance, and the actual cost of hospital and medical attention and accident benefits and group insurance for all employees.
9. The actual cost of development work in or about the mine or upon a group of mines when operated as a unit.

Royalties are not specifically mentioned in the foregoing section as being a proper deduction, nor in our opinion do royalties constitute an element of any of the items set forth by the statute as being deductible.

According to Webster, "to deduct" may mean the same thing as "to exempt"; and whatever is deducted under the provisions of the State is ipso facto exempted or freed from the burden of taxation. *State v. Eureka Con. Mining Co.*, 8 Nev. 15, 23.

In denying the contention of the appellant mining company that certain items should be deducted from the gross yield to determine the net proceeds of mines for the purpose of taxation, our Supreme Court said:

If the legislature had intended that the items claimed by appellant could be taken into consideration as deductible items, it could have said so. *State v. Tonopah Ex. Co.*, 49 Nev. 428, 437.

The Supreme Court of this State has followed, in all of the cases presented to it in which the question as to whether or not certain items were deductible under the statutes authorizing the taxation of the net proceeds of mines, a well-known and universally accepted doctrine of statutory construction to the effect that no exemption or deduction from taxation should be permitted unless the Legislature has expressly authorized such exemption or deduction. *State v. Eureka Con. Mining Co.*, 8 Nev. 15; *State v. Northern Bell Mining Co.*, 13 Nev. 250; *State v. Northern Bell Mining Co.*, 15 Nev. 385; *State v. Tonopah Ex. Co.*, 49 Nev. 428.

The phrase "the actual cost" reappears in practically all of the subdivisions of section 6580, Nevada Compiled Laws 1929. This phrase as used in the statute under construction in the case of *State v. Tonopah Ex. Mining Company*, 49 Nev. 428, was held to have a well-known meaning among miners. The court in the last-mentioned case said, "The word 'actual' is a word of limitation as distinguished from all costs of conducting the business." In view of the fact that the present Act herein referred to was passed shortly after the Supreme Court construed the phrase "actual costs," and since the Act expressly provides by law for the exemption of those items which the Supreme Court refused to include within the language of the former statute, it must be presumed that the phrase "actual costs," as used in the present statute, was used by the Legislature in the light of the strict construction placed upon it by the Supreme Court.

In other words, the phrase "actual costs," as used in the present statute, should receive the same strict construction as that placed upon it by the Supreme Court in its decision in the case of *State v. Tonopah Ex. Mining Company*, 49 Nev. 428. In our opinion, royalties have the same relation to the deductible items set forth in section 6580, Nevada Compiled Laws 1929, that depreciation, taxes and insurance had to the deductible items mentioned in the statute under consideration in the *Tonopah Ex. Mining Company* case, which was to the effect that depreciation, taxes and insurance were not actual costs of extraction, transportation, reduction, or sales of ores.

For the foregoing reasons, your inquiry is answered in the negative.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

By: W. HOWARD GRAY, *Deputy Attorney-General*

NEVADA TAX COMMISSION, *Carson City, Nevada*.

SYLLABUS

OPINION NO. 1936-211 Patented Mining Claims—Sale by County.

1. County Commissioners have no right to convey fractional interests in patented mining claims which have been acquired through operation of revenue statutes.

2. Chapter 44, Statutes of 1933, page 40, as amended by chapter 19, Statutes of 1935, page 25, is mandatory in that, when procedure has been strictly followed, County Commissioners must convey title to patented mining claims which belong to the county by virtue of operation of revenue statutes.

INQUIRY

CARSON CITY, June 8, 1936

1. Can a county contract and convey under and by virtue of chapter 44, 1933 Statutes, page 40, as amended by chapter 19, 1935 Statutes, page 25, a fractional portion of a patented mining claim of which it has become the owner through the operation of the revenue laws of this State?
2. Is chapter 44, 1933 Statutes, page 40, as amended by chapter 19, 1935 Statutes, page 25, mandatory in that it is obligatory upon the Boards of County Commissioners to contract and convey to purchasers complying with the provisions of the statute the title to patented mining claims, which title has been acquired by the county through the operation of the revenue laws of the State of Nevada?

OPINION

Section 1 of chapter 44 of the 1933 Statutes of Nevada, page 40, was amended by chapter 19, 1935 Statutes of Nevada, page 25, to read as follows:

SECTION 1. Whenever any person shall present to and file with the county commissioners of the proper county an affidavit and petition showing that he is a citizen of the United States; that there is belonging to said county as shown by the official records thereof a patented mining claim or claims, sufficiently identifying the same, which have become the property of said county through operation of the revenue laws of this state; the amount of the tax and penalties and costs, if any, for which said claim or claims became the property of said county; that it is his bona fide intention to explore and develop said claim or claims, not as agent for any person, company, association, partnership, firm, or corporation, but solely for his own use and benefit, the said county commissioners shall contract respecting said claim, or claims, as follows:

By an order appearing in its minutes give to such petitioner permission to enter upon, not to exceed two, of any such claims and explore the same for valuable minerals for a period of six months without any charge therefor; *provided*, no ore or valuable mineral, in excess of five hundred (500) pounds, shall be removed from any mining claim or claims until title thereto shall have been acquired by said citizen as is hereinafter provided. At the expiration of six months, or sooner, if said petitioner so desires, said county commissioners shall make and execute a deed conveying the title of such county to such claim or claims, not exceeding two, to said original petitioner for the sum for which said property became the property of the county.

By this section the petition to be filed with the Board of County Commissioners must show, among other necessary prerequisites, that there is belonging to said county a patented mining claim, or claims; the amount of the tax and penalties and costs, if any, for which said claim, or claims, became the property of said county; and that said petitioner intends to explore and develop said claim, or claims. Upon the filing of said petition, the section further provides that the Board of County Commissioners shall contract respecting said claim, or claims, in the manner provided for by the statute. Attention is called to the fact that in each and every instance in the statute, the Legislature has mentioned "claim, or claims" and that in no instance is a fractional interest in a patented mining claim mentioned. This leads us to the belief that the Legislature in the enactment of the statute contemplated that only such patented mining claims as were wholly and entirely owned by the county were to be sold and that it did not contemplate the conveyance of any fractional interest in a patented mining claim subject to the provisions of the statute.

It cannot strictly be said that a patented mining claim belongs to the county if a fractional interest of the title rests in some other person, or persons, for in that case the mining claim would belong to the county *and* to such other person who might own an interest in the title.

For the foregoing reasons, your inquiry No. 1 is answered in the negative.

In answering inquiry No. 2, your attention is directed to the amendment of 1935 whereby the permissive word "may" was supplanted by the mandatory word "shall" in the phrase "the said County Commissioners shall contract respecting said claim, or claims, as follows: * * *."

This was the sole change made by the 1935 Legislature and made after the Supreme Court had cast some doubt upon whether or not the statute of 1933 was mandatory in the case of *Houlahau v. Douglass et al.*, 55 Nev. 321.

In view of the phraseology of the statute, the amendment of 1935, and the circumstances surrounding the amendment, we are of the opinion that the statute as it now stands is mandatory. However, before the Board of County Commissioners shall contract respecting patented mining claims, which have become the property of the county through the operation of the revenue statutes, all necessary statutory prerequisites must be strictly complied with, and if such necessary statutory prerequisites were not fully met, the Board of County Commissioners, being a body of limited jurisdiction, would have no authority to act.

For the foregoing reasons, inquiry No. 2 is answered in the affirmative.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General.*

By: W. HOWARD GRAY, *Deputy Attorney-General*

HON. H. M. WATSON, *District Attorney, White Pine County, Ely, Nevada.*

SYLLABUS

OPINION NO. 1936-212 Motor Vehicles.

Registration; nonresident permits; necessity of obtaining registration plates in State; registration of motor vehicles used by salesmen.

INQUIRY

CARSON CITY, June 9, 1936

(The following inquiries were contained in letter dated May 13, 1936, and included in your letter of May 14, 1936.)

1. A salesman properly registered in a foreign State but engaged in soliciting orders in this State for a foreign firm, although not making actual delivery, is he required to purchase Nevada registration plates or is he eligible for nonresident permit?

2. Is there any difference in the status of salesman soliciting from a pleasure car and one in a similar position in a delivery sedan or panel delivery carrying advertising material or samples, but not making actual delivery of his merchandise.

3. Residents of bordering counties purchase merchandise for their own consumption in our State. Are they required to buy our registration plates?

4. Properly registered trucks from out of State purchase their own goods for resale in their own establishments in a foreign State. Are they required to purchase Nevada registration plates?

5. In the case of persons such as auditors, efficiency experts, etc., properly registered in a foreign State, who come here for the purpose of short-time work in Nevada agencies. Are they eligible for nonresident permit or must they purchase Nevada registration plates?

6. In the case of cars bought in the east and being driven to this or some other State for the purpose of resale or gainful purpose, properly registered in some other State. Are they subject to the Nevada registration plates?

7. In the case of musicians, orchestras or parties here for lecture purposes, in which cases they receive remuneration. Are they subject to our registration plates or are they eligible for nonresident permit?

8. May we interpret that persons here for gainful purpose must have registration plates and that this rule applies to all persons regardless of the nature of their business?

9. Trucks properly registered in foreign States operating in Nevada for purpose of demonstration of either vehicle or load carried by vehicle. Are these trucks or trailers due for Nevada registration plates?

OPINION

1. Inquiry No. 1 is answered in the negative upon the authority of Attorney-General's Opinions Nos. 160 and 173, 1934-1936.

2. Inquiry No. 2 is answered in the negative.

3. In answering inquiry No. 3, our answer is in the negative if the residents mentioned in the inquiry are residents of the State of Nevada and their vehicles are properly registered in our State. The inquiry is further answered in the negative if the residents are residents of neighboring States and their vehicles are properly registered in their home States. See Attorney-General's Opinion No. 173, 1934-1936.

4. Inquiry No. 4 is answered in the negative upon the authority of Attorney-General's Opinion No. 173, 1934-1936.

5. Answering inquiry No. 5, we hold that such persons as mentioned in said inquiry would be entitled to receive nonresident permits for their motor vehicles, and that they would not be required to purchase Nevada registration plates.

6. Inquiry No. 6 is answered in the negative. However, when the motor vehicles mentioned in inquiry No. 6 have been sold by the registered owners, they then must be reregistered if owned by residents of the State of Nevada and operated therein.

