

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL - 1939

SYLLABUS

271. State Distributive School Fund.

Douglas County high school is not a "district high school" organized under chapter 134, Statutes of Nevada 1937, and therefore is not entitled to receive moneys from the State Distributive School Fund. (February 8, 1939.)

INQUIRIES

CARSON CITY, February 3, 1939.

1. Does a "high school district" come within the definition of the term "school district" as used in section 5798 Nevada Compiled Laws 1929, sub-section 1 of section 151 of the School Code?
2. If a high school district comes within the definition of school district as there used, is Douglas County high school entitled to a share in the distribution of the State Distributive School Fund?

OPINION

Answering Query No. 1, a high school district may come within the definition of a school district when the high school drawn in question is a "district high school," organized and existing under and by virtue of chapter 134 Statutes of Nevada 1937, which said chapter provides for the organization of district high schools in said districts under certain conditions, such schools to be governed by Boards of School Trustees of the then existing school district wherein district high schools are organized. Section 1 of chapter 134 provides, inter alia, "a district high school differs from a regular county high school only in extent of territory, in place of organization, and in means of support." A county high school such as the Douglas County high school mentioned in Query No. 2, is organized under a different law, *i.e.*, under section 5818 to 5829, inclusive, Nevada Compiled Laws 1929,, and its district, if district it is, comprises the entire county, and the revenue for its support being derived in a different manner it cannot reasonably be said that the county is a school district as that term is used in the School Code and as used with respect to district high schools.

Answering Query No. 2, your inquiry is undoubtedly directed to the question of whether a county high school is entitled to a share in a distribution of the State Distributive Fund. We are advised that the Douglas County high school is a school duly organized and established under the law providing for the organization of county high schools, to wit, sections 5818 to 5829, inclusive Nevada Compiled Laws 1929. A perusal of these sections of the law discloses that the money used in the maintenance and conduct of county high schools comes exclusively from taxes levied in the county in which a particular county high school is situated and not from any other source. It is to be noted that section 5820, *supra*, provides among other things as follows:

When the location of the county high school has been finally determined, the board of county commissioners shall estimate the cost of purchasing suitable grounds, procuring plans and specifications, erecting a building, furnishing the

same, fencing and ornamenting the grounds, and the cost of running said school for the following twelve months; *provided*, that the estimate mentioned herein for purchasing suitable grounds, procuring plans and specifications, erecting a building, furnishing the same and fencing and ornamenting the grounds shall not be made, if previous to the time when the commissioners are to make such estimate the legislature shall have authorized said county to issue bonds for such purpose.

It is also provided in section 5821, *supra*, as follows:

When such estimate shall have been made, the board of county commissioners shall thereupon immediately proceed to levy a special tax upon all the assessable property of the county, sufficient to raise the amount estimated. Said tax shall be computed, entered on the tax roll and collected, and the amount so collected shall be deposited in the County treasury and be known and designated as the "County High-School Fund," and shall be drawn from the treasury in the manner now provided by law for drawing money from the treasury by school trustees; * * *.

And then again it is provided in section 5824, *supra*, as follows:

It shall be the duty of the county board of education to furnish annually, an estimate of the amount of money needed to pay all the necessary expenses of running said school; to enforce the uniform high-school course of study adopted by the state board of education; to employ teachers holding Nevada state certificates of the high school grade in full force and effect; to hire janitors and other employees, and discharge such employees when sufficient cause therefor shall charge such employees when sufficient cause therefor shall exist; and to do any and all other things necessary to the proper conduct of the school.

And in section 5825, *supra*, it is provided:

It shall be the duty of the board of county commissioners to include in their annual tax levy the amount estimated by the county board of education as needed to pay the expenses of conduction the county school; and such amount when collected, and paid in to the county treasury, shall be known as the "County High-School Fund," and may be drawn therefrom for the purpose of defraying the expenses of conducting said county high school in the manner now provided by law for drawing money from the county treasury by school trustees.

We think the foregoing sections of the law clearly indicate the intention of the Legislature that county high schools are to be supported entirely from moneys derived from taxation within the county itself, and that no apportionment is to be made from the State Distributive School Fund.

Query No. 2 is answered in the negative.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

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

HONORABLE GROVER L. KRICK, *District Attorney, Douglas County, Minden, Nevada*.

SYLLABUS

Memorandum. State Board of Printing Control Resolution.

(August 22, 1938) recorded at page 353, Vol. 18, Record of State Board of Examiners, with request Board of Examiners adopt same "and the Miehle Printing Press and Mfg. Co. be advised and requested to install an automatic Miehle Press, with the understanding the Legislature of 1939 be requested to pass an Act for the total cost of the machine." Claim shows on its face, subject to approval of Legislature of 1939.

MEMORANDUM

Carson City, February 8, 1939.

To the Ways and Means Committee of the Assembly, Thirty-ninth Session, Carson City, Nevada.

GENTLEMEN: This office has had under consideration the communication of Honorable R.E. Cahill, Chairman of your committee, requesting an opinion of this office for your committee with respect to the history and action so far had on Senate Bill No. 4, which is an Act for the relief of Miehle Printing Press and Manufacturing Co., *i.e.*, for the payment of a printing press for the State Printing Office. The communication propounds two queries, reading as follows:

1. Section 6995 N.C.L. 1929 states that "Neither house shall consider any other appropriation except an emergency appropriation for the immediate expense of the State Legislature until the budget has been finally acted on both houses." We would like your opinion as to whether the history of this bill from the Senate is correct or whether it should be changed to conform with this section.

2. Section 7049 and following regarding deficiency appropriations; would this bill fall under that section and be regarded a deficiency appropriation?

The bill, according to the history endorsed thereon has been considered by the Senate, passed by it, and is now in the hands of your committee by due reference thereto by the Assembly.

Answering Query No. 1 we beg to advise that section 6995 N.C.L. 1929 was amended in 1921 by chapter 60, Statutes 1921, and the Act appearing as section 6995 N.C.L. 1929 was repealed by the 1921 Act. See 1921 Statutes, pages 99-101, so that section 6995 is not the statute law on the question. A most pertinent change was incorporated in the 1921 Act relative to the time in which the Legislature may consider appropriations, other than those embodied in the Governor's budget and for expenses of the State Legislature. In section 5 of the 1921 Act it is provided "Neither house shall consider any other appropriation, except an emergency appropriation for the immediate expense of the State Legislature, *until ten days after the delivery of said budget to the presiding officer of each house. * * **" So that if the Legislature desires to be bound by a statutory enactment of a preceding Legislature a consideration of Senate Bill No. 4 would be valid after ten days from the introduction of the General Appropriation Bill, which we understand was introduced in both houses on February 6, 1939. If the Senate had desired to be bound by the 1921 amendment to what is now section 6995 N.C.L. 1929, then its action on Senate Bill No. 4 was premature.

However, unless there is a constitutional provision making the statutory enactments of one Legislature binding on a succeeding statutory enactments of one Legislature, then the succeeding Legislature may legislate as it sees fit on any subject unless as to any particular subject a prohibition is contained in the Constitution.

The legislative authority, *i.e.*, the law-making power of this State is vested in the Senate and

Assembly of the Legislature of the State of Nevada, except the power to initiate laws under article XIX of the Constitution providing for the initiation thereof by the people when they so desire. Article IV, section 1, Constitution of Nevada.

There is no provision in the Nevada Constitution prohibiting the Legislature from making appropriation by law for the purposes mentioned in Senate Bill No.4 at any time during the session. The Legislature is empowered to, and is in fact the only body that can, appropriate the public moneys of the State for the payment of claims against the State. Article IV, section 19, Constitution of Nevada.

The State Legislature possess legislative power unlimited except by the Federal Constitution, and such restrictions as are *expressly* placed upon it by the State Constitution. *Gibson v. Mason*, [5 Nev. 284](#).

In brief, it may be stated the rule is that, unless the Constitution makes statutory provisions binding on succeeding Legislatures, that then such provisions are not absolutely binding, and while entitled to great respect and consideration nevertheless they may be deviated from by a succeeding Legislature. We think that so far as the Assembly is concerned, with respect to Senate Bill No. 4, it may ignore the said 1921 Act and consider such bill at the present time, pass it or reject it; or the Assembly may consider itself bound by the provisions of the 1921 Act above mentioned and withhold consideration of the bill until after the expiration of the 10 days period from and after February 6, 1939.

Whether the Senate in passing Senate Bill No. 4, gave thought to section 6995 N.C.L. 1929, or the amendment thereof of 1921, we cannot say, but, the fact that the Senate passed the bill may be assumed to indicate that the Senate, with respect to Senate Bill No. 4, did not consider that it was bound by said statute or statutes; and not being constitutionally so bound, its action on the bill was constitutional.

Answering Query No. 2. An examination of the preamble to Senate Bill No. 4 discloses that, among other things, it is there recited that "The Miehle Printing Press and Manufacturing Company kindly consented to install what is known as a No. 46 unit book press, with automatic feeder and extension delivery, for the use of the 1939 legislative session, depending upon that body to make payment for the installation." This recital shows that the said manufacturing company acquiesced in and consented to the provision contained in the resolution adopted by the State Board of Printing Control, dated August 23, 1938, prior to receipt and installation of the printing press, concerning the proposed securing of said press, which resolution is now of record at page 353, vol. 18. Records of the State Board of Examiners, wherein among other things, it was and is provided that "The Miehle Printing Press and Manufacturing Co. be advised and requested to install an automatic Miehle Press, with the understanding that the Legislature of 1939 be requested to pass an Act for the total cost of the machine." In effect, and in fact, the above recital in Senate Bill No. 4 and the said resolution constitutes nothing more than an agreement on the part of the manufacturing company to install the printing press subject to payment therefor by the 1939 Legislature. This transaction, in our opinion, does not constitute a "deficiency appropriation" within the meaning of sections 7049 to 7055 N.C.L. 1929. The action of the State Board of Examiners taken was not a passing of the claim now before the Legislature. It was nothing more than a substantial compliance with section 6921 N.C.L. 1929, which said section provides the procedure to be followed by such board in the handling of claims against the state where no appropriation has been made and such claim must be presented to the Legislature. no action was taken or attempted by the Board of Examiners to allow or pass the claim. The

claim of the manufacturing company is on file in the office of Secretary of State and bears on its face a statement that the claim is subject to the approval of the Legislature. No attempt was made by anyone to bind the State for the payment was made by anyone to bind the State for the payment of the claim from any fund.

Query No. 2 is answered in the negative.

We conclude that Senate Bill No. 4 is constitutionally before the Legislature.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

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

Approved and inspected personally by me.

GRAY MASHBURN, *Attorney-General*

**A-1. Interstate Commerce Commission and Nevada Public Service Commission—
Conflicting Jurisdiction.**

Conflicting jurisdiction between Interstate Commerce Commission and Nevada Public Service Commission on application of railroad situated partly in Nevada and partly in another State on traffic over such railroad for permission to abandon service on the line rather than to abandon the line. Interstate Commerce Commission has jurisdiction under commerce clause of Federal Constitution, although not over purely intrastate service itself as distinguished from abandonment of service. State Commission and residents have, however, right to be heard on such application.

CARSON CITY, January 10, 1939.

Public Service Commission of Nevada, Carson City, Nevada.

Attention: HONORABLE HARLEY A. HARMON, *Chairman*.

Re: Tonopah & Tidewater-Railroad Company, Ltd., Application for Discontinuance of Service from Crucero, California, to Beatty, Nevada.

GENTLEMEN: This will acknowledge receipt of your letter of January 6, 1939, relative to the above-entitled matter.

It is noted that the above-named railroad company has filed with the Interstate Commerce Commission on application for discontinuance of service on its line of railroad extending from Crucero, California, to Beatty, Nevada, a distance of approximately 143 miles. It is also noted that Public Service Commission of Nevada seeking permission to discontinue service on such line of railroad. We are advised from your letter that the Interstate Commerce Commission has given notice to Nevada citizens who might be effected by the discontinuance of service, and also that your Commission has filed a protest with the Interstate Commerce Commission protesting the granting of the application and requesting a hearing on the application to be held in Nevada.

It appears from your letter that a question has arisen with your Commission as to the jurisdiction of the Interstate Commerce Commission to act in the matter, in that the application filed with the Interstate Commerce Commission was not an application for abandonment of the line, but an application for permission to abandon service on the line, and that you desire the advice of this office on such question.

We understand from your letter that the service proposed to be discontinued is interstate

service and, from our knowledge of the railroad, we apprehend that practically all of the service performed by it is interstate in character. This being the class of service performed by the railroad in question, we think, after an examination of the law, that the Interstate Commerce Commission has jurisdiction to pass upon the application.

An examination of the Interstate Commerce Commission Act discloses that Congress has vested the Interstate Commerce Commission with broad powers of jurisdiction, in all matters relating to the extension, construction or abandonment of railroad lines where such lines are engaged in interstate commerce, and Congress has also provided power and jurisdiction for the Interstate Commerce Commission to pass upon all questions relative to the abandonment of operations of railroad lines engaged in interstate commerce. See paragraph 18, section 1, title 49, U.S.C.A. Paragraph 19 of the above section provides the procedure with respect to abandonment of railroads or operations thereon, and paragraph 20 of said section provides the Interstate Commerce Commission shall have power to issue such certificates as are prayed for, or to refuse to issue such certificates, including certificates relative to abandonment of service. So, the Federal law itself, a law enacted pursuant to the commerce clause of the Federal Constitution, is the basis of the power and jurisdiction of the Interstate Commerce Commission, and the cases hold that, with respect to interstate commerce, the Federal law is supreme and operates to the exclusion of all State laws on the subject.

We have examined several cases pertaining to your question, among them being: *St. Louis, etc., R.R. Co. v. Alabama Public Service Commission*, 279 U.S. 560; *Pittsburgh & W.V.R. Co. v. United States*, 41 Fed. (2d) 806; *United States v. Idaho*, 298 U.S. 105; *Transit Commission v. United States*, 289 U.S. 121; *Colorado v. United States*, 271 U.S. 153; *Town of Inlet v. N.Y. Central R.R. Co.*, 7 Fed. supplement 781. These cases clearly decide that the jurisdiction of the Interstate Commerce Commission, insofar as interstate commerce is concerned is absolute.

In the *Colorado v. United States* case, *supra*, we find almost an identical situation as we have here, except that in the Colorado case it was sought to abandon the line entirely and the power and jurisdiction of the Interstate Commerce Commission to entertain the application for abandonment and decide the matter was questioned. The Supreme Court of the United States definitely decided in such case that, under the sections of the Interstate Commerce Act above cited, the Interstate Commerce Commission had full jurisdiction to entertain the application for abandonment and pass on the same. As illustrative of what the court said in the opinion, we quote briefly therefrom the following:

The exercise of federal power in authorizing abandonment is not an invasion of a field reserved to the State. The obligation assumed by the corporation under its charter of providing intrastate service on every part of its line within the State is subordinate to the performance by it of its federal duty, also assumed, efficiently to render transportation services in interstate commerce. There is no contention here that the railroad by its charter agreed in terms to continue to operate this branch regardless of loss. Compare *Railroad Commission v. Eastern Texas R.R. Co.*, 264 U.S. 79. But even explicit charter provisions must yield to the paramount power of Congress to regulate interstate commerce. *New York v. United States*. 257 U.S. 591, 601. Because the same instrumentality serves both, Congress has power to assume not only some control, but paramount control, insofar as interstate commerce is involved. It may determine to what extent and in what manner intrastate service must be subordinated in order that interstate

service may be adequately rendered. The power to make the determination inheres in the United States as an incident of its power or interstate commerce. The making of this determination involves an exercise of judgment upon the facts of the particular case. The authority to find the facts and to exercise thereon the judgment whether abandonment is consistent with public convenience and necessity, Congress conferred upon the commission.

The same situation existed in the *Town of Inlet v. N.Y. Central R.R. Co.* case, supra, and the court there held that the determination of how far a railway company, engaged in interstate commerce, should be required to continue service at constantly increasing loss, after many people served have abandoned rail for motor transportation is particularly within the Interstate Commerce Commission's province.

We conclude that as to the instant matter, insofar as interstate service is concerned, the Interstate Commerce Commission has jurisdiction to entertain an application to discontinue service and to pass upon such question. However, as to purely intrastate service, if any there be, the Interstate Commerce Commission has no jurisdiction, but such jurisdiction is vested in the Public Service Commission of this State with respect to intrastate service in Nevada.

The foregoing opinion is not to be construed as meaning that the State of Nevada, through your Commission, has no right to be heard in the matter of the discontinuance of service on the railroad in question. As we view the law, Congress intended that the people of a State have the right to be represented at the hearings held for the purpose of determining whether service on a railroad should be discontinued. In the *Colorado v. United States* case, supra, it was held that the sole test with respect to abandonment proceedings is whether such abandonment be consistent with public convenience and necessity, and that the Interstate Commerce Commission must have regard for the needs of both intrastate and interstate commerce. It is further pointed out in that case that State Commissions sometimes sit with the representatives of the Interstate Commerce Commission at such hearings that the practice has been established that the Interstate Commerce Commission leaves the preliminary inquiry to the State Commission, and that always consideration is given to representatives of the State authorities. Your letter of inquiry states that your Commission has filed a protest with the Interstate Commerce Commission and that you have requested a hearing to be held in Nevada. We, therefore, suggest that your Commission vigorously follow up your protest upon every available ground, and that the people of this State directly affected by the proposed discontinuance of service be given every opportunity to appear in any hearings held concerning the matter, either in person or by attorney, and there present their evidence as to why the petition should not be granted.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

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

A-2. Constitutional Law.

Salaries of the Justices of the Peace and Constables must be fixed by general law rather than special act. General statute requires fixing such salaries by Board of County Commissioners at July meeting prior to election of Justices of the Peace and Constables.

CARSON CITY, February 8, 1939.

HONORABLE CLAUDE SMITH, *Assemblyman, Churchill County, Assembly Chambers, Carson City, Nevada.*

DEAR MR. SMITH: I have had under consideration the annexed proposed bill fixing the salary of constable of Hazen township.

I beg to advise that since the year 1926, when the last amendment to section 20 of article IV of the Nevada Constitution was adopted, the power of the Legislature to enact special Acts fixing the salaries of Justices of the Peace and Constables has been taken away, and the fixing of their compensation is required to be done by a general Act of uniform operation throughout the State.

Pursuant to this constitutional amendment, the Legislature in 1929 enacted a law providing for the fixing of compensation of township officers by the Boards of County Commissioners, which compensation is to be fixed at a regular meeting of the Board of County Commissioners in July of any year in which an election of township officers is held. This law is now section 2201 to 2205, inclusive, Nevada Compiled Laws, 1929.

I conclude that the annexed proposed bill would, if enacted into the law, be a special Act in contravention of the above-constitutional provisions.

Respectfully submitted,

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

A-3. Corporations.

Filing fees payable by religious, charitable and educational associations. General corporation law does not provide for formation of corporations without capital stock. If nonstock corporation be provided for in other corporation law, no filing fee is required.

CARSON CITY, February 23, 1939.

HONORABLE MALCOLM McEACHIN, *Secretary of State, Carson City, Nevada.*

DEAR MR. McEACHIN: This is in reply to your inquiry of February 17 concerning the charging of fees in cases involving charitable corporations with stock.

It is our opinion that section 1676 N.C.L. 1929, as amended, clearly implies that in all cases in which religious or charitable societies or educational associations have capital stock that the regular filing fees must be paid.

It is further our opinion that under the 1925 corporation law, as amended, no provision is made for the formation of corporations without capital stock and that, therefore, any corporation incorporated under this Act is subject to the fees outlined in section 1676. However, it is quite possible that the corporation mentioned in your letter may come under the terms of some other sections of the Nevada Compiled Laws, *i.e.*, sections 3215-3222; sections 3240-3247; sections 3248-3255, or sections 1575-1583.

If the association mentioned in your letter may qualify and incorporate under any of the above provisions where in no capital stock is required, it is our opinion that no filing fee shall be exacted. However, if the association mentioned cannot qualify as above noted and it is necessary to incorporate with capital stock, then it is our opinion that a filing fee must be paid.

Sincerely yours,

ALAN BIBLE, *Deputy Attorney-General.*

A-4. Appointment of Legislative Members as Civil Officers of Profit.

Legislative members not eligible to appointment as civil officers of profit created while serving as such for one year thereafter. Constitution of State prohibits term of office of members of Board of Review created by State unemployment compensation law and other such officers for longer term than four years, but appointment for six years, pursuant to that law, is legal to the extent of a four-year term.

CARSON CITY, February 28, 1939.

MR. A.L. MCGINTY, *Director, Unemployment Compensation Division, Carson City, Nevada.*

DEAR SIR: Pursuant to your inquiry of this date concerning certain appointments to the Board of Unemployment Compensation Division and pursuant to your request for a written memorandum thereon, we submit the following:

Your inquiry whether a member of the present Board of Review of your Division was eligible to appointment thereto in view of the fact that such member was a member of the Assembly of the 1937 Legislature which enacted the unemployment compensation law containing the provisions providing for a Board of Review and fixing the compensation of the members thereof.

Section 8 of article IV of the Nevada Constitution reads as follows:

No senator or member of the assembly shall, during the term for which he shall have been elected, nor for one year thereafter, be appointed to any civil office of profit under this state which shall have been created, or the emoluments of which shall have been increased, during such term, except such office as may be filled by election by the people.

We think that the members of the Board of Review of the Unemployment Compensation Division are civil officers within the meaning of the above-quoted constitutional provision. Such members have official duties both of an administrative and of a judicial character, and we think beyond question fall within the definition of public officers. In the case of State of Nevada ex rel. Summerfield v. Clarke, 21 Nevada, 333, the Supreme Court of this State held that a notary public was an officer filling a civil office of profit under this State within the meaning of section 9, article IV of the Constitution which provides that "no person holding any lucrative office under the government of the United States, or any other powers, shall be eligible to any civil office of profit under this State." It is clear, we think, that a notary public has no greater public duties to perform than members of the Board of Review under the unemployment compensation law of this State. We are, therefore, inclined to view that a member of the Legislature of 1937 could not constitutionally provide a term of office for members of such board for a longer period than four years. The six-year term provided in section 10-b of the unemployment compensation law is undoubtedly unconstitutional for any period of time over four years. However, we think that the member appointed for the term of six years could legally hold such office for a period of four year, nothing else appearing that such member was otherwise ineligible. We understand that it is proposed to introduce a bill in the present Legislature amending the above section to provide for four-year terms and this, of course, will provide for any difficulty along this line in the future.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General.*

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

272. Public Service Commission.

Employees appointed to serve during pleasure of the appointing power may legally be discharged at any time and without notice.

STATEMENT OF FACTS

CARSON CITY, March 2, 1939.

On February 4, 1939, the Public Service Commission dispensed with the services of its chief Inspector and Assistant Inspector, such discharge becoming effective on February 5, 1939. At the same session the Commission appointed a new Chief Inspector and new Assistant Inspector to take office on February 6, 1939. The Commission under which the former Chief Inspector and Assistant Inspector held office read, in part: "this appointment being subject to the pleasure of this Commission."

INQUIRIES

- A. When does the salary of the former inspectors cease?
- B. May the former inspectors be discharged without notice?

OPINION

This office has repeatedly held that where a deputy or employee was appointed to serve only during the pleasure of the appointing power such appointing power may legally discharge the deputy or employee at any time he sees fit.

It appears under the instant Statement of Facts that the Commission appointed its inspectors with the proviso that "this appointment being subject to the pleasure of the Commission."

In answering a similar inquiry concerning the dismissal of a deputy mining inspector, this office, on March 31, 1938, held in part, as follows:

The power to remove is an incident to the power to appoint. *Somers v. State*, 58 N.W. 804, held that where the Superintendent of Public Instruction had power to appoint an assistant or deputy who was to perform the duties pertaining to his office as the Superintendent may direct, a deputy or assistant so appointed had no fixed term of office, but held office only at the pleasure of the appointing power. *Hard v. State*, 79 N.E. 916; *79 N.E. 916*; *Patton v. Board of Health*, 59 P. 702; *Meechem on Public Officers*, section 406 and 445 ; *Thropp, Public Officers*, section 304.

The appointment involved in your inquiry reads in part: "To serve in such capacity during my pleasure and until this appointment is revoked." It is, therefore, the opinion of this office in concurring with the foregoing opinions that the deputy holds office only at the will of the Mine Inspector and that his salary ceases on the date his revocation is effective.

The general rule is further expressed in 22 Ruling Case Law, section 267, page 562, as follows:

The general rule is that when an office is created to be filled by appointment, if the legislature does not designate the term of office, the appointee will hold only during the pleasure of the appointing power, and may be removed at any time without notice or hearing.

To the same effect see: 46 C.J. 1062; 21 Cal. Jur. 980; *Sonagle v. Curnow*, 69 P. 255; *Boyd*

v. Pendegast, 207 P. 713.

It is therefore the opinion of this office that the salary of each of the former inspectors ceased on the effective date of the revocation, that is, February 5, 1939, and that warrants for the payment of the new inspectors should be drawn for the period beginning February 6, 1939.

B. Since the appointments of the former inspectors were held subject to the pleasure of the Commission, it is our opinion that no legal notice is required. Your question B, therefore, is answered in the affirmative.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

By ALAN BIBLE, *Deputy Attorney-General*.

C.B. SEXTON, *Chairman, Public Service Commission of Nevada*.

I have read the foregoing opinion, examined the law in question, and am in complete accord with said opinion.

GRAY MASHBURN, *Attorney-General*.

A-5. Constitutional Law.

Chapter 90, 1925 Statutes of Nevada, regulating and licensing the erection, painting, or posting of billboards, signs, etc., is constitutional.

CARSON CITY, March 11, 1939.

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

DEAR ERNEST: Your letter requesting an opinion on the constitutionality of chapter 90 of the Act of March 18, 1925, has been referred to my attention.

On September 14, 1925, Honorable M.A. Diskin, Attorney-General, passed upon this identical question in a letter addressed to Honorable Lester D. Summerfield, District Attorney of Washoe County, as follows:

Attention is directed to Statutes 1925, chapter 90, being an Act entitled "An Act to regulate and license the erection, placing, painting or posting of billboards, signs, placards or other forms of outdoor advertising; providing penalties for violation of this Act and other matters properly connected therewith."

An official opinion is requested relative to the constitutionality of this measure.

OPINION

After a careful consideration of the points and authorities submitted, and from an independent investigation, I am not convinced that this Act is unconstitutional.

While some doubt exists in my mind as to the validity of certain provisions of this legislation, I do not entertain that degree of conviction respecting the illegality of the Act as a whole as would warrant me in ruling that the measure is invalid.

It has always been the policy of this office to refrain from declaring a statute unconstitutional unless such legislation is palpably contrary to the organic law. (Opinions of the Attorney-General, 1923-1924, No. 100.) This procedure has been prompted by a desire to submit debatable issues of this importance to the Supreme Court for its determination. The legal questions involved present issues of great public interest and should be finally passed upon by the Supreme Court.

I respectfully suggest that, at the first opportunity, a test case be filed and the entire matter submitted to the court for determination.

I have carefully examined each of the citations given in your letter to the Washoe County Commissioners; likewise, we have independently investigated this question and carefully examined the most recent cases thereon. The present extension of police power is well expressed, it seems to us, under the case of General Outdoor advertising Company v. Department of Public Works, 193 North Easter, 799; also Thomas Cusack company v. City of Chicago, 108 North Easter, 341; and People v. Sterling, 220 New York Supplement, 315. Although there may be some question as to the validity of certain provisions of chapter 90, it does not appear to us that the Act as a whole is unconstitutional and, therefore, we concur in the opinion as expressed by General Diskin.

With personal regards,

Sincerely yours,

ALAN BIBLE, *Deputy Attorney-General.*

A-6. Constitutional Law.

Legislature prohibited by Constitution from fixing salaries of Constables and Justices of the Peace by special Act.

CARSON CITY, March 14, 1939.

HONORABLE HENRY S. COLEMAN, *Assemblyman from Lincoln County, Assembly Chambers, State Capitol, Carson City, Nevada.*

DEAR MR. COLEMAN: We have under consideration your inquiry whether the Legislature could now enact special laws fixing the compensation of Justices of the Peace and Constables.

From the inception of our Constitution down to the year 1923 there was nothing in the Constitution which prohibited the Legislature from enacting special Acts fixing the compensation of Justices of the Peace and Constables. In fact, in 1889 the Constitution was so amended in this respect, that is, by an amendment to section 20 of article IV of the Constitution, making it definitely clear that the Legislature did have such power. This was pointed out in the case of State v. Spinner, [22 Nev. 213](#). From 1889 to 1923 it was undoubtedly common practice for the Legislature to enact special statutes fixing the compensation of such officers. However, in 1923 section 20 of article IV of the Constitution was amended in such a manner as to prohibit a Legislature from enacting such special Acts, but did not in such amendment give the Legislature the power to delegate the power to fix such compensation through the Boards of County Commissioners. Thus the matter was left in a rather chaotic condition until 1926, when the present section 20 of article IV was written into the Constitution. The present constitutional provision on this question prohibits the Legislature from enacting special Acts fixing the compensation of Justices of the Peace and Constables, and empowers the Legislature to delegate the authority to Boards of County Commissioners to fix such compensation. Pursuant to the authority so granted in the 1926 amendment, the Legislature enacted an Act authorizing and directing the Boards of County Commissioners to fix the compensation of Justices of the Peace and Constables. This was done in 1929, and such Act is now sections 2201 to 2205, Nevada Compiled Laws, 1929. This Act provides that the salaries of Justices of the Peace and Constables must be fixe din the month of July preceding the election to office of such officers.

It is our opinion that the Legislature is now powerless to enact any special Act fixing the compensation of any Justice of the Peace or Constable for any particular township in the State. The Legislature has complied with a constitutional mandate by providing the above-mentioned statute which is of general and uniform operation throughout the State.

Yours very truly,

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

SYLLABUS

273. Constitutional Law.

Question No. 1 on general election ballot of November 1938 was constitutionally passed, if interpretation of Legislature over a period of years be correct.

INQUIRY

CARSON CITY, March 8, 1939.

Upon the suggestion of a number of members of the Assembly who are in doubt upon the subject, I would respectfully ask you opinion as to whether Question 1 submitted to the voters of Nevada at the general election 1938 was approved, and if in your opinion the same is now a part of the Constitution of this State?

OPINION

Question No. 1 on the 1938 general election ballot was the amendment of section 6 of article XI of the State Constitution wherein the limitation of the special tax authorized to be provided by the Legislature for the support and maintenance of the University and common schools was stricken out, thus leaving no constitutional limitation on the amount of such tax. your inquiry is directed to the point of whether such amendment was constitutionally adopted by the vote of the people at such election.

So far as we have been able to ascertain this is the first time that this question has been raised and presented to this office for an opinion. It has not been directly passed upon by the Supreme Court.

The language of section 1 of article XVI of the Constitution relating to the approval of constitutional amendments, so far as is pertinent here, reads as follows:

* * * and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the legislature voting thereon, such amendment or amendments shall become a part of the constitution.

The above section 1 of article XVI was taken from the California Constitution of 1849, as amended in 1862. The above-quoted phrase is identical with that contained in that Constitution of California. We have searched the California reports to ascertain if such provision had been construed by the courts of that State and can find no case wherein the court construed or interpreted the language in question here. However, in the case of *In re Oliverez*, 21 Cal. 416, decided in 1863, wherein it appears several amendments to the Constitution were adopted in 1862, appears the statement that the proclamation of the Governor "announcing the fact that a majority of the votes cast upon the question of such amendments were in favor of the amendments." This statement apparently acquiesced in by the court. Thus it appears that at the

time in California the administrative interpretation of the phrase in question here was that it meant a majority of the votes cast upon the question.

While not agreeing with the California administrative interpretation, as we think the phrase was and is susceptible to a different construction, which would have prevented minorities from adopting constitutional amendments, in some instances amendments that were hastily drawn and ill advised, still we think the same interpretation has been given the same phrase in this State. The Supreme Court of this State has not passed upon the identical question. It did, however, in *State v. Board of Examiners*, [221 Nev. 67](#), say that the words “voting thereon” do not refer to the words “members of the Legislature” as their antecedent and consequently do not limit the right to vote upon the question of the ratification of proposed constitutional amendments to electors who were qualified to vote for members of the Legislature who voted upon the proposed amendments. The court further held that all electors of the State are entitled to vote upon the submission for a proposed constitutional amendment. The question of the number of votes necessary for the adoption of a constitutional amendment was not raised or discussed in the case.

On two occasions the Legislature of this State has provided for special elections for the purpose of voting on constitutional amendments. See chapter IV, Statute 1889, and chapter 8, 1937. In each of these Acts the Legislature provided that informalities, omissions, or defects in the election publications, proclamations, or in other proceedings by the officers, should not “render invalid the adoption by a majority of the electors qualified to vote for members of the Legislature on said proposed amendment to the Constitution; provided, it can be ascertained with reasonable certainty from the official returns transmitted to the office of the Secretary of State *whether said amendment was adopted by a majority of such electors voting thereon at said election.*” (Italics ours.) See section 13 of 1889 Act, and section 13 of 1937 Act.

Thus we have the legislative interpretation of two Legislatures of the phrase in question that a majority of the electors voting on the amendment is sufficient.

Where a doubt exists as to the proper construction to be placed on a constitutional provision, the courts will give weight to the construction placed thereon by other coordinate branches of the government. *State v. Glen*, [18 Nev. 35](#); *State v. Cole*, [28 Nev. 215](#); *Re Ming*, [42 Nev. 472](#).

While we do not agree that the apparent California administrative interpretation of the phrase, or the Nevada legislative interpretation thereof, is correct, still in view of the fact that such interpretation has apparently been acquiesced in for at least fifty years in this state we are constrained to hold that according to such interpretation Question No. 1, receiving a majority of the votes cast on such question at the 1938 election, thereby became a part of the Constitution.

However, in view of the importance of amending the fundamental law of this State, we desire to point out that the foregoing legislative interpretation of section 1 of article XVI of the Constitution results in a minority of the voters of the State making important changes in the Constitution.

The official returns of the general election of 1938 compiled by the Secretary of State, show that Question No. 1 received 16,436 votes in favor of adoption and 15,741 against adoption. Such returns show that the highest total vote cast at the general election was 46,484 for United States Senator. The vote cast in favor of Question No. 1 was over 6,800 votes short of a majority of the total vote cast at such election, and of course far short of a majority of the number of registered voters in the State, which number we understand was well over 50,000 at the last election.

Again, as illustrative of the question, in 1936 section 2 was added to article X of the

Constitution by vote of the people. This section limits the tax rate for all purposes to five cents on the one dollar of valuation. As shown by the secretary of State's compilation of election returns, it was adopted by a vote of 18,764, as against 10,332 votes against the amendment. The total highest vote cast at such election was 43,804. The vote for the amendment being some 5,600 votes less than a majority of those voting at the election.

This raises a serious question. It certainly creates a doubt whether the legislative construction of section 1 of article XVI of the Constitution has been correct. In view of the great importance of the instant question we respectfully suggest that such question should receive the consideration of our Supreme Court in a proper proceeding.

Further, in view of the fact that the language of the constitutional provision, in question here, may result in confusion with respect to future amendments to the Constitution, we respectfully suggest it be clarified by appropriate amendment providing at least that a majority of the highest number of the votes cast at the election shall be necessary for a ratification and approval of a constitutional amendment.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

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

HONORABLE J.W. OLDHAM, *Assemblyman, Elko County*.

HONORABLE E.P. CARVILLE, *Governor*.

Read and approved.

GRAY MASHBURN, *Attorney-General*.

SYLLABUS

274. Motor Vehicle Registration Law.

This certificate of registration of a motor vehicle for the current year is a prerequisite to an annual renewal of such registration. Applicant must present such certificate. Application for duplicate certificate is not sufficient to secure such annual renewal.

STATEMENT

CARSON CITY, March 22, 1939.