7. Answering inquiry No. 7, we are of the opinion that such parties as mentioned in said inquiry would not have to purchase Nevada registration plates in the event they have been properly registered for the current year in another State.

8. Answering inquiry No. 8, your attention is directed to Attorney-General's Opinion No. 173, 1934-1936, and we answer the inquiry in the negative. In the opinion referred to it was held that if individuals were hauling for hire they must register.

9. Inquiry No. 9 is answered in the negative, especially if the motor vehicles mentioned in inquiry No. 9 are here for only a short time and goods are not sold from the loads carried upon such motor vehicles. See Attorney-General's Opinion No. 173, 1934-1936.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General.*

By: W. HOWARD GRAY, *Deputy Attorney-General*

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

Attention: E. C. CUPIT, *Chief Clerk Highway Patrol.*

SYLLABUS

OPINION NO. 1936-213 Board of Control—State Purchases.

All State officers, departments and institutions, except those excluded by law, prior to making a purchase of any item at a price in excess of \$50, must obtain the approval of the Board of Control.

STATEMENT AND INQUIRY

CARSON CITY, June 10, 1936

In your memorandum of 6th instant you call attention to the fact that claim No. 154 of the Vocational Rehabilitation Department of the Department of Education of this State contained two items, each of which was over the sum of \$50, and asked whether the law requires the approval of the State Board of Control as a condition precedent to the allowance of such claims and the payment of such items when in excess of \$50.

OPINION

It is the opinion of this office that section 4, chapter 122, 1933 Statutes of Nevada, page 155, does require the approval of the State Board of Control; and, in this connection, I must cite you the following language:

No officer or department shall expend more than fifty (\$50) dollars without authorization therefor first obtained from the board of control; * * *.

Immediately following the above-quoted language there are certain State institutions and departments which are exempted from this requirement in the following language:

* * * *provided*, that the provisions of this section shall not be deemed to apply to the University of Nevada, hospital for mental diseases, state orphans' home, Nevada state prison, Nevada school of industry, the state highway department, nor the state printing department.

You will note that neither the Vocational Rehabilitation Department nor the Department of Education is named one of the State institutions or departments which is exempted from the provisions of the Act as above quoted. It is a fundamental rule of statutory construction that, when certain matters or things are named as excluded, all other matters or things of similar import or in the general classification under consideration, but not named, are included, the Latin expression for this rule is contained in these words "inclusio unius est exclusio alterius."

The language above quoted is entirely clear and hardly subject to construction; and it is, therefore, the opinion of this office that all officers and departments of the State which are not expressly excepted in the proviso above quoted are required to obtain the approval of the State Board of Control for the purchase of all items of a purchase price of more than \$50.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

HON. RICHARD KIRMAN, SR., *Governor of the State of Nevada, Carson City, Nevada.*

SYLLABUS

OPINION NO. 1936-214 Public Schools.

Transportation of pupils to and from consolidated school districts, county aid to district high schools, and other school districts.

INQUIRY

CARSON CITY, June 19, 1936

1. Does the provision "before any driver of any school vehicle shall begin the duties of that position he shall furnish a bond of an amount equal to his total wages for the current term of school in which he shall be hired, which bond shall insure the faithful performance of his contract," relate to other than consolidated school districts?

2. Do the words, "any school vehicle" contained in section 5949 and quoted in query No. 1 apply to a privately-owned vehicle operated by a parent, relative, or other person, and used in the

transportation of children living more than one mile from the school to the school in accordance with a contract or an agreement for compensation made with the school board; or is this term restricted to school buses and vehicles owned by the school district?

3. Is it legal for a board of trustees of any school district to enter into a contract or an agreement with a parent to pay such parent, or a relative of the children, or some other person, for transporting children to school in those cases where the family lives one or more miles from the school, provided that the parent, relative, or other person does not furnish the bond specified in section 5949?

4. If school children are transported from their homes for a distance of more than one mile to the school by a public stage line holding a Nevada certificate of public convenience, is it legal for the Board of School Trustees to pay for such transportation charges?

5. If a bond is required for the transportation of school children in a privately-owned vehicle, should the school district or the parent concerned pay the premium on such bond?

6. Are trustees of a consolidated district empowered to provide and pay for transportation of pupils to and from school without being authorized so to do by a majority vote of the qualified electors or by a petition signed by a majority of the electors?

7. Has section 142 of the school code, section 5790, Nevada Compiled Laws 1929, been repealed by implication insofar as it applies to boards of trustees of district high schools and trustees of any school districts other than consolidated school districts?

OPINION

1. Answering inquiry No. 1, attention is called to section 5951, Nevada Compiled Laws 1929, whereby sections 5949 and 5950, Nevada Compiled Laws 1929, are specifically referred to and made applicable to school districts other than consolidated school districts. The language quoted in inquiry No. 1 is taken from section 5949, Nevada Compiled Laws 1929. Section 5951 specifically provides that school districts other than consolidated school districts shall provide transportation to and from school for all children living one mile or more therefrom in the manner provided in section 5949, Nevada Compiled Laws 1929. For the foregoing reasons, inquiry No. 1 is answered in the affirmative.

2. In our opinion, the phrase "any school vehicle" taken from section 5949, Nevada Compiled Laws 1929, refers to and means a vehicle owned and operated by a school district for the purpose of transporting school children to and from a school. A privately-owned vehicle operated by a parent or relative of the school child could hardly be denoted as a school vehicle, inasmuch as the school authorities can exercise no authority of ownership over it. If the Legislature had intended the language above quoted in inquiry No. 2 to cover a vehicle which might be owned by a third party and used for the transportation of children, it undoubtedly would have used the language appearing in the first sentence of section 5949, Nevada Compiled Laws 1929, which reads as follows:

That the trustees of consolidated school districts shall require contracts with persons who shall be of reputable character elected as drivers of *vehicles used* to transport children to school at the expense of the districts.

It will be noted that in the sentence above quoted and referred to from section 5949, Nevada Compiled Laws 1929, the phrase "vehicles used" is employed, while in the same section the bond for a driver is required when the driver is employed to operate "any school vehicle." We are of the opinion, therefore, that the language referred to in inquiry No. 2 is restricted to school busses and vehicles owned by the school districts.

3. Answering inquiry No. 3 your attention is directed to section 5790, Nevada Compiled Laws 1929, which authorizes the use of county school funds for the purpose of paying for transportation of pupils to and from school. Your attention is also directed to subdivision (e) of section 5799, Nevada Compiled Laws 1929, which provides in part that moneys apportioned from the county school fund may be used for the transportation of children to and from school as

the school board of the district may deem proper, provided that in districts other than consolidated districts employing less than ten (10) teachers and in consolidated districts employing less than two (2) teachers, no money shall be paid for transportation of pupils to and from school without the approval of the Deputy Superintendent of Public Instruction.

Section 5951, Nevada Compiled Laws 1929, reads as follows:

The trustees of any school district other than a consolidated district shall provide transportation to and from school for all children living one mile or more therefrom in the manner provided in sections four and five of this act, if at any regular or special election held in the district the proposition of providing transportation for pupils to and from schools shall have been submitted to the qualified voters of the district and a majority of the votes cast shall have favored such transportation.

These three sections relating to the same subject matter should be construed in *pari materia*. Thus construed, we are of the opinion that school trustees of school districts, other than as covered in this opinion in answer to inquiry No. 7 for consolidated school districts, may expend moneys received from the county school fund for the purpose of paying the transportation of children to and from school after a duly held regular or special election upon the proposition of providing transportation to pupils, at which election a majority of the voters of the district have signified that they were in favor of such transportation. In addition to the election, which is a condition precedent to the use of school funds for the payment of transportation of pupils, there must also be secured the approval of the Deputy Superintendent of Public Instruction, coming within the provision of subdivision (e) of section 5799, Nevada Compiled Laws 1929.

The means by which the pupils are transported to and from school is a matter purely discretionary with the Board of Trustees of the particular school, which discretion must be exercised with the view of securing the greatest economy to the district consistent with the greatest benefit to the pupils.

4. In answering inquiry No. 4, attention is directed to section 5949, Nevada Compiled Laws 1929, whereby trustees of consolidated school districts shall require contracts with persons who shall be of reputable character elected as drivers of vehicles used to transport children to school at the expense of the district. The section further provides that such contracts shall state the time of the arrival at and the departure from the schoolhouse each day, the time such person is to act as driver for such vehicle, unless released by agreement, and the compensation of the driver. Providing that such contracts are entered into with public stage lines holding Nevada certificates of public convenience, we are of the opinion that inquiry No. 4 should be answered in the affirmative. We do not see any difference between the driver of a public stage line and the driver of a private conveyance or vehicle, and believe that such contracts may be entered into by the board of trustees of a consolidated district or any other school district.

5. Due to the answer given in inquiry No. 3 we deem it unnecessary to answer inquiry No. 5.

6. We are unable to find in the statutes any provisions requiring authorization by majority vote of the qualified electors, or by a petition signed by a majority of the electors, before the board of trustees of a consolidated school district has authority to pay for transporting pupils to and from school. We, therefore, are of the opinion that inquiry No. 6 should be answered in the affirmative.

7. Section 142 of the school code, the same being section 5790, Nevada Compiled Laws 1929, permits the board of trustees or board of education of each city, town, and district to use moneys from the county school funds to pay for transportation of pupils to and from school. This is an original section of the school code which was approved March 20, 1911. 1911 Statutes, page 183, Section 5951, Nevada Compiled Laws 1929, is section 6 of an Act approved February 26, 1915, 1915 Statutes, page 27. The last referred to section must be construed together and with section 5790 for the reasons that the statutes are in *pari materia*. In other words, reading the two sections together, the statutes provide that county school funds may be used for the transportation of pupils to and from school when school children live one mile or more from

school, and if such expenditure is authorized at any regular or special election held in the district upon the proposition of providing transportation for pupils to and from school and the majority of the qualified electors of the district have voted in favor of such transportation.

In regard to the transportation of pupils to and from a district high school at the expense of the county, a new section was added to an Act entitled "An Act to authorize county commissioners in counties not having county high schools to aid district high schools under certain conditions, and other matters properly connected therewith," by chapter 140, 1931 Statutes, page 228. This new section as added by the 1931 Statutes permits the County Commissioners of a county to include in the county's annual budget the cost of transporting high school pupils to and from a district high school at the expense of the county when a petition of at least twenty-five percent of the qualified electors of any county has been presented to them. This, of course, authorizes such an expenditure at the expense of the county only in such instances as come clearly within the purview of the Statute, that is, only in such counties not having county high schools.