Section 14(a) of the motor vehicle registration law of 1931 (chapter 202, 1931 Statutes of Nevada) provides how the annual renewal of motor vehicle registration shall be had and provides the method of making application therefor, and among other things requires the "presentation of the certificate of registration" theretofore issued for the current year as a prerequisite to renewal of registration for the ensuing year. Section 10 of the law provides that the certificate registration shall be securely fastened in plain sight within the driver's compartment of the vehicle—this for the purpose of having an identification card on the vehicle at all times. Section 18 provides that if the "certificate of registration * * * shall be lost, mutilated or shall have become illegible, the person to whom the same shall have been issued shall immediately make application for and obtain a duplicate or substitute therefor * * *."

INQUIRY

1. Is the certificate of registration of a motor vehicle for the current year a prerequisite to

annual renewal of such registration, and must the applicant present such certificate to the County Assessor at the time of making application for the annual renewal of motor vehicle registration?

2. If the answer to the above query is in the affirmative, then is the requirements for annual renewal of registration satisfied by the Assessors accepting an application for a duplicate certificate of registration at the time the applicant makes application for the renewal registration for a duplicate certificate of registration to the office of the Motor Vehicle Commissioner along with the application for the purpose of having the commissioner issue such duplicate together with a renewal registration certificate?

OPINION

Answering Query No. 1. A reading of the law in question discloses that it provides, in effect, two kinds of registration, *i.e.*, an original registration under section 6, which section apparently was enacted for the purpose of providing for the first registration of a motor vehicle under the law of this State, and an annual renewal registration thereafter pursuant to section 14(a) of the law. Certificates of registration, as well as certificates of ownership, are provided for in the law for the purpose of showing that the owner has registered, and in plain sign in all vehicles, except motorcycles, trailers and semitrailers wherein such certificates may be carried in a tool bag or other receptacle attached thereto. Section 10.

That the Legislature intended that the certificate of registration was and is to be carried on and in the motor vehicle registered at all times is not only evidenced by section 10 but also by section 18 of the law hereinabove quoted.

Section 14(a) of the law provides, so far as pertinent here, that

Every vehicle RE under this act shall expire at midnight on December thirty-first each year and shall be renewed annually upon *application by the registered owner by presentation of the certificate of registration for the current year* and by payment of the same fees together with the personal property tax as provided for original registration and such renewal shall take effect on the first day of January of each year. * * * (Italics ours.)

It is to be noted that the original application for registration is made “upon the appropriate form furnished by the department.” Section 6(b).

Under section 14(a) the application for renewal registration is made by “presentation of the certificate of registration.” Thus the Legislature, we think, intended that the certificate of registration theretofore duly issued by the Motor Vehicle Department identifying the owner and the vehicle and which certificate was and is to be carried in the vehicle at all times during the current year, was to constitute the application for renewal of registration for the next ensuing year. The fact that the Motor Vehicle Commissioners, as a convenient administrative feature, may require an application form blank to be filled out by the applicant applying for a renewal registration cannot alter the language of the section requiring the presentation of the certificate of registration. We think the language of section 14(a), quoted above, is clear and unambiguous. The presentation of the certificate of registration of the current year, *i.e.*, the immediately preceding year, if the application for renewal is made after January first, is a necessary prerequisite to the obtaining of an annual renewal of registration. It is incumbent upon the applicant to be in possession of and to present the certificate of registration to the County Assessor. Query No. 1 is answered in the affirmative.

Answering Query No. 2. The County Assessors are ex officio officers of the Motor Vehicle

Department. Section 1(b). Application for registration of a motor vehicle shall be made to the Assessor of the county of which the applicant is a resident, section 6(b), and this includes the application for the annual renewal registration. In view of the requirement contained in section 14(a) that the certificate of registration shall be presented by the applicant for renewal registration and, as we have seen, such certificate constitutes the application for renewal, we think it follows that in order for the Assessor to issue the license plates for the ensuing year, as required by section 11 of the law, such officer must have before him the certificate of registration so required to be presented. If the applicant cannot produce such certificate it is incumbent upon him to secure a duplicate thereof from the department and thereafter present the same to the Assessor before the Assessor can legally issue the license plates. Query No. 2 is answered in the negative.

We suggest, however, that if the Motor Vehicle Department is desirous of expediting the issuance of duplicate certificates of registration in cases covered by this opinion, that suitable arrangements could be made whereby the Assessors could issue such duplicates in their offices.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

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

HONORABLE MALCOLM McEACHIN, *Motor Vehicle Commissioners, Carson City, Nevada*.

SYLLABUS

275. Taxation of Automobiles.

Automobiles used for an indefinite period of time in Nevada by owners who are gainfully employed in this State have acquired sufficient taxable situs for collection of personal property taxes.

INQUIRY

CARSON CITY, March 22, 1939.

Is a person working in Nevada on a State highway construction job, who possesses a California automobile license for 1939 and a receipt showing all registration fees and taxes paid in full, required to pay a Nevada tax on his automobile upon applying for an automobile license in Nevada?

OPINION

At the outset we wish to state that the Supreme Court of Nevada has not passed upon the instant question, and our research further discloses a diversity of opinion in the decisions which we have examined.

The rule governing the taxation of property which needs no citation of authority to support is that real property is taxed by the "lex loci rei sitae" or law of the situs of such property. The general rule which governs the taxation of tangible personal property is the "lex loci domicilii" or the law of the domicile of the owner. The exception to this latter rule being that where tangible personal property acquired situs in a State other than the domicile of the owner, such property by reason of this fact then and there becomes taxable according to "lex situs" or law of the State where the situs is acquired.

Whether or not tangible personal property, such as the automobile mentioned in your question, acquires a situs must, of necessity, be determined from the set of facts in each case.

It is our opinion that automobiles brought into this State and used by nonresidents gainfully employed for an indefinite period of time within the State may acquire a taxable Nevada situs and are subject to a Nevada personal property tax.

It is our further opinion that the production of a receipt showing payment of California fees and taxes for the current year does not relieve the owner from payment within the State of Nevada. This last doctrine has been set forth in the following cases: *Coe v. Errol*, 116 U.S. 517; *Shaw v. Hartford*, 15 A. 742; *Hudson v. Miller*, 63 Pac. 21; *Prairie Cattle Co. v. Williamson*, 49 Pac. 937; *Spaulding Manufacturing Co. v. Kendall*, 91 Pac. 1031; *Nathan v. Spokane County*, 76 Pac. 521.

As stated in 110 A.L.R., page 718, it is generally agreed that tangible personal property having an actual permanent situs in the State is there taxable irrespective of whether or not it is also subject to be taxed or has been taxed in another State or in its owner's domicile elsewhere.

To the same effect see *Minturn v. Hays*, 2 Ca. 590, a case wherein plaintiffs, in a suit to enjoin the collection of taxes, alleged that they were citizens of New York, owning a steamer engaged in navigating the waters of the State of California, and that they paid taxes for said steamer in New York. Plaintiffs protested against such double taxation, but the court in rendering a decision said:

That the plaintiffs pay taxes for the same property in the State of New York is no ground of complaint against the exercise of a legitimate act of sovereignty by the State of California.

A lengthy annotation concerning the taxation of tangible personal property and the acquiring situs for taxation purposes is found in 110 A.L.R. beginning at page 707.

Of particular interest is a 1930 Supreme Court case from our sister State of Utah, *Hamilton and Gleason Company v. Emery County*, a case found in 285 Pac. 1006. This case was brought to recover money paid under protest for taxes, and the question involved was whether or not the property was taxable in the State of Utah. The property consisted of steam shovels, tractors, trucks, etc., and was owned by a Colorado construction company which was engaged in building a railroad in Emery County, Utah. The property was in the State of Utah from sometime in the year of 1925 until February 11, 1926, when a part of it was removed. Part of it was later removed on March 12, 1926, and the remainder on April 30, 1926, to Colorado, the residence of the plaintiff. All of the property was assessed by the County Assessor of Emery County for the year 1926. Plaintiff contended that the property was only in the State for a temporary use and purpose, and hence was not subject to taxation.

The court in disposing of this contention stated as follows:

It is well recognized and not disputed that, with respect to personal property of a tangible and corporeal nature and capable of having a situs of its own, the residence of its owner is generally immaterial, and the property taxable where it is found. What chiefly divides the parties is at to whether the property here had acquired a taxable situs, or whether it was merely temporarily in the state without a situs.

In 26 R.C.L. 179, under the heading "Situs of Property of Corporations," it is stated that "a state may tax the tangible personal property of a foreign corporation kept within its limits which is a part of the general permanent body of property within its jurisdiction and is not merely in transit through the state or temporarily staying therein." At page 277 it is also stated "That tangible property of a

nonresident kept within the state might be taxed there, unless it was actually in transit for the purposes of foreign or interstate commerce or had stopped for a merely temporary purpose incident to its journey or was in the state temporarily for some reason.” But at page 131 it further is stated that “property brought into a state by a contractor to use in the construction of a public work” is there subject to taxation.

In 2 Cooley, Taxation (4th Ed.), sec. 452, the author says that “the governing rule, as usually stated, is that the taxable situs depends on whether the property, is ‘permanently’ within the state. However, in this connection, the word ‘permanently’ is apt to be misleading unless read in connection with the facts of the particular case. It means a more or less permanent location for the time being. It is impossible to lay down any general rule fixing the length of time or degree of permanency necessary to establish a taxable situs in the state. It has been held that property of a construction company, used in construction of a railroad, acquires a situs at the place where used for an indefinite period.”

The principal case cited in support of the texts, that property brought into a state and there used in construction work for an indefinite period is subject to taxation, are Eoff v. Kennefick-Hammond Co., 80 Ark. 138, 96 S.W. 986, 7 L.R.A. (N.S.) 704, 117 Am. St. Rep. 79, 10 Ann. Cas. 63; Griggsby Const. Co. v. Freeman, 108 La. 437, 32 So. 399, 58 L.R.A. 349. We think such is the correct rule, and in principle is supported by the case of Transit Co. v. Lynch, 18 Utah, 378, 55 P. 639, 48 L.R.A. 790, where the language of the Constitution, property “used” within the territorial limits of the authority levying the tax, was considered an important element or factor and the case of Hall v. Refrigerator Transit Co., 24 Colo. 291, 51 P. 421, 56 L.R.A. 89, 65 Am. St. Rep. 223 with respect to such a constitutional provision cited and approved.

It is to be noted that this case differentiates Robinson v. Longley, [18 Nev. 71](#), and Barnes v. Woodbury, [17 Nev. 383](#). The first case involved taxation of a circus and menagerie traveling through the State wherein the court held that such property was here temporarily, just long enough to fill the engagements advertised, and was not subject to taxation.

We quite agree with the Utah court that this case is distinguishable on its facts from the problem before us at the present time.

Likewise, the case of Barnes v. Woodbury is easily distinguishable, inasmuch as the Barnes case involved the taxation of livestock between Eureka and White Pine Counties.

It is likewise of interest in passing to note that the State of California, whose citizens are involved in this controversy, has a registration law slightly different from our own in that it provides as follows:

Any nonresident owner of a vehicle of type subject to registration in this state who, while residing in this state, accepts gainful employment within said state shall for the purpose of, and subject to the provisions of this code, be considered a resident of this state.

The California Attorney-General in construing this section has held that it was the intent of the Legislature to make this provision applicable to any person temporarily within the State, having a temporary abode, who accepts gainful employment while within the State.

We are also given to understand that Nevada residents living and residing in Reno, who

commuted and were gainfully employed at the Boca Dam, were required to secure California license plates and pay all fees and taxes thereon during the time of their employment in California.

It is likewise to be noted that our Motor Vehicle Licensing Registration Act of 1931 defines a nonresident as “every person who is not a resident of this State and who does not use his motor vehicle for a gainful purpose.”

It is true that the 1933 and 1937 Legislature wrote into the nonresident provision broad provisions of reciprocity with other States concerning nonresidents in matters of motor vehicle registration, but even here, as stated in Attorney-General’s Opinion No. 265, such a reciprocity was confined to those nonresidents whose home State extended the same privilege to Nevada operators in like services.

The question before use is one of taxation rather than of registration, and our decision is based upon the fact that tangible personal property may acquire a situs apart from the alleged domicile of the owner. However, the registration laws are cited for the purpose of showing that even when broad reciprocity is given by statute, such reciprocity depends upon like privileges being extended by adjoining States.

In conclusion, if the automobiles referred to in your question are to be used for an indefinite period of time in Nevada by the owners who are gainfully employed in this state, it is our opinion that such automobiles have acquired a sufficient taxable situs for the collection of personal property taxes.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

By ALAN BIBLE, *Deputy Attorney-General*.

HONORABLE E.E. WINTERS, *District Attorney, Churchill County, Fallon, Nevada*.

SYLLABUS

276. Nevada Unemployment Compensation Division.

The Director of the Nevada Unemployment Compensation Division is designated by law to requisition moneys deposited in the United States Treasury on behalf of the Nevada Unemployment Compensation Division.

INQUIRY

CARSON CITY, March 27, 1939.

Section 2(f) of the unemployment compensation law (chapter 129, Statutes of Nevada 1937) reading, “‘Commissioner’ means the labor commissioner of the State of Nevada” was amended in chapter 109, Statutes of Nevada 1939, to read as follows:

(f) “Commissioner” as used in sections 10(a), 11(f), 12(a), 12(b), 13(a), and 13(b) means the labor commissioner of the State of Nevada; in all other sections and parts of sections of this act, the word “commissioner” shall be deemed to mean the director of the unemployment compensation division.

In view of the foregoing amendment, is the present Director of the Nevada Unemployment Compensation Division, Albert L. McGinty, or his successor in office, the person now designated in said compensation law, *i.e.*, in section 9(c) thereof, as the person duly authorized to requisition, on behalf of the Nevada Unemployment Compensation Division, moneys deposited

with the Secretary of the Treasury of the United States in the Unemployment Trust Fund?

OPINION

Reference is hereby made to our Opinion No. 256, dated May 25, 1938, wherein response to a similar inquiry with respect to the authority of the Labor Commissioner to requisition moneys deposited with the Secretary of the Treasury of the United States in the Unemployment Trust Fund, we held that such Labor Commissioner, or his successor in office, was the person duly authorized to make such requisition under the law as it then stood.

Section 2(f) of the law, as amended, clearly means that the Director is to be substituted for the Labor Commissioner in all instances, except as specifically provided in the amended section. None of the exceptions stated relate to that part of the law authorizing the requisitions on the trust fund. We conclude that chapter 109, Statutes 1939, the Director of the Unemployment Compensation Division in the person now authorized to requisition moneys deposited in the Unemployment Trust Fund. It follows that Albert L. McGinty, as Director of the Nevada Unemployment Compensation Division, or his successor in office has the legal authority to requisition on behalf of said division moneys deposited with the Secretary of the Treasury of the United States in the said Unemployment Trust Fund.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

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

HONORABLE ALBERT L. MCGINTY, *Director, Nevada Unemployment Compensation Division, Carson City, Nevada*.

A-7. Official Bonds of County Officers.

Official bonds of county officers do not extend to or cover their official conduct after end of term stated therein, and county and public not protected against official misconduct or nonfeasance after that time.

CARSON CITY, March 28, 1939.

HONORABLE MARTIN G. EVANSEN, *District Attorney, Hawthorne, Nevada*.

DEAR MR. EVANSEN: Pursuant to your request for an opinion as to whether the bonds heretofore made by the State Board of Examiners for Mr. D.M. Buckingham, as County Clerk and as County Treasurer, on or about and for the term beginning January 7, 1935, one of which was for \$10,000 and the other for \$80,000, are still in force and effect, I have to say that it is my unqualified opinion that they are not now in force and effect and have not been in force and effect since the first Monday in January 1939.

An examination of said bonds will, I am sure, reveal the facts that they state the definite day of the beginning of the effectiveness of these bonds, and also the definite day ending the effectiveness thereof. These bonds are on file in the office of the County Clerk of Mineral County at Hawthorne; and, I believe, you will find each of them states definitely that it is "during the period beginning January 7, 1935," or words to that effect, and that they also state the period when the effectiveness of the bonds end in the following language: "and ending the first Monday in January 1939."

there is absolutely no provision in these bonds or any other bonds issued by the State Board

of Examiners wherein it is provided that they remain in full force and effect until the successor of the officer is elected or appointed and qualified.

From the foregoing, I again repeat that it is my unqualified opinion that both of these bonds definitely expired on the first Monday in January 1939; and that, unless Mr. Buckingham has obtained bonds from some other source, he has been serving since the first Monday in January 1939 as County Clerk and also as County Treasurer of Mineral County, Nevada, without any bond at all.

Very truly yours,
GRAY MASHBURN, *Attorney-General.*

A-8. Mothers' Pensions.

Question of sufficiency of mothers' income from other sources to care for her offspring is one of fact to be determined by the Board of County Commissioners upon a hearing of the facts, not a question of law, and is also question of the collectibility from husband of award of alimony to wife or award for support of children; but Mothers' Pension Act is remedial legislation and must be liberally construed.

CARSON CITY, March 29, 1939.

MRS. AGNES HAMILTON, *Clerk and Treasurer, Storey County, Virginia City, Nevada.*

DEAR MRS. HAMILTON: Your recent request for an opinion concerning the granting of mothers' pensions has been delayed because of the legislative session and the great amount of work attendant thereto.

We have carefully read the opinion submitted by Mr. Richards and we believe that he correctly states the law therein.

It would seem from your letter that the principal concern of the County Commissioners is as to the fourth requirement, namely, "that the mother has not sufficient income from any source to properly care for her offspring without assistance from the county."

Whether or not the mother has sufficient income from any source is not a legal question but purely a question of fact for the determination of the Board of County Commissioners. It is entirely possible, as is so often the case, that the mother does not receive and is unable to exact any assistance from the divorced husband and father. The \$30 monthly judgment, mentioned in your letter, does not ipso facto assure the mother of this amount. Whether it is a collectible amount is again a question of fact for the determination of your Board of County Commissioners.

The Mothers' Pension Act is to be liberally construed for the protection of the children, and the granting or refusing of a pension thereunder is, as we read the Act, left entirely to the sound discretion of the Board of County Commissioners, under the facts of each individual case.

I trust this answers your inquiry.

With highest personal regards, I am,

Sincerely yours,
ALAN BIBLE, *Deputy Attorney-General.*

Attention: HON. DONNEL RICHARDS, *District Attorney, Virginia City, Nevada.*

A-9. Irrigation Ditch Water, Escape or Leakage Of.

Ditch owner required to use only ordinary care and diligence to prevent injury to adjoining property from overflow or escape or leakage from his ditch, but not liable therefor when occasioned solely by nature or excessive rains or melting snows.

CARSON CITY, April 7, 1939.

DR. J.C. FERRELL, *Superintendent, Nevada Hospital for Mental Diseases, Post Office Box 2460, Reno, Nevada.*

DEAR DR. FERRELL: We have your letter of March 30 relative to the North Truckee ditch and the objection of the North Truckee Ditch company to drainage from the hospital farm getting into such ditch. It is noted that you desire our opinion as to whether you can be held liable if the irrigation water from your field finds its way into the North Truckee ditch.

Generally speaking, a person must use his irrigation water in such a manner as not to injure the property of another person, so that if water is allowed to drain from a person's field onto the field of another against the objections of such other person, then the first person must take steps to prevent such drainage. This rule does not apply where the drainage is occasioned by nature, that is from melting snows or rain waters, but such rule does apply where the drainage is the result of irrigation. The fact the drainage water drains into an irrigation ditch or canal does not change the rule, and if the irrigation water used on your fields finds its way into the North Truckee ditch in such an amount as to be detrimental and injurious to such ditch, then we think the North Truckee Ditch Company would have and will have some ground for complaint.

On the other hand, you are entitled to irrigate your fields, and so long as you do not permit drainage into the North Truckee ditch then, of course, the company can have no ground of complaint. It may be necessary at times to cut off the flow of water on the field in time to stop drainage into the North Truckee ditch. The thought comes to use that perhaps it may be possible to construct a drainage ditch adjacent to the North Truckee ditch for the purpose of catching the drainage water from your field and conveying it somewhere else. If there is no ground adjacent to your field upon which the water could be drained without getting into the North Truckee ditch, it may be possible to construct a flume across the North Truckee ditch and run the drainage water elsewhere.

We think, however, that the ditch company may be making a mountain out of mole hill and we suggest that perhaps a conference with the directors of the company would at least pave the way for a reasonable adjustment of this matter. It is noted that complaint was made that some time or other drainage water got into the North Truckee ditch and prevented them from cleaning the ditch out. Unquestionably this could be remedied by the ditch company giving you notice of the time they desire to clean their ditch and then, of course, you could arrange to keep drainage water out of such ditch at that particular time. However, the ditch company should remember that during the irrigation season all persons are entitled to irrigate their land, and such company should arrange to clean its ditch during the nonirrigation season.

With kind personal regards and best wishes, I am,

Sincerely yours,

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

A-10. Collection Agencies.

Collection agencies, although located outside Nevada, are subject to the provisions of the collection agency law, i.e., 1931 Statutes of Nevada, page 449, under circumstances mentioned in the following letter opinion.

CARSON CITY, April 10, 1939.

HONORABLE MALCOLM McEACHIN, *Secretary of State, Carson City, Nevada.*

DEAR MR. McEACHIN: This will acknowledge receipt of your recent inquiry relative to collection agencies.

It is our opinion, in answer to your second query, that a person who solicits the business of collecting unpaid accounts who, himself, takes no part in the collection of the same but turns these accounts over to the person or firm whom he represents, which said person or firm is located outside the State, and proceeds to induce the payment of said accounts through the medium of the mail only, is subject to the provisions of the collection agency law, Act of 1931, page 449.

As stated in your letter, section 1 does require the one soliciting (the right to collect) to secure a license. The mere fact that section 2, which is simply a definition of terms, does not include within the definition of a collection agency one who solicits the right to collect, does not in our opinion mitigate against our ruling.

It is not clear to us exactly what situation is contemplated in your first inquiry. Therefore, will you please give us the facts involved in full detail so that we may be better able to arrive at an opinion in this matter?

With personal regards,

Sincerely yours,

ALAN BIBLE, *Deputy Attorney-General.*

A-11. Tax Assessment, Notice of Increase Thereof.

Statutory proceeding in assessing and equalizing valuation of property for taxation purposes is sufficient notice thereof to taxpayer, especially where personal notice mailed to last address known to taxing officers, and only redress available to taxpayer where property actually over-assessed is compromise settlement under Chapter 171, 1933 Statutes of Nevada, 235.

CARSON CITY, April 15, 1939.

HONORABLE RICHARD R. HANNA, *District Attorney, Yerington, Nevada.*

DEAR MR. HANNA: This will acknowledge receipt of your recent request for an opinion concerning our construction of section 6637 Nevada Compiled Laws 1929.

We concur with you in your opinion of March 17, 1939, addressed to the Honorable Board of County Commissioners of Lyon County, Nevada.

In addition to the reasons which you have expressed in your opinion it seems to us to be of particular importance that irrespective of the fact that Mr. Hubbard might have relied upon a representation of the Assessor as to the valuations upon property of California Lands, Inc., nevertheless, section 6429 N.C.L. gives each taxpayer actual notice of these increased valuations was sent to this address pursuant to section 6429, which is certainly the last address the Assessor had.

We are not unmindful of the fact that the language employed in section 6637 is very broad, and that it does state that the board may grant refunds where equitable. However, we do not feel that this statute can be construed so as to upset the fixed statutory procedure for arriving at the valuation of property, which procedure throughout not only gives the taxpayer ample notice but gives him adequate opportunity of appeal.

If the Legislature had intended changing the procedure for evaluating and equalizing property, they should have done so by express and direct language.

It appears from your statement of facts that the Board of County Commissioners do consider the levy against the California Lands excessive. In this connection, we suggest that particular attention be paid to the act of 1933, page 235, authorizing compromises. We feel that the California Lands, Inc., can quite possibly bring themselves within the provisions of this Act and apply for a compromise thereunder. I am authorized to state for the Attorney-General that if you, as District Attorney, with the consent and approval of your Board of County Commissioners, approve a compromise in this matter, the Attorney-General will concur in such approval.

I am returning herewith your complete file of letters in this matter.

With highest personal regards and best wishes,

Sincerely yours,

ALAN BIBLE, *Deputy Attorney-General.*

A-12. Bonds Issued by School District.

Transcript shows \$50,000 bond issued by Consolidated School District "B," Churchill County, Nevada, is valid and binding obligation of that district. Two ballot boxes still required under 1937 Statutes of Nevada, page 70.

CARSON CITY, April 19, 1939.

MISS MILDRED BRAY, *State Superintendent of Public Instruction, Carson City, Nevada.*

DEAR MISS BRAY: Reference is hereby made to your letter of April 19 wherein you request an examination and approval of the proceedings of the Board of school Trustees of Consolidated School District "B," Churchill County, Nevada, in the perfecting of a certain bond issue of that district to the amount of \$50,000, which said bonds have been offered for sale and bid for by the Permanent Investment Committee of the Public School Teachers' Retirement Salary Fund Board of Nevada. A transcript of the proceeding of said school board which accompanied your letter is enclosed herewith.

We have examined the transcript of the proceedings concerning the above-mentioned bond issue and find that the proceedings of said Board of Trustees were had in accordance with the laws of this State in such cases made and provided, and that each step required by such laws has been complied with.

However, attention is hereby directed to page 7 of said transcript, wherein it is stated that the bond election was held and conducted in all respects in compliance with chapter 95, Statutes of Nevada 1933. Please be advised that this particular chapter of the 1933 Statutes pertaining to bond election and the use of two ballot boxes was repealed and superseded by chapter 70, Statutes of Nevada 1937. However, this is simply a technicality because the 1937 law did not change the 1933 Act in any material respect, and none whatsoever insofar as the instant matter is concerned.

Your attention is also directed to section 5836 Nevada Compiled Laws 1929, with respect to the total bonded indebtedness of Consolidated School District "B." The information concerning this indebtedness should be furnished you and, no doubt, can be acquired from the Tax Commission offices.

We do not pass upon the form of the bond, inasmuch as no form accompanied the transcript. We assume that a proper form of bond will be printed.

Very truly yours,
W.T. MATHEWS, *Deputy Attorney-General.*

A-13. Unemployment Compensation—Coincident with Industrial Insurance Compensation.

Illegal fraudulently to claim and receive both for same period of time and for same injury prior to 1939 amendment of the unemployment compensation law.

CARSON CITY, April 19, 1939.

MR. ALBERT L. MCGINTY, *State Director Nevada Unemployment Compensation Division, Carson City, Nevada.*

Attention: MR. FRANK B. GREGORY.

DEAR MR. GREGORY: This will acknowledge receipt of your letter of April 10, relative to the proposed prosecution of one Mr. Harvey V. Hanson upon the charge of having receive compensation benefits to which he was not entitled.

It is noted from your letter that from December 6, 1938, to March 6, 1939, Mr. Hanson was paid \$226 for partial disability as result of an injury. It is also noted that during the period beginning January 16, 1939, to and including March 25, 1939, Mr. Hanson receives a total of \$150 unemployment benefits from your Division.

We assume that it was thought Mr. Hanson is subject to a prosecution because he received unemployment compensation benefits during a period of time he was also receiving compensation from the Industrial Insurance Commission because of the provisions of section 5(E)(2) of the unemployment compensation law reading:

An individual shall be disqualified for benefits * * * for any week with respect to which he is receiving or has received remuneration in the form of * * * compensation for temporary partial disability under the workmen's compensation law of any state or under a similar law of the United States.

It may be that under such a law that if the applicant for unemployment compensation willfully and with an intent to defraud the Unemployment Compensation Division made application for benefits and intentionally misled the Division, a prosecution would be in order. However, under section 16(A) or 16(C), it would be absolutely necessary for the prosecuting officer to prove the willful fraudulent intent on the part of the applicant before a prima facie case would be made out. We think, in this particular case, that the willful intent would be especially hard to prove for the reason that the Unemployment Compensation Division was really put on notice that the applicant either was an injured person or had recently been injured at the time of his making claim for unemployment compensation benefits. Attached to your letter was the enclosed application or initial claim of Hanson, and it is therein stated that he "was injured in the course of employment, then failed to get old job back." This statement is not consistent with a

fraudulent intent and would, in our opinion, detract from a showing of such intent to a marked degree.

Further, it is to be noted that since March 21, 1939, when the amendments to the unemployment compensation law were approved by the Governor, the receiving of compensation from industrial insurance is no longer a disqualification for any person not receiving unemployment compensation benefits, so that under the present law the mere fact that Mr. Hanson received industrial insurance benefits while at the same time receiving unemployment compensation benefits would be no offense under the law. This in itself would, no doubt, influence a jury to the extent of finding Mr. Hanson not guilty under the present law.

We respectfully suggest that the case against Mr. Hanson is not sufficiently strong to warrant prosecution.

We also suggest that perhaps it would be possible for the Unemployment Compensation Division to enter into some arrangement with the Industrial Commission whereby a list of injured employees receiving compensation from the Industrial Commission could be furnished the Division monthly, in order to avoid any possible conflict between the respective departments.

Very truly yours,

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

SYLLABUS

277. Unemployment Compensation Law.

In view of the 1939 amendments to the law, the Director is the officer having the sole power to select the personnel. Opinion No. 234 modified in this respect. Notwithstanding amendments of 1939, the Labor Commissioner and the Director still have concurrent authority over expenditures from the Unemployment Compensation Administration Fund.

INQUIRY

CARSON CITY, April 26, 1939.

Chapter 109, Statutes of Nevada 1939, contains several amendments to the unemployment compensation law, one of which in particular is an amendment to section 2(f) wherein the word "Compensation" is defined. Your Opinion 234, dated May 25, 1937, construed certain provisions of the unemployment compensation law with respect to the duties of the Labor Commissioner and the Director of the Unemployment Compensation Division in connection with the selection of personnel and administration of the Unemployment Compensation Administration Fund. In view of the foregoing amendment to the law, what, if any, change has been made in the administration of the law with respect to the matters contained in Opinion No. 234?

OPINION

Our Opinion No. 234 dealt with two questions. First, what were the powers and duties of the Labor Commissioner and the Director of the Unemployment Compensation Division relative to the employment of personnel of such division. Second, whether the Labor Commissioner or the Director had the authority to expend and authorize expenditure of moneys from the Unemployment Compensation Administration Fund.

With respect to the first question, the opinion held that while the Director of the Unemployment Compensation Division was authorized and directed to classify positions under the Act and to establish salary schedules, fix minimum personnel standards, fix compensation, duties and powers of such personnel, all of such acts must be done under and subject to the supervision and direction of the Labor Commissioner. The premise of the opinion was based upon the provisions of section 11(d) of the unemployment compensation law.

Section 2(f) of such law was amended by the 1939 Act and now reads as follows:

(f) "Commissioner" as used in section 10(a), 11(f), 12(a), 12(b), 13(a), and 13(b), means the labor commissioner of the State of Nevada; in all other sections and parts of sections of this act, the word "commissioner" shall be deemed to mean the director of the unemployment compensation division.

It is to be noted that the effect of this amendment is to substitute the Director for the Labor Commissioner in all parts and portions of section 11 of the Act excepting 11(f). The effect then of the amendment with respect to the selection and appointment of personnel of and to the Unemployment Compensation Division is to make the Director the sole appointing agent of the State and, therefore, not subject to the direction of the Labor Commissioner in this respect.

Therefore, our Opinion No. 234 is modified to the above extent.

With respect to the administration of the Unemployment Compensation Administration Fund, our Opinion No. 234 held that such fund was expendable only under the supervision of the Labor Compensation by reason of the language found in section 13(a) of the law taken in connection with certain language found in section 11(a) of such law. Section 2(f) specifically provides that the term "Compensation" as used in sections 13(a) and 13(b) means the Labor Compensation. Such sections in this respect have not been changed by the 1939 amendments thereto. Section 11(a) as amended in 1939 provides it shall be the duty of the Director to administer the unemployment compensation law and provides that he shall have power and authority to make expenditures as he deems necessary in administration of the law. Section 13(a), however, specifically provides that the moneys making up the Administration Fund shall be made available to the Labor Compensation, and it further provides in effect that such fund shall be continuously available to the Compensation for expenditure consistent with the Act. We think the effect of the 1939 amendments relative to the administration of this particular fund still continues the Labor Compensation as the officer authorized by the law to make requisition for and to receive the moneys going into the fund. With respect to the expenditure of the fund, we think the law still provides concurrent authority between the Labor Compensation and the Director. Opinion No. 234, on this point, is still applicable. In order to avoid difficulty in the expenditure of the fund, we suggest that the Labor Compensation authorize the Director in writing to expend such fund for the purposes and in the manner provided in the law.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

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

HON. ALBERT L. MCGINTY, *Director, Unemployment Compensation Division, Carson City, Nevada*.

Attention:

MR. FRANK B. GREGORY, *Rules and Regulations Officer*.

A-14. State Bond Issues—Consolidation Act and State Tax Rate.

Act setting State tax rate makes provision for redemption of and interest on said bonds and from proper refunds to counties and for disposal of Surplus in University Bond Redemption Fund. Chapter 197, 1939 Statutes of Nevada does not interfere with redemption and retirement of State highway bonds but contemplates doing so.

CARSON CITY, May 1, 1929.

HONORABLE HENRY C. SCHMIDT, *State Controller, Carson City, Nevada.*

DEAR MR. SCHMIDT: This will acknowledge receipt of your letter of April 26 requesting our advice and interpretation of chapter 197, Statutes of 1939, as applied to chapters 44, 114, 162, and 163 of the 1939 Statutes, and also as it relates to chapter 132, 1933 Statutes, and chapter 97 of the 1935 Statutes.

The first question propounded in your letter is whether the tax rate set up in chapters 114, 162, and 163 of the 1939 Statutes, which chapters provide for certain State bond issues, is included in the tax rate provided for in chapter 198 of the 1939 Statutes, which said chapter is the Act providing for the State tax rate. Our answer to this inquiry is in the affirmative for the reason that one of the items set forth in chapter 198 is "Consolidated Bond Interest and Redemption Fund, three and one-half cents (3½¢)." In connection with this answer, we beg to advise that undoubtedly the Legislature had full knowledge of the provisions of chapter 197 wherein the Consolidated Bond Interest and Redemption Fund was created, and that it also has full knowledge of the amount of money required to be raised by taxation to take care of this particular item. Legislative interpretation of its own Acts must be accorded the highest consideration unless such interpretation is clearly erroneous.

Answering question number 2 contained in your letter, we beg to advise that this office has been advised by Mr. Atkinson of the Nevada Tax Commission, who assisted in the preparation of chapter 198, that the bond issue provided for by chapter 132, Statutes of 1933, was taken into consideration at the time of the preparation of the appropriation bill, and that due consideration was given to the provisions of chapter 132 in arriving at the tax rate for the ensuing biennium, and that the balance in the Charities and Public Welfare Bond Interest and Redemption Fund over and above the outstanding indebtedness of \$4,000 was to be returned to the counties in conformance with the provisions of chapter 132, and that the tax rate for the coming biennium was computed upon this basis. So, in view of the interpretation given by the proponents of the appropriation bill to chapter 197 in this regard, we are of the opinion that chapter 198 does not so operate as to supersede said chapter 132.

Question number three, which relates to the University of Nevada Bond Redemption Fund or, rather, the surplus in such fund as carried over into the General Fund of the State by chapter 44 of the 1939 Statutes. Our understanding is that the sum of \$6,523.54 was the surplus remaining in this particular fund after the bonded indebtedness had been satisfied. This being the case, chapter 197 has no application.

Question number four. This question relates to the State emergency employment bonds under chapter 97 of the 1935 Statutes. There is no language in chapter 197 whereby the faith of the State of Nevada, which is pledged to the redemption of its bonds, is repealed. Section 7 of chapter 197 provides expressly that such chapter shall not affect the obligation of the State of Nevada nor the faith thereof for the redemption of any bonds.

Since receiving your letter of April 26, you mentioned orally to us that it was thought that

chapter 197 would interfere in some way with the retirement of the outstanding State highway bonds which, under section 30 of the Motor Vehicle Act of 1931, are being retired from the Motor Vehicle Fund. We are advised by Mr. Atkinson that this particular bond issue was taken into consideration at the time of the drafting of the 1939 general appropriation bill as mentioned above, and that the retirement of these particular bonds was left to be taken care of from the Motor Vehicle Fund. Thus again we have the legislative interpretation of the statutes pertaining to bond issues, and we respectfully suggest that as to these particular bonds, transfers should be made from the Motor Vehicle Fund in accordance with the statute providing therefor.