We do not believe that this section last referred to, and appearing in chapter 140, 1931 Statutes, page 228, repeals section 142 of the school code for the reason that the subject matter referred to in the 1931 Act does not affect the expenditure of school funds, but is limited only to the expenditure of county funds for the aid and assistance of district high schools when there is no county high school in the county. For the foregoing reasons, inquiry No. 7 is answered in the negative.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

By: W. HOWARD GRAY, *Deputy Attorney-General*

CHAUNCEY W. SMITH, *Superintendent of Public Instruction, Carson City, Nevada.*

SYLLABUS

OPINION NO. 1936-215 Foreign Corporations—Restoration of Right to do Business.

Sections 1809, 1810, and 1811, Nevada Compiled Laws 1929, provide the only method by which a foreign corporation may be reinstated and restored to its right to do business in this State, after such corporation has defaulted in the payment of its license tax, penalty, and costs and expenses.

STATEMENT

CARSON CITY, June 19, 1936

The 1923 Legislature of the State of Nevada enacted a law, which was approved by the Governor on March 21, 1923 (1923 Statutes of Nevada, 342, chapter 190) entitled "An Act relating to revenue and taxation, providing for a license tax upon all corporations, organized under the laws of the State of Nevada, and all foreign corporations doing business in the State of Nevada, *and providing a penalty for a violation of the provisions of this Act.*" That Act required, among other things, that "every foreign corporation doing business in this State" should pay to the Secretary of State by July first of each year a license tax of \$10 except such corporations as were then already required to pay an annual license; and, among the penalties imposed for a failure to do so, was a forfeiture of "its right to transact business within this State."

A certain foreign corporation which had theretofore qualified to do business in Nevada failed in 1924 to pay the license tax so required, and thereby forfeited "its right to transact any business within this State," the State of Nevada, and has not since that time done any business whatsoever in the State of Nevada so far as the records in the office of the Secretary of State reveal, and so far as we know. This foreign corporation now wishes to qualify again and to resume business in this State. Said chapter 190 also provided a method for such reinstatement by authorizing the Governor "to reinstate *any* corporation in its right to carry on business in this State, and in the exercise of its corporate privileges and immunities in case such corporation, on or before the first

day of June following the first Monday in March, shall pay to the Secretary of State all license taxes due under this Act, together with the penalties, costs and expenses incurred by the State.” The “penalties, costs and expenses incurred by the State,” referred to in the Act, was a penalty of \$2.50 and certain costs and expenses of publication, etc., required by the Act. Such license tax, penalty, costs and expenses have not been paid by said foreign corporation or by anyone in its behalf.

In 1925 said chapter 190 was repealed by chapter 180, 1925 Statutes of Nevada, 323 (Nevada Compiled Laws 1929, sections 1804-1813), section 9 of said Act, which is Nevada Compiled Laws 1929, section 1812. The chief purpose of this chapter 180, 1925 Statutes of Nevada, 323, was to require “every corporation,” both domestic and foreign, “doing business in this State” to “file with the Secretary of State a list of the officers and directors and a designation of its resident agent in this State,” and to pay to the Secretary of State a filing fee of \$5 therefor, and the title of the Act was as follows:

An Act requiring all corporations to file annually with the secretary of state a list of their officers and directors and a designation of resident agent, providing a fee therefor, and providing a penalty for the violation of the provisions of this act, and providing for the reinstatement of corporations whose charters have been forfeited under existing or preexisting laws.

In 1931, a law was enacted by the Legislature and approved by the Governor, known as chapter 219, 1931 Statutes of Nevada, 408, wherein both the title and certain provisions of said chapter 180 were amended, the title of said chapter 219 reading as follows:

An Act to amend the title and sections 1, 2, 3 and 4 of an act entitled “An Act requiring all corporations to file annually with the secretary of state a list of their officers and directors and a designation of resident agent, providing a fee therefor, and providing a penalty for the violation of the provisions of this act, and providing for the reinstatement of corporations whose charters have been forfeited under existing or preexisting laws,” approved March 21, 1925, being respectively, sections 1804, 1805, 1806 and 1807, Nevada Compiled Laws 1929.

And by section 1 of which the title of said chapter 180, 1925 Statutes of Nevada, 323, was amended to read as follows:

An Act requiring all corporations to file annually with the secretary of state a list of their officers and directors, a designation of resident agent, and a certificate of acceptance of resident agent, providing a fee therefor, and providing a penalty for the violation of the provisions of this act, and providing for the reinstatement of corporations whose charters have been forfeited under existing or preexisting laws.

Particular attention is called to the fact that this 1931 Act; *i.e.*, said chapter 219, amends only the title and sections 1, 2, 3, and 4 of said chapter 180, 1925 Statutes of Nevada, 323, and leaves the remainder of said chapter 180 intact and in force and effect, as contained in said chapter 180. The salient provisions of both said chapter 180 and of said chapter 219, insofar as they are material to the inquiry in this opinion and the opinion itself are concerned, are as follows:

1. A requirement that “every corporation,” both domestic and foreign, “doing business in this State shall,” by July first of each year, “file with the Secretary of State a list of the officers and directors and a designation of its resident agent in this State,” certified as required therein, and “pay to the Secretary of State a fee of five (\$5) dollars therefor.
2. A penalty in the sum of \$2.50 for failure to file such list of officers and designation of resident agent by July first of each year and an additional penalty if

not paid by the first Monday in August of the year of such default of a forfeiture of its right to do business in this State in the following language; *“and shall likewise forfeit its right to transact any business within this State.”*

In addition to the above-mentioned requirements and penalties of said chapters 180 and 219, section 6 of said chapter 180 (Nevada Compiled Laws 1929, section 1809), which it will be noted was not amended or repealed by said chapter 219, provides a method of reinstatement of such corporations which have forfeited their rights to do business in this State under either said chapter 190, or said chapter 180, or said chapter 219. This provision for the reinstatement of such corporations is expressly made to apply to “any corporation” and, therefore, applies to all corporations doing business in this State which have forfeited their rights to transact business in this State. It further authorizes the Governor “to restore to such corporation its right to carry on business in this State, and to exercise its corporate privileges and immunities,” said reinstatement and restoration to be upon the filing of certain affidavits provided for therein with the Secretary of State and upon the “payment to the Secretary of State of all filing fees, licenses, penalties, and costs and expenses due and in arrears at the time of the revocation of its charter, *and also all filing fees, licenses and penalties which have accrued since the revocation of its charter.*” Particular attention is also called to the provisions of section 8 of said chapter 180, which is Nevada Compiled Laws 1929, section 1811, and is in the following language:

Any corporation whose charter or right to do business has been forfeited under the provisions of an act entitled “An act relating to revenue and taxation, providing for a license tax upon all corporations, organized under the laws of the State of Nevada, and all foreign corporations doing business in the State of Nevada, and providing a penalty for a violation of the provisions of this act,” approved March 21, 1923, may be restored to its right, carry on business in this state, by complying with the provisions of sections (6) and (7) hereof.

It will be noted that the last above-quoted section 8 of said chapter 180 (Nevada Compiled Laws 1929, section 1811) relates to “any corporation,” both domestic and foreign, “whose * * * right to do business has been forfeited” under the provisions of said chapter 190, 1923 Statutes of Nevada, 342, and provides that it may be restored to its right to carry on business in this State by complying with sections 6 and 7 of said chapter 180, which are Nevada Compiled Laws 1929, sections 1809 and 1810; *i.e.*, the filing with the Secretary of State of the affidavit provided for and the payment to him of all the filing fees, licenses, penalties, and costs and expenses due and in arrears. In other words, the provisions of said section 8 (Nevada Compiled Laws 1929, section 1811) apply to both corporations whose charters have been revoked (domestic corporations) and to corporations whose rights to do business in this State have been forfeited (both domestic and foreign corporations). In this connection it should be noted, however, that the last paragraph of section 5 of said chapter 180 (Nevada Compiled Laws 1929, section 1808) provides a somewhat bunglesome and peculiar action and procedure to be taken by the Secretary of State in cases of defaulting foreign corporations, in which it seems that the Legislature attempted to provide a different or additional method by which the Secretary of State may collect such filing fees, penalties, and costs due to the State in cases of defaulting foreign corporations. It should also be noted in this connection, that said provisions of the last paragraph of said section 1808 do not furnish a method of reinstatement or restoration to a defaulting foreign corporation of its right to do business in this State, but simply furnish a method by which the Secretary of State may collect the delinquent filing fees, penalties, and costs and expenses from such defaulting foreign corporation without regard to reinstatement or restoration. The method for reinstatement and restoration of all corporations doing business in this State, both domestic and foreign, is provided for in sections 6, 7 and 8 of said chapter 180, 1925 Statutes of Nevada, 323, which are Nevada Compiled Laws 1929, sections 1809, 1810, and 1811. The foreign corporation which so defaulted in 1924 and which has defaulted in the payment of said filing fees, licenses, penalties, and costs and expenses every year since that time, and up to the present time, now desires to

qualify and do business in this State without paying its delinquent license tax for the year 1924 and its delinquent filing fees, licenses, penalties, and costs and expenses since that time, and without otherwise complying with the provisions of said sections 1809, 1810, and 1811, Nevada Compiled Laws 1929, as hereinbefore stated, and thereby having its right to do business in this State restored and reinstated in good standing in this State.

INQUIRY

Upon the law and facts hereinbefore stated, is it mandatory that the foreign corporation reinstate itself and restore its right to do business in the State of Nevada by complying with the provisions of said sections 6, 7, and 8 of said chapter 180, 1925 Statutes of Nevada, 323, being sections 1809, 1810, and 1811 of Nevada Compiled Laws 1929; or is it merely optional with said corporation to follow that method of reinstating itself and restoring its right to do business in this State, or to follow some other method it may desire to pursue to qualify itself again to do business in this State?

OPINION

It is the unqualified opinion of this office that the only method by which such foreign corporation may legally be reinstated and restored to the right to do business in this State is that provided for in said sections 1809, 1810, and 1811, Nevada Compiled Laws 1929. It must be kept in mind in this connection that this particular foreign corporation is not only in default in the payment of its license tax, penalty, costs and expenses which it was required to pay under said chapter 190 for the year 1924, but is also in default for its failure to file its list of officers, directors and designation of resident agent, and its failure to pay the filing fees, penalties, costs and expenses provided for in said chapter 180, 1925 Statutes of Nevada, 323, as amended by said chapter 219, 1931 Statutes of Nevada, 408 (Nevada Compiled Laws 1929, sections 1804-1813, as amended). Said section 8 of said chapter 180, being Nevada Compiled Laws 1929, section 1811, provides solely for restoration of a corporation to its right to do business in this State when it has forfeited its charter or such right for failure to comply with the provisions of said chapter 190 (the 1923 law) by paying its license tax and the penalties, costs and expenses provided for therein, and that its charter, or right to do business in the State, may be restored by complying with the provisions of said sections 6 and 7 of said chapter 180 (the 1925 law), being Nevada Compiled Laws 1929, sections 1809-1810, the sections requiring the filing of the affidavit by the corporation with the Secretary of State and paying him "all filing fees, licenses, penalties, and costs and expenses due and in arrears." In other words, the method of reinstatement and restoration in cases of forfeiture under said chapter 190 (the 1923 law) is merged into and made a part of the method of reinstatement and restoration provided of in said sections 1809 and 1810 (the 1925 law). Since the 1923 law has been repealed, there is no other method provided in the law for the reinstatement and restoration to the right to do business in the State of corporations which have forfeited such right than that provided for in the 1925 law, *i.e.*, Nevada Compiled Laws 1929, sections 1809-1811, both inclusive, or, in fact, the method provided for in said sections 1809 and 1810 alone. This sole and exclusive method is the filing of the affidavit by or on behalf of the corporation with the Secretary of State and the payment by it to the Secretary of State of all the delinquent filing fees, licenses, penalties, and costs and expenses from the time of the forfeiture of the right to do business in the State up to the time of such reinstatement and restoration, and by complying with the requirements of said section 1810 as to the change of the name of such corporation in cases where some other corporation has taken the name of the defaulting corporation while its right to do businesses was so suspended.

We are entirely familiar with the fact that the expression "revocation of its charter" is used at least three times in said section 1809 in connection with the statement to be included in the affidavit as the reason for the revocation of the charter of the corporation and also as to the time from which the "arrears" are to be calculated; and we are fully aware of the fact that the charter of a foreign corporation could not be revoked by this State or any officer of it, and that the most

this State or any officer thereof can legally do is to revoke its right to do business in this State, as distinguished from its charter. Notwithstanding this situation, it is our opinion, from a consideration of the entire law on the subject as above referred to that, insofar as foreign corporations are concerned, the expression "revocation of its charter" as used in said section 1809 simply refers to a revocation of the right of the foreign corporation to do business in this State.

It is, therefore, the unqualified opinion of this office that in order for said defaulting foreign corporation to reinstate itself and restore its right to do business in this State, or to qualify in any manner to do business in the State, it is necessary for it to so file such an affidavit and to pay to the Secretary of State all its delinquent fees, licenses, penalties, costs and expenses from the time of its forfeiture of that right up to the time of its reinstatement and restoration, and that said method is the only method by which it can legally qualify to do business in the State of Nevada, or by which it may legally be reinstated or restored to that right.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General.*

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

SYLLABUS

OPINION NO. 1936-216 Nevada School of Industry—Teachers' Retirement Fund.

Teachers employed in Nevada School of Industry cannot participate in the teachers' retirement fund.

INQUIRY

CARSON CITY, June 22, 1936

1. Do teachers employed in the Nevada School of Industry come within the provision of the statutes of Nevada relative to retirement salary?

2. If inquiry No. 1 is answered in the negative, may the Nevada Teachers' Retirement Salary Fund Board take any action which would bring teachers employed in the Nevada School of Industry under the terms of the statutes providing for teachers' retirement salary?

OPINION

1. Inquiry No. 1 is answered in the negative for the reason that teachers employed in the Nevada School of Industry are not employed as teachers "in the public schools." Teachers in such institution are under the supervision of the board created to govern the Nevada School of Industry. Sections 6830 to 6840, Nevada Compiled Laws 1929. Said board is empowered to organize a department of instruction in the said school. Section 6837, Nevada Compiled Laws 1929. This department is to have a course of study corresponding as far as practicable with the course of study in the State public schools. Section 6837, Nevada Compiled Laws 1929. From the foregoing it is clear that the Legislature did not contemplate that the department of instruction so created by the board governing the Nevada School of Industry should be considered as a part or portion of the State public school system.

Section 6014, Nevada Compiled Laws 1929, as amended in 1935 Statutes, page 38, authorizes legally qualified school teachers serving in the public schools. Orphans' Home and county normal schools to participate in the retirement fund. Inasmuch as the teachers employed in the Nevada School of Industry do not come within any of the classifications contained in section 6014. Nevada Compiled Laws 1929, they do not, in our opinion, have the right to participate in such retirement salary fund or in the creation of such a fund.

2. The Public School Teachers' Retirement Salary Fund Board has no authority under the statute to make any regulation or pass any resolution whereby one who does not come within the

statutory provisions of section 6014, Nevada Compiled Laws 1929, would be permitted to participate in the Retirement Salary Fund. Such a rule would be tantamount to legislation, which power the board does not or cannot possess.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

By: W. HOWARD GRAY, *Deputy Attorney-General*

CHAUNCEY W. SMITH, *Superintendent of Public Instruction, Carson City, Nevada.*

SYLLABUS

OPINION NO. 1936-217 Public Schools—Teachers’ Retirement Salary.

Necessity of retirement of teachers before being entitled to receive annual retirement salary.

INQUIRY

CARSON CITY, June 22, 1936

1. In the event a teacher has met the requirements of sections 5 and 12 of the Public School Teachers’ Retirement Salary Fund Act (sections 6007-6013, Nevada Compiled Laws 1929), retired from active teaching and for a period received the pension provided for a teacher who has thirty years of teaching service to her credit, and later resumed active teaching in the Nevada public schools, is such teacher entitled to receive the monthly pension payments of \$50 for the summer vacations when she is not teaching, *i.e.*, in the interim between the time her teaching contract for one school term ceases and the time a new contract for her services becomes operative?

2. May a teacher who has been granted a retirement salary based on thirty years’ actual teaching service and who reenters the teaching profession in Nevada public schools for one or more school terms, again be placed on the list of beneficiaries of the pension system when she permanently retires from the teaching profession?

OPINION

1. Section 6014, Nevada Compiled Laws 1929, as amended by chapter 33, 1935 Statutes, page 38, provides that, “upon retirement voluntary or involuntary” a teacher who has complied with the requirements of the Teachers’ Retirement Salary Act shall be entitled to receive during life an annual retirement salary of \$600 per annum.

“Retirement,” while susceptible of various meanings, has been defined as withdrawing from active service. (*State v. Love*, Nebr. 145, N. W. 1010, Ann. Cas. 1915D. 1078.) Its use in the statute referred to clearly connotes that it was intended to convey the thought that by retirement a teacher ceased to be active in the profession of school teaching.

Retirement from school teaching is just as much a necessary prerequisite to receiving the annual retirement salary as any of the other acts which must be complied with by the applicant. In other words, there must be a bona fide retirement before a teacher is entitled to receive the benefits of the statute. Periods of unemployment during the summer months between the regular school years can hardly be considered evidence of retirement from active service.

In our opinion, no teacher is entitled to follow his or her profession during the regular school year and receive retirement salary during the vacation period.

Inquiry No. 1 is, therefore, answered in the negative.

2. Inquiry No. 2 is answered in the affirmative; provided, however, that the teacher must retire from active service as a school teacher and actually cease teaching school. There is nothing in the statute which implies that a teacher who has retired for a time and then returned to his or her profession waives his or her rights to a retirement salary at such future time as he or she may

meet the statutory requirement of retiring from his or her profession as a school teacher. However, before any teacher is entitled to receive the annual retirement salary provided for by the statutes, the teacher must, as heretofore stated, retire as a school teacher from active service.

Inquiry No. 2 is, therefore, answered in the affirmative.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

By: W. HOWARD GRAY, *Deputy Attorney-General*

CHAUNCEY W. SMITH, *Superintendent of Public Instruction, Carson City, Nevada.*

SYLLABUS

OPINION NO. 1936-218 Motor Truck License Law.

The owners of a truck operated wholly within the corporate limits of any town or city in the State of Nevada, while engaged in hauling merchandise for others than the motor vehicle dealer to whom the truck belongs, cannot be compelled to secure either or any of the licenses provided for by chapter 165, Statutes of 1933, page 217, as amended by chapter 126, Statutes of 1935, page 261, when such merchandise is being hauled for the purpose of demonstration of said motor truck and when no compensation is received for the use of the truck. The owners of such a truck cannot be compelled to secure registration plates other than dealer plates while such truck is being so used for demonstration purposes.

STATEMENT

CARSON CITY, July 1, 1936

A motor vehicle dealer situated in Reno has been using one of its new trucks to haul merchandise for outside business other than its own, claiming that they are doing this for the purpose of demonstration and are receiving no compensation for the use of this truck. The only license plates upon the truck are the dealer's plates. The unladen weight of the truck is approximately 4,500 pounds, and when engaged in hauling merchandise for other than the motor vehicle dealer the truck does not leave the city of Reno and operates entirely within a radius of five miles of the city of Reno.

INQUIRIES

1. Can the owners of this truck be compelled to secure either or any of the licenses provided for by chapter 165, statutes of 1933, page 217, as amended by chapter 126, Statutes of 1935, page 261?
2. Can the owners of this truck be compelled to secure registration plates other than the dealer plates?

OPINION

Answering inquiry number 1, your attention is directed to section 3 of the Motor Vehicle Carriers Act, the same being chapter 165, 1933 Statutes of Nevada, page 217, as amended by chapter 126 of the 1935 Statutes of Nevada, pages 261-263. This section, as amended, reads in part as follows:

None of the provisions of this Act shall apply to any motor vehicle operated wholly within the corporate limits of any city or town in the State of Nevada; nor to city or town draymen and private motor carriers or property, operating within a five-mile radius of the limits of a city or town; * * *.

By virtue of the foregoing section of the statute, inquiry number 1 is, upon the statement of facts, hereinbefore set forth, answered in the negative, inasmuch as the truck in question is operated wholly within the corporate limits of the city of Reno while engaged in hauling merchandise for others than the motor vehicle dealer to whom the truck belongs. The motor truck would likewise be excluded from the provisions of the Motor Vehicle Carriers Act if it were operated as a private motor carrier of property since, according to the statement of facts, it operates exclusively within a radius of five miles of the city of Reno.