Very truly yours,

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

SYLLABUS

278. Department of Education.

An applicant is entitled to receive a life diploma who holds a special, renewable certificate, after having taught sixty months, twenty-four of which must have been in the State of Nevada. Applicant must be resident of Nevada.

INQUIRY

CARSON CITY, May 3, 1939.

An applicant holds a Nevada special kindergarten-primary certificate enabling her to teach in the kindergartens of this State. This certificate is renewable. The applicant has taught twenty-four months under this special certificate in Nevada. Her other teaching has been done in another State under a first-grade elementary certificate from that State. Her out-of-State teachings brings her total teach experience to over sixty months. Is the applicant eligible under the above-quoted sentence to a primary-kindergarten life diploma in Nevada?

OPINION

Section 5677 N.C.L. 1929 provides that:

The state board of education may grant a life diploma to any *resident* of the State of Nevada who shall present affidavits of having taught successfully and continuously for a period of sixty months, twenty-four of which shall have been in the State of Nevada; * * * Such life diploma may be granted to any *resident* of Nevada who shall have taught the required number of months and who shall hold a renewable Nevada certificate, or who shall hold a special certificate that has been the applicant's only license to teach for a period of at least sixty months previous to the application for such life diploma; * * * (Italics ours.)

It is stated in the above inquiry that the special certificate held by the applicant is renewable. We assume that the State Board of Education has complied with the provision of subdivision 5 of section 5672 N.C.L. 1929, and has promulgated rules whereby special certificates may be renewed, otherwise such special certificates would not be renewable. Subdivision 5 of said section 5672 was written into the law in 1923, and empowers the State Board of Education in its discretion to renew special certificates. Since such addition to the law we are inclined to the view that section 5677, supra, is to be construed in *pari materia* with said section 5672, and so construed the term "renewable Nevada certificate" includes special certificates.

We think that the applicant mentioned in the above inquiry now holding a renewable Nevada

special certificate and such applicant having completed the required length of time in actual teaching may be legally granted a life diploma of the same grade as the grade of the special certificate, provided, of course, such applicant is a *resident* of Nevada.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

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

HONORABLE MILDRED BRAY, *State Superintendent of Public Instruction, Carson City, Nevada*.

A-15. State Appropriations, Reversions Of.

Generally, the residue of appropriation made in the General Appropriation Act for the biennium revert at the end of biennium, unless otherwise provided for in the Act. State Board of Publicity appropriation, chapter 177, 1937 Statutes of Nevada, does not so revert, as that chapter indicates legislative intention not to revert.

CARSON CITY, May 4, 1939.

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

DEAR MR. ALLEN: This will acknowledge receipt of your letter of May 2. It is noted that you are directed by the State Board of Publicity to inquire whether the appropriation made by the 1937 Legislature for the use of the State Board of Publicity reverts to the General fund of the State on the 1st day of July 1939.

Generally, appropriation made by the Legislature are made to carry on the business of the State Government for a period of two years and, by reason of long continued custom, the State Controller causes unexpended moneys in appropriations to revert to the General Fund at the end of the biennium.

However, we think there are appropriation made from time to time by the State Legislature that are not subject to reversion. We think the Legislature can and does make certain appropriations that are intended to be continuing in nature until fully expended or reverted by Act of the Legislature.

A reading of the statute creating the State Board of Publicity and providing certain powers and duties for such board, the same being chapter 177, Statutes of Nevada 1937, shows that the legislative intent is quite clearly expressed therein; that the appropriation made in such statute was to be subject to the control of the State Board of Publicity until entirely expended or until the statute was in some manner changed by the Legislature. No time limitation whatsoever appears in the statute. The board appointed by the Governor serves at the pleasure of the Governor. The context of the entire statute certainly contemplates the Board of Publicity as a continuing board for the purpose of giving due publicity concerning the State of Nevada. A reasonable construction of the statute is that this publicity was not all to be had in the biennium immediately following the passage of the Act. It is our opinion that with respect to this particular statute and the particular fund appropriated therein that the intent of the Legislature was and is that the appropriation should be at the disposal of the board until entirely expended, unless otherwise directed by the Legislature. We find no Act of the Legislature in 1939 changing the 1937 statute in any respect.

Respectfully submitted,
W.T. MATHEWS, *Deputy Attorney-General.*

A-16. Industrial Insurance Fund—Investments in Bonds and Securities.

City bonds, legally issued, are valid investments of moneys in fund. Elections for bond issues required unless statute exempts particular issue from such election. Yerington 1939 street bond issue so governed.

CARSON CITY, May 5, 1939.

HON. D.J. SULLIVAN, *Chairman, Nevada Industrial Commission, Carson City, Nevada.*
Re: City of Yerington Street Bonds.

DEAR MR. SULLIVAN: We have your letter of May 5 together with letter to you from Mr. John R. Ross, Attorney for the City of Yerington, relative to the proposed sale of city of Yerington street bonds as authorized by chapter 126, Statutes of Nevada 1939. You inquire whether such chapter is a valid statute authorizing the issuance of such bonds.

We think the Act providing for the issuance of the bonds in question is a valid legislative enactment and, no doubt, authorizes the issuance of the bonds, and were this the only question involved, we would unhesitatingly hold that bonds issued pursuant to the Act would be valid. However, a reference to chapter 70 of the 1937 Statutes discloses that whenever any municipality proposes to issue bonds that such proposal shall be submitted to a bond election provided for in the Act. No express exemption or exception appears in the Yerington Street Bond Act exempting the particular bond issue for the city of Yerington without the necessity of holding such election, but such intent is not expressed in the Act, and for this reason we have considerable doubt as to whether the city of Yerington can issue such bonds without such election.

We fully recognize that the bond issue is small and that the expense of the election concerning such issue is hardly warranted, but even so it would seem the Legislature presumed to have knowledge of the state of the law on the subject upon which it legislates, would have taken the bond election law into consideration and said something about it in chapter 126.

It is not within the province of the office of the Attorney-General to pass upon legal questions involving incorporated cities. This is the province of the City Attorney, and, we think, this matter should receive his consideration with a view toward furnishing authority sustaining the validity of these street bonds in the absence of an election. We are not advised that the city of Yerington is incorporated under a charter form of government as contemplated by section 8 of article VII of the State Constitution. If its government was so formed, then, of course, the bond election law has not application. See chapter 85, Statutes of 1937.

Yours very truly,
W.T. MATHEWS, *Deputy Attorney-General.*

SYLLABUS

279. The State Board of Health.

State Health Officer is entitled to a salary of \$3,600 per year.

STATEMENT OF FACTS

CARSON CITY, May 5, 1939.

Section 4, chapter 184, 1939 Nevada Statutes, provides in part that the State Board of Health, with the approval of the Governor, shall appoint the State Health Officer. * * * His annual compensation shall be determined by the State Board of Health, but shall be not more than \$3,600 a year, together with his necessary traveling expenses while engaged in the performance of his official duties, to be paid monthly in the same manner as the salaries and expenses of other State officers are paid.” Pursuant thereto the newly organized State Board of Health fixed the salary of the State Health Officer at \$3,600 per year. Chapter 199 of the 1939 Nevada Statutes, being the General Appropriation Act, under section 49 “the State Board of Health” fixed the salary of secretary” at \$5,000 for the biennium, or \$2,500 per year.

INQUIRY

The State Health Officer is entitled to what salary?

OPINION

As stated in your inquiry, where the Legislature fixes the salary and no appropriation is made therefor, the salary so fixed must be paid. *State v. Eggers*, [29 Nev. 469](#); *State v. Eggers*, [35 Nev. 250](#); Attorney-General’s Opinion No. 176, 1925-1926.

Likewise, where the Legislature fixes the salary yet makes an appropriation less than the statutory salary, it has been held that the statutory salary must be paid. Attorney-General’s Opinion No. 38, 1923-1924; *State v. Poindexter*, 190 N.W. 818 (N.D.); in re. Opinion to the Governor, 154 So. 154 (Fla.).

In the Nevada ruling the 1919 Nevada Statutes fixed the State Engineer’s salary at \$5,000 ; \$4,000 for his services as State Engineer and \$1,000 as ex officio Commissioner. The then Attorney-General, Honorable M.A. Diskin, held that failure on the part of the Legislature to allow a sum sufficient to pay the salary fixed by statute would not thereby prevent the officer from collecting his statutory salary.

In the North Dakota case, a 1919 statutory Act provided that the Supreme Court reporter should receive \$2,500; whereas, the General Appropriation Act of 1921 appropriated but \$4,000 a biennium, or \$2,000 per year. The Supreme Court held that the later General Appropriation Act did not repeal the law fixing the court reporter’s salary, and that he was entitled to the greater amount or \$2,500 per year.

Thus where the salary is fixed by statute this amount must be paid, even though the Legislature appropriates a lower amount or makes no appropriation whatever.

Whether the appropriation in the instant case is insufficient or whether there is no appropriation whatever, there would seem to be but one inquiry; *i.e.*, is the annual compensation to be allowed the State Health Officer a fixed salary? In our opinion, it is.

The last expression of our Supreme Court on this point is *Norcross v. Cole*, [44 Nev. 88](#). The court said:

It is true that the act in question does not name a given amount as a sum which was appropriated to pay the indebtedness, but the intention of the legislature to incur the indebtedness, and to have it paid out of the state treasury, is made clear, and a method is provided whereby the exact amount to be expended in pursuance

of the act may be ascertained not later than ten days after the first Monday in March of each year. In our opinion, this is sufficient, for that is certain which is capable of being made certain.

A fortiori, in this instant case, the amount not only can be determined, but is determined, as a maximum sum is definitely stated. In *State v. Eggers*, [29 Nev. 469](#), the court held in part that “it is usual and necessary to fix a maximum in the general appropriation bill or in an Act authorizing them, specifying the amount above which they cannot be allowed.” *McCracken v. State*, [41 Nev. 49](#).

The case of *State v. Jorgenson*, 142 N.W. 450, is the nearest in point of facts to the case before us. There section 6 of chapter 303 of the Laws of 1911 provided that: “The Commissioners first appointed under this Act, after having duly qualified, shall without delay meet at the capital at Bismark and shall thereupon organize by electing a secretary who shall receive a salary of not more than \$2,400 per annum.” The court in holding that this created a valid annual appropriation of \$2,400 said: “In the statute before us the limits of the expenditures, both for the salary of the secretary and the expenses of operating the commission, are definitely fixed, and this, we think, is sufficient.”

Thus under the doctrine of the North Dakota case, in the Nevada statute before us the limits of the expenditures and the salary of the State Health Officer are definitely fixed. To same effect see *Gamble v. Velarde*, 13 P. (2d) 559.

The same general rule governing appropriations is stated in *Crane v. Frohmiller*, 45 P. (2d) 955, as follows:

We hold, therefore, that in order to constitute a valid appropriation of the legislature it must, if the appropriation is to be paid from the general fund, fix at least a maximum amount beyond which such appropriation may not go, although, if the payment is to be made only from a special fund which is itself limited in amount, no limit need be stated in the fact authorizing the expenditures and specifying for what purpose the money is to be expended.

In conclusion, and the for the reasons above stated, it is the opinion of this office that the State Health Officer is entitled to a salary of \$3,600 per year.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

By ALAN BIBLE, *Deputy Attorney-General*.

HONORABLE HENRY C. SCHMIDT, *State Controller, Carson City, Nevada*.

A-17. Motor Vehicle Liens.

Motor vehicle liens for storage charges not provided by “warehouse receipt law,” but by law giving lien to dealers, garage men, and automobile repair men for storage, repairs, etc. Suit to recover charges is necessary.

CARSON CITY, May 11, 1939.

HONORABLE MALCOLM McEACHIN, *Secretary of State and Motor Vehicle Commissioner, Carson City, Nevada*.

DEAR MR. McEACHIN: This will acknowledge receipt of your recent inquiry concerning motor vehicle liens. Your Department has asked what Nevada statute governs the acquiring and enforcement of liens on motor vehicles held for storage and repairs.

It is the opinion of this office that chapter 213, Statutes of Nevada 1917, as amended by chapter 174, Statutes of Nevada 1925 (being Nevada Compiled Laws 1929, sections 3772-3779) governs liens on motor vehicles acquired by motor vehicle dealers, garage keepers, and automobile repairmen. This Act which gives a lien and which requires the bringing of a suit to enforce such a lien clearly provides due process of law. The suit would be governed by our general Civil Practice Act.

Chapter 213, Statutes of Nevada 1917, as amended, is the last expression of our Legislature on the subject of liens for storing, maintaining, keeping and repairing motor vehicles and, in this respect, it is our opinion that it supersedes the so-called "Warehouse Receipt Law," chapter 268, Statutes of Nevada 1913 (being Nevada Compiled Laws 1929, sections 7846-7854), and the so-called "Sale of Unclaimed Property Act," chapter 173, Statutes of Nevada 1909 (being Nevada Compiled Laws 1929, sections 634-636).

Therefore, titles to motor vehicles acquired pursuant to these last two mentioned Acts are, in our opinion, void.

Sincerely yours,

ALAN BIBLE, *Deputy Attorney-General.*

A-18. Medical Board Records.

Examination papers of applicants for license to practice medicine are public records and open to proper public inspection by interested persons.

CARSON CITY, May 13, 1939.

JOHN E. WORDEN: This will acknowledge receipt of your recent inquiry concerning release of the records of your board.

In our opinion this is largely a matter within the sound discretion of the board itself. I note, in reading the State Act regulating the practice of medicine, that section 8 thereof provides, in part, as follows:

After an examination shall have been completed, the examination papers, which are a part of the board's record, shall be filed by the secretary of the board and shall be open to public inspection whenever requested.

It would seem from this wording that it was the intention of the Legislature to make papers before medical examiners largely matters of public record. In view of the public interest attached to the actions of the medical profession, it would seem to be the better practice to assist as far as possible in acquainting the public, when properly asked, with the record of the medical practitioner.

I trust this is the information you desire.

Sincerely yours,

ALAN BIBLE, *Deputy Attorney-General.*

SYLLABUS

280. School Trustees—Budget Law.

Budget law supersedes section 5789, N.C.L. 1929, Boards of School Trustees now have no power to call an election in school districts for the purpose of voting an additional school tax under section 5789.

STATEMENT OF FACTS

CARSON CITY, May 23, 1939.

In the elementary school district the moneys received from the regular State and county apportionments together with the moneys received from a special district tax, as provided by law, are insufficient to meet the budget requirements for the biennium covered by the budget.

INQUIRY

Is it now possible for the Board of School trustees of the above district to call an election pursuant to section 5789 Nevada Compiled Laws 1929, and submit to the qualified electors of such district the question of whether a special tax in excess of the twenty-five cent special tax provided for in section 5788 Nevada Compiled Laws 1929, may be levied in that district for the purpose of meeting budget requirements?

OPINION

Section 5788 Nevada Compiled Laws 1929 provides in substance that a board of school trustees, when in its judgment the school moneys to which the district shall be entitled for the coming school year will not be sufficient to maintain the school properly and for a sufficient number of months, shall have the power to direct that a tax of not more than twenty-five cents on the one hundred dollars of assessed valuation of such district shall be levied by the Board of County Commissioners.

Section 5789, *supra*, provides, so far as is pertinent here, as follows:

The board of trustees of any school district may, when in their judgment it is advisable, call an election and submit to the qualified electors of the district the question whether a tax shall be raised to furnish additional school facilities for said district, or to keep any school or schools in such district open for a longer period than the ordinary funds will allow or for building an additional schoolhouse or houses, or for any two or for all these purposes.

The above sections are part of the general school law enacted in 1911. The purpose of section 5788, *supra*, was to provide an additional tax for school districts when it was found that the State and county apportionments for a coming school year would not be sufficient. The amount of the special tax was, and is, limited, and, as pointed out in Opinion No. 325, Opinions of Attorney-General 1929-1930, when the amounts of school moneys have been raised in the manner provided in the law, then the legislative method for raising the tax has been exhausted.

Section 5789, *supra*, was probably enacted for the purpose of enabling a board of school trustees to call an election in the district for the purpose of raising additional funds for the purposes mentioned in such section by a vote of the electors, which vote if in favor of the increase in taxation, would empower the Board of County Commissioners to levy an additional tax in such district.

Is section 5789, *supra*, now effective for such purpose? We think not. In 1917, the Legislature enacted the commonly known, "Budget Law," the same being sections 3010-3025, inclusive, Nevada Compiled Laws 1919. Under this law boards of school trustees must prepare a budget between the first Monday in January and the first Monday in March of each year of the amount of money estimated to be necessary to pay the expenses of conducting the school for the current year and the year following. Section 3018, *supra*, and as amended, 1935, Statutes 1971.

The law further provides that it shall be unlawful for any board of school trustees or any member thereof to authorize, allow, or contract any expenditures unless the money for the payment thereof has been specially set aside for such payment by the budget. Section 3019, supra.

These sections, as well as all other sections of the budget law are clearly inconsistent with the provisions of said section 5789, and being later in time must control. The Supreme Court of Nevada has so held in *Carson City v. County Commissioners*, [47 Nev. 415](#).

The making of a budget, made mandatory under the budget law, is not consistent with the calling of an election for the purpose of increasing taxation above the limitation fixed on the rate of a tax levy by the Legislature, if this could be done then the very purpose of the budget law would be nullified. The purpose of the budget law is to assure and require economy in the administration of government and governmental functions. *Carson City v. County Commissioners*, supra.

The court in the above case well said:

By the act in question it is made unlawful for the governing board of any county or city to contract for any expenditures unless the money for payment thereof has been specially set aside for such payment by the budget. The only exception to this is, in the case of necessity or emergency, such board may borrow money.

Section 9 shows a repugance between the budget law and all other laws pertaining to the raising of revenue by taxation for current expenses of a city government. It specifies the items which shall be included in the city budget, particularly designating streets and alleys. That the state legislature intended the method provided in section 9 for raising money for city purposes to be exclusive is clearly shown by the provision of section 10 of the act, wherein provided:

“It shall be unlawful for any governing board or any member thereof or any officer of any city, town, municipality, * * * to authorize, allow, or contract for any expenditure unless the money for the payment thereof has been specially set aside for such payment by the budget.

If there were any doubt as to the intention of the legislature after a consideration of the other sections of the law, the provision just quoted dissipates it. It shows that it was the purpose of the legislature to limit the expenditure by the cities of the state to money raised pursuant to the budget law.

Further, if in a school district, additional funds are needed, over and above the amounts budgeted, by reason of “great necessity or emergency,” the budget law contains provisions enabling the board of trustees of such district to authorize a temporary loan to provide money therefor, which loan may run for a period of two and one-half years, and also provides for an emergency tax to repay such loan. Sections 3020, 3021, 3022, supra. These latter provisions are so clearly inconsistent with section 5789 as to repeal such section by implication, even if no other part of the budget law did not do so.

The budget law having repealed said section 5789 by most evident inconsistency it follows that the inquiry must be answered in the negative. Attention is also directed to the fact that the people of Nevada at the November election 1936, approved and ratified an addition to the State Constitution wherein the total tax levy for all public purposes, including levies for bonds, within the State, or any subdivision thereof, shall not exceed five cents on the one dollar of assessed

valuation. Section 2, article X, Constitution.

This constitutional provision certainly requires a strict adherence to the provisions of the budget law.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

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

MILDRED BRAY, *Superintendent of Public Instruction, Carson City, Nevada*.

SYLLABUS

281. Apportionment of School Moneys to Consolidate School Districts.

Apportionment of school moneys by Superintendent of Public Instruction to consolidated school districts governed by sections 5789-5799, Nevada Compiled Laws 1929, and not by section 5952 Nevada Compiled Laws 1929. Average daily attendance of school children in such districts being the basis of computation.

INQUIRY

1. Does chapter 175, 1929 Statutes of Nevada (being section 5798 Nevada Compiled Laws 1929), which changes the apportionment of State school funds from the school-census basis to the basis of pupils in average daily attendance, repeal, by implication, the provisions of section 7, chapter 29, 1915 Statutes (being section 5952 Nevada Compiled Laws 1929), and so provide that teacher apportionments be made from the State Distributive School Fund on the basis of the total average daily attendance of the consolidated school district for the preceding school year?

2. If section 5952 Nevada Compiled Laws 1929 was in full force and effect after the passage and approval of chapter 175, Statutes, and is not in full force and effect, what interpretation should be given to that portion of the last sentence of section 5952 commencing with the word "provided?"

3. Should a component school in a consolidated school district be governed by the proviso contained in subparagraph 3(a) section 5798 Nevada Compiled Laws 1929, and receive as the semiannual teacher apportionment only \$62.50 when the average daily attendance of that school has fallen below five for the preceding school year?

4. If the average daily attendance for the preceding school year of a district in a consolidated school district falls below three, is that component part of the district: 1. Automatically abolished: (a) as a school district, (b) as an integral part of the consolidated school district. 2. Is it thereafter entitled to a semiannual teacher apportionment of: (a) \$62.50, (b) \$137.50, or (c) \$0.00? In other words, is section 5746 Nevada Compiled Laws 1929 to be considered *in pari materia* with sections 5798 and 5952 Nevada Compiled Laws 1929?

OPINION

Answering Query No. 1:

Section 5952 Nevada Compiled Laws 1929 is section 7 of the Act of 1915 providing for the consolidation of school districts, which Act was enacted at a time when the apportionment of

State and county school moneys was made upon the basis of the number of children within school districts as determined by the annual school census then required to be taken. Undoubtedly, said section 7 was enacted by the Legislature with the thought in mind that section 7 must conform to the general law with respect to apportionments on a school census basis. However, in 1925 the Legislature changed the apportionment basis from the school census basis to the average daily attendance of school children basis in the general law. Chapter 175, Statutes 1925: sections 5798-5799 Nevada Compiled Laws 1929. this office, in a former opinion, held that the basis of apportionment of State and county moneys for school purposes was and is the average daily attendance as shown by the last preceding annual school report, and that section 5780 Nevada Compiled Laws 1929, which provided for an additional census to be taken when there had been an increase of the number of children since the last regular census, was inoperative and of no force and effect, and that the average daily attendance record must govern even in that situation. Opinion No. 71, Report of Attorney-General, 1931-1932.

The effect of the 1915 Act providing for the consolidation of school districts was, in effect, to abolish the districts consolidating under the Act. In fact one school district was created from the two or more consolidating districts. Upon the consolidation being effected such consolidated district then became just another school district. There may have been some necessity in 1915, and which necessity may have been continued up to 1925, for the apportionments of school moneys to have been made to a consolidated district pursuant to section 7 of the 1915 consolidation Act. But the 1925 Act changing the basis of apportionment from the school census basis to the average daily attendance basis created, we think, an irreconcilable conflict between the provisions of section 7 of the consolidation Act and the provisions of the 1925 amendments to the general law governing the apportionments of school moneys. In brief, section 7 of the Act of 1915 providing for the consolidation of school districts was and is to be construed in pari materia with the provisions of the general law relating to the apportionment of school moneys and effect given to both laws so long as no irreconcilable conflict existed. However, when the law was so changed as to create such a conflict, then under the rule of *pari materia* the statute later in time must prevail. In this case the 1925 amendments; *i.e.*, sections 5798 and 5799 Nevada Compiled Laws 1929, being the later statutes must govern. We hold that sections 5798 and 5799 Nevada Compiled Laws 1929 requiring the apportionment of school moneys on the basis of the average daily attendance of school children are in conflict with section 5952 Nevada Compiled Laws 1929, and, being later in time, govern as to apportionment of school moneys to consolidated school districts. Query No. 1 is answered in the affirmative.

Answering Query No. 2.

For the reasons contained in the above answer to Query No. 1, we think it not necessary to now answer Query No. 2. Suffice it to say that the number of teachers for apportionment purposes in consolidated districts is to be arrived at upon the basis of the average number of children in attendance, as provided in sections 5798 and 5799 Nevada Compiled Laws 1929.

Answering Queries Nos. 4 and 5.

These queries may be considered together, because, we think, that after the consolidation of school districts is effected no component districts are left in existence. It is clear from the 1915 consolidation Act that upon consolidation of the districts seeking consolidation that one large district comes into existence, and the districts formerly existing are dissolved and no longer function in any way. That this is so conclusively borne out by sections 5958-5966 Nevada Compiled Laws 1929, providing for the dissolution of consolidated school districts, wherein it is

provided that upon such dissolution new districts are to be created from the consolidated district, and that the funds of the consolidated district shall be apportioned to such new districts.

There being no component districts after consolidation, and as we have hereinbefore shown, the apportionment of school moneys being governed by sections 5798 and 5799 Nevada Compiled Laws 1929, we think it necessarily follows that the average daily attendance of school children at school in the consolidated district is to be computed in such district as a whole.

With respect to Query No. 4, we think it clear from the foregoing opinion that component parts of a consolidated district go out of existence upon the consolidation of districts entering therein, so that the law in question here is administered as to such consolidated district in its entirety. Further, section 5746 Nevada Compiled Laws 1929 has no application except as to the consolidated district as a whole.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

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

MISS MILDRED BRAY, *Superintendent of Public Instruction, Carson City, Nevada*.

A-19. State Board of Stock Commissioners.

Wild horses are treated as "strays" under our law, and impounding and disposal thereof governed by law relating to "strays" under jurisdiction of Boards of County Commissioners, not under State Board of Stock Commissioners.

CARSON CITY, June 2, 1939.

DR. EDWARD RECORDS, *Executive Secretary, State Board of Stock Commissioners, Post Office Box 1027, Reno, Nevada*.

DEAR DR. RECORDS: Supplementing our conversation of yesterday relative to the matter of the disposal of approximately 50 wild horses now impounded in Elko County, we beg to advise that we have examined the correspondence on the subject left by you.

It is noted therefrom that it is thought that under section 3993 Nevada Compiled Laws 1929, the Board of Stock Commissioners could, by its agent, sell the impounded horses pursuant to a public notice of such sale. Under ordinary circumstances and conditions, no doubt such section would provide sufficient authority; but, under the circumstances surrounding the impounding of the horses in question, we think a situation has arisen wholly outside such statute. We think section 3993 relates to horses, mules, burros, or cattle that would be commonly known as "strays" and not wild horses. We think such statute, or rather the language thereof, implies private ownership somewhere which cannot be ascertained. The language, "the ownership of which cannot be determined by diligent search through the recorded brands of the State and by inquiry among reputable stockmen and ranchers in the vicinity where such animals are found," certainly implies that private ownership somewhere exists. On the other hand, with respect to the horses in question here, we think the ownership of such horses is known, and that is that the ownership is in the people of the State of Nevada. Such was the effect of our opinion given on March 29, 1939, to District Attorney Tapscott.

We think that the law of this State does not authorize the State Board of Stock Commissioners to act in this particular case, and that you really have no jurisdiction therein at all.

It seems that the jurisdiction over wild horses, that is, known wild horses, insofar as the

taking and disposing of such horses is concerned, is lodged in the Board of County Commissioners of the county wherein the horses are found. Such is the effect of sections 3958-3961 Nevada Compiled Laws 1929.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

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

A-20. Mormon Cricket Control.

Minimum wages and maximum hours and overtime governed on project involved at time by Federal law, rules and regulations, not by State law, as same is paid out of Federal moneys and under Federal Jurisdiction, and is question for United States Attorney.

CARSON CITY, June 8, 1939.

HONORABLE R.N. GIBSON, *Labor Commissioner, Carson City, Nevada*.

DEAR SIR: This will acknowledge receipt of your letter of June 2, wherein you inquire whether Mormon cricket control constitutes public work, and whether the provisions of the Nevada hours of service statute relating to public works applies in the work of eradicating Mormon crickets. We note from copy of letter annexed to your inquiry that the question arises over whether a person employed in the destruction of crickets is entitled to overtime pay, that is, time worked over and beyond the maximum number of hours specified in the law applying to the particular work being done.

Without deciding whether the eradication of Mormon crickets constitutes public works within the meaning of Nevada statutes, we find, from an examination into the present method of operation in the control of Mormon crickets that undoubtedly the matter is controlled by Federal statutes. We note from the copy of letter above mentioned that you quote from a letter addressed from this office in 1938 where it is indicated that Mormon cricket control constitutes public works. However, reference to the letter addressed from this office discloses that in the same letter this office advised Mr. McIntyre that at that time the Mormon cricket control was under the control of Dr. Edward Records acting for and on behalf of the Federal Government, and that we advised Mr. McIntyre to get in touch with Dr. Records for the very purpose of determining then whether cricket control constituted public works as viewed by the Federal authorities, since the employees were employed by the Federal agency and paid under Federal participation. The date of the letter to Mr. McIntyre was April 19, 1937.

With respect to the present method of Mormon cricket control, we are advised that it is under the absolute jurisdiction of the Bureau of Entomology and Plant Quarantine of the United States Department of Agriculture, and that a Federal representative of such bureau is directing the method of operation in Nevada under a Federal statute appropriating money for Mormon cricket control and vesting the administration of the fund in the above Bureau. We are advised that whatever State and county money is used for Mormon cricket control this year is used simply as money in aid of the Federal project and to assist the Federal Government in the matter. So, it would seem that all employees engaged in the eradication of Mormon crickets are, in fact, employees of the Federal Government.

We understand that the Attorney-General of the United States has, from time to time, ruled upon what constitutes employment in public work of the United States and that his rulings are broad enough to include the employees engaged in the eradication of crickets. We think that

such employees would come under the Federal law providing for an eight-hour day on public work, the same being section 321, title 40, U.S.C.A. The Federal 8-hour law is applicable thereto be submitted to the United States Attorney for the District of Nevada for an opinion thereon, unless a conference between yourselves and the Federal agency in charge of the work in Nevada discloses that such a request is unnecessary.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

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

NOTE—It will be noted that some oral conversations were had and considerable correspondence indulged in with reference to the matters involved in the official opinions given on the matters in controversy here. In fact, our three opinion letters, dated June 9, June 15, and October 24, 1939, must be considered together as constituting the final opinion of this office on the main question involved, for the reason that some of the facts necessary to a proper determination of that question must be considered as together constituting the full and final question must be considered as together constituting the full and final Compensation Division who made the inquiry at the time he presented the facts upon which said letters of June 9, and June 15, were based; and said facts were therefore unintentionally withheld from and unknown to this office at the time those two letters were written. Official opinions of this office are, of course, always based upon the information before us at the time; and when that information is fragmentary, the result is that all of the opinion letters relating to the question must be considered as together constituting the full and final official opinion of this office. Inasmuch as the Unemployment Compensation Division is a new department of the State Government and did not exist at the time the employee involved in this question was employed by the State of Nevada as secretary and stenographer for more than two years prior to her employment in said Division; and, inasmuch as neither said agent nor any of the other officers and employees employed in said division at the time said requests for the opinion of this office were made was connected with any governmental department of the State of Nevada at the time the employee involved in said official opinion was employed for more than four years as secretary and stenographer in the office of the then Governor of this State and, probably, other State offices and departments, and did not know of such prior employment by her, certainly there is no good reason why said agent or any other officer or employee of the Division should be censured for the fragmentary facts submitted to and used by us as the basis for our said letters of June 9 and June 15; and our said letter of October 24 definitely states there was no such censure on our part.

A-21. Salary Schedule Law.

Salary schedule law is retroactive and covers time of State employment not only since law was enacted and approved but also State employment prior to that time. The test is period of existence of actual State employment, not the knowledge thereof by head of office or department. Estoppel exists in such cases only when false representations are made to a party who is without knowledge of the real facts, or such facts are purposely concealed from the party injured thereby after he has acted to his detriment in reliance upon the truth of such representation or upon the facts thus concealed.

CARSON CITY, June 9, 1939.

HONORABLE ALBERT L. MCGINTY, *Director Unemployment Compensation Division, Carson City, Nevada.*

Attention: MR. FRANK B. GREGORY, *Rules and Regulations Officer.*

DEAR SIR: This will acknowledge receipt of your letters of June 2 relating to the case of Rose A. Welborn and the case of Mrs. Bertha S. Cohen, concerning the rate of salary to be paid them for services rendered the Unemployment Compensation Division.

With respect to the Welborn case, we beg to advise first that an opinion of this office, dated May 14, 1938, was furnished to Mr. George W. Friedhoff, the then Director of the Division, which opinion may be found at page 153, Report of the Attorney-General for the period July 1, 1936, to June 30, 1938, wherein it was held that a clerk, stenographer, or typist employed by the Division was entitled to the increase in salary provided in section 7562 Nevada Compiled Laws 1929, if she had completed two years time in some other State department prior to being employed by the Division. The same opinion held that, if such clerk, stenographer, or typist had been employed in some other State department for three, four or five years, she would be entitled to the salary specified in the statute according to her length of service when employed in your department. This opinion probably was furnished Mr. Friedhoff in the very case presented by Miss Welborn and, if the Unemployment Compensation Division has been fully advised as to her prior service at the time of her employment or even thereafter when the statutory period of time had expired, then we think the Division would have been required to have paid her the increased amount of salary provided in the law. However, your letter discloses that Miss Welborn apparently withheld pertinent information from the Division for a considerable time after her employment, and also that she accepted from time to time, without protest, if we are correct in interpreting your letter, the salary of \$125 per month. Under these circumstances, we are of the opinion that the employee must advise the Division of her prior employment and make demand for increased salary before the Division becomes liable therefor.

With respect to the case of Mrs. Bertha S. Cohen, we beg to advise that we are of the opinion that the Nevada statute, to wit, sections 7562 and 7563 Nevada Compiled Laws 1939, is retroactive insofar as it relates to the period of employment necessary to secure the increased salary provided in the law. We think that service in a State department for the required number of years prior to the employment in some other department, even though a considerable period of time spent by the employee in private employment has intervened, makes such employee or applicant eligible for the higher rate of pay provided in the statute. However, as we read your letter concerning Mrs. Cohen, it would seem that your Division had no knowledge of her prior employment by the State until receiving her letter of January 23, 1939, so that the Division could not reasonably be held with knowledge of her prior employment up to that time, and it appearing she received the highest salary payable under the statute from January 1, 1939, the Division complied with her request or demand for an increase in salary. Apparently from the date of her employment with the commission, to wit, June 5, 1937, to the 23d day of January 1939, Mrs. Cohen accepted without protest the salary \$125 per month. This being true, we are of the opinion that she is not estopped from claiming back pay for the full period of her employment. It is noted from your letter that if Mrs. Cohen is entitled to back pay covering the full period of her employment that it will be necessary for your Division to present the matter to the Social Security Board for the purpose of securing money with which to make payment of the back salary. In view of the fact that the Federal Government furnishes the money with which the

salaries of the personnel of your Division are paid, it would seem that the matter of the payment of back pay to personnel, if the same becomes payable under our law, is a matter for the Federal Social Security Board and its attorneys to determine whether the same shall be paid. Certainly, State officers are not in a position to compel the Federal Government to furnish additional money.

Respectfully submitted,
GRAY MASHBURN, *Attorney-General*.
By W.T. MATHEWS, *Deputy Attorney-General*.

CARSON CITY, June 15, 1939.

MR. ALBERT L. MCGINTY, *Director Unemployment Compensation Division*, Carson
City, Nevada.

Attention: MR. FRANK B. GREGORY, *Rules and Regulations Officer*.

GENTLEMEN: This will acknowledge receipt of your letter of June 2d relating to the case of Rose A. Welborn, concerning the rate of salary to be paid her for services rendered your Division.