Said section 3 of the Act hereinabove referred to also provides that none of the provisions of this Act shall apply to any person engaged in transporting his own personal property in his own motor vehicle of an unladen weight of not to exceed 5,000 pounds. While this section of the statute would have no application when the truck was engaged in hauling merchandise for others than the owner of the truck, still it would exclude from the operation of the Act this particular truck while transporting personal property belonging to the owner of the motor vehicle.

Answering inquiry number 2, your attention is directed to section 16 of the Act pertaining to licensing and registration of motor vehicles, the same being chapter 202, 1931 Statutes of Nevada, page 322. This section, in part, reads as follows:

A manufacturer of or dealer in motor vehicles, trailers, or semitrailers having an established place of business in this State owning any such new or used vehicles and operating them upon the public highways exclusively for the purpose of testing, demonstrating or selling the same, in lieu of registering each such vehicle, may make application upon an official blank provided for that purpose to the department for a general distinguishing number or a symbol; provided that vehicles ordinarily used by the dealer or manufacturer in the conduct of his business as work or service vehicles must be registered the same as any other like vehicle as provided in section 6 of this Act.

Assuming that the statement made by the motor vehicle dealer owning the truck is true, that this truck is being used for demonstration purposes and that no compensation is received for the use of the truck, it is our opinion that the section of the statute hereinabove referred to and quoted specifically authorizes the use of dealer plates upon such truck while it is being operated exclusively for the purpose of testing, demonstrating or selling the same. Inquiry number 2 is therefore answered in the negative.

Both opinions 1 and 2 are specifically limited to a situation involving the state of facts as recited in the statement hereinabove set forth.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

By: W. HOWARD GRAY, *Deputy Attorney-General*

PUBLIC SERVICE COMMISSION (Attention Mr. Lee S. Scott, Secretary), *Carson City, Nevada*.

SYLLABUS

OPINION NO. 1936-219 County Road Supervisors—Appointment or Election—Elected when County Operating Under County Highway Board Pursuant to Uniform System of Road Government Law; Otherwise, Appointed—Uniform System of County Road Government Not Mandatory.

1. The law establishing a uniform system of county road government (N.C.L. 1929, sections 5356-5391, inclusive) is not mandatory; and it is not compulsory upon County Commissioners, County Assessors and District Attorneys to organize as a Board of County Highway Commissioners in each county of the State.

2. The 1901 Act (N.C.L. 1929, sections 5418-5421, inclusive) was repealed by the 1911 county road law (N.C.L. 1929, sections 5422-5423, inclusive).

3. The State law does not require that County Road Supervisors in the road districts in Washoe County be elected at the general election, or at all, assuming, as stated in the request for opinion, that Washoe County has not organized under said uniform system of county road government; but provides that such road supervisors shall be appointed by the Board of County Commissioners of Washoe County, and not otherwise.

INQUIRIES

CARSON CITY, July 17, 1936

This office is asked for the official opinion of the Attorney-General on the following point and in answer to the following inquiries, the order of which we reverse in answer:

1. Is the law establishing a uniform system of road government, approved March 26, 1913, Statutes of Nevada 1913, page 380, *i.e.*, Nevada Compiled Laws, sections 5356-5391, both inclusive, mandatory; and is it compulsory upon County Commissioners, County Assessors and District Attorneys to organize as a Board of County Highway Commissioners in each of the counties of the State?

2. Does said uniform county road law above referred to, *i.e.*, Nevada Compiled Laws, 1929, sections 5356-5391, inclusive, supersede the 1901 county road law, *i.e.*, Nevada Compiled Laws 1929, sections 5418-5421, both inclusive, and the 1911 road law, *i.e.*, Nevada Compiled Laws, 1929, sections 5422-5425, inclusive, or either of them?

3. In view of the fact that Washoe County has not elected to come, and has not in fact come, under the 1913 uniform county road law, in that the County Commissioners, District Attorney and County Assessor have not organized as a Board of Highway Commissioners for that county, does the law of this State require that the County Road Supervisor in the road districts in Washoe County be elected at the general election; or may they legally be appointed by the County Commissioners or County Highway Board?

STATEMENT

In the year 1901 the Legislature of this State passed a law which was approved by the Governor of this State on March 19, 1901, chapter 80, 1901 Statutes of Nevada, page 89, which law was brought in the 1929 compilation of the laws of this State as Nevada Compiled Laws 1929, sections 5418-5421, both inclusive. This law simply provided for the establishment of road districts in counties of this State polling at the general election immediately preceding that time 1,800 votes or over, and for the *election* at each election of county officers thereafter a road supervisor in each of said districts and prescribing the duties of such road supervisors; for the compensation of such road supervisors to be fixed by the County Commissioners; and for the appointment of one road supervisor for each road district by the County Commissioners by April 15, 1901, "*to serve and hold office until their successors have been elected and installed.*"

Notwithstanding the last above-mentioned 1901 Act, the Legislature of this state in 1911 enacted, and the Governor approved on March 24, 1911, another law relating to the same general subject, and including practically the same provisions, except the election of such road supervisors, designated as chapter 172, 1911 Statutes of Nevada, pages 355-356, containing six sections, which law was compiled in the 1929, compilation of the laws of this State as Nevada Compiled Laws 1929, sections 5422-5425, both inclusive, omitting therefrom sections 5 and 6 of said chapter 172, which section 5 repealed all Acts, and parts of Acts in conflict with said chapter 172, and which section 6 provided that the Act should take effect on January 1, 1913.

Notwithstanding said 1901 and 1911 Acts, the Legislature of this State in 1913 enacted, and the Governor approved on March 26, 1913, another law, establishing or attempting to establish "a uniform system or road government" in the State of Nevada, designated as chapter 257, 1913 Statutes of Nevada, page 380-399, which was compiled in the 1929 compilation of the laws of this State as Nevada Compiled Laws 1929, sections 5356-5391.

It is our information, as contained in the letter of the District Attorney of Washoe County to the Attorney-General dated July 15, 1936, that Washoe County has never come under said "uniform system of road government," *i.e.*, said 1913 Act, by organizing the Board of Highway Commissioners of Washoe County composed of the County Commissioners, District Attorney and County Assessor, as provided for in said 1913 Act, *i.e.*, Nevada Compiled Laws 1929, sections 5356-5391, inclusive.

OPINION

1. It is the opinion of this office that said 1913 Act providing for the establishment of a uniform system of road government, *i.e.*, Nevada Compiled Laws 1929, sections 5356-5391, both inclusive, is not mandatory, and that it is not compulsory upon the County Commissioners, County Assessor and District Attorney of each of the counties of the State, or of any of the counties of the State, to organize as a Board of County Highway Commissioners under that Act.

In this connection, we quote Opinion No. 79 of the Attorney-General of this State dated August 22, 1913, in answer to an inquiry propounded to him by Gray Mashburn, then District Attorney of Storey County, Nevada, and now Attorney-General of Nevada, as follows:

CARSON CITY, August 22, 1913

HON. GRAY MASHBURN, *District Attorney of Storey County, Virginia City, Nevada*

DEAR SIR: I am in receipt of your favor of the 15th instant asking the construction of chapter 257 of the Statutes of Nevada for 1913, relating to road government and administration.

Upon a careful examination of the same, I am of the opinion that this Act was not intended to supersede the statutory provisions now existing in relation to the establishment, maintenance, and repair of roads, but was intended to institute a new and additional method for such supervision. It is in a way a local-option Act, requiring for its adoption by the particular county the issuing of bonds at an election to be held as provided in said Act. I am led to this conclusion by reason of the fact that the enforcement of many of the provisions of this Act depends upon the issuance of bonds, after a favorable election held for that purpose, and that the Act was not intended to operate until after such election was held in the particular county.

Understanding that your county has held no such election, I am prepared to answer your specific inquiries and advise you as follows:

First—It is optional with the various Boards of County Commissioners of the State to have such commission, but not compulsory.

Second—It is not compulsory to appoint a Road Supervisor where no bonds are issued by the county.

Third—If such election is not held by the county, the Boards of County Commissioners are at liberty to operate under the old laws relating to public roads.

Fourth—Your fourth and fifth questions have already been answered by the previous responses.

Sixth—If no election has been held in your county, the old law stands, and the matter is in the hands of your Board of County Commissioners, under the same.

Respectfully submitted,
GEORGE B. THATCHER, *Attorney-General.*

It has been consistently held by the Attorneys-General of this State ever since that time, and by the present Attorney-General, that said Act is not mandatory nor its provisions compulsory upon the counties of the State, but merely optional with counties and County Commissioners, and we see no reason why this office should change its views in this matter. Certainly, counties

are not bound by the terms of that Act unless they organize the Boards of County Highway Commissioners as provided for in that Act.

2. In answer to query number 2, it is the opinion of this office that said 1901 Act, *i.e.*, Nevada Compiled Laws 1929, sections 5418-5421, both inclusive, was repealed by said 1911 county road law, *i.e.*, Nevada Compiled Laws 1929, sections 5422-5425, inclusive, and certainly by section 5 of said 1911 Act, omitted from Nevada Compiled Laws 1929, which omitted section reads as follows:

All Acts and parts of Acts in conflict with the provisions of this Act (1911 Act) are hereby repealed.

It will be noted, and is hereinbefore noted, that the provisions of the 1901 Act are practically identical with the provisions of the 1911 Act, except that the 1901 Act provides for the *election* of road supervisors, while the 1911 Act provides for the appointment of such road supervisors by the Board of County Commissioners, and also provides that the terms of office of such road supervisors (section 5423, Nevada Compiled Laws 1929) shall be “during the pleasure of the Board of County Commissioners,” or terminated at the pleasure of the Board of County Commissioners. Certainly, these provisions of the 1911 Act are in conflict with the 1901 Act. It is a fundamental rule of statutory construction that where there is conflict between the provisions of two Acts of the Legislature, the provisions of the last enactment prevail and repeal by implication the conflicting provisions of the former Act. In addition to this, section 5 of the 1911 Act expressly repeals all Acts and parts of Acts in conflict with the 1911 Act.

3. From the foregoing, it follows that it is the unqualified opinion of this office that the law of the State of Nevada does not require that the county road supervisors in the road districts in Washoe County be elected at the general election, or at all, and that such road supervisors shall be appointed by the Board of County Commissioners of Washoe County, and not otherwise.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

HON. ERNEST S. BROWN, *District Attorney, Washoe County, Reno, Nevada*.

SYLLABUS

OPINION NO. 1936-220 Residence Voting Qualifications of Civilian Conservation Corps Members.

Men who are enlisted in the Civilian Conservation Corps and who are stationed in camps in the State of Nevada cannot legally register and vote at the elections to be held in the fall of 1936 unless the families of such men reside within this State.

INQUIRY

CARSON CITY, July 22, 1936

Can men who are enlisted in the Civilian Conservation Corps and who are stationed in camps in the State of Nevada legally register and vote at the elections to be held in the fall of 1936?

OPINION

In Attorney-General's Opinion No. 194, dated December 4, 1935, it was held that the members of the Civilian Conservation Corps stationed within the boundaries of an organized school district are not residing in that school district within the meaning of the term “residing,” as used in the school code, so as to qualify them as signers of a petition requesting the

establishment of a night school. The authorities therein cited and referred to, and upon which the opinion is based, are applicable to the inquiry propounded herein.

As pointed out in said opinion, the fact is that the members of the Civilian Conservation Corps came to Nevada, not as the result of their own volition, but as the result of orders of superior officers. Their residence in the State is of uncertain duration and depends wholly upon the authorities in command. The position of those who are enrolled in the Corps is similar to that of enlisted men in the military and naval services of the United States Government. As we understand it, those who enroll in the Civilian Conservation Corps enroll for a definite period of time, after which they may enroll for an additional period. We also understand that the individuals who are so enrolled cannot terminate their relationship with the Corps without the consent of the authorities in charge of the Corps first had and obtained. Therefore, it is evident that they are not free to go and come as they will.

This office ruled in Attorney-General's Opinion No. 90, 1932-1934, that civil attaches of the Government Ammunition Base at Hawthorne, Nevada, residing within the so-called reservation at the munitions base on Government land, have the legal right to vote, providing they meet all the requirements of the statutes of Nevada.

This last referred to opinion is limited to civil attachés of the Government. We believe that there is considerable difference between civil attachés and members of the Civilian Conservation Corps. While the Conservation Corps is entitled a "Civilian Conservation Corps," nevertheless the members thereof are, as hereinbefore pointed out, not free to terminate their connection with the organization of their own free will. If they have no choice in choosing their residence and cannot freely change their place of abode, it can hardly be said that the fact that they lived in Nevada during their term of service evidences any intention on their part to make their legal residence within the State of Nevada.

In Attorney-General's Opinion No. 316, 1927-1928, it was held that whether Government employees of an Indian Reservation can vote depends upon the matter of residence. In that opinion, the then Attorney-General said:

I am of the opinion that the mere fact of residence upon a reservation for the statutory periods not in itself to be considered as sufficient to constitute a residence to authorize registration and voting, but that such residences must concur with and be manifest by the resultant acts which are dependent of the presence on the reservation.

Section 2 of Article II of the Nevada Constitution was also discussed and authorities referred to construing constitutional provisions of similar import in sister jurisdictions.

In passing on the inquiry to which the present opinion is directed, attention must also be directed to section 2365, Nevada Compiled Laws 1929, which reads in part as follows:

If a man have a family residing in one place and he does business in another, the former must be considered his place of residence, unless his family be located there for temporary purposes only; but if his family reside without the State, and he be permanently located within the same, with no intention of removing therefrom, he shall be deemed a resident.

It is our understanding that members of the Civilian Conservation Corps are required to send a large portion of their pay to those members of their families who are dependent upon them wholly or partially for support. Since the members of the Corps are enlisted from all over the United States and their families are residing at or near the places of their enlistment, and since it can hardly be said that their location in this State with the Civilian Conservation Corps is permanent, it is our opinion that the residence of the members of the Civilian Conservation Corps must be considered to be at the place at which their families are residing.

"Residence," as used in the statutes defining who shall have the right to vote, means that a person shall not only be physically, corporeally, and actually present within the State for the

statutory period, but the person must, while he is residing in the State and county, have a definite *intention* to make the State and county his home.

For the foregoing reasons, and upon the authorities cited in the opinions of the Attorney-General's office herein referred to, this office is of the opinion that members of the Civilian Conservation Corps whose families do not reside in the State of Nevada are not entitled to register and vote at the elections to be held in Nevada in 1936, and that merely residing for the statutory period in the State and county as a member of the Civilian Conservation Corps is not in itself sufficient to constitute residence to authorize registration and voting.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

By: W. HOWARD GRAY, *Deputy Attorney-General*

HON. W. R. REYNOLDS, *District Attorney, Eureka County, Eureka, Nevada.*

SYLLABUS

OPINION NO. 1936-221 Nominations of Candidates for County Offices.

When a vacancy occurs in a partisan office after the holding of the primary election, the nominations for the office for the unexpired term shall be made by the county central committees of the respective parties.

STATEMENT

CARSON CITY, July 30, 1936

About July 22, 1936, this office received from Hon. Roger Foley, District Attorney of Clark County, a letter discussing the method of nominating partisan candidates, under the primary election law of this State, for county offices other than nonpartisan offices, in cases where the particular county offices become vacant by resignation or death after the time provided in section 4 of the primary election law, which is Nevada Compiled Laws 1929, section 2407, for the Secretary of State to "prepare and transmit to each County Clerk a notice in writing designating the offices for which the candidates are to be nominated at such primary election," and after the time within which said section requires the County Clerk to publish so much of such notice, so transmitted to him by the Secretary of State as may be applicable to his county, in a newspaper published in that county. In said letter this office is asked for its official opinion on the points of law involved.

The letter is so full and complete and so well and clearly discusses the law on the points involved that we quoted, as follows, the entire letter, omitting the superscription, etc., and the name of the officer who resigned his position after the period of time had elapsed within which the Secretary of State is required to so prepare and transmit said notice and the county Clerk to so publish it:

Since receiving your letter of June 29, new developments have occurred in the Recorder and Auditor's office, Mr. _____ having fully paid up and made good the shortage and tendered his resignation to take effect at midnight, July 31.

Friday evening, July 3, he informed me that an additional shortage of \$351 existed in his accounts. On Monday, July 6, the next business day, I informed Mr. _____ that he must make full settlement and resign his office or be prosecuted. With the assistance of friends, he was able to sell his furniture and make good the full amount of this new and the balance of the old shortage, totaling \$547.81. Mr. Trabert, Deputy State Auditor, at our request, kindly came from Goldfield and made a complete check of the affairs of the office, and advised us that \$547 was the entire shortage. This amount of money has been deposited with the County Treasurer.

I desire to inform you of our plans for filling the vacancy. I have advised the County Commissioners to make a temporary appointment and have the temporary appointee ready to qualify at 9 a.m., August 1 in order that the business of the office may not be interrupted. This temporary appointment to be made under section 4805 N.C.L. 1929, and also, at their regular meeting on August 5, make a permanent appointment under section 4812, as amended, Statutes of 1933, page 165, the person appointed under said section to fill the vacancy until the next ensuing biennial or general election.

The County Clerk, on the 7th day of July 1936, and, of course, prior to the effective date of resignation of Mr. _____, complied with section 4 of the primary election law, on page 18 of the 1936 pamphlet of the Secretary of State, and published his notice designating the offices for which candidates are to be nominated at the ensuing primary election. In the opinion of the Supreme Court, in the Jepson Case, 48 Nevada, page 64, on page 69, it appears that said section 4 of the election laws does not apply to elections to fill vacancies. This understanding on my part is based upon the following portions of the opinion of the Supreme Court in that case:

“Since there is nothing found in the statutes of 1917 relative to elections or in the law with reference to the nomination for candidates for public offices which makes it incumbent upon the Secretary of State to give notice or County Clerk to include in the published notice county offices in which a vacancy has occurred or exists as one of the offices for which candidates are to be nominated at the ensuing primary election, we do not perceive upon what theory or principle this court has jurisdiction to compel the respondent Clerk of Douglas County to include in the notice required of him to be published of the offices for which candidates are to be nominated at the ensuing primary election, the office of County Clerk and Treasurer.” (The office of County Clerk and Treasurer was the office in which it was claimed a vacancy existed.)

However, I felt that it was fair and proper that the electors of this county receive due notice of such vacancy in order to afford those who may desire to do so adequate opportunity to file nomination papers for such office. I advised the County Clerk and he did publish a notice informing the electors of this county that a vacancy would occur July 31 in the office of County Recorder and Auditor and that the Clerk would receive nomination papers and the require filing fee for such office and would file the same on the morning of August 1, 1936.

I also advised the Clerk to certify to the Secretary of State, on August 1, the fact of such a vacancy (see section 4759 N.C.L. 1929). In the middle of said section the following appears:

“Said Clerk shall also, within ten days after the vacancy has occurred, in any county office or office of the Justice of the Peace (by resignation or otherwise) certify to the Secretary of State the fact of such vacancy.”

I understand by virtue of section 4813 N.C.L. 1929, as amended, Statutes of 1933, page 165, that the appointee of the Board of County Commissioners will hold office until and no longer than the next ensuing general or biennial election, which is the general election in November 1936. Therefore, it seems to me that there is at least an implied command in said section, that at the general election in November 1936, a person be elected to fill the balance of _____’s unexpired term. Nowhere in the election laws can I find any defined procedure covering the nomination of a successor to fill such vacancy. To forcibly illustrate the proposition, what would be your answer to the situation in the event that this resignation had taken place after the primary election in September and prior to the November general election. The appointment in that case would only be good until the general election, and the successor would have to be elected under section 4813 and the question would

arise: How is the successor to be nominated then? Under what procedure would his name be placed on the November ballot?

Of course, we do not have to decide any such question because _____ has resigned prior to the expiration of the date for filing. But you will notice that the resignation takes place after the certificate of the Secretary of State and after the publication of notice by the Clerk pursuant to such certificate as required by section 4 of the primary election law.

In California, the Supreme Court has held that in vacancies occurring after the publication of a notice similar to that required by section 4 of our election law, nominations to fill such vacancies cannot be made at the ensuing primary election. The following is from the opinion in Fitzgerald v. Smith, Supreme Court of California, 174 Pacific, page 660:

“The respondent is about to place on the official election ballot to be used in Kern County at the primary election to be held on August 27, 1918, as candidates for the office of Judge of the Superior Court of Kern County for the unexpired term of Hon. Milton D. Farmer, resigned, the names of three candidates who have filed nomination petitions in form as required by the direct primary law. The resignation of Judge Farmer, as Judge of the Superior Court of Kern County, was not filed until July 11, 1918, on which date it was, by the Governor, duly accepted. Concededly, election for the unexpired term must take place at the next general election to be held in November, 1918, but it is clear under the circumstances of this case, candidates for such office may not be voted for at the August primary. We are of the opinion that this claim is well based.