With respect to this case, we beg to advise first that an opinion of this office, dated May 14, 1938, was furnished to Mr. George W. Friedhoff, the then Director of the Division, which opinion may be found at page 153, Report of the Attorney-General for the period July 1, 1936, to June 30, 1938, wherein it was held that a clerk, stenographer, or typist employed by the Division. The same opinion held that, if such clerk, stenographer, or typist had been employed in some other State department for three, four, or five years, she would be entitled to the salary specified in the statute according to her length of service when employed in your department. This opinion probably was furnished Mr. Friedhoff in the very case presented by Miss Welborn and, if the Unemployment Compensation Division had been fully advised as to her prior service at the time of her employment or even thereafter when the statutory period of time had expired, then we think the Division would have been required to have paid her the increased amount of salary provided in the law. However, your letter discloses that Miss Welborn apparently withheld pertinent information from the Division for a considerable time after her employment, and also that she accepted from time to time without protest, if we are correct in interpreting your letter, the salary of \$125 per month. Under these circumstances, we are of the opinion that the Unemployment compensation Division is not liable to pay her back pay covering the difference in the rate paid her and what she would have been entitled to had she disclosed the fact that she has been previously employed by the State. Under such circumstances, we are of the opinion that the employee must advise the Division of her prior employment and make demand for increased salary before the Division becomes liable therefor.

Respectfully submitted,
GRAY MASHBURN, *Attorney-General*.
By W.T. MATHEWS, *Deputy Attorney-General*.

CARSON CITY, June 15, 1939.

MR. ALBERT L. MCGINTY, *Director, Unemployment Compensation Division*, Carson
City, Nevada.

Attention: MR. FRANK B. GREGORY, *Rules and Regulations Officer*.

GENTLEMEN: This will acknowledge receipt of your letter of June 2d, relating to the case

of Mrs. Bertha S. Cohen, concerning the rate of salary to be paid her for services rendered your Division.

With respect to this case, we beg to advise that we are of the opinion that the Nevada statute, to wit, sections 7562 and 7563 Nevada Compiled Laws 1929, is retroactive insofar as it relates to the period of employment necessary to secure the increased salary provided in the law. We think that service in a State department for the required number of years prior to the employment in some other department, even though a considerable period of time spent by the employee in private employment has intervened, makes such employee or applicant eligible for the higher rate of pay provided in the statute. However, from your letter concerning this matter and from conversations had relative thereto, it is clearly apparent that your Division had no knowledge of Mrs. Cohen's prior employment by the State until sometime in October of 1938. We are advised that in October 1938, some conversation was held between Mrs. Cohen and a member of your staff relative to her prior employment. It also appears that Mrs. Cohen did not authoritatively advise your Division of her prior employment until the 23d day of January 1939, on which date she furnished your Division such information in writing. It appears that the Division complied with her request for a statutory increase in the salary pursuant to such letter and paid such increased salary from January 1, 1939. It further appears that from the date of her employment with the Division, to wit, June 5, 1937, to the 23d day of January 1939, Mrs. Cohen accepted, without protest, the salary of \$125 per month.

We are of the opinion that under the foregoing set of facts Mrs. Cohen is estopped from claiming back pay for the full period of her employment. From the time of her employment to at least the middle of October 1938, it seems Mrs. Cohen kept silent upon the question of her prior employment with the State. This was a matter that was well known to her, but unknown to the Division. We think that she was held with the knowledge of the state of the law with respect to the payment of salaries and keeping silent with respect to the payment of salaries and keeping silent with respect to her prior employment thereby kept the knowledge thereof from the Division. We think this constitutes estoppel. We gather from the conversations relative to this matter that Mrs. Cohen did not furnish absolute information concerning her prior employment until requested to do so by the then Director of the Division in January 1939. We think the law is that in cases of this kind it is the duty of the person possessing the knowledge of the prior employment to forthwith convey that knowledge to the employing unit and if she fails to do so that it is now too late to set up such claim.

Another matter to be taken into consideration is, we think, the fact that the Federal Government furnishes the money with which the salaries of the personnel of the Division are paid and, as we understand, this money is budgeted at least once a year, and, no doubt, during the period of Mrs. Cohen's employment her salary was budgeted upon the proposition that she was a new employee, inasmuch as the Division had no knowledge of her prior employment, so even if it could be said that in this particular case back pay is due, it would still remain for the Federal Social Security Board and its attorneys to determine whether the same shall be paid from the Federal funds. Certainly, State officers are not in a position to compel the Federal Government to furnish additional money.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

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

CARSON CITY, October 24, 1939.

MR. ALBERT MCGINTY, *Director, Unemployment Compensation Division, Carson City, Nevada.*

Re: BERTHA S. COHEN's Salary.

DEAR MR. MCGINTY: Both Mrs. Berth S. Cohen and her sister, Miss Felice Cohn, who is a quite capable and efficient lawyer, of Reno, Nevada have recently called upon me with reference to the controversy between Mrs. Cohen, the claimant, and your Department concerning the reduced salary paid her while working in and for your Unemployment Compensation Division. they have left with me a copy of a great deal of the correspondence and other papers relating to this controversy, I assume a copy of all of it. I went over this matter and correspondence and other papers of which I have a copy with each of them separately, and came to the conclusion that the decision heretofore given in this matter was not entirely correct. This view was based to some considerable extent upon statements made to me by Mrs. Cohen and her sister of the facts with which we were not familiar at the time that decision was made. I have again today gone over the copy of this correspondence and other papers which were left with me by Mrs. Cohen or her sister at the time they called upon me; and I am still of the view that the decision heretofore made in this matter was not entirely correct. I am, therefore, writing you my views as Attorney-General of this State with reference to this matter, in the hope that the error heretofore made and the injury done her by the payment of the reduced salary instead of the statutory salary may be corrected as soon as conveniently possible.

This office can only take the information furnished us by the particular office or department involved in each instance as being true and correct, and the facts involved in the particular matter presented to us for the official opinion of this office. A reading of the letter written by Mr. Mathews, my Deputy, to you, of June 15, 1939, in answer to the inquiry made of me by Honorable Frank B. Gregory, Rules and Regulations Officer of your Division, dated June 2, 1939, shows positively that it was based upon *information* furnished this office by your Division or someone connected therewith or interested in this matter. The above-mentioned letter so written by Mr. Mathews for and in behalf of the Attorney-General and so dated June 15, 1939, shows that the decision and views expressed therein were based upon *misinformation* which had been furnished by office to the effect that your Division was not furnished proper information, or information in the proper manner, concerning her former employment as a State employee, *i.e.*, as stenographer and later as Secretary to two or more of the Governors of this State, until January 23, 1939, and immediately thereafter complied with her request to pay her the increased salary provided for in the schedule of salaries for State employees provided for ever since the year 1929 in the Nevada Compiled Laws 1929, section 7562, and upon further misrepresentation that Mrs. Cohen accepted this reduced salary of \$125 per month for the period now complained of "*without protest.*" That letter of Mr. Mathews also shows that the views therein expressed were based upon the further misinformation that Mrs. Cohen "*kept silent*" upon the question of her prior employment with the State, a matter upon which we quote further from this letter of Mr. Mathews as follows: "We gather from the conversations relative to this matter that Mrs. Cohen did not furnish absolute information concerning her prior employment until requested to do so by the then Director of Division in January 1939." You will note that the views expressed by Mr. Mathews in his said letter were to the effect that Mrs. Cohen was "*estopped*" from claiming back pay for the full period of her employment because of what we assumed to be facts, basing that assumption on the above-mentioned misinformation, but which we have now ascertained was misinformation and erroneous and not facts at all.

This is not to be considered a criticism of your Division or of anyone connected with it, or of any other person who furnished us the above-mentioned misinformation.

We are now reliably informed, however, that what we assumed as facts and upon which we based our views as expressed in Mr. Mathews' letter to you of June 15, 1939, was incorrect and, therefore, misinformation. This reliable information which we now have is to the effect that Mr. William Kelly Klaus, who was Director of your Division at the time Mrs. Cohen was employed, and, who actually employed her, well knew at that time and at all times when he was such Director that Mrs. Cohen had theretofore been so employed as stenographer and later as private secretary in the Governor's office for several years; that Mr. George Friedhoff, who succeeded Mr. Klaus as such Director and in whose employment Mrs. Cohen served during all the time for which she now claims compensation at the statutory salary of \$150 per month, also well knew of her said former employment during all of that time, a matter which both of these former Directors freely admit; that Mr. Klaus has given "permission to use his name" as one who knew of her former employment as such State employee in the Governor's office; that Governor Kirman, who appointed both Director Klaus and Director Friedhoff, told Mr. Klaus at the time he employed Mrs. Cohen of her former service as such State employee and added that, inasmuch as she had been so employed in the Governor's office prior to that time for a period of eight years, she was "entitled" to compensation at the rate of \$150 per month in accordance with said statutory schedule of salaries for State employees; that this matter of her former employment was discussed between her and Mr. Klaus at the time of her employment was discussed between her and Mr. Klaus Mr. Friedhoff and, therefore, no misrepresentations were made by or deception practiced by Mrs. Cohen; that Mrs. Cohen did not keep "silent" upon the question of her said prior employment; that she did not accept her salary checks "without protest" or in full compensation; that she claimed he salary should be \$150 per month as provided for in said section 7562; and that she was lead to believe and really felt that said controversy with reference to the amount of he salary would be adjusted to accord with said salary schedule so provided by law for State employees.

You will not that Mr. Mathews says in the second paragraph of his letter to you of June 15, 1939, that "Services in a State Department for the required number of years prior to the employment in some other department, even though a considerable period of time spent by the employee in private employment has intervened, makes such employee * * * eligible to the higher rate of pay provided in the statute." It is certainly evident from the above-quoted statement by Mr. Mathews, coupled with the facts involved as we now understand them and as above stated, that Mrs. Cohen was, during the entire period of her employment in you Division, entitled to a salary at the rate of \$150 per month, in view of the fact that her former services as such State employee was for a full period of about eight years, and said statutory salary schedule entitles any such State employee as she was to \$150 per month for each month after having completed a period of four years' service for the State.

The element of estoppel, upon which the views expressed by Mr. Mathews were based, arises in such cases as this only when misrepresentations, false representations concealment of material facts amounting to fraud, has been practiced on the other party to the transaction and such other party has suffered injury on the account of such misrepresentations, false representations, concealment, or fraud. On this point, I quote as follows from 21 C.J., page 1119, section 122:

Essential Elements (a). In General. In order to constitute this kind of estoppel there must exist a *false* representation or concealment of material facts; it must

have been made with knowledge, actual or constructive, of the facts; *the part to whom it was made must have been without knowledge or the means of knowledge of the real facts*; it must have been made with the intention that it should be acted upon; and the party to whom it was made must have relied on or acted upon it *to his prejudice*. To constitute an “*estoppel in pais*” *there must concur an admission, statement, or act inconsistent with the claim afterward asserted, action by the other party thereon and injury to such other party*. *There can be no estoppel if either of these elements are wanting. They are each of equal importance*. So it has been held that the doctrine of estoppel applies only to voluntary representations, admissions, and acts, *and not to declarations executed by statute*.

Estoppel in such cases as this is commonly known as “estoppel in pais.” It is evident from the situation as hereinbefore stated that Mrs. Cohen neither made misrepresentations, false representations, or practiced concealment of fraud on either Mr. Klaus or Mr. Friedhoff, under whose employment she served during the entire time involved in this controversy and for which she claims the increased compensation.

In connection with this question of whether or not she is “estopped,” I call particular attention to the second sentence in the above-quoted language from Corpus Juris as to the elements which must “concur” in order to constitute “estoppel in pais,” *i.e.*, an “admission, statement, or act inconsistent with the claim afterwards asserted” and “action by the other party thereon *and injury to such other party*.” I also call attention to the statement in that quotation that “there can be no estoppel if either of these elements are wanting. They are each of equal importance.” The fact of the matter is that all of these elements are “wanting” (lacking). they cannot, therefore, that they are concurred because they are all “wanting” or lacking.

For the foregoing reasons, this office is unquestionably and unalterably of the positive opinion that Mrs. Cohen is entitled to compensation for all of the time she was so employed at the rate of \$150 per month as provided for in said section 7562, as amended by chapter 201, 1937 Statutes of Nevada, page 422, which amendment does not alter the situation as to this particular salary as it existed under said section 7562 as enacted in 1929.

You may use this letter as the official opinion of this office on the point involved, but we reserve the right to prepare a formal opinion later, if we desire to do so, in the form of an official of opinion.

Respectfully submitted,
GRAY MASHBURN, *Attorney-General*.

A-22. Land Payments and Interest.

Installment payments and interest must be paid when due to prevent land contracts from being subject to cancelation, except when delay unavoidable because of accident or other emergency.

CARSON CITY, June 9, 1939.

HONORABLE WAYNE McLEOD, *Surveyor General, Carson City, Nevada*.

DEAR MR. McLEOD: You recently made an inquiry of this office as to our interpretation of section 5519 Nevada Compiled Laws 1929, as amended by the 1933 statutes. Your inquiry

asked that if interest payments were not received in the office of the Surveyor General within six months from the date on which such interest payments became overdue, should a new application issue or would it be sufficient if the interest payment was deposited in a post office bearing a postmark of the last due day.

The pertinent part of section 5519, supra, reads as follows:

* * * it shall be the duty of the state land register to immediately declare such contract forfeited, and to accept and certify such application, and the remainder of the land embraced in such forfeited contracts shall unconditionally revert to the state; *provided further*, that no application shall be received for any part of the lands embraced in such contract within six months from the date when said interest payment becomes overdue unless an abandonment to said contract be filed by the contractor, assignee, or agent.

It is our opinion from reading the entire statute that the interest payment must be actually received in the office of the Surveyor General on the day due, with the exception hereinafter noted.

Our conclusion is strengthened by the analogous situation in payments made under the negotiable instrument law. Under this law, presentment for payment must be made on the day the instrument falls due. The negotiable instrument law specifically provides that delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. Thus, where an instrument is deposited in the post office in due season to reach the place where it is payable before it falls due by regular course of next mail and there is no reason to believe that it will not be duly delivered, and but for the mistake of the postmaster in misdirecting it, it would have reached its proper destination and have been received when due, such a delay is excusable.

It appears to us that such a rule as applied to the receipt of interest payments is fair and reasonable, and that it will end the inevitable confusion which would result if the date of postmarking should control the Surveyor General. Likewise, it would appear to us that where the delay in payment is due to something beyond the control of the contractor (such as a train wreck, misdirection by the postmaster, etc.), such payment should be accepted upon a proper showing of the facts connected with the delay.

Sincerely yours,

ALAN BIBLE, *Deputy Attorney-General*.

A-23. Mutual Fire Insurance Company Deductions From Tax on Income.

No deductions allowed for premiums paid or for dividends paid policy holders in determining 2 percent tax on income.

CARSON CITY, June 16, 1938.

MR. HENRY C. SCHMIDT, *Insurance Commissioner, State Capitol Building,*

Carson City, Nevada.

DEAR MR. SCHMIDT: Your verbal inquiry of recent date as to whether mutual insurance companies have the right to deduct from the amount of premiums, upon which the annual 2% tax is paid, the amount of dividends paid to their member policy holders.

An examination of the statute providing such tax, to wit, chapter 64, Statutes of Nevada 1939, discloses that every insurance company or association of whatsoever description, except

fraternal or labor insurance companies, or societies operating through the means of a lodge system, shall annually pay to the State of Nevada a tax of 2% upon the total income from all classes of business covering property or risk in this State during the preceding calendar year. The same statute provides certain exemptions, to wit, a deduction for return premiums and premiums received on reinsurance, the amount of county and municipal taxes paid, and the amount of annual licenses paid in this State by the companies taxed.

The rule is that persons or companies seeking exemption from taxation shall point to an exemption clear and express in the statute. The rule further provides that such exemption must be clear beyond a doubt. In the above statute there is no exemption provided for dividends paid to stockholders or member policy holders. We think the law is clear that no deductions for this purpose can legally be made under the above statute.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

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

A-24. Unemployment Compensation Division.

The Unemployment Compensation Division is not required to pay court costs in suits to recover contributions to fund as Department is part of State and suit is brought in name of State, which is exempt from paying court costs.

CARSON CITY, June 16, 1938.

MR. FRANK B. GREGORY, *Rules and Regulations Officer, Unemployment Compensation Division, Carson City, Nevada.*

Re: Filing fees in civil actions.

DEAR SIR: Complying with your recent telephonic request that we further advise you whether your Division in the bringing of civil actions for the recover of contributions must pay filing fees at the commencement of such suits.

The Unemployment Compensation Division of Nevada is, in our opinion, a department of the State, and under the control and direction of an officer of the State, to wit, the Labor Commissioner. Section 14(b) of the unemployment compensation law as originally adopted and as it now stands in the amendment of 1939 provides specifically that the action or proceeding brought for the recovery of such contributions shall be in the name of the State of Nevada. Thus the Legislature has made the State itself the plaintiff in such actions.

We think that the State as such plaintiff is such plaintiff in its sovereign capacity. As a sovereign it may employ its courts, courts created by it, in the matter of bringing suits without the payment of fees for that purpose. We think this rule obtains by reason of the general law on such subject which is, in brief, that the sovereign is not bound by statutory provisions unless it is expressly provided in such statute that it is to be bound thereby. This rule is most aptly stated in 25 R.C.L. 783, 784, sections 31 and 32. As is so well stated in *O'Berry v. Mecklenburg County*, 67 A.L.R. at page 1310, where the court said as follows:

Furthermore, general statutes do not bind the sovereign, unless the sovereign is expressly mentioned. Thus in *State v. Garland*, 29 N.C. (7 Ired. L.) 48, Ruffin, Ch. J., wrote: "It is a known and firmly established maxim, that general statutes do not bind the sovereign, unless expressly mentioned in them. Laws are prima facie made for the government of the citizen and not of the State herself."

It is stated in 11 C.J., 863, sec. 32, as follows:

Statute authorizing the clerk to collect fees for his services are strictly construed and will not be extended beyond their letter, and more especially is this true in the case of special statutory enactments. A general provision covering services not specially provided for will not embrace services for the state or a county, unless they are expressly named in the statute, or necessarily implied from the language thereof.

This office, many years ago, through Attorney-General Fowler, held in an analogous situation that the State by reason of its sovereignty is exempt from the payment of fees provided by law for County Recorders in the recording of a deed conveying property to the State. (Opinion No. 104, Attorney-General's Report 1919-1920.) Unless the statutes providing fees for justices of the peace and clerks of the district courts contain express provisions that filing fees shall be charged to and paid by the State in the bringing of civil actions, then under the rules of law above set forth such fees are not to be charged or paid by the State. We fail to find any statute providing such fees that expressly require payment thereof by the State.

We are of the opinion that in civil actions brought in the name of the State of Nevada that the sovereignty of the State prevails and that no filing fees can be required of the State in such cases.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

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

A-25. Motor Carrier License Fee.

Motor carrier license fee on miner's truck used by him in mining "sand."
Sand is a mineral and such truck is exempt from license fee.

CARSON CITY, June 23, 1939.

Public Service Commission of Nevada, Carson City, Nevada.

Attention: Lee S. Scott, Secretary.

GENTLEMEN: Supplementing our letter of May 31, which was in reply to your letter of May 22d inquiring whether the commodity "sand" could be considered a mineral in connection with a mine operator's exemption contained in section 3 of the Motor Carrier Licensing Act of 1933, as amended.

From the copy of the letter addressed to the Commission by Inspector Richards, which accompanied your inquiry, it seems that the truck owner contacted for the purpose of securing the motor carrier license plate under the above law claimed exemption upon the ground the commodity carried by him was sand taken from a sand pit which had been located under the placer mining laws of the United States. In order to answer your inquiry it was necessary to ascertain whether the Department of the Interior of the United States, through its land department, considered sand a mineral. This was necessary because the land department is vested with the power by Congress of determining the status of all lands under its jurisdiction and this includes the determination of what constitutes minerals. The courts take the position that the determination of this question by the land department is binding on the courts.

We found that many years ago the land department in the case of Zimmerman v. Brunson, 39 L.D. 310, held that sand was not a mineral and at that time did not come under the laws relating to the location of placer ground. However, in order to make definitely sure that this particular

case was still controlling, we took the matter up with the General Land Office at Washington D.C., and were advised by that office that in the case of *Layman v. Ellis*, 52 L.D. 714, the case of *Zimmerman v. Brunson* had been overruled, and that in the later case sand and gravel were deemed to be minerals and subject to location under the mining laws.

Section 3 of the Motor Carrier Act of 1933, as it originally stood and as amended, provides, among other things, an exemption for the transportation of ore or *minerals* or mining supplies by a producer in his own motor vehicle having an unladen weight of not exceeding 15,000 pounds, or three vehicles whose combined unladen weight does not exceed 15,000 pounds. In view of the holding of the land department of the United States and the rule adopted by the courts of being bound by such decision, we are constrained to hold that sand constitutes a mineral within the meaning of said section 3 of the Motor Carrier Licensing Act.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

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

A-26. School Law.

County Boards of Education cannot legally use moneys devoted to furnishing dormitories and for allowances therefor to pupils residing at remote places away from the school to pay living expenses of such pupils elsewhere than in dormitories.

CARSON CITY, June 28, 1939.

MISS MILDRED BRAY, *Superintendent of Public Instruction, Carson City, Nevada*.

DEAR MISS BRAY: Under date of June 19, 1939, you asked this office whether or not a county board of education in the State of Nevada has the authority to make certain monthly allowances to pupils who attend the county high school, but whose homes are in remote sections of the county; the allowances to be used for living expenses while the pupils are attending the county high school and to be considered in lieu of dormitory expenses.

In our opinion a county board of education cannot make such an allowance.

In the first instance there is no statute authorizing such an expenditure. Furthermore, our Supreme Court has repeatedly held that statutory boards can only exercise such power as is specifically granted or as may be necessarily incidental for the purpose of carrying such power into effect; and when the law prescribes the mode which the board must pursue in the exercise of its powers, it excludes all other modes of procedure.

It is true that section 5829 Nevada Compiled Laws 1929 empowers the county board of education to rent, purchase, or erect dormitories. Likewise, sections 5904-5913 Nevada Compiled Laws 1929 provides the method and means for bonding counties for building and equipping high schools and dormitories. Section 5829, *supra*, is an express grant of the power to obtain a dormitory. Such a grant or power prescribes the mode of procedure, that is the purchase, rental, or erection of a dormitory. This provision excludes all other modes. Clearly, therefore, no express authority existing, the board cannot substitute living expense allowances in lieu of furnishing a dormitory.

Sincerely,

ALAN BIBLE, *Deputy Attorney-General*.

A-27. Venereal Disease Appropriation.

Venereal disease appropriation does not revert at end of biennium but remains subject to use of State Board of Health; although appropriations usually so revert.

CARSON CITY, June 28, 1939.

DR. B.H. CAPLES, *Director, Division of Venereal Disease Control, Medico-Dental Building, Reno, Nevada.*

DEAR DR. CAPLES: This will acknowledge receipt of your letter of June 26, 1939, inquiring whether the appropriation made by the 1937 Legislature for use in the eradication of venereal diseases reverts to the General Fund of the State if not spent by the end of the fiscal year.

This office recently passed upon a similar problem in connection with the reversion of moneys appropriated for the use of the State Publicity Board, and we there held in part:

Generally, appropriations made by the Legislature are made to carry on the business of the State government for a period of two years and, by reason of long-continued custom, the State Controller causes unexpended moneys in appropriations to revert to the General Fund at the end of the biennium.

However, we think there are appropriations made from time to time by the State Legislature that are not subject to reversion. We think the Legislature can and does make certain appropriations that are intended to be continuing in nature until fully expended or reverted by act of the Legislature.

A reading of the statute creating the State Board of Publicity and providing certain powers and duties for such board, the same being chapter 177, Statutes of Nevada 1937, shows that the legislative intent is quite clearly expressed therein, that the appropriation made in such statute was to be subject to the control of the State Board of Publicity until entirely expended or until the statute was in some manner changed by the Legislature. No time limitation whatsoever appears in the statute.

An examination of chapter 179, 1937 Statutes of Nevada, likewise shows that the appropriation was made subject to the expenditure of the State Board of Health. It likewise appears that no time limit has been fixed for the expenditure of this money. Likewise, the 1939 Legislature has not changed this Act in any way. It is true that the 1939 Legislature made an additional appropriation for the 1939-1941 biennium. However, it does not seem to us that this additional appropriation can in any way be construed as a limitation upon the original appropriation of the 1937 Act.

It is our opinion that the appropriation under the 1937 Act does not revert to the General Fund on June 30, 1939.

Sincerely,

ALAN BIBLE, *Deputy Attorney-General.*

SYLLABUS

282. Unemployment Compensation Law.

Cost awarded against State in civil actions brought under such law are awarded under section 8939 Nevada Compiled Laws 1929, and payable from Unemployment Compensation Administration Fund. Unconstitutionality of

section 14(b) of unemployment compensation law, as amended in 1939, a doubtful question, should be submitted to the courts for determination.

INQUIRY

CARSON CITY, June 30, 1939.

If court costs are awarded to a defendant against a State in a collection proceeding under section 14 of the Nevada unemployment compensation law, (a) are there other funds available to pay such costs, and (b) are such costs properly payable from the administration fund of the agent, State, *i.e.*, Nevada?

OPINION

It is noted in your letter transmitting the above inquiry that the inquiry is propounded upon the proposition or theory that section 14(b) of the unemployment compensation law, as amended by Statutes of Nevada 1939, is unconstitutional.

For the purpose of this opinion in answering the above inquiry, we will answer the same upon the basis that suits for collection of delinquent contributions to the Unemployment compensation fund are brought under section 14(b) of the 1937 Act as it stood before the 1939 amendment.

Under the 1937 Act, delinquent contributions were collectible by civil action in the name of the State of Nevada, thus making the state party plaintiff. the universal law with respect to the recovery of costs against the State is that a sovereign State, in suits to which it is a party in its own courts, is not liable for costs in the absence of an express statute creating such liability. (14 Am. Jur. 22, sec. 34.) The only statute relating to the payment of costs on the part of the State is section 8939 Nevada Compiled Laws 1929, which reads as follows:

When the state is a party, and costs are awarded against it, they must be paid out of the State treasury.

This particular statute does not in express terms say that the State shall be liable for costs in suits to which it is a party in its own courts. However, the inference to be drawn from such statute is that costs can be awarded against the State, and we think that this is the construction that has been placed upon such section by administrative departments of the State for many years. Therefore, the purposes of this opinion, we think such statute sufficiently complies with the above stated universal rule of law as to costs, and that it is applicable to suits brought for the collection of delinquent contributions under the unemployment compensation law.

Section 8939 provides that such costs must be paid out of the State Treasury. However, before such costs can be paid out of State moneys in the State Treasury, there must be an appropriation made by the Legislature setting aside State funds in the State Treasury for the payment of such costs. And we think that such appropriation would necessarily have to be made by the Legislature for your division before State moneys in the State Treasury could be used for the payment of costs. We know of no specific appropriation being made by the Legislature for the payment of costs on the part of the State from State moneys as such, and particularly is this so with respect to the Unemployment Compensation Division suits, except, we think that section 13(a) of the unemployment compensation law as enacted in 1937 and as amended in 1939, which provides for the Unemployment Compensation Administration Fund, and which section further provides that the moneys in such fund shall be expended solely for the purpose of defraying the costs of administration of the Act, does provide a sufficient appropriation for the purpose of paying costs in suits brought under such law. The bringing of suits for the collection of

delinquent contributions is a part of the administration of the Act, and we think it necessarily follows that moneys in such fund can legally be used for the payment of such courts costs as may be awarded against the State of Nevada in suits brought in the course of the administration of the unemployment compensation law.

As stated hereinbefore, the foregoing part of this opinion is based upon the proposition that the 1939 amendment of section 14(b) is unconstitutional. If such amendment is not unconstitutional then, of course, no costs can be charged to the State of Nevada in proceedings brought under said section 14(b).

We have given serious consideration to the proposition that section 14(b) as amended in 1939 is unconstitutional, in that it is violative of section 6 of article VI of the Constitution of Nevada, which said section deals with the jurisdiction of the district courts of the State. Upon most careful examination of said section 6 and section 8 of the same article dealing with the jurisdiction of justice courts, we have come to the conclusion that there is grave doubt as to the unconstitutionality of said section 14(b), and we therefore suggest that an opportunity be given to test the constitutionality of section 14(b) as amended in 1939 in the courts.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

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

ALBERT L. MCGINTY, *Director, Unemployment Compensation Division, Carson City, Nevada*.

Attention:

FRANK B. GREGORY, *Rules and Regulations Officer*.

A-28. Fishing in Lake Mead and Colorado River Pursuant to Reciprocal Law Governing Such Fishing.

The 1939 law provides reciprocal fishing arrangement between States of Arizona and Nevada, and for adoption of rules and regulations governing such fishing and supplements general fish and game law of Nevada, and should be construed in pari materia with it. Violation of 1939 law is, therefore, punishable under prior general law.

CARSON CITY, July 5, 1939.

HON. RONALD H. WILEY, *District Attorney, Clark County, Las Vegas, Nevada*.

DEAR MR. WILEY: Replying to your letter requesting an opinion on the question of whether a person charged with catching bass from Lake Mead in excess of the limit fixed by the State Fish and Game Commission in rules and regulations promulgated by it pursuant to be authority created in chapter 175, Statutes of 1939, can be prosecuted under section 3073. Nevada Compiled Laws 1929, in view of the fact that said chapter 175 Statutes of 1939, does not provide a penalty for the violation of rules and regulations of the State Fish and Game Commission promulgated under said chapter.

In our opinion, no prosecution lies under section 3073 Nevada Compiled Laws 1929, for the reason that the limit of fish fixed in said section is different from that fixed in the rules and regulations of the State Fish and Game Commission promulgated under the 1939 Act because section 3128 Nevada Compiled Laws 1929, provides that "every person who shall violate, or fail to observe, any order, ordinance, rule or regulation, enacted, made or provided by the State Board of Fish and Game Commissioners of this State under the provisions of this Act," shall be guilty

of a misdemeanor and punished as provided in said section. Chapter 175, 1939 Statutes of Nevada, is an Act supplementary to the general fish and game law of which section 3128, supra, is a part. As such supplemental Act, it is to be construed in *pari materia* with the prior Act and the rule is, even with respect to penal laws, that where in a penal law, which relates to the same subject as an earlier statute and was enacted with reference to the earlier legislation, no penalty is provided for the thing prohibited, those violating its provisions are liable to the penalty imposed by the earlier law. 25 R.C.L. 1066, section 290; *Keller v. State*, 69 Am. Dec. 226.

In the above-cited case the court held that the Maryland license laws of 1856 and 1827, and those supplementary to the latter, are to be construed in *pari materia*, and the absence of a penalty in the later Act leaves those failing to take out a license under it amenable to the penalties of the earlier Act. See, also *Alston v. United States*, 274, U.S. 289; 71 L. Ed. 1052.

We conclude that chapter 175, Statutes of 1939, being supplementary to the general fish and game law and dealing with the same subject, except that it is limited to Lake Mead and the Colorado River, is to be construed in *pari materia* with the general fish and game law and the penalty in section 3128 of the prior law is the penalty to be invoked in cases dealing with the violation of rules and regulation promulgated by the State Fish and Game Commission under said chapter 175.

Respectfully submitted,
GRAY MASHBURN, *Attorney-General*.
By W.T. MATHEWS, *Deputy Attorney-General*.

A-29. School Law.

School fund apportionment basis is subject to discretion of Superintendent of Public Instruction in certain instances, and to adoption of shorter period than one full year to determine average daily attendance for school money apportionment, especially in cases of epidemics.

CARSON CITY, July 7, 1939.

MISS MILDRED BRAY, *Superintendent of Public Instruction, Carson City, Nevada.*

DEAR MISS BRAY: Reference is hereby made to your letter of July 1, wherein you inquire whether your construction of the last clause of sub-section 2b of section 5798 Nevada Compiled Laws 1929, reading "or under said conditions he may take the six months of highest average daily attendance as the apportionment basis," is correct."

From your letter we note that your construction of the above-quoted language is that it refers to the present school year, meaning the school year in which an epidemic may occur. A reading of the forepart of said sub-section 2b discloses that the Superintendent of Public Instruction may, in his discretion, in view of the language of the last clause of said sub-section, use his discretion with respect to the use of either the first or second immediately preceding school year as the period upon which to compute the average daily attendance for purposes of apportionment of school moneys to schools wherein epidemics have occurred. But, the Legislature evidently had in mind that conditions in a particular school district may have changed most materially from one school year to another, such as occurs in districts in boom mining camps, and the Legislature, undoubtedly having such situations in mind, provided the last clause in said sub-section as quoted above for the very purpose of giving the Superintendent of Public Instruction the right to use a later period of time under such conditions. It seems to us that it would be rather

unreasonable for the Legislature to provide a period of time comprising an entire school year preceding the school year in which the epidemic occurred and then say that the Superintendent of Public Instruction could use six months of such year. Such, we think, was not the intention of the Legislature.

It is our opinion that the Superintendent of Public Instruction may use the six months of the present school year as the period of time in which to compute the average daily attendance for the purpose of apportioning school moneys to school districts wherein epidemics have occurred.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

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

A-30. Tax Laws.

Disposition of proceeds of sales property deeded to county for delinquent taxes should be to the various funds for which taxes were levied, including taxes due State if sufficient to satisfy all such funds and, if not, then apportioned pro rata among such funds, and unpaid portion remitted by county board; and, if there be any excess after satisfying all such funds, then remainder should be apportioned to County General Fund.

CARSON CITY, July 13, 1939.

HONORABLE D.G. LaRUE, *State Auditor, Carson City, Nevada*.

DEAR MRS. LaRUE: Reference is hereby made to your letter of July 11, 1939, inquiring whether it is incumbent upon counties to apportion to the various funds, for which a tax is levied, the proceeds of sales of property which has been deeded to the county by reason of nonpayment of taxes.

Your inquiry is answered by sections 6448, 6462, 6463, 6465, and 6466 Nevada Compiled Laws 1929. An examination of these sections of the law will disclose that it is the intent of the law that where property is sold by a county, after the same has been deeded to the county pursuant to purchase of the same for and in behalf of the State and county by the County Treasurer and the period of redemption having expired, moneys received from the sale of such property, after the costs of sale have been taken care of, should be apportioned to the various funds for which the tax was levied. This, of course, includes apportionment to the State. the county is not entitled to apportion the entire amount or any of the proceeds of the sale to its General Fund until after the taxes due have been taken care of. If more money is received from the sale than is necessary to pay the delinquent taxes, then any amount over the amount of taxes due belongs to the county and may be apportioned to its General Fund. If the sum received at the sale is not sufficient to pay the taxes due, including the State's portion thereof, then such money should be prorated to the various funds, including the State's portion, and the amount of delinquent taxes then should be remitted by the Board of County Commissioners in accordance with the provisions of section 6465, *supra*.

Respectfully submitted,

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

SYLLABUS

283. Secretary of State Ex Officio Motor Vehicle Commissioner.

Uniform fee statute for office of Secretary of State not applicable to office of Motor Vehicle Commissioner. Vehicle Commissioner not authorized to exact a fee for searching records of his office. Such commissioner may require credit and like concerns to come to his office for purpose of examining records and securing information therefrom.

INQUIRY

CARSON CITY, July 26, 1939.

1. Does the uniform fee statute for the office of Secretary of State apply to the office of the Motor Vehicle Department?
2. If such statute does not apply, can the Motor Vehicle Commissioner require the payment of a reasonable fee for searching the records of his office and furnishing information so acquired to inquirers?
3. If the Motor Vehicle Commissioner cannot charge the above-mentioned fee, can he decline to make such search and require inquirers to come to his office and obtain the information requested?

OPINION

Answering Query No. 1.

The uniform fee statute for the office of Secretary of State, the same being chapter 52 Statutes of 1933, and as found in sections 7421.01 and 7422.02 Nevada Compiled Laws 1929, was enacted for the purpose of fixing the fees to be charged by the Secretary of State pertaining to all matters in his office as Secretary of State. No fees are therein fixed for matters pertaining to the Motor Vehicle Department as such. The statute cannot be said to apply to such department unless the office of Motor Vehicle Commissioner is, by reason of its ex officio character, part and parcel of the office of Secretary of State. Section 2 of the motor vehicle registration law, the same being chapter 202 Statutes of 1931, and as found at section 4435, et seq., Nevada Compiled Laws 1929, states that the Secretary of State shall be ex officio Vehicle Commissioner, and that he shall have all the powers and perform the duties imposed by the Act. It is also provided in section 3 of the Act that he shall maintain an office in the State Capitol. These sections of the Motor Vehicle Registration Act, we think, establish the ex officio office of Vehicle Commissioner as an office separate and distinct from the office of Secretary of State. Such is the rule in analogous cases decided by the Supreme Court of Nevada. See, *Denver v. Hobart*, [10 Nev. 28](#); *State v. Laughton*, [19 Nev. 202](#); *State ex rel. Cutting v. La Grave*, [23 Nev. 120](#); *State ex rel. Howell v. La Grave*, [23 Nev. 373](#).

The present uniform fee statute for the office of Secretary of State, as its provisions show, was enacted for that office and applies only to the affairs of that office. It was enacted in 1933 some two years after the enactment of the Motor Vehicle Registration Act providing the ex officio office of Vehicle Commissioner. Surely if the Legislature had intended the provisions thereof to govern the office of Vehicle Commissioner, a separate and distinct office, it would have said so as the Legislature is presumed to know the existing state of the law on the subject upon which it legislates. *Clover Valley L. & S. Co. v. Lamb*, 43, Nev. 375. In our opinion, the above-cited uniform fee statute for the office of Secretary of State has no application to the office of Motor Vehicle Commissioner and its departments.

Answering Query No. 2.

It is a cardinal rule with respect to the charging of fees by public officers that unless that unless the law authorizes the charging and collection of fees none may be charged or collected. A public officer can only demand such fees as the law has fixed and authorized for the performance of his duties. *Washoe County v. Humboldt County*, [14 Nev. 131](#). There is no statutory authorization for the Vehicle Commissioner to require the payment of any fee for searching the records of his office and furnishing the information thus obtained. Query No. 2 is answered in the negative.

Answering Query No. 3.

The records and files in the office of Vehicle Commissioner are public records, and as such are open to inspection by the public during business hours. Section 4, Motor Vehicle Registration Act, section 5620 Nevada Compiled Laws 1929. Pursuant to these sections the public, during business hours, has the right to inspect and copy such records without fee, subject to reasonable regulations and supervision by and on the part of the Vehicle commissioner. *Direct Mail Service, Inc., v. Registrar of Motor Vehicles*, 5 N.E. (2d) 545, 108 A.L.R. 1391; *state v. Grimes*, [29 Nev. 50](#). There is no express provision in the Act requiring the Vehicle Commissioner to make search of his records, except as to stolen vehicles (section 5 of the Act). but, the statute as a whole contemplates the furnishing of information to people having a direct or personal interest in some particular vehicle, we think the inference to be drawn from the Act is, that as to such individual cases it is incumbent upon the Vehicle Commission to obtain and furnish the requested information, and by mail if necessary. But, as to the requiring of information to be furnished to credit concerns and other concerns, where such information requires extensive search and if for the purpose of furthering the business of such concerns, it is our opinion that the Vehicle Commissioner may legally require that they come to his office, and pursuant to reasonable regulations and supervision for the protection of the records personally inspect the same.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

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

HON. MALCOLM McEACHIN, *Secretary of State, Carson City, Nevada*.

A-31. University Engineering Building and Gymnasium Building, Erection Of, and Board of Regents' Authority Concerning Same—Bond Issue.

Limitation of construction expenses and bond issue therefor is upon amount State may pay for such construction and equipment in each instance, i.e., for the construction and equipment of the engineering building, \$175,000; and for the construction and equipment of the gymnasium building, \$200,000; and does not include Public Works Administration allotment from the United States. Entire expense of each thereof may legally be full amount provided for State's participation as above stated, plus Public Works Allotment of the United States Government.

CARSON CITY, August 1, 1939.

MR. C.H. GORMAN, *Comptroller, University of Nevada, Reno, Nevada*.

DEAR MR. GORMAN: Referring to your verbal inquiries of yesterday concerning the erection of the Engineering Building and the Gymnasium Building at the University of Nevada

and the Board of Regents' authority in connection therewith.

You inquired first whether the amount of the bond issues provided in the statutes authorizing such issues constitutes a limitation on the entire costs of such building or the costs to the State of Nevada alone.

Your second inquiry deals with the question of whether the Board of Regents has the authority to change the plans of buildings after the first submission of such plans to the Public Works Administration of the United States Government.

We understand that the Board of Regents has submitted certain plans and other data to the Public Works Administration for the purpose of securing a PWA allotment to assist in the erection of the buildings and the completion of the project and that the above questions have arisen in the courses of the negotiations.

Chapter 162, 1939 Statutes of Nevada, provides for the erection and equipment of an Engineering Building at the University of Nevada. Section 4 of such chapter empowers the Board of Regents of the University to erect the building and to equip the same. Such section provides that the cost of said building, together with the heating, lighting, water and sewer connections, and all equipment thereof shall not exceed the sum of \$175,000. Chapter 163, 1939 Statutes of Nevada, provides for the erection and equipment of a Gymnasium of Regents to erect and equip such gymnasium in the same language as section 4 of chapter 162, except that the cost thereof shall not exceed the sum of \$200,000.

In 1935 the same identical question with respect to the costs of a public building to the State was presented to the Attorney-General in connection with the Laboratory Building for the State Highway Department and the Supreme Court and Library Building. The Acts providing for such buildings contained the same language as is found in section 4 of each of the 1939 Acts. The Attorney-General has ruled that such language meant the total cost to the State alone and had nothing to do whatsoever with additional money furnished by the Federal Government. In brief, that such language provided a measuring stick as to the cost to the State alone and was not a limitation on the total cost of the building whatsoever. The above ruling of the Attorney-General is contained in Opinion No. 182, Report of the Attorney General, 1934-1936. We adopt such opinion as the opinion in answer to your first inquiry and hold that the limitation as to cost of each of the buildings in question here is a limitation of cost as to the State alone, and that the Board of Regents may legally exceed such costs provided the excess cost is not chargeable to the State.

Answering your second inquiry. As pointed out above, section 4 of each of the 1939 Acts empowers and directs the Board of Regents of the University to erect the buildings and equip them. This is undoubtedly a broad power vested by a legislative Act in the Board of Regents. The Act leaves it to the Board of Regents, in each instance, to cause to provide the plans therefor. Certainly, if the Board of Regents are empowered in the first instance to provide the plans, such board has the power to change them thereafter. Your inquiry is answered in the affirmative.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

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

A-32. Referendum on County Law.

Petition for such referendum vote, in county on law pertaining to that particular county, does not stay or suspend operation of such law.

CARSON CITY, August 3, 1939.

MR. L.R. McINTIRE, *County Treasurer, Austin, Nevada.*

DEAR MR. McINTIRE: This will acknowledge receipt of your letter of July 29, together with copy of District Attorney Browne's opinion of this office as to whether the filing of a petition for referendum suspends the operation of the statute in question.

It is noted from Mr. Browne's opinion that his office naturally concerned in the matter and that he feels that someone else should give an opinion. In view of Mr. Browne's statement contained in the opinion, and in view of the fact that you desire further opinion in this matter, we herewith submit our opinion concerning the question of whether the filing of a referendum petition, which petition calls for a county vote on a statute pertaining to a county or the affairs of a county, suspends the operation of a law enacted by the Legislature.

We cannot concur in the opinion rendered you by Mr. Browne.

The Supreme Court of Nevada has definitely decided your very question in the case of *Ex rel. Morton v. Howard*, [49 Nev. 405](#). In this case, the court held that in the absence of a provision in the Constitution. This particular case concerned a county referendum and arose in Churchill County. The decision of our Supreme Court in this particular case is conclusive, and our opinion is, following the decision of the Supreme Court in the above case, that chapter 14, Statutes of 1939, repealing the Act of the 1937 Legislature authorizing the District Attorney of Lander County to employ a stenographer, stands repealed from and after the first day of July 1939, and that the filing of a petition for a referendum vote on this particular repealing statute does not suspend the effect of such statute.

In view of the fact that the statute authorizing the District Attorney of Lander County to employ a stenographer stands repealed, it follows there is no statutory authority for him to now employ a stenographer, consequently, you have no authority or power to issue a warrant for the payment of such stenographer's salary after the effective date of said chapter 14, Statutes of 1939.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General.*

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

Attention: HON. HOWARD E. BROWNE, *District Attorney, Austin, Nevada.*

SYLLABUS

284. Unemployment Compensation Law.

Federal Social Security Board has no right to control or direct employment of personnel of the Unemployment Compensation Division, such board by reason of control over administrative funds may control employment of personnel of the State Employment Service Division. State law does not permit the transfer of personnel from Unemployment Compensation Division to Employment Service Division except upon authorization of the Labor Commissioner. Social Security Board has no power to eliminate positions, designate duties, or fix salaries of personnel of Unemployment Compensation Division, but such board by reason of its control of funds may dictate State policy in the State Employment Service Division.

INQUIRY

CARSON CITY, August 14, 1939.

1. Whether under our law the Social Security Board has any right to direct the activities of either the Director of the Employment Division or the Director of the Unemployment Compensation Division in the hiring of personnel.
2. Does the State unemployment compensation law permit the transfer of several units of personnel of the Unemployment Compensation Division to the Employment Division, all of which would be under the supervision and control of the Labor Commissioner.
3. Does the Social Security Board have any legal authority to eliminate positions or fix certain duties for positions in either the Employment Division or the Compensation Division.

OPINION

Answering Query No. 1.

We think that under the unemployment compensation law of this State neither the Social Security Board nor any other Federal Bureau or officer has any right to direct the activities of the Director of the State Unemployment Compensation Division in the hiring of personnel. The Social Security Board and its officers and departments, in the administration of the Federal Social Security Act with respect to unemployment compensation are bound by the provisions of such Act. It is clear that Congress intended that State officers charged with the duty of administering State unemployment compensation laws were not to be interfered with when administering State laws that met the qualifications set forth in the Federal Act particularly with respect to the selection and employment of the necessary personnel, even if it could be said Congress possessed such power. Title IX, sec 903; title III, sec. 513, Social Security Act. the Nevada unemployment compensation law meets the requirements Congress provided in the Social Security Act with respect to State legislation on unemployment and compensation. Such requirements are contained in title IF, sec. 903, and title III, sec. 513, Federal Social Security Act. The language contained in section (a)1 of said section 513, dealing with the certification of administrative funds to the State, is significant with respect to the employment of personnel. We quote:

(a). The board (social security board) shall make no certification for payment to any state unless it finds that the law of such state, approved by the board under title IX, includes provisions for

(a) Such methods of administration (*other than those relating to selection, tenure of office, and compensation of personnel*) as are found by the board to be reasonably calculated to insure full payment of unemployment compensation when due. (Italics ours.)

The Nevada unemployment compensation law of 1937 and the amendments thereto of 1939 have been approved by the Social Security Board. such law specifically provides who shall employ the required personnel. Such law contains no provision permitting any other person or board, state or Federal, to employ the personnel or even to direct the activities of the person in the employment of personnel to direct the activities of the person in the employment of personnel so authorized by the Nevada law, save and except such personnel must be employed from merit rating or eligible lists furnished by the merit examination board provided for in the Nevada law. And further, the underscored portion of the above quoted Federal law, in our opinion, clearly

evidences the intent of the Congress that as to the *selection, tenure of office and the compensation of the personnel of State Unemployment Compensation Divisions*, Federal officers, bureaus and departments were and are to be governed by the provisions of State laws on the subject. your inquiry with respect to employment of the personnel of the Unemployment Compensation Division is answered in the negative.

With respect to the right of the Social Security Board to direct the activities of the Director of the State Employment Service, in the employment of personnel, we assume that the inquiry is made with respect to such activities as may be had in administering the Federal Employment Service under the Federal Act.

Section 12(a) of the Nevada unemployment compensation law, as amended at 1939 Statutes, page 136, provides for the acceptance by the State of the Federal Employment Service Act, commonly known as the Wagner-Peyser Act, and it is also provided that the State will observe and comply with the requirements of such Federal Act. The Labor Commissioner as the agency of the of the State for the purposes of the Federal Act, is directed to appoint the Director of the State Employment Service and the officers and the employees thereof "in accordance with regulations prescribed by the Director the United States Employment Service." Sec. 12(a) supra.

Thus the Legislature has specifically subjected the employment of personnel of the employment service to Federal regulations. It is provided in the Federal Act that the State shall submit detailed plans of its proposed mode of operation to the Federal Director, which plans must be approved by such Director. such plans include budgets must also be approved by the Federal Director before any Federal money can be certified to the State for use in the employment service. Sections 7 and 8, Federal Act. It further appears that before funds for the administration of the Federal Act by the State agency, which are derived from grants made under title III of the Social Security Act, are certified by the Social Security Board for such purpose, that the Social Security Board must approve the budgets submitted by the State. Fiscal Rules and Regulations, U.S. Dept. of Labor, Employment Service, year 1937, page 4. It is further provided in section 9 of the Federal Act that it shall be the duty of the Director of the United States Employment Service to ascertain whether the system of State employment offices is conducted in accordance with the Federal rules and regulations and the standards of efficiency prescribed by such Director, and that the Director may revoke any existing certificates or withhold any further certificates (certifying money to the State) "whenever he shall determine, as to any State, that the cooperating agency has not properly expended the moneys paid to it *or the moneys herein required to be appropriated by such State*, in accordance with plans approved under this Act." (Italics ours.) The section further provides, however, that the Director, before revoking any certificate, must give notice in writing to the State specifically setting forth wherein the State has failed to comply with the approved plans. Upon revocation being had the State is given the right to appeal to the Secretary of Labor. The State having accepted the Federal Act and the burdens thereof, and the Federal Director and the Social Security Board under the Federal legislation being given practically absolute control over the funds used in the administration of the Federal Employment Service, Act, even though such administration is carried on by a State agency, we are impelled to answer your inquiry on this question in the affirmative insofar as the same concerns the personnel that may be employed in the Employment Service Division.

Answering Query No. 2.

Section 10(a) of the Nevada unemployment compensation law provides: "Said Unemployment Compensation Division and the Nevada State Employment Service Division

shall be responsible for the discharge of its distinctive functions. *Each division shall be a separate administrative unit with respect to personnel, budget, and duties, except insofar as the commissioner may find that such separation is impracticable.*" (Italics ours.) The Nevada State Employment Service Division under the Labor Commissioner is made the State agency to administer the Federal Employment Service. Sec. 12(a) Nevada Unemployment Compensation Act. It is clear that the Legislature intended that no transfer of personnel of the Unemployment Compensation Division to the Employment Division was to be made, except in such cases as the *Labor Commissioner* shall find to be practicable. Unless the Labor Commissioner authorizes the transfer of such personnel, then such transfer cannot be made.

Answering Query No. 3.

With respect to the authority of the Social Security Board to eliminate positions, fix salaries, or designate certain duties of the personnel of the Unemployment Compensation Division, we think such authority does not exist. It is not granted in the State law, and, as shown hereinbefore in the in the answer to Query No. 1, Congress has certainly not granted such authority to the Social Security Board. To the contrary, Congress, we submit, has expressly denied such authority to such board in the exception contained in sub-section (a)1 of section 513, title III, Social Security Act, hereinbefore quoted, reading "other than those relating to selection, tenure of office, and compensation of personnel * * *." This portion of Query No. 3 is answered in the negative.

With respect to the personnel of the Employment Division, however, we think, as shown hereinbefore, that the reason of the absolute financial control vested in the Director of the United States Employment Service and in the Social Security Board, such Director and such Board could dictate the policy to be pursued by the State in the number of positions and the salaries to be paid such personnel, and also the duties to be performed insofar as they pertain to the administration of the Federal Act. However, such power, in our opinion, does not extend so far as to permit the Federal Director or Social Security Board dictating what salary or duties shall be performed by the Labor Commissioner acting as Commissioner of the Employment Service.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General.*

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

HONORABLE E.P. CARVILLE, *Governor of Nevada, Executive Chamber, State Capitol, Carson City, Nevada.*

SYLLABUS

285. See Opinion No. 284.

INQUIRY

CARSON CITY, August 21, 1939.

Does the Nevada unemployment compensation law permit the transfer of certain employees from the Nevada Unemployment Compensation Division, where said employees are now under direct supervision of the Director, to an entirely new unit where they would be under the complete supervisory control of the State Labor Commissioner, charged with administering the Nevada State Employment Service, and yet for all other purposes said employees would remain employees of the Nevada Unemployment Compensation Division over which the Division Director would exercise no control whatsoever?

OPINION

Inquiry number 2 in our Opinion No. 284 related to the same question as propounded above except that it is directed to the personnel of the Unemployment Compensation Division. In answering the question, we pointed out that the Nevada unemployment compensation law specifically provides that “each division shall be a separate administrative unit with respect to personnel, budget and duties insofar as the commissioner may find that such separation is impracticable.” The Nevada law certainly means that the Unemployment Compensation Division and the Employment Division shall be separate and distinct departments except that the Labor Commissioner, in his discretion, may combine the personnel and the duties thereof if he should find that it is impracticable to keep them separated.

If the Labor Commissioner is directed, under the law, to exercise full authority over the employment of the personnel of the Employment Division, which he undoubtedly is, and the law specifically provides that each Division shall be a separate and distinct department, with the power vested in the Director of the Unemployment Compensation Division according to the provisions of the law relating to that Division, then it is clear that unless the Labor Commissioner, in the exercise of his discretion, deems it advisable to transfer individuals from the Unemployment Compensation Division to the Employment Division for the purpose of performing certain duties, that such power does not exist in any other board or officer to cause such a transfer. The lesser power over the individual is certainly included in the greater power vested in the Labor Commissioner to find and decide what separation of the personnel of the respective divisions is impracticable.

Your inquiry is answered in the negative.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

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

HON. E.P. CARVILLE, *Governor, Carson City, Nevada*.

SYLLABUS

286. Old-Age Assistance—State Welfare Board—Power to Make Rules.

Welfare Board is authorized by law to make rules and regulations only when consistent with law.

Public records must be kept open to inspection by the interested public or parties concerned, but necessarily to mere curiosity seekers.

Names of recipients and amount paid each of them are not to be published at public expense.

SYLLABUS

CARSON CITY, August 30, 1939.

One of the counties of this State, through its District Attorney, objects to Rule XIV of the Nevada State Welfare Department which reads as follows:

That all materials and records pertaining to applicants for old-age assistance shall be regarded as confidential, and *open to inspection only to authorized representatives of the Federal, State, and county governments*, and for use in our proceedings only upon proper subpoena. (Italics ours.)

We are informed that the above-quoted Rule XIV was adopted by Nevada State Welfare Department because of the fact that its records relating to old-age assistance contain considerable information which is both important and also of a very personal nature, and relates solely to the personal affairs of the applicants and recipients of old-age assistance, and which could not concern the public or the public welfare, or be of any interest to the general public, except that small portion thereof who desire to pry into the private affairs of other people. It was, no doubt, the thought of the members of the State Welfare Department that, since it was important that they have all the information, personal to the applicant and recipient, which might shed any light at all upon their personal and financial affairs, and that such applicant and recipient would not feel free to reveal the same if their personal affairs were to be made public or available to the general public, it was in the interest of economy and for the welfare of the public, including the Federal, State, and county governments that such information and records to be considered and treated as confidential. It was chiefly with this thought and purpose in mind that Nevada State Welfare Department adopted the above-quoted Rule XIV. Certainly, it was a humanitarian rule and was prompted by humanitarian impulses and consideration for these unfortunate people, for the very simple reason that even these aged needy persons have some pride, and certainly would not desire their private and personal affairs to be subjected to the scrutiny of unfriendly and inconsiderate persons who could have no particular interest in the information contained in the records except that prompted by spite, malice, or a desire to add to their store of gossip.

It will be noted that that portion of the above-quoted Rule XIV which is in italics does provide that these records shall be open to inspection by representatives of the Federal, State, and county governments. Certainly it will be recognized that they are the people who are charged with the duty of seeing that the moneys provided by the Federal, State, and county governments is properly expended, and to further see that all those who are entitled to old-age assistance receive such assistance in the amounts, respectively, which are necessary for their proper support; and that no one else receives such assistance. The rule expressly provides that these representatives and the courts may inspect such records. They are the people charged with the duty of guarding the public interests. It was the thought and purpose of the State Welfare Department in the adoption of said Rule XIV to guard and protect these unfortunate aged needy persons from those who are motivated solely by curiosity, and at the same time, to leave these records open to inspection by these governmental agents and the courts who are charged with the duty of protecting the public funds as well as the interests of these unfortunate persons.

So much for the good policy of the rule. From the standpoint of policy, the rule is certainly a wholesome one. The office of Attorney-General has nothing, however, to do with the question of policy. That is a matter, within the law, for the State Welfare Department. The Attorney-General is limited to the letter and spirit of the law. The law on the question is an entirely different matter, and that is what the Attorney-General must deal with, not with policy. In fact, the State Welfare Department cannot legally adopt policies or make rules and regulations which are contrary to the law.

The Supervisor of the Division of Old-Age Assistance presents this office the following:

INQUIRY

Has the State Welfare Department the lawful right, power, and authority, under the law, to make and adopt the above-quoted Rule XIV, and, if so, is it mandatory upon the counties of this State to abide by it?

OPINION

Generally, the State Welfare Department has the power and authority to make rules and regulations, but only such as are consistent with and are not in violation of the laws, of the State or the laws of the United States. This power and authority is expressly conferred by the old-age assistant law of this State, chapter 67, 1937 Statutes of Nevada, section 5 paragraph (b), in the following language:

That it is the duty of the county boards to cooperate with the state department in the administration of the provisions of this act in the respective counties, subject to the rules and regulations prescribed by the state department pursuant to the provisions of this act.

No officer, board, commission or department of either the State or of the United States has any lawful power, however, to make any rule or regulation which violates or is inconsistent with any law.

The trouble with said Rule XIV is that, if the materials and records referred to in that rule be considered State or county records, it violates Nevada Compiled Laws 1929, section 5620, which reads as follows:

All books and records of the state and county officers of this state shall be open at all times during office hours to inspection by any person, and the same may be fully copied or an abstract or memoranda prepared therefrom, and any copies, abstracts or memoranda taken therefrom may be utilized to supply the general public with copies, abstracts or memoranda of said records or in any other way in which the same may be used to the advantage of the owner thereof or of the general public.

The above-quoted section 5620 has its limitations as to the use to which such records may be made. The language expressly limits the use to which the books and records and the material copied therefrom may be devoted by saying that it is to supply the “general public” with the same, or in some other way “to the advantage of the owner thereof or of the general public.” In other words, the language used indicates at least that it is not mandatory on the custodian of such books and records to permit people to “nose around over them” out of mere curiosity, or that they are open to mere curiosity seekers. The general public, however, that is interested in knowing the contents of such materials and records must be permitted the right to inspect them and copy excerpts from them when prompted by proper motives, but not otherwise. *State v. Grimes*, [29 Nev. 50](#), 124 Am. St. Rep. 883, 5 L.R.A. (N.S.) 545, 84 Pac. 1061.

Generally, the laws of the United States make the public documents of the various officers, commissions, and departments thereof and the contents of such public records open to reasonable use and inspection during office hours or at other reasonable times, especially for use as evidence. If these materials and records be records of the United States, then they are also open to reasonable inspection and use, with the above-mentioned limitations, but even if they are public records of the United States, they would also be open to reasonable public inspection and use. If they be combined public records of the United States, the State and the counties of the State, they would still be subject to reasonable public inspection and use.

There is nothing in said Old-Age Assistance Act, or in any other law applicable to the subject which makes such materials and records, or the information contained therein, confidential. Other laws of the State make the records of the County Clerk and of other State and county officers public records and open to inspection, except certain court records which may be sealed

and not disclosed, but even such records may not be sealed except in pursuance of duly made orders of the court.

So, while the State Welfare Department may make rules and regulations which are consistent with the law, it has no authority to make confidential a public record such as the information, materials, and records in question are, although such a rule might be very wholesome. We are all bound, however, by the law, and much as we might like to have the materials and records in question considered and treated as confidential, the law does not so provide.

Certainly, however, there is no law requiring that the information and materials contained in such records may be published in newspapers or otherwise. Neither is there any authorization in the law for the publishing of names of the applicants or recipients of old-age assistance. In fact, these are not, in any sense of the word, claims against the county, and neither the names of the applicants or recipients nor any of the other materials and information contained in such records could legally be published at county expense or paid for by the county or out of county funds.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

HERBERT H. CLARK, *Supervisor, Division Old-Age Assistance*.

A-33. Grazing License Fees, Disbursement of, and Procedure For.

Subject to State and Federal cooperative agreements under supervision of Federal grazing officers; and, pursuant to cooperative agreements advances may be made legally for materials, labor, etc., pursuant to resolution or resolutions providing for same.

CARSON CITY, August 31, 1939.

HONORABLE C.B. TAPSCOTT, *District Attorney, Elko, Nevada*.

DEAR MR. TAPSCOTT: This will acknowledge receipt of your letter of August 25, 1939, enclosing your opinion and asking for our interpretation of chapter 67 Statutes of Nevada 1939.

In our opinion, you have correctly interpreted chapter 67 of the 1939 Nevada Statutes.

Sections 3,5, and 6 of this Act govern the disbursement of moneys from the funds derived from grazing fees and from the funds derived from grazing licenses. We are given to understand that the State of Nevada has no funds derived from grazing licenses, and hence we will be concerned only with the disbursement of grazing fees.

Section 3, in part, provides as follows:

Each such board shall record its decisions as to disposition of such fund in the form of a resolution ore resolutions properly adopted by such board, certified to as such by the chairman and secretary of such board.

Section 5 of this Act, which directly outlines the mode of disbursement, provides as follows:

It shall be the duty of the board of county commissioners of each county concerned, *upon receipt of a resolution or resolutions from a state grazing board as provided for in this act*, and likewise the duty of each and every other officer of the county concerned, without unnecessary delay, to take such steps and perform such acts as necessary to disburse from the fund at disposal of the state grazing board concerned, *in accordance with the provisions of such resolutions and this act*, and the procedure followed in disbursement of county funds generally. (Italics ours.)

Section 6 deals with cooperative agreement entered into between the State Grazing Boards and Federal officials for the construction and maintenance of range improvements.

Section 5 sets out a definite mode of procedure to be followed in the disbursement of grazing fee funds. Under this section, it is mandatory that the State Grazing Boards furnished the Boards of County Commissioners with a resolution or resolutions authorizing "the disposition of funds."

Thereafter, the County Commissioners shall follow the same procedure provided for the disbursement of county funds generally. This provision, though not detailed, should cause no great concern. The State Grazing Boards at their regular meetings should, by resolution, allow all legal and just claims which are proper charges against the boards. Thereafter, each claimant should fill in, sign, and notarize a regular county claim in the same manner as other county claims are prepared. This claim, together with the resolution of the State Grazing Boards, should be presented to the County Commissioners at their regular monthly meetings. After the commissioners have approved this claim and the auditor allowed it, the Treasurer should draw a regular county check in favor of the claimant. The work of both the State Grazing Boards and the Boards of County Commissioners might be simplified by preparing one resolution authorizing the payment of all claims which are legal charges against the State Grazing Boards.

Your letter mentions the procedure followed in the State of Idaho, but in the absence of similar statutes in this State we are, of course, powerless to interpret the law except as it is written.

Section 6, as noted above, provides for the execution of cooperative agreements for the construction and maintenance of range improvements between the State Grazing Boards and Federal officials in charge of grazing districts.

In securing funds from the county under section 6, in our opinion it is necessary that a resolution authorizing the State Grazing Boards to enter into cooperative agreements with the Federal Government accompany each requisition for funds. It would also be well to accompany such resolution and requisition with a true copy of the proposed cooperative agreement. Thus supported, the claim of the grazing boards for contributions from the range improvement fund for construction and maintenance purposes is in proper shape for approval by the County Commissioners.

The general rule is that county and State moneys cannot be expended until work or material for which they are allowed has been performed or delivered. In our opinion, section 6 clearly indicates a more liberal rule concerning the disposition of grazing fee funds for range improvement. Section 6, in part, authorizes the State Grazing Boards "to enter into such cooperative agreements, and to take such steps as may be necessary under the provisions of this Act *to contribute* from their respective funds to such projects under the terms of such cooperative agreements." (Italics ours.) The Act also provides that the direct management and supervision of such projects shall be exercised by the Federal officials concerned. These sections to our minds clearly indicate that advances of money were contemplated before the actual performance of labor or delivery of materials, and in order to effectuate any cooperative agreement which the State Grazing Boards may enter into, we hold that the County Commissioners, upon the presentation of a requisition properly supported by certified resolutions and copies of the proposed agreements, shall allow the contribution of moneys from the Range Improvement Fund in the manner and under the terms and conditions of the agreement.

It also occurs to me that the State Grazing Boards could avoid the necessity of frequent or monthly meetings, called simply to allow administrative expenses, by authorizing in one

resolution the payment of fixed monthly expenses, such as secretary's salary, secretary's supplies, etc., which resolution would allow such payments to be made over a longer fixed period of time.

Sincerely yours,
ALAN BIBLE, *Attorney-General*.

A-34. Emergency Loans to Washoe County General Hospital.

Emergency loans to Washoe County General Hospital are authorized under the law when the facts necessary to constitute an emergency exist and when the Hospital Board has complied with the procedure outlined in the "Fiscal Management Act," as amended, necessary to obtain such emergency loans; provided repayment thereof does not require a tax levy in excess of the constitutional and statutory limitation.

CARSON CITY, August 31, 1939.

HONORABLE E.P. CARVILLE, *Governor of the State of Nevada, and Chairman of the Nevada State Board of Finance, Carson City, Nevada.*

MY DEAR GOVERNOR: Pursuant to your oral telephone request of a few days ago for the official opinion of this office as to whether the Board of Hospital Trustees of Washoe County General Hospital is legally authorized and empowered, under the present laws of this State, to apply for, negotiate, and obtain a so-called Emergency Loan for its use in providing for and maintaining said hospital, I am furnishing you our views herein in the form of a letter rather than by a more formal opinion. In that telephone conversation, you referred to the views of Hon. Ernest S. Brown, District Attorney, of Washoe County, Nevada, and Hon. Charles A. Cantwell, an attorney for the First National Bank of Nevada, Reno, Nevada, as communicated to you, and stated that they would be glad to discuss this matter with me, or communicate with me, with reference to it. In view of the fact that I was to be in Reno within a few days to discuss another matter of official business with Mr. Brown, I arranged to take this matter up with him at that time. Mr. Brown, however, informed me of his views and those of Mr. Cantwell on the subject, and I have given the matter involved in your inquiry considerable consideration since you so asked me for the official opinion of this office on the inquiry so made of me by you, particularly this morning. I am, therefore, hastening to furnish you this somewhat informal official opinion by letter, instead of taking more time to prepare the more formal opinion on the question involved. We reserve the right to prepare and file a more formal opinion later. In the meantime, however, I request that this letter be considered and used as the official opinion of this office on the inquiry so made.

It should be kept in mind that this opinion is not asked on the point as to whether the situation as it exists with reference to Washoe County General Hospital actually constitutes an emergency. It is limited solely to the question so asked of me, which, as I understand it is as follows:

Is the Board of Hospital Trustees of the Washoe County General Hospital such a governing board (Nevada Compiled Laws 1929, section 3020, as amended by chapter 44, 1935 Statutes of Nevada, page 73) as is authorized and empowered under the present laws of the State of Nevada, as amended by chapter 105, 1937 Statutes of Nevada, page 195, to apply for, negotiate, and obtain a so-called

emergency loan for the use of that board in providing for and maintaining said hospital?

The law under which the Washoe County General Hospital was established was approved March 27, 1929 (Nevada Compiled Laws 1929, sections 2225-2242, both inclusive), as amended by 1931 Statutes of Nevada, pages 194, 195, and 196. that law provides that the first Board of Hospital Trustees shall be appointed by the Board of County Commissioners of Washoe County, and the first Board was so appointed. The law provides, thereafter, that the members of the hospital board shall be elected as other county officers are elected. The entire management and control of Washoe County General Hospital is placed by said law, as amended, exclusively under said, as amended, exclusively under said Board of Hospital Trustees, and it is vested with very broad and exclusive powers by that law. In fact, it seems that about the only thing connected with said hospital which is left to the Board of County Commissioners of Washoe County, is the levy of the tax for the establishment, support and maintenance of that institution, as provided for in the last paragraph of section 2225 and in section 2243.01 (1931 Statutes of Nevada, page 96), Nevada Compiled Laws 1929, and to exercise its discretion as to the amount of such tax levy as provided for in said section 2243.01. The entire "fiscal management" of the affairs of that institution is left by the law to said Board of Hospital Trustees as provided for in Nevada Compiled Laws 1929, section 2228, as amended by 1937 Statutes of Nevada, page 195. It is provided, among other things, as follows:

They (The Board of Hospital Trustees) shall have the exclusive control of the expenditures of all moneys collected to the credit of the hospital fund, and of the purchase of the site or sites, the purchase or construction of any hospital building or buildings, and of the supervision, care, and custody of the grounds, rooms or buildings purchased, constructed, leased or set apart for that purpose; *provided*, that all moneys received for such hospital shall be deposited in the treasury of the county in which said hospital is situated to the credit of the hospital fund, and paid out only upon *warrants* drawn by the board of hospital trustees of said county or counties upon properly authenticated vouchers of the hospital board, after approval of same by the county auditor.

From the above quotation, it will be seen that the hospital board has exclusive control over the expenditures of all moneys for the use of the hospital; that said moneys are deposited in the county treasury in the hospital fund; and that all hospital expenses are paid out on "warrants" drawn by the Board of Hospital Trustees alone, after the approval thereof by the County Auditor alone and without the approval or consent of the Board of County Commissioners. Said section also provides that the hospital board shall appoint all employees of the hospital, without the necessity of the concurrence or approval of the Board of County Commissioners, and shall make up its own budget as other governmental agencies are required to do so under the law of this State. The exact language chiefly relied upon by the hospital board and its legal advisers for its authority to apply for, negotiate, and obtain such emergency loans is also contained in said section 2228, and is as follows, the italicized portion of which is the language so relied upon:

and shall file with said board of county commissioners during the first week of January in each year a *budget* as required of all governmental agencies of this state by an act entitled "An act regulating the fiscal management of counties, cities, towns, districts, and other governmental agencies," approved March 22, 1917, as amended, and in the *fiscal management of the affairs of said public*

hospital and all other institutions under the supervision, government and control of the board of hospital trustees shall be governed by the provisions of said act as amended.

It is the views of said hospital board and its advisors that, by the above reference to the so-called "Fiscal Management Act" (Nevada Compiled Laws 1929, sections 3010-3025, both inclusive, approved March 22, 1917, as thereafter amended), which requires the making of budgets by the State, counties, cities, municipalities and certain other enumerated governmental and educational agencies, and authorizes them to apply for, negotiate, and obtain emergency loans, and particularly by the use of above italicized and quoted language, the hospital board is in the same position and category with reference to emergency loans as are the other political subdivisions and governmental and educational agencies as are enumerated in said "Fiscal Management Act," particularly in Nevada Compiled Laws 1929, section 3020, as amended by 1935 Statutes of Nevada, page 73. This language so chiefly relied upon is as follows:

and is the *fiscal management* of the affairs of said public hospital and all other institutions under the supervised government and control of the board of hospital trustees (the Hospital Board), shall be governed by the provisions of said act (Fiscal Management Act), as amended.

This method of amendment of the "Fiscal Management Act," by reference so as to make the provisions of said "Fiscal Management Act" relating to emergency loans apply to this hospital board is certainly a unique and round-about way of accomplishing that purpose. It is just about as direct as it would be to go from the middle finger of the hand by way of the thumb in order to get to the little finger of that hand. It would have been much clearer, and more definite, certain, and satisfactory if said section 3020 had been amended so as to include the Boards of Hospital Trustees of such public hospitals among the political subdivisions and governmental agencies enumerated in that section. Certainly, the "Fiscal Management Act," which includes all the authority for the obtaining of emergency loans by all the other political, governmental, and educational agencies of the State, is the place where a person would naturally look to ascertain whether this hospital board has the authority to apply for, negotiate, and obtain emergency loans for its lawful purposes. However, we are not dealing with the law as it should be, but as it actually exists.