“The direct primary law requires, for the purpose of acquainting the electors with the names of the offices for which candidates may file nomination petitions and be voted for at the primary election, that certain notices shall be given—the first at least 70 days before the date of the primary by the Secretary of State to the County Clerks and registrars, designating all of the offices, except township offices, for which candidates are to be nominated at the primary election; and the second one given by the County Clerk or registrar in each county and city and county by publication in a newspaper or newspapers published in such county or city and county, commencing within ten days after receipt by him of such notice from the Secretary of State, which notice shall include a designation of all the offices for which candidates are to be nominated at such primary election. (Sec. 4 Direct Primary Law, Stats. 1913, p. 1382, as amended Statutes 1919, p. 1344, Sec. 3.)

“These notices were given prior to the resignation of Judge Farmer and of course they did not and could not include any designation of this office as one of the offices for which candidates were to be nominated.

“We are satisfied that a proper construction of the primary laws requires the conclusion that candidates may be nominated at the primary for such offices only as may properly be included in the notices thus provided for. It is the condition existing at the time prescribed by the law for the giving of the notices that controls insofar as the primary is concerned. For the purposes of the primary, the situation here is the same as it would have been if Judge Farmer had not resigned until the time for filing nomination petitions had expired. Under the circumstances, no candidate for this office can be nominated at the primary, with the result that the candidates to be voted for at the General Election in November for such office must be nominated in the manner prescribed by section 1188 of the Political Code.

“It is ordered that the respondent omit from the official primary election ballot to be used at the primary election on August 27, 1918, all mention of Judge of the Superior Court for the unexpired term of Judge Farmer, and all of the names of persons who have filed nomination petitions therefor.”

It is my opinion that the reasoning in the Fitzgerald case is sound, and further, I can find no procedure or machinery in our primary election laws authorizing the nomination at the ensuing primary of any candidates for the unexpired term of Auditor and Recorder, and it is my opinion that, adopting the language of the Fitzgerald case that "for the purpose of the primary, the situation here is the same as it would have been if _____ had not resigned until the time for the filing of nomination petitions had expired."

Under section 4813, the commissioners make appointment to fill such vacancy until the next ensuing biennial or general election only, and therefore a successor for _____ must be elected at the November election in 1936. The situation must be taken care of in accordance with section 25 of the primary election law, and due to the fact that the vacancy occurred after the giving of the notice provided by section 4 of the Primary Election Act, there is no method by which nominations for this office can be made at the ensuing primary.

Therefore, a vacancy will occur after the holding of the primary election, and the nomination for the office of County Recorder and Auditor for the unexpired term must be made by the county central committee of the respective parties.

However, we have safeguarded the situation by proceeding to inform the electors of this vacancy by the notice given by the County Clerk, which notice was published in the local paper, to the effect that he would receive nomination petitions for this office and file the same on August 1. Then, if you should decide that my conclusions as above stated are wrong, we will be in a position to proceed under the primary election.

I respectfully request a very early reply from you giving me your views on this matter.

OPINION

As usual, Mr. Foley has come to the proper and legal conclusion in his splendid discussion of the points involved; and we approve the final opinion expressed by him as to the legal method to be pursued in filling the vacancy in the nomination for the office of County Recorder and Auditor. In this connection, it is well to add that the same method applies to all other county offices except nonpartisan offices. There is another section of the law which provides another method of filling such vacancies in nonpartisan offices, that is to say, Nevada Compiled Laws 1929, section 2429. This is the section of the law construed by the Supreme Court of this State in *Ex Rel Penrose v. Greathouse*, 48 Nevada 419.

The portion of said section 2407, Nevada Compiled Laws 1929, which requires the Secretary of State to so prepare and transmit to the County Clerk the notice in writing designating the offices for which candidates are to be nominated at the primary election reads as follows:

[Secretary of State to Notify County Clerks] (1) At least sixty days before the time for holding the September primary election in 1918, and biennially thereafter, the Secretary of State shall prepare and Transmit to each County Clerk a notice in writing designating the offices for which candidates are to be nominated at such primary election.

The portion of said section 2407, Nevada Compiled Laws 1929, which requires the County Clerk to publish notice in a newspaper published in his county designating the office for which candidates are to be nominated at such primary election in his county reads as follows:

[Publication in Newspaper.] (2) Within ten days after receipt of such notice such County Clerk shall publish so much thereof as may be applicable to his county, once in a newspaper published in such county. As amended, Stats. 1923, 49.

It will be noted that the Supreme Court of this State in *Ex Rel Penrose v. Greathouse*, supra, discusses to some extent the policy of the State to submit the selection of officers to the vote of the people at elections rather than by appointment whenever it is legally possible to do so under the Constitution and laws of this State. It must be kept in mind, however, that the Penrose case was a case in which the vacancy in the nomination occurred after the primary election. In that case Judge Hart died and the office of District Judge thereby became vacant on October 12, 1924, after the primary election for that year had been held, and the general election followed within less than a month thereafter, *i.e.*, on November 4, 1924. It must be kept in mind also that the office involved was a nonpartisan office, *i.e.*, the office of District Judge, and that an entirely different method of filling vacancies in nominations for nonpartisan offices is provided in said section 2429 from that provided in said section for the filling of vacancies in nominations for partisan offices. The office of County Recorder and Auditor is a partisan office for which nominations are to be made by political parties. It follows that the method to be pursued in the filling of the vacancy in nominations for Recorder and Auditor, a partisan office, is entirely different from that to be pursued in filling vacancies in nominations for nonpartisan offices. The method pursued and approved in the Penrose case for the filling of nominations for the nonpartisan office of District Judge does not apply, and this decision of the Supreme Court of this State in the Penrose case does not apply in the filling of the vacancy in party nominations for the county office of Recorder and Auditor.

If there were any method provided by law by which nominations for the office of County Recorder and Auditor could legally be made at an election, then declarations of candidacy should be received, the names of such candidates placed upon the primary election ballot, and the people of Clark County given an opportunity to select their party nominees for this partisan office. The people as a whole should always be given an opportunity to vote upon and select their own officers where it is legally possible for them to be given an opportunity to do so; but we find no machinery set up in the law for the Secretary of State at this late day to legally prepare and transmit to the County Clerk of Clark County the "notice in writing designating the office for which candidates are to be nominated "at the September primary election of this year, or for the County Clerk of Clark County to now at this late day publish the notice required by the above-quoted provisions of said section 2407.

Under these provisions, the preparation and transmission to the County Clerk of the notice in writing designating the offices for which candidates are to be nominated at the September primary election must be made "at least sixty days before the time for holding the September primary election"; and the County Clerk must publish the notice "within ten days after receipt of such notice" from the Secretary of State. It is therefore, too late for either of the above-mentioned notices to be now legally given.

Pursuant to the arrangement suggested by the District Attorney and now contemplated by the Board of County Commissioners of Clark County, the office of County Recorder and Auditor of that county, as distinguished from the party nominations for that office will be filled by appointment until the biennial election this year. The law as amended in 1933, 1933 Statutes, page 165, provides for the election by the people of a County Recorder and Auditor at the general election this year; but there is no provision in the law for party nominations to fill the vacancy in party nominations for this office by election at the September primary election this year. The fact remains, however, that it is a partisan office and that nominees for the office are to be named by the political parties to be voted on at the November general election this year. The question is: How are these nominees to be named? The first paragraph of Nevada Compiled Laws 1929, section 2429, which is section 25 of the primary election law, furnishes the answer, and reads as follows:

Vacancies occurring after the holding of any primary election shall be filled by the party committee of the county, district or State, as the case may be.

Since a vacancy will occur in the nominations for this office of County Recorder and Auditor “after the holding of the (any) primary election” in September of this year, then it is evident that the above-quoted language of said section 2429 applies; and that it will be legal for the party committees, respectively, of Clark County to fill the vacancy in nominations for this particular office after the September primary election.

Since it is now too late for the notices required in said section 2407, as above quoted, to be legally given, and a vacancy in the nominations for this particular office will occur after the September primary election, it is the opinion of this office that the only method provided by law for the filling of these vacancies is by the party committees, respectively, of Clark County, as provided for in said section 2429.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

HON. ROGER FOLEY, *District Attorney, Clark County, Las Vegas, Nevada*.

SYLLABUS

OPINION NO. 1936-222 Public Buildings—Wage Rates.

All employees of the age of 18 years or more on public buildings, such as the Supreme Court and State Library Building, shall be paid not less than the minimum of 62 1/2 ¢ per hour if paid by the hour, or not less than \$5 per each eight hour day if paid by the day.

STATEMENT

CARSON CITY, August 15, 1936

We have just received a letter from the State Highway Engineer of this State asking for certain information on behalf of the Public Works Administration concerning the wage rate per hour to be paid apprentice metal workers employed on the Supreme Court and State Library Building. We quote from that letter as follows:

In the letter from PWA, they question our authority to pay less than 62 1/2 ¢ per hour, which is the State rate, and ask that we get from you an opinion as to whether or not we can legally pay an apprentice boy 37 1/2 ¢ per hour in conformity with his agreement with the union instead of the 62 1/2 ¢ per hour which is the State rate for laborers. The library job is a closed shop union job. Apprentices under the union rulings do only certain types of work in their first year and also in their second year, and I am wondering if they can be construed as *laborers* under the Nevada Act.

This office is asked for an immediate opinion on the question involved; and we are, therefore, formulating the following query which, as we understand it, presents the point of law on which the official opinion of this office is desired.

INQUIRY

May wages be legally paid “apprentice metal workers” employed on the Supreme Court and State Library Building at the rate of only 37 1/2 ¢ per hour in view of the minimum wage law of the State of Nevada?

OPINION

The law of the State of Nevada is so clear, explicit, and impossible of misunderstanding that we hardly know how it is subject to construction, as it is fundamental that a law which is clear and explicit and not subject to misunderstanding does not need to be construed. We are, therefore, quoting as follows from the minimum wage law of this State relating to work on public buildings, *i.e.*, Chapter 7, 1935 Statutes of Nevada, page 12, omitting the portions thereof which are not pertinent to the point of law inquired of in the foregoing query:

On *all* public buildings * * * which may hereafter be erected or constructed * * * for the State of Nevada * * * or any board or commission thereof, and on *all* public works carried on *within* the State of Nevada and on *all* public works carried on by *any* contractor within the State of Nevada, and on *all* work and labor to be done in such erection or construction or *any matter to thing incident thereto* by *any* person, firm, association, company, or corporation under contract with the State of Nevada, unskilled labor shall be paid for at the rate of not less than \$5 per each eight-hour day, or 62 1/2 ¢ per hour for each male person over the age of 18 years who shall be employed at such labor.