After a careful consideration of the question in all its aspects, it is the opinion of this office that the Board of Trustees of the Washoe County General Hospital is authorized by the said "Fiscal Management Act" (Nevada Compiled Laws 1929, section 3020, as amended by 1935 Statutes of Nevada, page 73, and as further amended by reference and implication by said section 2228, Nevada Compiled Laws 1929, as amended by chapter 105, 1937 Statutes of Nevada, page 195) to apply for, negotiate, and obtain emergency loans; *provided*, the "great necessity or emergency" mentioned in said section 3020, as so amended, exists; *and provided further*, that the repayment of said emergency loan shall not raise the tax levy above the levy specified in said section 2243.01 (1937 Statutes of Nevada, page 167); *and provided further*, that said hospital board has complied with the procedure outlined in said "Fiscal Management Act," as so amended, necessary to obtain such an emergency loan.

Certainly, no one can question the proposition that the expression "fiscal management" as used in said section 228 as so amended by 1937 Statutes of Nevada, page 195, includes the application for, the negotiation of, and the obtaining of emergency loans as provided for in the "Fiscal Management Act" (Nevada Compiled Laws 1929, section 3020). Even the title of the

said "Fiscal Management Act" conclusively shows that the obtaining of emergency loans comes within the meaning of "fiscal management." The title of that Act is as follows: "An Act regulating the fiscal management of counties, cities, towns, school districts, and *other governmental agencies*." It is in this Act that we find the sole and only authority for obtaining emergency loans by these or any other governmental agencies. If the expression "fiscal management" as used in section 2228 as so amended, be not broad enough to include the obtaining of emergency loans, then the title of said "Fiscal Management Act" is not broad enough to cover that portion of the body of that Act which authorizes the obtaining of emergency loans, for that is the only expression in the title of that Act which could possibly, in any way, relate to the emergency loans provided for in that Act. If that expression "fiscal management" of the affairs of said hospital, as used in said section 2228, be not broad enough to cover the obtaining of the emergency loans as provided for in said "Fiscal Management Act," then there is no authority at all for obtaining emergency loans by any political subdivision or other governmental or educational agencies of the State, for that is the only law even attempting to provide for the obtaining of emergency loans by such subdivisions and agencies, and, if that expression be not broad enough to cover the obtaining of emergency loans then the emergency loan provisions of the "Fiscal Management Act" are unconstitutional, for the very simple reason that the title of the Act is not broad enough to cover the provisions of the body of the Act, and such provisions are not within the title of the Act. In other words, to hold the expression "fiscal management" as used in said section 2228 is not broad enough to authorize the obtaining of emergency loans by the Board of Hospital Trustees would destroy all the authority which exists in the law for obtaining of emergency loans by any of the political subdivisions and governmental agencies mentioned in said section 3020, or elsewhere in said "Fiscal Management Act" if maintained. No one desires such situation. We believe the Act is constitutional and legally authorizes emergency loans.

It will be noted from further reading of said section 2228, as so amended, that, among the other broad powers of said hospital board, it is expressly authorized to "carry out the spirit and intent of this Act (County Hospital Act) in establishing and maintaining a public hospital." It will be noted also that the governing board of the political subdivisions and other governmental and educational agencies political subdivisions and other governmental and educational agencies authorized to obtain emergency loans in said "Fiscal Management Act" are also authorized, and it is made its mandatory duty, to "levy" (at least certify), a tax to repay such emergency loans.

Certainly, it must be conceded that to allow such county hospital boards to obtain such emergency loans without first securing the consent and approval of the Board of County Commissioners of the particular county, and to provide for the repayment thereof, could not work any greater handicap upon such Boards of County Commissioners than the provisions of said section 30 which authorizes the governing boards of many political subdivisions and other governmental and educational agencies therein to obtain such emergency loans without the consent and approval of their respective Boards of County Commissioners.

For the foregoing reasons, it is the opinion of this office that the Board of Hospital Trustees of the Washoe County General Hospital is amply authorized and empowered by law to make the emergency loan applied for, if the "great necessity or emergency" mentioned in said section 3020, as so amended, exists, and if the repayment of the emergency loan would not raise the tax levy above the levy specified in said section 2243.01, and if the procedure outlined in said "Fiscal Management Act" has been complied with.

Respectfully submitted,
GRAY MASHBURN, *Attorney-General*.

NOTE—The Insurance Commissioner first made a request for the official opinion of this office, which was given in our letter to him of September 8, 1939, and later, *i.e.*, October 25, 1939, asked us to reconsider our said letter opinion of September 8, 1939. Since both of these letters relate to the same subject matter and arrive at the same conclusion they should be considered together and as constitution one official opinion.

A-35. Mutual Insurance of Publicly Owned Property.

Mutual insurance of publicly owned property permitted by law where policy expressly provides that no assessment shall ever be levied against the insured other than the regular premium on the policy, and where company has filed its schedule of premium rates in your office and otherwise provided for in insurance law.

CARSON CITY, September 8, 1939.

HONORABLE HENRY C. SCHMIDT, *State Controller and Ex Officio Insurance Commissioner, Carson City, Nevada.*

DEAR MR. SCHMIDT: Your inquiry of recent date whether the State, counties, or school districts may insure publicly owned property with mutual fire insurance companies.

We beg to advise that it is the opinion of this office that where the policy of insurance written by a mutual fire insurance company, authorized to write insurance in this State, contains an express provision that no assessment shall ever be levied against the insured in addition to and over and above the premium fixed in the contract of insurance by the company, and such company has filed its schedule of premium rates in your office, that publicly owned property of the State, county, and school district may be legally insured with such a mutual fire insurance company.

Respectfully submitted,
GRAY MASHBURN, *Attorney-General*.
By W.T. MATHEWS, *Deputy Attorney-General*.

CARSON CITY, November 2, 1939.

HON. HENRY C. SCHMIDT, *State Controller and Ex Officio Insurance Commissioner, Carson City, Nevada.*

DEAR MR. SCHMIDT: This will acknowledge receipt of your letter of October 25 relative to our letter of September 8 giving an opinion that publicly owned property might be legally insured in mutual fire insurance companies. It is noted that you would appreciate our office giving the subject further thought and study. Also noted that you know there are opinions on both sides of the question.

We beg to advise that we have given the matter some further thought, and after so doing, we are of the opinion that our opinion of September 8 represents the views of this office on the particular matter. We have examined the authorities are of considerable age and no doubt fitted the situation as it then existed. Our opinion, based primarily upon the proposition that the most of the present day mutual fire insurance companies operate nearly upon the same lines as old-line

companies and that their policies provide for fixed premiums and, in addition thereto, such companies usually have a reserve for the purpose of taking care of emergencies. to our minds, this creates an entirely different situation from the older mutual companies and so operates as to take such companies out of the proposition that the State, county, or school district insuring therein is or would be lending the credit of the State to or for the benefit of the mutual company.

For the foregoing reasons we are inclined to the view that our former opinion is correct insofar as it relates to mutual fire insurance companies which set up in their policies an absolute fixed premium consideration and keeps on file in your office a schedule of its premium rates, particularly so when such companies have created a reserve fund.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

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

A-36. Unemployment Compensation Division Administrative Funds.

Administrative funds of Unemployment Compensation Division deposited in bank by State Treasurer are legally secured by collateral security (bonds, etc.) required by law to secure State Treasurer's deposits; and Commissioner (Director) of Unemployment Compensation Division is authorized to instruct State Treasurer as to conditions under which such funds may be considered as belonging to the State.

CARSON CITY, September 19, 1939.

MR. ALBERT L. MCGINTY, *Director, Unemployment Compensation Division,* *State*
Capitol Building, Carson City, Nevada.

DEAR MR. MCGINTY: I have your letter to me of 18th instant, and, although Hon. W.T. Mathews, Deputy Attorney-General, who has been assigned by me to handle matters connected with your department, is absent from Carson City on his vacation (the only one he has had in 7 years), I am writing to give to you my personal views on the matters about which you inquire.

You enclosed with your letter to me a letter from Hon. Frank B. Gregory, Rules and Regulations Officer, of your department, attached to the inquiry made by Hon. R.E. Wagenet, Director, Social Security Board, Washington, D.C., and also enclosed therewith a "Memorandum" on Collateral Security for State Funds" prepared and submitted by Mr. Gregory. I have just read all this correspondence, and am writing to say that I am in complete accord with the views expressed in Mr. Gregory's "Inter Office Correspondence" addressed to Mr. S.A. Mackenzie, Chief Accountant, Section Collateral Security for Unemployment Compensation, as to administrative funds dated 12th instant, and as expressed in his said, "Memorandum," except that I am somewhat more positive in my views to the effect that your unemployment funds "*deposited by the State Treasurer*" in the various banks of this State may be legally secured, pursuant to the laws of this State, by the collateral security (bonds, etc.) mentioned in Nevada Compiled Laws 1929, section 7029.02; *i.e.*, chapter 165, 1937 Statutes of Nevada, section 2, page 366, quoted in the first paragraph of Mr. Gregory's "Memorandum." I am also quite positively of the opinion that even if said section 7029.02 be held not to be sufficient authority for the securing of your funds by collateral security, the Nevada State unemployment compensation law, *i.e.*, chapter 129, 1937 Statutes of Nevada, sections 9 (a), (b), and (c), pages 276, 277, as amended by chapter 109, 1939 Statutes of Nevada, section 12, pages 137, 138,

quoted from in the first paragraph beginning on page 2 of said “Memorandum” under the heading or title “Unemployment Compensation Administrative Fund,” are sufficient authority for such collateral security of said funds.

While said section 7029.02 is a part of the general Act of this Stat providing for collateral security of public funds in banks, and the first section of that Act, as amended in said chapter 165, 1937 Statutes of Nevada, page 365, expressly provides that all moneys under the control of the State Treasurer “belonging to the State” may be deposited in banks and collateral security accepted therefor, and there is no such limitation to funds “*belonging to the State*” in the second section of that chapter, which is said section 7029.02. In any event, the unemployment compensation law of this State, as quoted in Mr. Gregory’s “Memorandum,” is sufficiently broad and explicit to authorize the Commissioner (Director) of Unemployment Compensation of this State to instruct and direct the State Treasurer (the custodian of the fund involved) as to the conditions under which he is to deposit said funds, and to include in such instructions and directions the condition that such funds so deposited in banks by the State Treasurer shall be secured by the collateral security designated in the laws of this State to secure public funds.

Upon the whole, it is the opinion of this office that unemployment compensation funds in the custody of the State Treasurer of this State may legally be deposited in the banks designated in the law upon the bonds and other collateral security mentioned in said section 7029.02, and that such collateral security may be held and used to secure the funds so deposited.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

NOTE—As our letter opinion of September 25, 1939, merely supplements and adds further authorities to our letter opinion of September 23, 1939, both should be considered together and as constituting one single opinion, especially as both relate to the same matter and arrive at the same conclusion.

A-37. National Guard Armory.

State Board of Military Auditors have no legal authority to construct armories or other buildings for the National Guard, except when legislative Act expressly authorizes it to do so and makes an express appropriation of money therefor. The same rule applies to all other State officers, boards, commissions and departments. Since the Legislature gave no such authority and made no such appropriation, said State Board of Military Auditors cannot legally construct such an armory or other building for the National Guard, especially as the building contemplated would be on land which does not belong to the State or to said Board or to the National Guard.

CARSON CITY, September 23, 1939.

HONORABLE E.P. CARVILLE, *Governor, and Chairman of State Board of Military Auditors, Carson City, Nevada.*

Re: Proposed Agreement—Elko County Agricultural District IV with State Board of Military Auditors.

DEAR GOVERNOR: With reference to the above-mentioned agreement which you referred to me two or three days ago for my advise as to the form and legality thereof, I am writing to say

that I took this matter up with Jay H. White, Adjutant General of the Nevada National Guard, yesterday afternoon, and that, in my opinion, it would be in violation of the constitution and laws of this State for the State Board of Military Auditors to enter into any such agreement, inasmuch as it contemplates the construction of a building at State expense and the Legislature has not made any appropriation or enacted any law, approved by the Governor of this State, setting even the maximum which may be expended for any such purpose, or, in fact, authorizing any amount of money at all for such purpose.

While it is true that the National Guard Act makes it the duty of the State Board of Military Auditors to furnish an armory or some similar place for the use of the National Guard units, it does not appropriate or authorize the appropriation of any money at all for the purpose contemplated in the proposed agreement.

It has been field so many times by the courts and the Attorney-General's office that money cannot be expended out of the General Fund, or any other funds in the State Treasury of this State, except in pursuance of an express appropriation made by Act of the Legislature and the approval of the Governor of the State, that this question certainly is not subject to any doubt or question. May I call your attention to the following language on this point quoted from article IV, section 19 of the Nevada Constitution:

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

While there is no provision of the Constitution defining or limiting the language to be used in order to constitute an appropriation, the authorities are absolutely unanimous to the effect that there must be some language in the Act indicating definitely that a certain amount of money, or the maximum of money authorized by the Act, is set aside or earmarked for the purpose or purposes named in the appropriating Act. It is not necessary, of course, that the appropriation be made in the General Appropriation Act. It is a sufficient appropriation if the maximum to be expended is definitely set aside in any Act of the Legislature approved by the Governor. If this were not true, and the State officers, and any group of State officers, or even all of the State officers combined, could legally earmark and use money out of the State Treasury without legislative action, then the Act of the Legislature in appropriating money would be a useless gesture. It is not a question of whether the Legislature knows more about what is needed for the various State offices, boards, commissions, departments, and institutions, than do the legislators of this State; but it is simply question of what is the law and what is our system of government, as provided for in our Constitution and laws. The system of government so provided by our Constitution and laws has, on the whole, worked pretty satisfactorily. The question is: What do our constitution and laws provide in this regard, and is the proposed agreement in accordance therewith. May I also call your attention to the annotations under this article and section of the Constitution as found in Nevada Compiled Laws 1929, under section 70 thereof, and to Opinion No. 279 of this office, dated May 5, 1939, a copy of which I enclose herewith, and to the discussion of this general question to the cases cited therein, and also to Opinion No. 38 of Honorable M.A. Diskin, Attorney-General, dated April 13, 1923, and published in his Biennial Report for the years 1923 and 1924.

It is true that it is not necessary to include in the General Appropriation Act an appropriation to pay a salary which is fixed at a definite amount by law. The creation of the office, the naming of the salary therefor, and the election or appointment and qualification of the officer to hold the particular office, is a sufficient setting aside or appropriation of that amount of money from the

General Fund annually as long as the particular office remains in existence, or until it is abolished, and as long as an officer is elected or appointed to fill it and qualifies in accordance with law. In that situation, however, the law itself states the definite amount to be paid for the salary or compensation of the officer. In other instances, the maximum amount to be paid for a designated purpose is either mentioned in the Act providing for the project or the carrying out of the purpose of the Act, or the Act provides that so much of the moneys, to be raised in the manner designated in the Act, as may be needed for the carrying out of the purposes of the Act may be used for those purposes. An instance of this method of appropriation is where a tax is levied for a designated purpose, such as the ad valorem tax for the support of the university and other similar instances. This is recognized by the cases as a proper and legal manner of making an appropriation of the amount to be so raised for the purposes indicated in the Act or in the tax levied. In each of these instances, however, the yardstick or measure provided for in the Act determines the maximum amount appropriated or to be expended for the designated purpose or purposes. In other words, the Act itself in such instances provides a method of determining the maximum amount so appropriated and to be expended, and thereby makes certain the maximum amount thereof. This meets the requirements stated in the decisions of the Supreme Court of this State and courts of last resort in other States, to the effect that that is certain which may be made certain by the terms of the Act.

The most which can be said for the National Guard Act, in this connection, is that that Act makes it the duty of the State Board of Military Auditors to provide an armory or other place for the use of the National Guard units of the State. there is not the slightest authorization in the act for that board to determine the maximum amount to be used, or even any amount to be used, for the purpose or purposes mentioned. In fact, if the Act authorized that board do determine the maximum or purposes mentioned. In fact, if the Act authorized that board to determine the amount to be used therefor, and to set aside or appropriate and expend it out of the General Fund of the State, or any other fund of the State not so appropriated, then the Act itself would be unconstitutional, for our Constitution clearly definitely lodges the right, authority, and power to make appropriations in the Legislature by legislative Act approved by the Governor. In other words, it requires both the enactment by the Legislature and the approval by the Governor of the State to constitute an appropriation setting aside money for expenditure for any purpose out of the funds in the State Treasury of this State. the mere making it the duty of the State Board of Military Auditors to provide these facilities for National Guard units of the State, does not constitute an appropriation. It was the duty of the Legislature to provide the means by which your board could perform this duty, by appropriating (setting aside) certain moneys to be used for that purpose by Act of the Legislature approved by the governor designating at least the maximum so set aside and available for expenditure for that purpose. This the Legislature did not do. The proposed agreement would, therefore, be illegal and beyond the authority of your board, inasmuch as it contemplates the expenditure of unappropriated State moneys from the General Fund in the State Treasury for that purpose.

The proposed agreement is also illegal for the reason that it contemplates the construction of a building at State expense on land not owned by the State, and also contemplates that the contemplated building when constructed shall belong to some other agency than the State, *i.e.*, to the Elko County Association District No. IV. In this connection, I quote the fourth paragraph, beginning on page 3 of the proposed agreement, which agreement is returned herewith to you, as follows:

It is understood that the addition to be constructed by second (party) hereunder shall forthwith be and become the property of the first party. (Elko County Agricultural Association District No. IV.)

Certainly it would be illegal for the State to construct at State expense a building to belong to anyone else than to the State.

There are several other provisions of the proposed agreement which should be modified, and these modifications are indicated by me in red pencil on the original said proposed agreement; but, inasmuch as the policy established by the proposed agreement would be unconstitutional and, therefore, illegal, I have not reduced the modifications to written language, but shall be glad to do so when and if the board indicates to me that they may desire to go ahead with the proposed agreement notwithstanding this official opinion of this office, although I do not have the slightest idea, of course, that the board may desire to do so.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

CARSON CITY, September 25, 1939.

HONORABLE E.P. CARVILLE, *Governor, and Chairman of State Board of Military Auditors, Carson City, Nevada.*

Re: Proposed Agreement—Elko county Agricultural District IV, with State Board of Military Auditors.

DEAR GOVERNOR: I had intended to discuss, in my letter-official opinion of September 23, 1939, the statutory provisions of the law which, in my opinion, render the above-mentioned proposed agreement invalid; but people were waiting for me in the outer office and I was in so much of a hurry to get the opinion out and over to you that I now find I neglected to do so. I am, therefore, writing this addition to my letter of September 23, 1939, in order that I may call your attention to one at least of the statutory provisions which, in my opinion, renders the proposed agreement invalid, and I request that this letter be attached to my above-mentioned former letter to you, to the end that the complete opinion may discuss both the constitutional prohibition and the statutory prohibition against any such agreement, as I view the matter.

I believe that it will be sufficient to call your attention to only the following statutory prohibition, contained in Nevada Compiled Laws 1929, section 7050:

7050. STATE NOT TO BE BOUND. It is hereby declared to be unlawful for any state officer, commissioner, head of any bind, the State of Nevada or any fund or department thereof, in any amount in excess of the specific amount provided by law, or in any other manner than that provided by the law, for any purpose whatever.

The purpose of the Act from which I quoted said section 7050 was two-fold: First, to prevent deficiencies, and, second, to prohibit the setting aside by State officers, boards, and commissions of moneys from the General Fund under the theory of the existence of emergencies, except in the cases mentioned in Nevada Compiled Laws 1929, section 7051, *i.e.*, “to suppress insurrections, defending the State, or assisting in defending the United States in time of war, or great catastrophes, fires, storms, or acts of God.” The next succeeding sections, *i.e.*, 7052, 7053, Nevada Compiled Laws 1929, provide quite severe penalties for violations of said section 7050 and the immediately preceding section 7049. I do not believe it necessary to cite or quote further authorities.

May I suggest that the purpose of the proposed agreement may be accomplished by having either Elko County or the Elko county Agricultural District IV construct this addition at its own expense, and that your board pay out of the funds appropriated for the support of the National Guard the expense thereof by way of monthly rentals. I believe a somewhat similar plan was used to obtain an armory for the use of the National Guard unit at Winnemucca a few years ago. General White was Adjutant General at that time, and, no doubt, has in mind and can detail to you the method by which the Winnemucca situation was handled.

Since the National Guard unit has been established at Elko, your board should certainly provide some means by which it may have an armory or other place to drill and keep its equipment. The only question is how this may be accomplished without a violation of the Constitution and laws of this State.

Respectfully submitted,
GRAY MASHBURN, *Attorney-General*.

SYLLABUS

288. Water Law—Humboldt River Adjudication—When Costs Assessable.

Court and other costs and expenses of adjudication may be legally certified by the State Engineer in cost bills during the course of adjudication, and without waiting for the end of the adjudication as finally determined by the court originally, or upon motions for new trial, appeals, etc.; and, upon receipt of such certified cost bills, the County Assessor of the county in which the lands entitled to water for irrigation under the decree are located, may legally immediately prorate such costs and expenses and assess and levy taxes against such lands to repay such costs and expenses included in such cost bills.

STATEMENT

CARSON CITY, October 17, 1939.

The relative rights of water users to the use of waters of the Humboldt River stream system and its tributaries was in course of adjudication for many, many years. The State Engineer of this State filed his order designating said Humboldt River stream system and its tributaries for adjudication on May 21, 1913, and soon thereafter made the necessary investigations, gave the necessary orders, took evidence, heard testimony and did all and singular the other matters and things required by the water law of this State and necessary to enable him to the Clerk of the Sixth Judicial District Court of the State of Nevada, in and for the County of Humboldt, on January 17, 1923. Soon thereafter the notices required by law were duly given and certain exceptions filed to said State Engineer's Final Order of Determination and a short time later hearings and trial were duly begun, as provided for by law, in said Sixth Judicial Court of the State of Nevada, in and for the County of Humboldt, that court having been duly selected and designated as the court in which said adjudication should be had. Judge George A. Bartlett, then District Judge of the Second Judicial District Court of the State of Nevada, in and for Washoe County, had theretofore been duly designated as the Acting District Judge before whom said hearings and trial should be had in said Sixth Judicial District Court; and said hearings and trial were so begun before said Acting District Judge George A. Bartlett shortly after said filing of said State Engineer's Final Order of Determination and the exceptions and objections filed

thereto, all in the manner provided by law, and were so continued before him a great portion of the time from that time until he made and entered his written Opinion and Decision in said adjudication on or about December 31, 1930, shortly before he retired from office as District Judge of said Sixth Judicial District Court; that pursuant to, and within the time provided by law, written Findings of Fact, Conclusions of Law and Decree in said adjudication were prepared and proposed in said adjudication, in accordance with said written Opinion and Decision, which adjudication was entitled, "In the Matter of the Determination of the Relative Rights of the Claimants and Appropriators of the Waters of the Humboldt River Stream System and Its Tributaries," No. 2804, in the Sixth Judicial District Court of the State of Nevada, in and for the County of Humboldt. Due notice was given of the making, entering and filing of said Opinion and Decision and of said Proposed Findings of Fact, Conclusions of Law and Decree, and certain exceptions and objection were duly filed thereto and duly heard by said court; and on October 20, 1931, said George A. Bartlett, former District Judge presiding at said trial, made and entered in said matter and filed with the Clerk of said court at Winnemucca, Nevada, his Final Findings of Fact, Conclusions of Law and Decree in said adjudication and matter, all pursuant to law in accordance with his said written Opinion And Decision. Both said written Opinion and Decision and said Proposed Findings of Fact, Conclusions of Law and decree, and also said Final Findings of Fact, Conclusions of Law and Decree of said George A. Bartlett as such Acting District Judge and as such former District Judge presiding at the trial, were printed, and duly served upon said water users and their attorneys, within the time and in the manner provided by law. At or near the beginning of said trial and hearings in said adjudication and matter, said acting and presiding Judge George A. Bartlett, pursuant to section 36 of the water law of this state, being Nevada Compiled Laws 1929, section 7923, appointed John V. Mueller, civil engineer, to assist the court and all parties interested in said matter and adjudication, and said John V. Mueller so acted "not only in the innumerable hearings" that had been held in the five years immediately preceding that time, "but also in the physical examination and investigation of conditions existing along the entire stream system, over which many weeks Had been spent "in examination of ditches, canals, slough, and diversion systems," all as found by the court on page 18 of said printed Opinion and decision. The court also found that "during court hearings controversial parties to a particular proceeding have called upon Mr. Mueller, making him the witness in chief of all sides," and that he had "given his time, energies and ability in their assistance," as stated on page 18 of said printed Opinion and Decision. The court also at that point on said page 18, praised the ability, integrity, knowledge, and services rendered by Mr. Mueller in the following language: "The appointment of Mr. Mueller as technical advisor and assistant to the court was based upon recognition not only of his ability and high integrity and thorough comprehension of all conditions involved in the determination, but also upon h is wide and complete range of knowledge and information as to the details and data in the distribution of the waters of the entire Humboldt River system, with which he has been intimately acquainted for a period of approximately fifteen years, largely through his former official connection with the office of the State Engineer." The court then fixed Mr. Mueller's fees and compensation for the excellent services so rendered by him at \$7,500, and found that that would amount to two cents (2¢) per acre of the land allotted water under the Opinion and Decision of the court, and ordered that it should be "paid by the parties hereto as other costs."

I have dealt with the so-called "Bartlett Decree" somewhat at length, for the purpose of showing the great length of time over which this adjudication has extended, to wit, about 26

years, and to show the ridiculousness of the theory that the State Engineer, after having advanced the moneys absolutely necessary to carry on the proceedings and adjudication and as required and directed by the court, has to wait until the “final judgment” in the matter of said adjudication before his funds so depleted could lawfully be replenished by the assessment of the costs and expenses of adjudication upon the lands of the water users involved, the collection of those assessments by the county officers and the refunding of the moneys so collected to the State Engineer’s Fund and Humboldt River Adjudication Fund. It must be kept in mind that both of the above-mentioned funds belonging to the office of the State Engineer are and have always been exceedingly small. It must also be kept in mind that said “State Engineer’s Fund” has been built up through the many years of practically the entire existence of the State Engineer’s office in this State, and consists of small excesses of the \$10 fees required by law to be paid to the State Engineer by each water applicant to cover and pay for the filing of proofs of appropriation as required by the water law of this State; that the building up of this fund has been an exceedingly slow process; and that the amount of money in it has always been small as compared with the enormous costs and expenses of the adjudication of the larger stream systems in the State, especially the Humboldt River stream system and its tributaries. as to the other fund in the State Engineer’s office out of which these costs and expenses of adjudication have been paid, *i.e.*, the “Humboldt River Adjudication Fund,” it was created by a legislative appropriation directly from the General Fund in the State Treasury, derived, in most part at least, by the levy of an ad valorem tax by the Legislature upon all the property taxable in this State, not merely by the water users on the Humboldt River stream system and its tributaries or on any other stream system in this State. In other words, the moneys in this “Humboldt River Adjudication Fund” were moneys which had been paid into the State Treasury from all the taxpayers in the State, and the burden was spread over the entire State, not that portion alone of the taxpayers to be benefited directly by the adjudication of the water rights of the water users on the Humboldt River stream system and its tributaries. The Constitution and laws of this State definitely require that the burdens of taxation be borne of this State definitely require that the burdens of taxation be borne solely by those to be benefited by the particular taxation, and prohibit solely by those to be benefited by the particular taxation, and prohibit the spreading of the burdens of a particular taxation over those taxpayers who are not to be benefited by the particular taxation. Familiar examples of this rule of law are found in the limitation of taxation [copied material cut off at top of page]

people within the boundaries established and maintained, and municipally owned light and power plants, water systems, etc., and irrigation and drainage districts, school taxation. Only the property of those to be benefited by a tax is subject to the taxation for any particular purpose.

The fact of the matter is that there is absolutely no theory, under our Constitution and laws, by which the water users on any particular stream system in this State could claim a right to any interest in said “State Engineer’s Fund,” especially as to vested rights as distinguished from rights under permits initiated by applications for the use of water filed in the office of the State Engineer. If anybody in the State of Nevada had any right at all to the moneys constituting this fund, or to the permanent use of it, that right was certainly limited, in all fairness, to the persons who assisted in the creation and building up of that fund, that is to say, to the applicants who made application to the State Engineer for permission to use the waters of the particular stream and paid the \$10 fee required by law to cover the filing of proofs of appropriation. The use of the moneys constituting that fund to pay, initially, the costs and expenses of the Humboldt River

adjudication was, at most, merely a loan or advancement to the water users of that stream system and its tributaries to pay the costs and expenses as they accrued and thereby keep the adjudication proceedings moving, and upon the theory that the payments so made out of that fund for that purpose would be repaid and refunded to said State Engineer's Fund, to the end that it might be replenished so that the office of the State Engineer could properly function and to compensate for the filing of proofs of appropriation as contemplated in the law relating to that fund.

The above-mentioned "Humboldt River Adjudication Fund" was created by chapter 181, 1925 Statutes of Nevada, page 327, and expressly provided that the \$6,000 appropriated thereby out of the General Fund of the State of Nevada was a mere *advancement*, and that the moneys "*advanced*" from that fund for "stenographic work and transcripts" and for "costs, witness fees, or expenses incurred" were to be "recovered" and "placed" in the General Fund in the State Treasury. Certainly, it must be clear to all concerned and all who will study the laws establishing both said "Humboldt River Adjudication Fund" and said "State Engineer's Fund" and the circumstances under which money was paid from these funds by the State Engineer as costs and expenses of said Humboldt River adjudication, that the moneys so paid on said costs and expenses of this adjudication were mere advances or loans for the purpose of keeping said adjudication proceedings moving along and prevent delay, and to comply with the orders and directions of the court in said adjudication requiring said State Engineer to pay said costs and expenses out of the funds of his office.

The importance of this adjudication must also be kept in mind, because of the great number of the water users on this stream system and its tributaries involved in this adjudication, the immense acreage involved, the great length of the stream system and its tributaries, the climatic conditions, topography of the country involved, and other important facts found by the court to exist in this adjudication. Judge Bartlett found in his Opinion and Decision that this was "one of the State's most valuable assets"; that the "labors of the State Engineers covering a quarter century's work in gathering data, and the labors of 40 lawyers and many technical assistants" were devoted to this important adjudication; "that the rights of 600 odd claimants on the Humboldt stream system" were also involved; that the cultivated area involved totaled nearly 300,000 acres, *i.e.*, at least 285,238 acres, requiring the distribution of at least 698,379 acre-feet of water.

I mention these matters somewhat at length, in order that the immensity of the task involved in this Humboldt River adjudication, and the importance of securing a proper adjudication of these water rights, as well as the consequent length of time it should require to properly adjudicate these complicated water rights, may be before us in considering this matter; and also to show the great injury which would not doubt have resulted to these water users if the law had failed to provide for and the State Engineer had refused to advance the costs and expenses of this adjudication out of the said funds of his office, and the consequent benefits which must have accrued to the water users from the these considerations of the law, and of the State Engineer in advancing out of the funds of his office the money necessary to pay these costs and expenses as they were ordered and directed by the court and as they accrued, instead of forcing the delay which necessarily would have been incident to any failure to so advance the moneys to pay these costs and expenses promptly.

Of the total amount of the costs and expenses of said adjudication under both Judges Bartlett and Edwards, *i.e.*, \$23,939.41, practically three-fourths of it, *i.e.*, the sum of \$18,410.34, was paid out as costs and expenses under Judge Bartlett, or while he was handling said adjudication,

leaving only \$5,529.07 of said costs and expenses of said adjudication as the amount thereof expended while Ju[unreadable] was handling said adjudication on said new trials. Judge Bartlett was not only fixed and allowed the compensation of Mr. Mueller, as above indicated, in the sum of \$7,500 in his said Opinion and Decision, adopted in and made a part of his Final Findings of Fact, Conclusions of Law and Decree, but also, in the last paragraph of his said Final Findings of Fact, Conclusions of Law and Decree, ordered, adjudged, and decreed that the cost of that proceeding was thereby “assessed proportionately to claimants and appropriators of the Humboldt stream system and its tributaries based upon the amount of acreage set forth in this (said) Decree to which water has been allotted.” Said Bartlett Final Decree (judgement) was made, entered and filed in said adjudication matter on October 20, 1931, and is dated as of that date. As shown by the cost bills (Memoranda of Costs) filed in said manner by the State Engineer, the costs of that “proceeding” up to that time amounted to \$18,410.34, said cost bills having been made out and filed pursuant to and as required by the water law of this State as it existed at that time. Certainly, no one familiar with the law relating to cost bills in water adjudications as contained in the last sentence of section 35 of water law, being Nevada Compiled Laws 1929, section 7922, and being in the following language:

The cost bill shall be prepared and filed with the clerk of the court wherein said proceedings are pending, and it shall not be necessary to serve any of the exceptors, claimants, or appropriators or their attorneys with a copy of the said cost bill

will contend for a moment that it is necessary to have the approval of the court of judge of cost bills so filed, especially cost bills relating to matters other than compensation for the services for such experts so employed by the courts as were Judge Bartlett’s and Judge Edwards’ respective experts. It is a fact, however, that notwithstanding the fact that it was not necessary to have the approvals of District Judges of such cost bills, the State Engineer, out of a super-abundance of precaution, did actually secure the approval of said acting and presiding District Judges of all the cost bills filed by him in this adjudication matter, and such approvals were endorsed on all of said cost bills.

This section 35 of the water law, particularly that portion thereof last-above quoted, is the section and law under which cost bills for *ordinary* costs and expenses of such water adjudications, as distinguished from compensation for experts employed by the court to advise the court as provided for and covered in section 36 of the water law, being Nevada Compiled Laws 1929, section 7923, have always been filed since enactment of said section 35 as it now exists, and such has always been the holdings and advice of the Attorney-General to the State Engineer.

It must be kept in mind that these costs and expenses were not the State Engineer’s cost and expenses, or of his office and that they related almost entirely to costs and expenses incurred by the court and ordered and directed by the court. Outside of the compensation, etc., of experts employed by the court, practically all the remainder of said costs and expenses, covered by the cost bills so filed and approved by the State Engineer and the subject of this opinion, was for the per diem and transcripts of court reporters appointed by and insisted upon by the court, but their per diem and compensation for transcripts were and are fixed either by order of the court or by court rules. Certainly, there can be no question as to whether these costs and expenses insofar as they relate to compensation for court reporters and their transcripts, covered by these cost bills, were allowed by the court. They were not only allowed by the court at the time the court

required their services and appointed them, as shown by the records and court rules, but also by the approval and allowance by the court as endorsed on each of said cost bills. Since the costs and expenses involved and as covered by said cost bills, so allowed and approved, consist almost entirely of compensation for the court's expert advisors, as appointed by the court pursuant to said section 36, and expressly fixed, approved, and allowed by the court, and of per diem and compensation for court reporters appointed by the court and whose compensation therefor was either fixed by the court or by court rules, there cannot possibly be any reasonable question as to whether they were allowed and approved by the court, entirely outside the question of such approval and allowance as endorsed on said cost bills. As hereinbefore stated, Judge Bartlett, in his said Opinion and Decision, and again in his said Final Findings of Fact, Conclusions of Law and Decree (judgment) expressly fixed, approved, and allowed by Mr. Mueller's compensation, included in said cost bills, ordered same paid. Judge Edwards, in his Opinion and Decision and in his Final Findings of Fact, Conclusions of Law and Decree (judgment), expressly fixed, allowed, and approved the compensation, etc., for his expert advisor, so employed by him, and ordered that it also be paid. There can be no question, therefore, as to whether these costs and expenses were approved and allowed by the court. There cannot possibly be any question on this point. It is important to keep the above situation in mind considering and dealing with the matter involved.

It was the custom of the State Engineer to pay these costs and expenses as they accrued, as directed by the court and as bills therefor were presented, and when the court ordered the services and expenses involved in the particular instance and directed payment thereof in or at the time of the making of said order. Practically all of said costs and expenses, covered by said cost bills and so certified by the State Engineer to the County Assessors of the five counties in which said stream system and its tributaries are situated, *i.e.*, the sum of \$23,393.41 was to pay fees and expenses of said experts so appointed by the court and was certainly fixed and allowed by said District Judges, and practically all of the remainder of said cost bills and sum so certified was to pay the per diem of court reporters and for transcripts ordered by the court and so fixed by court orders and court rules. The compensation of the two experts so appointed amounted to \$11,500, as fixed and ordered paid by the court, the compensation of Judge Bartlett's expert being fixed and ordered paid in the sum of \$7,500, and the compensation of Judge Edwards' expert being fixed and ordered paid in the sum of \$4,000, both amounting to said sum of \$11,500. Practically the entire remainder of said costs and expenses and of said sum so certified therefor was for compensation for court reporters so ordered and appointed by the court and whose compensation was so fixed and allowed. Since practically the entire amount thereof was incident to Judge Bartlett's Decree and it was he who applied the doctrine of relation to the rights of the Elko County water users, and thereby decreed them earlier priorities than they were given in the Final Order of Determination as filed in said adjudication, the Elko County water users are the very users who ought not to complain at having their lands assessed to pay these costs and expenses incurred under Judge Bartlett's adjudication. Certainly, the so-called noncontestants cannot reasonably complain, as, in many instances, they were given earlier priorities by said application of the doctrine of relation than they had ever claimed to have. In fact, the failure to assess these costs and expenses to the lands of the Elko County water users is not due to any fault of or complaint made by either the contesting or the noncontesting water users in Elko County. Insofar as the costs and expenses of Judge Bartlett's adjudication are concerned, the Elko County water users are the last who should complain as they are the users who were particularly

benefited by Judge Bartlett's Decree. Yet, the water users in the four other counties, *i.e.*, Eureka, Lander, Pershing, and Humboldt Counties, have already paid, and that in full, their entire portion of said costs and expenses, while those in Elko County alone have not yet paid any part thereof. But, as above stated, the Elko County water users themselves are not at fault and are not to be blamed for the delay in the payment of their portion of these costs and expenses of the adjudication, for the very bills and so certified by the State Engineer, without any fault of said Elko County water users, has not been assessed to their lands.

Now, let us return to the actual court proceedings in this adjudication as they occurred after the said so-called Bartlett Decree, *i.e.*, the making, entering, and filing of the written Final Findings of Fact, Conclusions of Law and Decree by Judge Bartlett on October 20, 1931. Soon after the making, entering, and filing of said Final Findings of Fact, Conclusions of Law and Decree (the final judgment) by Judge Bartlett in the case, several of the water users duly served notice of their intention to move for a new trial, and, Judge Bartlett having duly assigned to Judge H.W. Edwards, then District Judge of the Seventh Judicial District Court of the State of Nevada, in and for Judge Edwards, as such acting and presiding judge, duly set said motions for new trial for hearing, and proceeded to hear them, and in the matters on which he had duly granted new trials.

Judge Edwards says, on page 5 of his Opinion and Decision, that exceptions of importance were taken to the Bartlett Final Decree *only* with reference to the Callahan Estate, Dunphy Estate, Phillipini Ranching Company, the division of the river into four districts, and the application of the doctrine of relation, *none of which, however, related to or involved in any way the costs and expenses allowed and approved by Judge Bartlett in his final Decree and so certified by the State Engineer and here involved.* He "marvels" at the fact that it was necessary to take so few exceptions, in view of the length of the stream and of the time it required to adjudicate it, the many water rights determined, and many other complicated situations involved.

Judge Edwards devoted several weeks to the hearings and trials on the above mentioned few matters on which he had granted a new trial. When he had completed said hearings, he took these new trial matters under advisement and thereafter devoted several weeks to a study and the determination of them. *We must keep in mind, however, that Judge Edwards did not grant a new trial on the point of the compensation fixed, approved, and allowed by Judge Bartlett to Mr. Mueller, or on the point of any of the other costs and expenses allowed by Judge Bartlett in his final Decree or otherwise.* Like Judge Bartlett, however, he retired from office after he had decided the few matters above indicated upon which he had granted a new trial, but before he signed his Final Findings of Fact, Conclusions of Law and Decree (his final judgment) therein.

What later developed to be the "Opinion and Decision" of Judge Edwards on said new trial was printed in the State Printing Office, Carson City, Nevada; and on page 6 of said printed form of his said "Opinion and Decision," Judge Edwards fixed, approved, and allowed the compensation of his said expert engineer and advisor in said new trials at the sum of \$4,000, and assessed the same as costs against the water users in the proportion of the water rights allotted in the following language:

In order to assist the court in its investigation and study of the record and great mass of testimony and data therein contained, it became *necessary* to employ Robert A. Allen, a former State Engineer. For the months of service he has given to this work the court considers that \$4,000 is a reasonable sum to be allowed him for his services, *and said amount is hereby assessed as costs against the parties to*

this action in proportion to the amount of water rights awarded each of the parties in the Order of Determination. (Italics mine.)

Judge Edwards assumed, however, that it was not necessary for him to give the water users involved in an opportunity to make and file exceptions and objections to what he designated as “Amended, Changed, and Corrected Findings of Fact, Conclusions of Law and Decree,” filed by him herein on or about December 24 and 26, 1934, on the new trial granted by him, but that the same was final when so made, entered, and filed by him. Certain motions, notices of motions, and other pleadings were duly filed, however, attacking so-called “Amended, Changed, and Corrected Findings of Fact, Conclusions of Law and Decree” so made, filed, and entered herein by Judge Edwards, and it was assumed, therefore, that the adjudication of this stream system and its tributaries had not completed, and these matters were, therefore, duly assigned to Judge J.M. Lockhart, who had succeeded Judge Edwards as Judge of said Seventh Judicial District Court of the State of Nevada.

For the foregoing reasons, Judge Lockhart then, in due course, proceeded to hear and determine the new matters raised by said last above-mentioned motions, pleadings, etc. It must be kept in mind, however, that none of said matters related in any way to the compensation fixed, approved, and allowed by Judge Edwards to his expert engineer and advisor in the new trial had by him, in the sum of \$4,000, or any of the other costs and expenses allowed by him in his said Final Findings of Fact, conclusions of Law and Decree, or as endorsed on the said cost bills so filed herein by the State Engineer. One of the proceedings before Judge Lockhart was a motion to strike Judge Edwards’ said “Amended, Changed, and Corrected Findings of Fact, Conclusions of Law and Decree,” so filed herein were duly amended by eliminating therefrom all thereof, except the portions thereof which constituted the written Opinion and Decision of Judge Edwards on the matters of new trial before him, and the said portions thereof so remaining were designated his “Opinion and Decision” in that case. The last above-quoted language so fixing, approving, allowing, and assessing the compensation of his said expert engineer and advisor in the sum of \$4,000 was left in said “Opinion and Decision,” and now constitutes a part of said Opinion and Decision. At the same time, Judge Edwards caused to be duly filed in said matter the remainder of his said “Amended, Changed, and Corrected Findings of Fact, Conclusions of Law and Decree,” as his “*Proposed Findings of Fact, Conclusions of Law and Decree*” in said matter, dated October 7, 1935, and caused it to be filed on and as of October 8, 1935, this still being within the time provided by the law after he retired from office; that due notice was given, in the manner provided by law, of said Proposed Findings of Fact, Conclusions of Law and Decree so dated October 7, 1935, and so filed October 8, 1935, all within the time provided by the law therefor.

On or about October 28, 1935, John M. Marble and other water users filed and soon thereafter served their motion to strike said purported Amended, Changed, and Corrected Final Findings of Fact, Conclusions of Law and Decree so made and entered by or on behalf of Judge Edwards, and Judge Lockhart proceeded to hear the same, and all of the other motions and pleadings so assigned to and then pending before him and made and entered in said matter his Decision, dated December 3, 1936, on said motion to strike said Final Findings of Fact, Conclusions of Law and Decree so filed herein by and on behalf of Judge Edwards, and *denied* that motion, and about that time denied certain other motions then pending before him and granted certain other motions for new trial on some of the issues on which Judge Edwards has granted new trials. *It should be kept in mind, however, that Judge Lockhart denied said motion*

to strike Judge Edwards' Final Findings of Fact, Conclusions of Law and Decree (the final judgment) and did not grant a new trial on the cost and expenses so fixed, approved, allowed, and assessed or ordered assessed by Judge Edwards, or amend or otherwise disturb said allowance of costs and expenses so made by Judge Edwards.

From the foregoing, it must be clear that the said Findings of Fact, Conclusions of Law and Decree so made by Judge Edwards was not "set aside," and that the said allowance of costs and expenses so made by Judge Edwards was not set aside or otherwise disturbed by Judge Lockhart.

It is important to note that in his "*Decisions on Motions for New Trials*," filed with the Clerk of said Sixth Judicial District Court at Winnemucca on May 8, 1932, Judge Edwards does not, or otherwise or at all, "set aside" the so-called Bartlett Decree. It is also important to note that Judge Lockhart did not "set aside" the so-called Edwards Decree as the former District Attorney of Elko County advised the Assessor of that county that Judge Lockhart had done. The fact of the matter is that Judge Lockhart expressly found that the so-called Edwards Final Findings of Fact, conclusions of Law and Decree are records of the court. It is a fact that motion was made by and on behalf of certain water users to strike the Amended, Changed, and Corrected Findings of Fact, Conclusions of Law and Decree made and entered by Judge Edwards in this adjudication from the files in this matter, on 17 or more distinct grounds, and Judge Lockhart in his "*Decision on Motion to Strike Purported Amended, Changed, and Corrected Findings of Fact, Conclusions of Law and Decree*," dated December 3, 1936, expressly denied that motion in the following language, found at the bottom of page 7 and top of page 8 thereof:

It is the *order* of this Court that the motion to strike the Purported Amended, Changed and Corrected Findings of Fact, Conclusions of Law and Decree (The Edwards Final Decree) filed October 28, 1935, herein *be, and the same hereby is denied*. (Italics mine.)

On page 4 the court expressly finds that no exceptions were filed or requests made for modification of said Findings of Fact, Conclusions of Law and Decree in the following language:

In August, 1935, the said Former Judge served or had served other proposed findings of fact, and thereafter no exceptions or requests being made for a modification of said findings, filed in this court on October 8, 1935, and after more than thirty days had elapsed, a document designated as "Findings of Fact, Conclusions of Law and Decree."

On page 5 of said Lockhart Decision of December 3, 1936, the court expressly holds that the document filed by Judge Edwards on December 26, 1934, was merely a "*Decision*" of the matters on the new trial granted by him, in the following language:

The court must hold that his (Edwards') document filed December 26, 1934, was a *Decision* as required of a retiring Judge before going out of office, and then in the same paragraph expressly finds that the filing of that "*Decision*" left it open for Judge Edwards to file "*Proposed Findings of Fact, Conclusions of Law and Decree*," as provided by the 1931 Statutes so familiar to all of us. Judge Lockhart then proceeds in the same paragraph to find that Judge Edwards did file said Proposed Findings of Fact, Conclusions of Law and Decree, and, no exceptions having been filed to them except as to his authority to make and sign them at the time he did make and sign them, he followed it up by signing and filing such (final) Findings of Fact, Conclusions of Law and Decree, and that that document was then a record of that court, in the following language:

This he did, and no exceptions having been filed to them except protests that he

had no authority at that time to make and sign such findings, etc., *he followed it up by signing and filing such findings of fact, conclusions of law and decree, and they are now records of this court.*

In the next paragraph of Judge Lockhart's said Decision of December 3, 1936, he finds that said Final Findings of Fact, Conclusions of Law and Decree so made by Judge Edwards were in exact accord with the "Decision" filed by him on December 26, 1934, and that, since it did not change the substance of the "Decision" it became the (final) Findings of Fact, Conclusion of Law and Decree of the court as made and entered by Judge Edwards. From the foregoing, it is certainly clear and unquestionable that Judge Lockhart did not "set aside" the so-called Edwards Final Findings of Fact, Conclusions of Law and Decree. He merely granted a new trial in other decisions made by him about that time on three matters named in his said decisions so made and entered on December 3, 1936, *none of which related to the costs and expenses so allowed by either Judge Bartlett or Judge Edwards.*

After Judge Lockhart had so granted a new trial on the three points above shown, and while he was preparing to proceed with said new trial, W.W. Carpenter and certain other water users filed in the Supreme Court of this State an application for a writ of prohibition to restrain Judge Lockhart, or any other District Judge who might thereafter preside in said adjudication matter, from proceeding with any new trial in said matter. This application for a writ of prohibition was quite fully presented and argued to the Supreme Court of this State, and that court, on December 7, 1937, made and entered its order, by the unanimous concurrence of the court, in and by which it prohibited, enjoined, and restrained Judge Lockhart or any other District Judge from proceeding with said new trial ("new trials"), in the following language:

For the reasons given, it is hereby ordered that the demurrers to the petition for writ of prohibition, and the motions to quash the alternative writ, are overruled, *and that said Presiding Judge, J.M. Lockhart, or any other district judge who may hereafter preside in said cause, is prohibited, enjoined, and restrained from proceeding with the new trials granted by said presiding district Judge in said court and cause by orders dated December 3, 1936, and filed therein on December 5, 1936.*

The petitioners are allowed their *costs* in this proceeding. Carpenter et al. v. Sixth Judicial District Court in and for Humboldt County et al., 73 P. (2d) 1312.

In that unanimous decision of the Supreme Court, it expressly found that Judge Bartlett had *no jurisdiction* to apply the doctrine of relation to the approximately 191 noncontesting clients and thereby give them "an earlier and better priority than that fixed by the order of determination" in the following language:

As we view this matter, there was no *jurisdiction* as the basis for Judge Bartlett's order awarding the 191 noncontesting claimants an earlier and better priority than that fixed by the order of determination.

It should be kept in mind that Judge Bartlett had applied the doctrine of relation to these noncontesting water users and had thereby given them "earlier and better" priorities than had been fixed in the Order of Determination, and even better than they had claimed.

It should also be kept in mind that Judge Edwards in his Final Decree, etc., had found that these noncontestants were not entitled to the application of the doctrine of relation to their water rights, and had adopted the priorities set forth in the State Engineer's Final Order of Determination. In other words, Judge Edwards went back to the priorities allowed in said Final

Order of Determination and had thereby denied said noncontestants the “earlier and better” priorities given them by Judge Bartlett.

Within the time allowed by law therefor, said Sixth Judicial District Court and many of the Elko County water users filed a petition for *rehearing* in the Supreme court of this State in said Carpenter case, and their counsel, with the consent of the court, carefully and extensively briefed the points of law involved, and orally argued their petition for rehearing in that court; and, on November 26, 1938, the Supreme Court of this State made and entered its order again, among other things, prohibiting, enjoining, and restraining said Judge Lockhart or any other District Judge from proceeding with the new trials granted by him in said adjudication matter, in the following language:

For the reasons given, it is hereby *ordered* that the demurrers to the petition for writ of prohibition, and the motions to quash the alternative writ, are overruled, and that said presiding judge, *J.M. Lockhart, or any other district judge who may hereafter preside in said cause, is prohibited, enjoined and restrained from proceeding with the new trials granted by said presiding district Judge in said court and cause by orders dated December 3, 1936, and filed therein on December 5, 1936.*

The petitioners are allowed their *costs* in this proceeding. *Carpenter et al. v. Sixth Judicial District Court, in and for Humboldt County et al., 84 P. (2d) 494.*

In view of this action of the Supreme Court of the State of Nevada in and by which it absolutely and permanently “prohibited, enjoined and restrained” Judge Lockhart and/or all other District Judges who might thereafter preside in said adjudication matter from granting or proceeding with new trials in that matter, it certainly cannot be contended that the “final” judgment of Judge Edwards, as set forth and quoted on pages 19-21, both inclusive, hereof, it certainly cannot be contended that the said Findings of Fact, Conclusions of Law and Decree of Judge Edwards, dated December 3, 1936, is not the “final” judgment of the court in this adjudication matter. The Supreme Court of this State having so held, that final judgment relates back to the time when Judge Edwards made, entered, and filed herein his “Opinion and Decision” in that case, *i.e.*, about December 24 or 26, 1934, and therein fixed, allowed, approved, and assessed the compensation of his expert engineer and advisor at \$4,000, and allowed the other valid costs and expenses which had accrued in his portion of this adjudication as hereinbefore set forth, especially in view of the fact that Judge Lockhart, as hereinbefore set forth, found and held that said written Final Findings of Fact, Conclusions of Law and Decree made and entered by Judge Edwards in that matter were in strict accordance with that “Opinion and decision” so made and entered by Judge Edwards.

SOURCE OF MISUNDERSTANDINGS AS TO WHAT IS THE “FINAL JUDGMENT” IN THIS ADJUDICATION.

The opinion of the former District Attorney of Elko County to the County Assessor of that county, dated June 18, 1936, seems to be based upon his idea that the “final judgment” referred to in chapter 233, 1931 Statutes of Nevada, had not then been entered in this adjudication, and to the further fact that he believed the so-called Edwards Final Findings of fact, Conclusions of Law and Decree had been “set aside” by Judge Lockhart. As hereinbefore shown, both of these assumptions were erroneous. Certainly, Judge Lockhart did not set aside this “final judgment”

(Final Findings of Fact, Conclusions of Law and Decree) made and entered by Judge Edwards, but, on the other hand, denied the motion to strike or “set aside,” said Findings of Fact, Conclusions of Law and Decree, and expressly held that it was part of the records of the case. It has certainly remained such ever since that time, because the Supreme Court of this State has finally held, both upon the original application for prohibition against Judge Lockhart, and on the petition for a rehearing in that matter, as hereinbefore quoted, that neither Judge Edwards nor any other District Judge had any jurisdiction to grant new trials in this matter, and prohibited, enjoined and restrained them from doing so.

The difficulty encountered by the former District Attorney of Elko County in rendering his opinion to the County Assessor of that county was due, no doubt, to his misconception of what constitutes the “final judgment” in this adjudication and similar adjudications of water rights. In this adjudication Judge Bartlett first filed his written “Opinion and Decision.” He then followed it up, as the law requires by the filing of his “*Proposed* Findings of Fact, Conclusions of Law and Decree, one being merely his *Proposed* Findings of Fact, Conclusions of Law and Decree, and the other being his *Final* Findings of Fact, Conclusions of Law and Decree. It is only *final* orders, judgments and decrees which may properly serve as bases for motions for new trials. The former District Attorney of Elko County, no doubt, based his opinion to the County Assessor of that county, dated June 18, 1936, upon his idea that the “final judgment,” referred to in the language quoted by him from chapter 223, 1931 Statutes of Nevada, meant the judgment made, entered, and filed in water adjudications at the end of such adjudications, instead of meaning, as it does, the final findings of fact, conclusions of law and decrees in such adjudications as distinguished from the proposed findings of fact, conclusions of law and decrees made and entered therein. Any such idea would clearly be a misconception of the law, for the reasons hereinbefore stated.

SYNOPSIS

I regret exceedingly that this statement has grown so long, but it seemed advisable to set forth the foregoing matters somewhat in detail in order that we may have the material facts involved before us in determining the inquiry hereinafter set forth, especially in view of the fact that this adjudication is so important, continued for so many years, required so much time in actual court proceedings, and involved so many water rights.

Because of the great length of the foregoing statement, it now seems advisable to here set forth a synopsis of the findings of the court relating solely to the fixing, approval, allowance, and assessing of the costs and expenses covered by cost bills filed by the State Engineer in this adjudication matter approved by Judges Bartlett and Edwards, and the action of the State Engineer in certifying to the County Assessors the assessments to be made by them upon the lands of the various water users in the five counties through which said Humboldt River and its tributaries flow.

This synopsis is as follows to wit:

All of the judges who have participated in said adjudication have insisted upon having all the proceedings reported by duly qualified and appointed court reporters and transcripts of the evidence made for their use in the matter, and it seemed necessary that that be done. The law and the rules and orders of the court fixed the compensation for such court reporters, both for the reporting of said proceedings and for the making of said transcripts. In Judge Bartlett’s said written “Opinion and Decision,” he fixed, approved and allowed the compensation of his expert

engineer and advisor, as hereinbefore indicated, at \$7,500, and carried the same, together with the allowance of all the other costs and expenses of his portion of said adjudication, into his "final" judgment (Final Findings of Fact, Conclusions of Law and Decree), and directed that the same be paid. Judge Bartlett having retired from office, said adjudication matter was duly assigned to Judge Edwards, and he also appointed his own expert engineer and advisor, and, in his said written "Opinion and Decision," fixed, approved, allowed, and assessed his compensation at \$4,000 as hereinbefore set forth in detail, and carried the same into his own "final" judgment (Final Findings of Fact, Conclusions of Law and Decree), and therein allowed and all the other lawful costs and expenses which accrued during his portion of said adjudication.

Pursuant to the various orders of said Judges Bartlett and Edwards, the State Engineer loaned, advanced, and paid said costs and expenses as they accrued out of the said Humboldt River Adjudication Fund and said State Engineer's Fund in his office, with the assurance that the money so paid out by him would be assessed against the lands of all the water users allotted water rights, and collected and refunded to his said funds within a reasonable time. Pursuant to that arrangement and plans, said State Engineer filed, during the course of said adjudication cost bills covering the costs and expenses so fixed, approved, and allowed by said Judges Bartlett and Edwards during the time they participated in said adjudication, in the total sum of \$23,939.41 segregated as hereinbefore stated, of which total amount of costs and expenses as shown by said cost bills, the sum \$12,039.82 was apportioned to the waters users in Elko county allotted water rights in said adjudication, and said State Engineer, on or about February 20, 1935, prorated and certified the amount of said costs and expenses to the County Assessors of the five Counties of Elko, Eureka, Lander, Pershing, and Humboldt through which said Humboldt River and its tributaries flow, and requested that each of said County Assessors levy the amount of said costs and expenses for the particular county to the lands of the water users in that county so allotted water rights. The Assessors off all said counties, except Elko County, immediately levied said assessments against the lands of said water users in their respective counties, and their respective portions of said costs and expenses were duly collected at the time taxes were collected for the year 1935, and in due course, were refunded to said funds belonging to the State Engineer's office, but the Assessor of said Elko County failed to assess said sum of \$12,039.82 of said costs and expenses so certified to him and prorated to the lands of the water users in Elko County so allotted water rights, and the same has never been assessed, collected or refunded to the said funds of the State Engineer's office, and the whole thereof still remains due, owing, and unpaid.

This is not to be taken as a criticism of the Elko County Assessor, as he was acting under the advice of the District Attorney of his county, who is his legal advisor. Neither is it to be taken as a criticism of the former District Attorney of Elko County. The records of this adjudication are all kept in the County Clerk's office at Winnemucca, where the entire adjudication of the stream system has taken place, and they were not available to the District Attorney at Elko; and, in addition to the above, this adjudication began long before said former District Attorney began the practice of law, and probably before he was old enough to take an interest in the matter or remember what had taken place in it. In fact, it was seldom that lawyers who were not attorneys for one or more water users were present in court about what was actually transpiring in it. It was seldom also that the attorneys for the water users generally were present in court in said adjudication except when hearings were being had on the water rights of their own clients. It is not strange, therefore, that the former District Attorney was not entirely familiar with all the many ramifications, proceedings, and other matters involved in said adjudication, including the

action of Judges Bartlett and Edwards in ordering the incurring of the costs and expenses in said adjudication, other than for their expert engineers and advisors, or of the action of said judges in fixing, approving, and allowing their compensation, and the other costs and expenses of said adjudication, and in ordering the same assessed to the lands of the water users allotted water rights, as was done by each of said District Judges in his "Opinion and Decision" and in his Final Findings of Fact, Conclusions of Law and Decree, the same being the "final judgment of each of them in said adjudication, and/or with the action of the State Engineer in the filing of cost bills and obtaining the approval of the court on each of them, and of his action in apportioning, prorating, and certifying the same to each of the Assessors of the above-named five counties involved.

It should be kept in mind that the certification and apportionment by the State Engineer of said costs and expenses, as was done by him on February 20, 1935, was long after both Judge Bartlett and Judge Edwards had made and entered in said adjudication their respective Opinions and Decisions in which they respectively fixed the compensation of their respective expert engineers and advisors, pursuant to which each of them prepared, made, entered and filed herein their respective judgments (Final Findings of Fact, Conclusions of Law and Decrees), that of Judge Bartlett having been made and entered in said adjudication a few days before he retired from office the first Monday in January 1931, and that of Judge Edwards a few days before he retired from office on the first Monday in January 1935. From the foregoing, it follows that each of the "final" judgments of Judges Bartlett and Edwards (their Opinions and Decisions), fixing, approving, and allowing said costs and expenses, and ordering and directing that they be so assessed against the lands of said water users and paid, was made and entered in said adjudication prior to the certification and apportionment of said costs and expenses by the State Engineer.

It is important also that it be kept constantly in mind dealing with this matter that the granting of a new trial does not "set aside" the judgment entered in any case. It simply opens up the points only on which a new trial is granted, for the purpose of permitting the introduction of certainly newly discovered evidence, or for a further consideration of the evidence already introduced to see whether the final judgment already entered in the case is in accordance with that evidence. This is particularly true in cases like this adjudication, where many questions are involved in and are determined by the "final judgment," and new trials are granted on only certain of the matters adjudicated and determined, as was the case in said adjudication. Certainly, no one will contend that the granting of a new trial on the question of whether or not the court has jurisdiction to divide the river into districts could not affect the priority of the water rights of the individual water users. Certainly, the granting of a new trial on the question as to whether the Callahan Estate has a water right for the operation of a mill and reduction plant for ore, or for the generation of electrical energy, would not be "set aside" the Findings of Fact, Conclusions of Law and Decree as to the water rights of all the other 600 and more water users on this long and involved stream system. The purpose of granting the new trial on the few points on which a new trial was granted to enable the taking of newly discovered evidence and a reconsideration of the old evidence already introduced, so as to see whether the adjudication was proper and sustained by the evidence as to the few particular matters on which a new trial was granted. It is also very important, indeed, to keep in mind the Act of the 1935 Legislature of this State in appropriating money from the General Fund of the State to replenish the exhausted funds in the office of the state Engineer so that certain pressing items of the costs and expenses of the

said adjudication might be paid out of said State Engineer's funds and later refunded to said State Engineer's fund by assessments to be levied against the lands of the water users as provided for therein. In considering this Act, it must be kept in mind that the above-mentioned two funds in the office of the State Engineer, named in said Act of the 1935 Legislature of this State, had become exhausted by payments made out of them by the State Engineer pursuant to the orders of the court in said adjudication, on said costs and expenses of said adjudication, and that there were certain other costs and expenses remaining unpaid and for which the claimants were pressing for payment. These two funds in the State Engineer's office are quite small, as compared with the amount of the costs and expenses in said adjudication, and they are exceedingly important funds in that office and must be kept up in order that that office may properly function for the benefit of all the water users in the State. Knowing that situation, all of the Senators from the five counties involved introduced in the 1935 Legislature a bill known as Senate Bill No. 151. My recollection of the matter shows that the bill passed the Senate unanimously and, having the support of all the members of the Assembly, also passed that body unanimously or practically unanimously. It was approved by Governor Kirman on March 28, 1935, and became and now is chapter 136, 1935 Statutes of Nevada, pages 297-299, inclusive. That chapter recites in the preamble thereof that these two funds in the State Engineer's office had become and were then "exhausted due to the fact that all of the moneys in said fund (in each instance) have (had) been used as *part of payment of said costs and expenses*" of said "Humboldt River Water Adjudication." Section 1 of that chapter appropriated \$13,000 out of the General Fund in the State treasury to be applied on said "court costs and expenses so allowed by the court in the Humboldt River Water Adjudication." Section 2 of that chapter clearly indicates that the Legislature assumed that the taxes on the lands of the water users along that stream system, as certified by the State Engineer on February 20, 1935, had already been assessed and "levied against the lands of the water users along said stream system," as absolutely required by the law, and expressly directed that the moneys "collected" and "derived from the taxes" so certified, levied, and collected "be paid into said respective funds," *i.e.*, \$6,000 into the adjudication fund therein named "to reimburse said fund in the sum of \$6,000 *for moneys heretofore advanced from said fund as part payment of said court costs and expenses*" (the costs and expenses of said Humboldt River adjudication); the next \$5,227.98 so "to be derived from said tax levy" into the State Engineer's Revolving Fund, again "to reimburse said fund, in said amount for moneys * * * *advanced* from such fund as part payment of said court costs and expenses" (of the Humboldt River adjudication); and the remainder of the moneys so "to be derived from said tax levy" to be used to reimburse the General Fund in the State Treasury "*until the same is fully repaid*" from the taxes so levied and collected. Certainly, no one can reasonably and conscientiously question the fact that said chapter 136, 1935 Statutes of Nevada, not only contemplates but actually and mandatorily requires that taxes be levied upon the lands of all the water users allotted water rights along the Humboldt River, and collected from said water users to refund said \$13,000 so appropriated from the State General Fund, and for the "court costs and expenses" so paid out by the State Engineer in said adjudication.

INQUIRIES

1. Is the Edwards Decision (the so-called Edwards Decree) fixing, approving, and allowing the costs and expenses of the Humboldt River adjudication, so-called, and ordering the payment thereof, including the compensation of his expert engineer and advisor, such a "final judgment,"

as is binding upon the water users allotted water rights in and under said adjudication along the Humboldt River, and such as requires that the taxes be assessed on the lands of said water users in the five counties involved in proportion to the water rights allotted them, respectively, as ordered, directed, and assessed by Judge Edwards in his said Opinion and Decision and Final Findings of Fact, Conclusions of Law and Decree in that adjudication?

2. Is the said so-called Edwards Decree “binding insofar as the cost assessments are concerned?

OPINION

It is the unqualified opinion of this office that the facts and law as set forth in the foregoing statement, which is hereby expressly made a part of this opinion, unquestionably require that both of the above inquiries be answered in the affirmative. In view of the fact that most of these costs and expenses accrued and were ordered paid during the time Judge Bartlett was the acting and presiding Judge in said Humboldt River adjudication, and were fixed, approved, allowed and ordered assessed and paid by him, the same affirmative answer to both of said inquiries would necessarily have to be given if said inquiries were directed toward the costs and expenses of said adjudication so fixed and ordered assessed and paid by him in his “Opinion and Decision” and in his Final Findings of Fact, Conclusions of Law and Decree during that portion of said adjudication handled by him.

It is also the unqualified opinion of this office that all of said costs and expenses so apportioned, prorated and certified by said State Engineer on February 20, 1935, to the Assessors of the five counties involved and through which said Humboldt River stream system and its tributaries flow are valid and legal costs and expenses of said adjudication and binding upon said water users so allotted water rights; and that the law absolutely and mandatorily requires that said costs be levied and assessed against the lands of all said water users so allotted water rights in the manner so certified by said State Engineer.

It is also the unqualified opinion of this office that said decisions of both Judges Bartlett and Edwards, so carried into their respective Final Findings of Fact, Conclusions of Law and Decrees, are such “final judgments” of the court, as distinguished from “Proposed” Findings of Fact, Conclusions of Law and Decrees, as would serve, and do serve, as a proper, valid, and sufficient basis for the fixing, approval, and allowance of the costs and expenses which accrued under them, respectively, during the course of the adjudication of said Humboldt River stream system and its tributaries. In view of the fact that all of said costs and expenses were incurred and paid pursuant to and in strict compliance with the orders of said Judges, respectively, during the course of said adjudication, or in matters necessarily incident to carrying out such respective orders and directions of said Judges, it is also the unqualified opinion of this office that the filing of cost bills by the State Engineer, under section 35 of the water law of this State, being Nevada Compiled Laws 1929, section 7922, was and is sufficient to serve as a basis for such apportionment, prorating and certification of the costs and expenses of such adjudication, except as to the costs and expenses incident to the payment of the compensation for such expert engineers and advisors so appointed by the court, as provided for in said section 36 of the water code, being Nevada Compiled Laws 1929, section 7923.

I am, therefore, requesting the Tax Commission to request and instruct the Assessor of Elko County to levy said costs and expenses against the lands of said water users as so certified by the State Engineer in the sum of \$12,039.82, in proportion to the water right allotted to them,

although the sad certification by the State Engineer is sufficient authority to make it the mandatory duty of said Assessor to so levy said assessments or cause them to be levied; and although the request and instruction of the State Controller of this State is also now, at this late date, sufficient authority to require such assessment and collection of said costs and expenses and the payment of the moneys derived therefrom to the State Treasurer to reimburse said funds of the State Engineer's office.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General.*

HONORABLE C.B. TAPSCOTT, *District Attorney, Elko County, Elko, Nevada.*

NEVADA TAX COMMISSION, *Carson City, Nevada.*

SYLLABUS

289. Mining Claims—Taxation.

Taxpayer may redeem one patented mining claim without being required to redeem entire group.

STATEMENT OF FACTS

CARSON CITY, October 18, 1939.

Mr. J., a resident of Nevada, and Mr. V., also a resident of Nevada, are both interested in obtaining a certain patented mining claim. Pursuant to said desires Mr. J. did, as evidence by a deed under date of May 1939, purchase said mining claim from the owner thereof and received a deed thereto. Thereafter, in June 1939, in the office of County Clerk and Treasurer, Mr. J. tendered to County Clerk and Treasurer a check for an unknown amount, but Mr. J. did state it was more than the taxes would be for said mining claim, and requested County Clerk and Treasurer to hold the remaining amount for him. He was then informed by County Clerk and Treasurer that this claim had been assessed together with two other patented mining claims, and that the taxes could not be paid on one, but had to be paid on all; that the claims were assessed to C.L.C., and each claim assessed at the value of \$500 with the same tax rate levied on each claim.

Mr. J. on September 5 purchased the two additional claims from Mr. C. and received a deed. While in Los Angeles, Mr. J. received from Mrs. E.C. a letter from the County Clerk and Treasurer under date of August 11, 1939, stating that "in order to redeem the property and not have it deeded to the county, 1936 taxes in the amount of \$235,39 must be paid on or before September 12, 1939, the redemption period expiring that day."

Relying on this information Mr. J. called at the office of County Clerk and Treasurer before noon September 12 to pay the taxes for the year 1936 on the above claims and he was informed by County Clerk and Treasurer that the 11th was the last day that they could be paid. He told County Clerk and Treasurer about the letter and County Clerk and Treasurer stated this to be a mistake. Mr. J. has in his possession another letter to other persons to the same effect regarding the date. Mr. J. filed on September 12, 1939, an application to explore the patented claims which application was notarized before the County Clerk.

Later Mr. J. was informed that the proper procedure was to put in a request for a tax compromise, which he did, for said claim.

Later Mr. J. also petitioned for the public sale of said claim.

Mr. J. states he has been in possession of said property.

Mr. V.'s application for a lease and option to purchase is now dated September 12, 1939, and notarized by County Clerk.

QUESTION

Is Mr. J. or Mr. V. legally entitled to said property?

OPINION

Attorney-General L.B. Fowler, under date of June 7, 1920, Attorney-General's Opinion No. 142, 1919-1920 Biennial Report, held that a taxpayer has the right to redeem any lot or parcel of his property sold and that (as long as personal property taxes are first paid) it is not incumbent upon him to redeem all of the property sold for the nonpayment of taxes.

Likewise, Attorney-General Diskin, under date of September 29, 1927, in Attorney-General's Opinion No. 281, 1927-1928 Biennial Report, held that a deed to lots after the delinquency date would invest the grantee with the right to redeem them. General Diskin in citing the case of State of Nevada v. C.P.R.R. Company, [21 Nev. 94](#), held that the grantee could redeem certain lots and refuse to redeem or pay taxes on other lots in another distinct subdivision because the two tracts are separate subdivisions, assessed separately and with different valuations.