It will be noted that there is absolutely no difference in the law as to the minimum wages to be paid "apprentices," and the minimum wages to be paid those who are not "apprentices." The only difference made by the law as to the minimum wages to be paid is the difference between the age of the employee, the line being drawn at the age of 18 years. In other words, all employees, of the age of 18 years, on public buildings, such as the Supreme Court and State Library Building, regardless of whether they be apprentices or those who are not apprentices, shall be paid not less than the minimum of 62 1/2 ¢ per hour, if paid by the hour, or not less than \$5 per each eight-hour day if paid by the day.

It will be noted that the minimum wage rate above specified, and as specified in said chapter 7, is the minimum wage specified for "*unskilled*" labor. It is clear from the letter that the entire subject matter of the inquiry is or relates to "*unskilled*" labor. It is, therefore, the unqualified opinion of this office that it would be illegal to pay an employee, over the age of 18 years, on the building less in wages than \$5 per each eight-hour day or 62 1/2 ¢ per hour.

We call attention to the very severe penalty attached to any violation of this minimum wage law, as set forth in section 2 of said chapter 7, wherein a penalty is provided of not less than \$50 nor more than \$150 for each person so employed at such labor in violation of said minimum wage law, and to the fact that each day any such person is so employed constitutes a separate offense. Certainly, no State officer, including the Attorney-General himself, would desire to subject himself to the severe penalty provided for in the law as above stated.

We call attention also to the fact that the age limit specified in the law below which persons might be so employed at less than the minimum wage rate, specified in the law as above mentioned, is 18 years. In other words, this age limit is very low. It is evident from this fact alone that it was the intention of the Legislature and of the Governor of this State who approved the Act that the minimum wage law so specified should apply to all employees on such public buildings. In addition to this, it is a matter of common knowledge that such was the intention of the Legislature in passing the Act. Certainly, it must be recognized by all that it would be poor public policy to employ boys of such tender years on such public buildings.

Under the system of government established by the Constitution and laws of every State in the United States, it is for the Legislature and Governor of the State to establish the public policy of the State by the enactment and approval of such laws as they deem proper as a matter of good policy in the State. In fact, the same theory applies to the Nation and the enactment of laws by Congress and their approval by the President.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General.*

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

SYLLABUS

OPINION NO. 1936-223 Nevada State Prison—Nevada State Hospital for Mental Diseases—Disposition of Prisoners.

A prisoner transferred from the Nevada State Prison to the Nevada State Hospital for Mental Diseases, or legally committed to that hospital as an insane person, when such prisoner has been restored to sanity or determined to be sane prior to the expiration of his term of imprisonment, as shown by his commitment to Nevada State Prison, must be returned, upon his release from Nevada State Hospital for Mental Diseases, to Nevada State Prison to serve the remainder of the term of his commitment to the penitentiary, or until released by the State Board of Pardon and Parole Commissioners.

INQUIRY

CARSON CITY, August 25, 1936

What disposition may the Nevada State Hospital for Mental Diseases legally make of a prisoner transferred from the Nevada State Penitentiary to said hospital, or legally committed to that hospital as an insane person, when such prisoner has been restored to sanity or determined to be sane prior to the expiration of his term of imprisonment as shown by his commitment to Nevada State Penitentiary?

OPINION

Such a prisoner must be returned, upon his release from Nevada State Hospital for Mental Diseases, to Nevada State Penitentiary to serve the remainder of the term of his commitment to the penitentiary, or until released by the State Board of Pardon and Parole Commissioners, as provided for in Nevada Compiled Laws 1929, section 3520, which reads as follows:

Disposition of convicts—Escapes. SEC. 16. The superintendent of the Nevada Hospital for Mental Diseases shall receive such insane convict and safely keep him, and if such convict be restored to sanity before the expiration of his sentence to said prison, shall deliver him to the Warden thereof, who shall retain such convict therein for the unexpired term of his sentence, unless said convict shall be released by order of the Board of Pardons. An escape from said Nevada Hospital for Mental Diseases by any convict therein, under the provisions of this Act, shall be deemed an escape from the State Prison and be punished as such.

This section of the law is certainly as clear, explicit and definite as it is possible for the English language to make a statement of the law. It is not, therefore, subject to construction or interpretation. It simply means what it says; and it says that when a convict has been transferred to the Nevada Hospital for Mental Diseases as an insane person and is restored to sanity before the expiration of his term of imprisonment in the penitentiary, the Superintendent of the Hospital *shall* deliver him to the Warden of the penitentiary for return to the penitentiary, and that the Warden shall retain the convict in the penitentiary for the unexpired term of the prisoner's sentence, unless he be released by order of the Board of Pardons, which simply means the Board of Pardon and Parole Commissioners.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General.*

WARDEN WM. L. LEWIS, *Nevada State Prison, Carson City, Nevada.*

SYLLABUS

OPINION NO. 1936-224 Relief Workers—Signatories of Voluntary Work Agreements with Resettlement Administration—Workmen’s Insurance.

1. Signatories of voluntary work agreements with Resettlement Administration are not employees within the meaning of that term in Nevada Industrial Insurance Act.
2. Signatories of voluntary work agreements with Resettlement Administration are not such workers as are provided accident relief under chapter 188, 1935 Statutes of Nevada, page 393.

STATEMENT OF FACTS

CARSON CITY, October 6, 1936

The Resettlement Administration has determined that, in certain instances, recipients of monetary grants made by this Administration to persons eligible for public aid, will be permitted to execute voluntary work agreements which evidence the willingness of the recipients of such grants to perform work on projects to which they are assigned by this Administration.

The making of a monetary grant to a person otherwise eligible for public aid will not be contingent on such person’s executing a voluntary work agreement. Such agreements will be used only in those instances where the recipient of the grant indicates a willingness to perform work in return for the grant to be received by him.

It is the intention of this Administration to make available the services of signatories to such voluntary work agreements to States or political subdivisions thereof, or other local governing or public administrative bodies in their prosecution or certain useful local public projects not financed in whole or in part out of funds appropriated by the Emergency Relief Appropriation Act of 1935 or the Emergency Relief Appropriation Act of 1936.

INQUIRIES

- (1) May the public funds of the State and political subdivisions thereof and other local governing or public administrative bodies be used for the payment of premiums or workmen’s compensation insurance or other equivalent form of insurance covering signatories of voluntary work agreements?
- (2) Are the State and its political subdivisions and other local authorities authorized by law to assume liability for injuries sustained by assigned voluntary work agreement signatories?
- (3) Will assigned voluntary work agreement signatories be otherwise similarly protected by such insurance by the operating of the provisions of any other applicable State statute?

OPINION

The answer to the foregoing inquiries depends upon whether or not the signatories of the voluntary work agreements referred to in the statement of facts come within the scope and purview of the statutes of the State of Nevada providing accident relief for workmen performing labor under the circumstances as outlined in the above statement of facts.

The signatories of the voluntary work agreements with the Resettlement Administration obviously would not be considered “employees” as that word is used in the Nevada Industrial Insurance Act. *State v. Nevada Industrial Commission*, 55 Nev. 343, 34 P. (2d) 48.

This office is also of the opinion that the signatories of the voluntary work agreements with the Resettlement Administration when performing labor and services in situations as outlined in the above statement of facts would not come within the scope or purview of chapter 188, 1935 Statutes of Nevada, page 393. The Act last referred to was passed for the purpose of providing protection for relief workers upon projects approved by the Nevada Emergency Relief Administration. Section 4 of chapter 188, 1935 Statutes of Nevada, page 395, reads in part as follows:

The accident relief provided herein will be granted to workers injured in the performance of duty on projects as defined above, * * *.

The word "project" is defined in the Act as follows:

The word project shall include work projects and administrative projects and other types of projects approved by the Nevada Emergency Relief Administration to give employment to residents of Nevada. Subdivision (a), section 3, chapter 188, 1935 Statutes of Nevada, page 394.

Relief workers are defined in the said Act as follows:

A relief worker or person engaged in a work relief project shall be construed to mean a person receiving relief, and this Act shall apply to all resident relief workers who are paid from the funds made available to the Nevada Emergency Relief Administration or conjunctively by it and the State of Nevada. Subdivision (c), section 3, chapter 188, 1935 Statutes of Nevada, page 394.

From the foregoing it is quite evident that chapter 188 of the 1935 Statutes of Nevada was designed to protect workmen employed on projects approved by the Nevada Emergency Relief Administration who were being paid from funds received from the Nevada Emergency Relief Administration, said funds in turn being received by the Nevada Emergency Relief Administration from the Federal Emergency Relief Administration and/or the State of Nevada. The above statement of facts set forth in this opinion is taken from a letter addressed to His Excellency, Honorable Richard Kirman, Governor of the State of Nevada, bearing the date of September 19, 1936, and bearing the signature of Jonathan Garst, Regional Director of the Resettlement Administration, Region IX. From the foregoing facts it is quite clear that services of the signatories of the voluntary work agreements will be made available to local public projects not financed in whole or in part out of funds appropriated by the Emergency Relief Appropriation Act of 1935 or the Emergency Relief Appropriation Act of 1936. Since these workers, the signatories of the voluntary work agreements, are not to be employed upon projects financed by Federal moneys and approved by the Nevada Emergency Relief Administration, we are of the opinion that they would not come within the scope of chapter 188, 1935 Statutes of Nevada, which expressly provides for the protection of workers who are employed and paid by funds received, in part at least, from the Emergency Relief Appropriation Acts of 1935 and 1936.

Chapter 188, 1935 Statutes of Nevada, page 393, and the Nevada Industrial Insurance Act are the only State laws relative to the protection of workers performing labor and services for the State, counties and other political subdivisions of the State, and since in our opinion the signatories of the voluntary work agreement do not come within the scope or purview of either of those statutes, we are, for the foregoing reasons, of the opinion that each of the inquiries should be and is answered in the negative.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General.*

By: W. HOWARD GRAY, *Deputy Attorney-General*

HON. RICHARD KIRMAN, *Governor of Nevada, Carson City, Nevada.*