It is also to be noted that the State Legislature amended section 6441 of the Nevada Compiled Laws of 1929 in 1927 to read in part as follows:

The taxpayer shall have the right to pay the taxes upon any subdivision thereof entered upon the assessment roll without paying upon the whole; provided, that he has furnished the assessor with a statement, under oath, of all his real estate, as provided in section 8 of this act, giving therein a full description of all his lands by legal subdivisions, together with a classification thereof by legal subdivision into cultivated lands, meadow lands, wild-hay land, pasture land, grazing, and barren land, or such other classification as shall be lawfully required by the Nevada tax commission; and provided further, than an owner of undivided real estate may always pay the portion of taxes due on his interest therein.

As noted from the above-cited Supreme Court decision, Attorney-General's rulings and the statutory amendment, it would appear that the County Clerk and Treasurer was in error in refusing to accept Mr. J.'s tender made prior to the expiration of the redemption period for delinquent taxes on the one patented mining claim. It would appear also that Mr. J. has a clear, legal right to institute an action to enforce the acceptance of this tender and compel specific performance.

Likewise the County Clerk and Treasurer represented by letter under date of August 11, 1939, that the property on which taxes were delinquent for the year 1936 could be redeemed on or before September 12, 1939, the redemption period expiring on that date. This representation was certainly clear and unequivocal, and Mr. J. had the moral right, under the circumstances, to rely upon it. It is difficult to picture a stronger set of facts entitling Mr. J. to receive the property, title to which he had acquired by deed from legal owner.

In passing, it might be well to observe that, in our opinion, prior to the actual expiration of the period of redemption, a valid application to explore the patented mining claims could not be presented and filed with the Board of County Commissioners in view of the requirements of 1935 Statutes, page 25, to the effect that a showing must be made that the claim has already

become the property of said county through the operation of the revenue laws of the State.

Therefore, assuming that September 11, 1939, was the last day on which redemption could be made, no application for permission to work the patented mining claim could be made until after this date. In our opinion, mere priority of time should not be controlling. However, it would be well for the County Commissioners to require each applicant to make a sworn statement as to the exact time on September 12, 1939, at which each filed his application with the County Clerk and Treasurer.

From the facts which you have presented, it is the opinion of this office that Mr. J. is legally entitled to the patented mining claim, and it is also our opinion that in the event of a suit to enforce performance, the courts would invest Mr. J. with title.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

BY ALAN BIBLE, *Deputy Attorney-General*.

MARTIN G. EVANSEN, *District Attorney, Hawthorne, Nevada*.

A-38. Reports of Railroad Accidents to Public Service Commission of State.

Public Service Commission of State fully authorized to make rules and regulations governing such reports, and question of whether they comply with Federal Interstate Commerce Commission rules and regulations is matter for discretion of State Commission. State Commission not necessarily controlled by action of Interstate Commerce Commission.

CARSON CITY, November 2, 1939.

The Public Service Commission of Nevada, Carson City, Nevada.

Attention: Lee S. Scott, Secretary

GENTLEMEN: This will acknowledge receipt of your letter of October 25 relative to the letter from the Southern Pacific Company with respect to the change in rules of your commission dealing with the reporting of accidents by railroad companies where the disability is only for one day.

It is noted that the Interstate Commerce Commission has changed its rules in this regard and that the effect of the change in rules is to put the reporting of accidents on the same footing as it was prior to some time in 1936. I understand your communication to be a request for advice on the advisability of changing the rules of your commission to conform to the rules of the Interstate Commerce Commission.

Frankly, I do not believe that the Nevada law relative to reports of this nature requires an absolute conformity to the rules adopted by the Interstate Commerce Commission. In brief, I feel that your commission has the discretion as to whether it is now advisable to change your rules to conform to the rules of the Federal Commission. It seems to me that the matter could well be left as it is now.

Yours very truly,

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

A-39. Consolidated School Districts, Establishment of Branch Schools Therein, and

Apportionment of School Moneys Thereto.

Trustees of such consolidated school districts not authorized by law to establish branch schools therein, except by dissolution of the consolidated school district as provided by law or the establishment of new school districts therein carved out of territory within consolidated school district and entirely separate therefrom as provided by law. Error in establishing such a sub-district and in maintaining it for a long period of time as if properly established should not, however, prevent proper maintenance of the sub-district school as has been customary, it being unwise, improper and inequitable to disturb long established precedent and custom. Financing of school in new school district carved out of and separated from consolidated school district territory is, for first year, by the same method as for any other new school district established in unorganized territory, and such new school district may legally be carved out of the territory embraced within the consolidated school district in the manner provided by law.

CARSON CITY, November 6, 1939.

MISS MILDRED BRAY, *Superintendent of Public Instruction, Carson City, Nevada.*

DEAR MISS BRAY: Reference is hereby made to your letter of November 1 requesting an opinion upon four inquiries therein propounded concerning the consolidated school district therein mentioned, the creation of a branch school within such district, and the apportionment of school moneys thereto.

Inasmuch as we are submitting this opinion in the form of a letter at this time, reserving the right to prepare a formal opinion later, if necessary, we will refrain from quoting the questions propounded, but we will refer to them by number.

Answering Question No. 1: It is our opinion that the trustees of a consolidated school district had an have no statutory authority to establish a branch school within a consolidated school district. An examination of the school law discloses that new schools may be established in consolidated districts, or rather the territory covered by such districts, in two way only. First, by the dissolution of a consolidated school district carved out of territory within the consolidated district inclusive, Nevada Compiled Laws 1929. Under the method provided in these sections, new schools would be established by the creation of new districts out of the territory formerly the territory of the consolidated district. The second method would be the creation of a new school district carved out of territory within the consolidated district under the provisions of section 5727 Nevada Compiled Laws 1929. This section authorizes the Boards of County Commissioners to create new school districts in territory occupied by consolidated school district upon the conditions provided in the section being complied with. We find no authority in the school law elsewhere empowering school trustees to establish branch schools within consolidated district, and no such authority being found in the law, we conclude that school trustees have no power to establish a branch school within a consolidated school district.

In this connection, if it is imperative that a school be established within territory occupied by consolidated school district, the legal way is for the County Commissioners, upon conditions set forth in section 5727, supra, being complied with, to create an entirely new district.

Answering Question No. 2: We beg to point out that from the contents of your letter it would seem that sub-district (a) was erroneously created. This we assume from your letter, and the use

of consolidated school district funds during the first year of the sub-district school for the purpose of maintaining such school was erroneous. However, inasmuch as several years have passed by, it would seem to us to be now too late to question the use of the funds for the first year that the sub-district school (a) was in existence, and further, while such school may have been erroneously, or perhaps illegally, established, still the fact that it has been running for several years seems to us to lay a sufficient foundation for the continuance of the apportionment of moneys to it based upon the average daily attendance of pupils for the preceding years as is the practice in other cases. A new school district carved out of a consolidated school district and the school established therein under the law is to be financed for the first year the same as new districts created out of unorganized territory.

Answering Question No. 3: We think this question has been sufficiently answered above in our answer to Question No. 2.

Answering Question No. 4: The Act of the State Legislature specifying the boundaries of the consolidated school district mentioned in your inquiry, the same being chapter 239, Statutes of Nevada 1931, does not, in our opinion, detract from the power of the Boards of County Commissioners from creating new districts within the boundaries of the consolidated district mentioned in this statute. The statute in question contains no prohibition whereby the Board of County Commissioners would be precluded from exercising their power under the general school law. In brief, chapter 239 is to be read in *pari materia* with the statute empowering Board of County Commissioners to establish new school districts upon the conditions therein being met.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

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

A-40. Assignment of Salary.

Assignment of unearned salary or compensation of a public officer or employee is not valid, and you may not legally advance money on an assignment of a public officer or employee in excess of that actually earned and due. This rule is in interest of public policy, as officers and employees who have already received their salaries are deemed less efficient than if they were looking forward to receiving the same.

CARSON CITY, November 15, 1939.

HONORABLE HENRY C. SCHMIDT, *State Controller and Ex Officio Insurance Commissioner, Carson City, Nevada.*

DEAR MR. SCHMIDT: This will acknowledge receipt of your recent inquiry in which you ask whether or not your office has the right to accept assignments and advance money thereon over and above the amount actually earned and due.

The general rule is that a public officer cannot assign unearned salary or fees of his office.

This rule is stated as follows in 6 Corpus Juris Secundum, section 21, page 1068:

It is a well-settled general rule that an assignment by a public officer of the unearned salary, wages, or fees of his office is void as against public policy. an assignment of both earned and unearned salary or fees is deemed severable and is valid as to so much as has been earned at the time of the assignment.

It is also stated that the reason for the general rule is not the desire to protect the private interests of such officers, but is one of public policy based on the necessity of securing the efficiency of the public service by insuring that the funds provided for its maintenance shall be received by those who are to perform the work at the periods appointed for their payment.

To same effect see 4 American Jurisprudence, section 46, pages 264, 265.

The above general rule is quite clear and, therefore, it is our opinion that you cannot advance money on a public officer's assignment over and above the amount actually earned and due.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

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

A-41. Hunting and Fishing Licenses.

Nonresidents who obtain such licenses at the smaller fee required of residents by falsely representing that they are residents are subject to prosecution if such representations are made within the State and prosecutions therefore are begun before the statute of limitation has run.

CARSON CITY, November 23, 1939.

HONORABLE ROLAND H. WILEY, *District Attorney, Las Vegas, Nevada*.

Attention: Hon. Paul Ralli, Deputy.

DEAR MR. RALLI: Some weeks ago you wrote me calling my attention to and quoted Nevada Compiled Laws 1929, section 10486 and 3090, and to the provisions of chapter 188, 1933 Statutes of Nevada, page 284, section 53, authorizing County Clerks to designate agents for the purpose of issuing and delivering hunting and fishing licenses, and to the fact that some residents of California, and probably other States than Nevada, have represented to the agents so designated by your County Clerk that they are residents of the State of Nevada and thereby secured such licenses at a fee of \$7.50 on each license less than they would have had to pay if they had stated the truth as to the State of their residence. Upon this statement of facts, you ask the opinion of this office as to whether such persons, so violating the law, may be legally prosecuted for a violation of the provisions of the two sections of the law so quoted by you in your letter to me of 26th ultimo.

It is the unqualified opinion of this office that such nonresidents of this State are legally subject to prosecution for the violation of said law of this State in making such false representations as to the place of their residence, and that they should be prosecuted by you, if such false representations were actually made by them while present in this State, and they can be found within this State and prosecuted before the statute of limitations runs against such prosecutions.

Sincerely yours,

GRAY MASHBURN, *Attorney-General*.

SYLLABUS

290. Unemployment Compensation Law. Federal Unemployment Tax Act. Federal Instrumentalities.

State law complies with the conditions set forth in section 1606(b) of the

Federal Act; State contributions to State Unemployment Compensation Fund can be levied on National Banks and Federal Reserve Banks on and after August 10, 1939.

INQUIRIES

CARSON CITY, November 28, 1939.

1. Do the provisions of the Nevada unemployment compensation law meet and comply with the conditions set forth in section 1606(b) of the Federal Unemployment Tax Act?
2. If so, upon what date may the State of Nevada commence to levy contributions from instrumentalities of the United States, such as national banks, and banks which are members of the Federal Reserve System for contributions to the Nevada Unemployment Compensation Fund? In this connection you are advised that the Social Security Act amendments of 1939, of which section 1606(b) of the Federal Unemployment Tax Act is a part, was approved and generally became effective on August 10, 1939.

OPINION

Answering Question No. 1.

Section 2 of the Nevada unemployment compensation law was amended by 1939 Statutes at page 115, with respect to the term "employment" and its relation to Federal instrumentalities as follows: "employment" and its relation to Federal instrumentalities as follows: "The term 'Employment' shall not include: * * * services performed in the employ of any other State or its political subdivisions or of the United States Government, or of an instrumentality of any other State or States or their political subdivisions or the United States; *provided*, that in the event that Congress of the United States shall permit the States to require any instrumentality of the United States to make payment into an unemployment fund under a State Unemployment Compensation Act, and to comply with State regulations thereunder, then, to the extent permitted by Congress, and from and after the date of which such permission becomes effective, all of the provisions of this Act shall be applicable to such instrumentality and to services performed for such instrumentality in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals and services; *provided further*, that if this State should not be certified by the Social Security Board under section 903 of the Social Security Act for any year, then the payments required such from instrumentality and their workers with respect to such year shall be refunded by the Commissioner from the Unemployment Fund, without interest."

Section 1606(b) of the Federal Unemployment Tax Act of August 10, 1939, which said Act reenacted and amended several section of title IX of the Federal Social Security Act, provides that the Legislature of any State may require any instrumentality of the United States which is not wholly owned by the United States, or exempt from the tax imposed by section 1600 of the Act by any other provision of law, to make contributions to its unemployment compensation fund. Section 1606(c) removes any restriction imposed by the National Banking Act with respect to the furnishing of returns and reports by national banking associations to unemployment compensation divisions, etc. Congress by the enactment of section 1606 signified its intent that among other Federal instrumentalities, national banks, and Federal Reserve banks, could be required by the States to contribute to unemployment compensation funds of the States. In brief, Congress gave its consent to such taxation. It is clear that the above-quoted section of the

Nevada law provides for the assessment of contributions to the Unemployment compensation Fund of this State to instrumentalities of the United States, including national banks and Federal Reserve banks, to the extent permitted by Congress. Section 1606(b) and (c) contain no limitation on the State in regard to such taxation, other than such taxation must not be discriminatory, and such State law must contain a provision for refund of such contribution for any year in which the State is not certified by the Social Security Board. The Nevada law meets these requirements.

The fact that the above-quoted amendment of the Nevada law was enacted and approved prior to the enactment of said section 1606 of the Federal Act is of no moment. The Nevada Legislature simply anticipated similar action by Congress. We find no condition in the Federal Act that is not met by the Nevada law, as amended, with respect to the Federal instrumentalities permitted by Congress to be taxed for unemployment purposes in this State. The inquiry is answered in the affirmative.

Answering Query No. 2.

As shown hereinbefore, in section 1606(b) and (c) of the Federal Unemployment Act, Congress has consented that the States may impose unemployment compensation taxes or contributions on Federal instrumentalities which are nondiscriminatory. It appears that section 1606(b) and (c), in fact the entire section, became effective August 10, 1939. The amendment to the Nevada Act relating to such instrumentalities immediately the bar to taxation thereof by this State for unemployment purposes was removed by Congress. Unless some other provision of law, either State or Federal, prohibits or prohibited the immediate operation of the Nevada law upon such instrumentalities, then such instrumentalities were subject to such taxation on and after August 10, 1939.

We are advised that it has been said that by reason of the provisions of section 1607 of the Federal Unemployment Tax Act that Federal instrumentalities permitted by Congress to be taxed for State unemployment purposes by a State under section 1606(b) and (c) of such Act, State taxation cannot be had until on and after January 1, 1940. We understand it is thought that because section 1607 will not be effective until January 1, 1940, that such limitation on the effective date of taxation as may be contained therein is a limitation on the State. It is also said, so we are advised, that section 1606 (b) wherein Congress has consented that a State may tax Federal instrumentalities for unemployment purposes, is qualified to the extent that a State may not so tax such instrumentalities which are exempted from the tax imposed by section 1600 of the Federal Act *by virtue of any other provision of law*, and that section 1607*c)(6) is another provision of law, and by reason of the fact such section will not be effective until January 1, 1940, the State may not tax such instrumentalities until that time. First, it must be remembered that the Unemployment Compensation Division of Nevada did not nor does not obtain its power and authority to levy and collect unemployment compensation contributions from section 1600 of the Federal Act. Its power flows from the State law. Section 1600 of the Federal Act provides the tax that is to be paid by employers defined in the Federal Act. Such tax is to be paid to the Federal Government for unemployment compensation purposes. The machinery and procedure set up by and in the sections of the federal Act following section 1600 are for the purpose of levying and collecting a Federal tax by Federal officers for the purpose of carrying out the provisions of the Federal Social Security Act as originally enacted and as amended by the Federal Unemployment Act of 1939, *i.e.*, by the Federal Government under its laws, and by the States under their laws that have been approved by the Federal Social Security Board, which include the

Nevada law.

Congress, in section 1606(b), provided that a State might tax the instrumentalities of the United States in question here. There is no exemption in that section other than the instrumentality must not be wholly owned by the United States, and must not be exempt from the tax imposed by section 1600 by virtue of any other provision of law. There is no exemption now contained in the Nevada law applicable to such instrumentalities as are in question here. National banks and banking associations are not wholly owned by the United States, and, we think that such institutions are not exempt from taxation under the Nevada law at the present time by reason of any exemption that may now be contained in the Federal Unemployment Tax Act. If any exemption is provided in the Federal Act, it relates only to the tax imposed by section 1600 for Federal unemployment purposes and not to the tax imposed by the State law. No other Federal law has been cited to us as containing an exemption in this matter, and we think no such law can be found.

In taxation problems the rule with respect to exemption from taxation is, that those who seek shelter under an exemption law must present a clear case, free from doubt, and point to an express provision in the law that grants an exemption, as such laws, being in derogation of the general rule must be strictly construed against the person claiming the exemption and in favor of the public. 17 R.C.L. 522, sec. 42; 26 R.C.L. 302, sec. 266; 26 R.C.L. 313, sec. 272; 27 Cor. Jur. 437, sec. 91; 61 Cor. Jur. 392, sec. 396; *Erie Ry. Co. v. Pennsylvania*, 21 Wall, 492, 22 L. Ed. 595; *Railway Co. v. Philadelphia*, 101 U.S. 528.

There must be no doubt or ambiguity in the language used upon which the claim to the exemption is founded. It has been said that a well-founded doubt is fatal to the claim. *Bank of Commerce v. Tennessee*, 161 U.S. 134.

To the same effect is *Gondy v. Meath*, 203 U.S. 146; *Pacific Co. v. Johnson*, 285 U.S. 480.

The language used in section 1607(c) of the Federal Act, upon which we understand the right to exemption of the instrumentalities in question here from taxation by this State under the Nevada law is based, reads as follows:

The term "employment" means any service performed prior to January 1, 1940, which was employment as defined in this section prior to such date, and any service, of whatever nature, performed after December 31, 1939, within the United States by an employee for the person employing him, irrespective of the citizenship or residence of either, *except*

(6) Service performed in the employ of the United States Government *or of an instrumentality of the United States* which is (A) wholly owned by the United States or (b) *exempt from the tax imposed by section 1600 by virtue of any other provision of law.* (Italics ours.)

Assuming that section 1607(c) or section 1607 in its entirety does not become effective until January 1, 1940, still such section, we think, does not operate as a limitation on the State's right to levy unemployment contributions on the Federal instrumentalities in question here. It may limit the right of the Federal authorities to levy the Federal tax provided in section 1600 by express terms, or by reason of the words "by virtue of any other provision of law." It is clear beyond any doubt that such language is not "any other provision of law" as means by section 1607(c) (6) or by section 1606(b) where the same language is used. Further, even if by the most strained construction such language is said to provide an exemption from the provisions of section 1600, still the doubt and ambiguity in such claimed exemption, on our opinion, will bring

such exemption squarely within the rule of law with respect thereto hereinbefore cited, *i.e.*, there must be no doubt or ambiguity in the language used upon which the claim to the exemption is founded. *Bank of Commerce v. Tennessee*, supra.

We are advised, and we think it is conceded, that section 1606 of the Federal Act in its entirety became effective on August 10, 1939, as that is the date on which it was approved and became effective. Section 1606(b) and (c) contains the consent of Congress that States could tax Federal instrumentalities for State unemployment compensation purposes. No provision appears in such statute extending to a future date on which such State taxation could be had. There is no provision contained in section 1607 of the Federal Act, even if such section will not be effective until January 1, 1940, extending to that date the day on which State taxation, permitted under section 1606 (b) (c), may be had. It does not appear that there is any other Federal statute clearly exempting the instrumentalities in question from the tax imposed by section 1600 of the Federal Act. There is no State statute so exempting them.

We think the conclusion must be that the instrumentalities mentioned in the inquiry became subject to the payment of the unemployment compensation contributions levied under the Nevada law on and after August 10, 1939.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

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

ALBERT L. MCGINTY, *Director, Nevada Unemployment Compensation Division,*
Carson City, Nevada.

SYLLABUS

291. Unemployment Compensation Division—State Employment Service Division.

Unemployment compensation law does not sanction appointment of the same person as director over both divisions.

INQUIRY

CARSON CITY, December 2, 1939.

Would it be legal under the provisions of the Nevada unemployment compensation law as amended by chapter 109 of the 1939 Statutes to place the administration of the Unemployment Compensation Division and the State Employment Service under one and the same Director?

OPINION

Section 10(a) of the Nevada unemployment compensation law, as amended 1939 Statutes 131, provides:

Unemployment Compensation Division. There is hereby created under the labor commissioner a division to be known as the unemployment compensation division, which shall be coordinate with the Nevada state employment service. The unemployment compensation division shall be administered by a full-time salaried director, who shall be appointed and whose salary shall be fixed by the governor, but who shall be subject to the supervision of the commissioner. Said unemployment compensation division and the Nevada state employment service shall be responsible for the discharge of its distinctive functions. Each division shall be a separate administrative unit with respect to personnel, budget, and

duties, except insofar as the commissioner may find that such separation is impracticable. The commissioner is authorized to appoint, fix the compensation of, and prescribe the duties of the director of the Nevada state employment service division of the director of the Nevada state employment service division in accordance with the provisions of section 12 of this act.

Section 12(a) of the Nevada law, as amended, 1939 Statutes 136, provides:

State Employment Service. The Nevada state employment service division is hereby reestablished under the labor commissioner as a coordinate division with the unemployment compensation division. The commissioner, through such employment service division, shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this act and for the purposes of performing such duties as are within the purview of the act of Congress entitled "An act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes," approved June 6, 1933 (48 Stat. 113; U.S.C. Title 29, sec 49(e), as amended). The provisions of the said act of Congress, as amended, are hereby accepted by this state in conformity with section 4 of said act, and this state will observe and comply with the requirements thereof. It shall be the duty of the commissioner to cooperate with any official or agency of the United States having powers or duties under the provisions of the said act of Congress, as amended, and to do and perform all things necessary to secure to this state the benefits of said act of Congress, as amended, in the promotion and maintenance of a system of public employment offices. The labor commissioner is hereby designated and constituted the agency of this state for the purposes of said act. The commissioner is directed to appoint the director, other officers, and employees of the Nevada state employment service division. Such appointments shall be made in accordance with regulations prescribed by the director of the United States employment service. The commissioner may cooperate with or enter into agreements with the railroad retirement board with respect to the establishment, maintenance, and use of free employment service facilities.

It is clear from section 10(a) that the Legislature by the use of the term "coordinate" intended that the Unemployment Compensation Division and the State Employment Service were to be of equal rank and standing under the law. It is clear that the Unemployment Compensation Division shall be administered by a Director who shall devote his full time to such administration, which said expression in the law, in our opinion, negatives any intent on the part of the Legislature that such Director was to devote a part or any of his time to the State Employment Service. The section further providing that each division or service shall be responsible for the discharge of its distinctive functions, certainly imports an intent that the supervising heads of these departments were to be separate and distinct. The provision that each division shall be a separate administrative unit with respect to personnel, budget, and *duties*, except as the Labor Commissioner may find that separation thereof is impracticable, does not militate against the intent of the Legislature that the supervising heads or directors were to be separate persons. We think that the term "personnel" as used in section 10(a) relates to officers and employees below the grade of Director. The language authorizing the Labor Commissioner

to appoint, fix the compensation of, and prescribe the duties of the Director of the Employment Service with the Director of the Unemployment Compensation Division. We think the rule of *pari materia* cannot be so construed as to cover such evident inconsistent language and permit the combining of the two offices in one person.

Further evidence of the intent of the Legislature that the two offices in question here were to be kept separate and distinct and filled by different persons is contained in section 12(a) above quoted. In this section the Labor Commissioner was and is “directed” to appoint the Director, other officers, and employees of the State Employment Service. This is an express direction from the Legislature to the Labor Commissioner to appoint such Director, but expressly directed the Governor to appoint “a full-time salaried Director” as the administrative officer of the Unemployment Compensation Division. Certainly it cannot well be said that the Legislature used the words “full time” in any other sense than their common meaning and interpretation imports, *i.e.*, that such Director was to devote his full time to the business and affairs of the Unemployment Compensation Division, and the Legislature having clearly provided that each division shall be a separate administrative functions, and then in a later section of the law *directed* the Labor commissioner to appoint the Director of the Employment Service, we think the conclusion must be that the law contemplates and requires that the appointment of separate Directors for each division.

It is also to be noted that in section 12(a) it is provided that the appointments made by the Labor Commissioner shall be made in accordance with the regulations prescribed by the Director of the United States Employment Service dated July 1, 1938, with respect to a State Director of the Employment Service was that such Director shall devote his full time to the activities of such service. Rule 4, Agreement Between State Labor Commissioner and the United States Employment Service. This rule, we understand, has not been abrogated. Thus the United States Employment Service, under the Act of Congress, the provisions of which were accepted by the Legislature in section 12(a), required and requires a full-time State Director of Employment Service.

But irrespective of the requirements of the Federal Government or its officers, it is the opinion of this office that the law of this State provides for and requires the appointment of separate individuals to the office of Director of the Unemployment Compensation Division and the Employment Service Division, respectively. The inquiry is answered in the negative.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

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

HONORABLE R.N. GIBSON, *Labor Commissioner, Carson City, Nevada*.

A-42. Industrial Commission Funds.

Investment of Industrial Commission funds in bonds mentioned is valid, and said bonds have been duly authorized and issued.

CARSON CITY, December 9, 1939.

HONORABLE DAN J. SULLIVAN, *Chairman, Nevada Industrial Commission,* Carson City, Nevada.

DEAR MR. SULLIVAN: Pursuant to your request, we have examined certified copies of the transcript of proceedings covering the issuance of the following bonds:

\$5,000 City and County of San Francisco Hetch Hetchy, 4½% bonds of the issue of July 1, 1928, due July 1, 1972.

\$5,000 City and County of San Francisco Spring Valley, 4½% bonds of the issue of July, 1929, due July 1, 1970.

We have likewise examined an executed Hetch Hetchy bond, No. 20721, and an executed Spring Valley bond, No. 40651.

It is our opinion that these bonds have been authorized and issued in accordance with the Constitution and statutes of the State of California, and the charter of the said City and County of San Francisco, California, and that they constitute valid legal and binding obligations of said City and County of San Francisco, California.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

By ALAN BIBLE, *Deputy Attorney-General*.

SYLLABUS

292. Public Schools—Apportionment from State School Reserve Fund.

Apportionment from State School Fund made upon difference between amount actually returned by county tax levy for elementary and high school purposes and amount necessary to meet requirements of law.

INQUIRY

CARSON CITY, December 13, 1939.

1. In apportioning State relief to counties from the State School Reserve Fund, pursuant to the provisions of subparagraph 4(a), section 5798 Nevada Compiled Laws 1929, should the State Superintendent use as the basis for computing such relief “the amount raised by the levy on the 35 cents on the hundred dollars” of assessed valuation, or should she use as the basis the amount collected by the levy of the actual tax fixed by the county for elementary school purposes, provided that such levy is more than 35 cents on the hundred dollars of assessed valuation of the county?

2. Does your answer to the above apply likewise to the interpretation of the words “the amount raised by such 35 cent levy,” in subparagraph 4(b) of section 5798 Nevada Compiled Laws 1929?

OPINION

Section 798, 4(a), N.C.L. 1929, so far as applicable here, reads as follows:

Whenever any county shall have levied 35 cents on the hundred dollars assessed valuation of the county for elementary school purposes, if such levy does not bring in an amount of money equal to that required by law of such county for elementary school purposes, exclusive of bonds and interest thereon, the superintendent of public instruction shall apportion to said county from the state school reserve fund a sum of money such that taken with the amount raised by the levy of 35 cents on the hundred dollars by the county will be sufficient to make the sum required by law of such county for elementary school purposes; * * *.

Answering Inquiry No. 1.

It is clear that the foregoing section provides that if a county shall have levied a tax of 35

cents on the hundred dollars valuation of the county for elementary school purposes, and such levy does not bring in an amount of money sufficient to meet the amount required by law for such purpose, that such county may have apportioned to it from the State School Reserve Fund a sum of money which, taken together with the amount raised by such tax levy will meet the lawful requirements for elementary school purposes. The language quoted, we think, presupposes that the County Commissioners will have been advised by the School Trustees and other officers of at least the approximate amount that will be needed for elementary school purposes on or before the county tax is levied, and, that if the tax levy agreed upon shall fail to return enough money to meet the legal requirements, that recourse may then be had to the State School Reserve Fund. The amount of the tax levy fixed at 35 cents in the statute is a limitation in the sense that that rate must be used before such county may have recourse to the Reserve Fund.

If a county shall have levied a tax for elementary school purposes in excess of 35 cents on the hundred dollars of valuation, the intent and purpose of such increased rate was to raise sufficient money to meet the requirements of law, and the statute in question is to be applied in the manner, *i.e.*, that if such increased rate shall fail to return the amount required by law that then recourse may be had to the State School Reserve Fund, and the amount to be apportioned from the Reserve Fund shall be such amount thereof as taken with the amount actually returned by the increased tax levy as will meet the lawful requirements. IN brief, we think the above-quoted section of law clearly evidences the intent of the Legislature that the county tax levy for elementary school purposes shall, in the first instance, meet at least the minimum requirements of law for that purpose, and that if for any reason the levy, provided it is not less than 35 cents on the hundred dollars of valuation, fails to meet such requirements, recourse may then be had to the State School Reserve Fund *to make up the difference between the amount actually raised by the tax levy and the amount needed to meet the requirements of law.*

Answering Inquiry No. 2.

The language of sub-section 4(b) of section 5798 N.C.L. 1929, is substantially the same as that contained in subsection 4(a) quoted above, insofar as it relates to the right of recourse to the State School Reserve Fund in aid of high schools. The answer to Query No. 1 is applicable.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General.*

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

MILDRED BRAY, *Superintendent Public Instruction, Carson City, Nevada.*

A-43. Fish and Game Law.

Right to keep in storage for own consumption after beginning of closed season under permit granted under section 69 of Fish and Game Law (Nevada Compiled Laws 1929, sec. 3103) is limited by section 92 of said Fish and Game Law (Nevada Compiled Laws 1929, sec. 3126) to a period of 60 days after the beginning of the closed seasons, as provided for in said section 3126.

CARSON CITY, December 15, 1939.

Fish and Game Commission, State of Nevada, Box 678, Reno, Nevada.

Attention: L.M. Johnson.

DEAR MADAM: Reference is hereby made to your letter of December 14 requesting an

opinion of this office concerning the length of time game may be kept in possession after the season closes.

Reference is made in your letter to section 69 and section 92 of the fish and game law, and it is also noted that an argument has been advanced that the hunter may have 60 days after the season closes under section 92, and that if it is desired to keep the game longer, that a permit must then be obtained.

A perusal of the fish and game law discloses that under section 69, as originally adopted, it was provided that any person upon obtaining a permit from any State or county fish or game warden or deputy warden, might keep in storage in a licensed warehouse or his own during the open season, and not to exceed a 1-day limit. It was also in possession of any game bird, game animal, or game fish, or any part thereof, might have not to exceed 60 days after the beginning of the closed season in which to consume the same. Under these sections, as originally adopted, it is clearly apparent that the permission given in section 69 whereby a person upon obtaining a permit might keep in storage fish or game killed during the open season was modified by the provision in section 92 as originally adopted, in that section 92 provided that the game must be consumed not later than 60 days after the beginning of the closed season. In brief, the provision as originally adopted, and undoubtedly leads to the conclusion that the permit provided for in section 69 was a limited permit by reason of the language contained in section 92 inasmuch as section 92, being a later section of the Act, governs wherever any inconsistency appears in an earlier section.

An examination of these particular sections as later amended discloses that the same modification is now contained in section 92 with respect to the permit provided for in section 69, as amended, as existed in the first instance. Our conclusion is that at the present time, section 92 governs with respect to the length of time a person may legally have in his possession game or fish taken during the open season.

Respectfully submitted,

GRAY MASHBURN, *Attorney-General*.

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

A-44. District Attorney's Duties.

District Attorney's duty to collect bills due for services rendered, etc., by county hospital.

CARSON CITY, December 19, 1939.

HONORABLE MARTIN EVANSEN, *District Attorney, Hawthorne, Nevada*.

DEAR MARTIN: This will acknowledge receipt of your letter under date of December 11, 1939, received in this office today.

You ask our opinion on the following question:

Is it the duty of the Mineral County District Attorney to collect bills past due for the Mineral County Hospital upon the request of the trustees of the hospital?

In our opinion it is the duty of the District Attorney to collect bills for the county hospital upon request of the hospital trustees. In this connection, section 2076 Nevada Compiled Laws 1929 provides in part that the District Attorney "shall prosecute all recognizances forfeited in the district court, and all actions for the recovery of *debts*, fines, penalties, and forfeitures accruing to

his county * * *.” (Italics ours.) The County Hospital Act likewise provides that “all moneys received for such hospital shall be deposited in the treasury of the county in which such hospital is situated for the credit of the hospital fund.” It is thus our opinion that bills owing to the county hospital are debts accruing to the county, and under the plain provisions of section 2076 it follows that it is a part of the District Attorney’s duties to collect such debts.

With highest personal regards and the season’s best wishes to yourself and Mrs. Evanson, I am

Sincerely yours,

ALAN BIBLE, *Deputy Attorney-General.*

A-45. County Indigent Home, Use of by Indigent and in Emergency Accident Cases Involving Indigents.

Maternity cases of indigent mothers should be admitted to and treated in said home and are legally entitled to such admission and treatment, both by law and by general custom. Same rule applies to emergency accident cases.

CARSON CITY, December 20, 1939.

HONORABLE SANFORD A. BUNCE, *District Attorney, Pershing County, Lovelock, Nevada.*

DEAR MR. BUNCE: Reference is hereby made to your letter of December 19, 1939, making inquiry concerning the use of the Pershing County Indigent Home, first, by an indigent case, and, second, by an emergency accident case which has an indigent status.

You also inquire concerning a former opinion of this office to Mr. Wilson. The opinion in question was not directly on the point of maternity cases. However, the opinion did and does hold that the County Indigent Home is to be used in all cases by poor persons who are unable to enter other hospitals, and the opinion also holds that persons may pay to the county such amounts as they are able to pay for treatment in the county home. Such opinion is No. 23 in the Report of the Attorney-General for the period January 1, 1931, to June 30, 1932.

With respect to your inquiries, we beg to advise that an indigent maternity case is certainly eligible for admission to the Pershing County Home. Section 4 of the Expectant Mothers Act, the same being chapter 171 Statutes of 1935, expressly provides that such mothers may be confined in any county hospital, etc. Even without such provision, it is our opinion that an indigent mother would be entitled to proper care in a county hospital.

With respect to emergency accident cases, the opinion is the same. There can be no question of the power of the Board of County Commissioners to provide for the care of indigents who may be injured in some accident.

Very truly yours,

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

A-46. State Board of Relief, Work Planning and Pension Control (State Welfare Department).

Money appropriated in 1939 Statutes of Nevada is for use of and must be turned over to “Federal Relief Administration for Nevada” as provided for in that chapter, and is not for use of said State Board of Relief, Work Planning and

Pension Control.

CARSON CITY, November 22, 1939.

MR. HERBERT H. CLARK, *Supervisor, Division of Old-Age Assistance, Reno, Nevada.*

DEAR MR. CLARK: Your letter of the 26th ultimo reached my officio on 28th ultimo; but I have been absent from the office so much of the time since it reached my office and there were so many other matters that required my attention since it reached me that I simply have not been able to get around to answering it.

The \$66,000 appropriation made in chapter 103, 1939 Statutes of Nevada, to be paid in installments of \$3,000 a month for a period of twenty-one months "to provide for the cost of direct relief, work relief, and expenses incidental thereto," it seems, must be paid to the "Federal Relief Administration for Nevada." The provisions of the Act seem to be mandatory, not only as to the amount, but as to the agency to which it must be paid, *i.e.*, "Federal Relief Administration for Nevada." It is a fundamental rule of construction that, where there is an irreconcilable conflict of law, the last enactment must control, and that where the two acts are not in irreconcilable conflict, they must be construed in *pari materia*.

I am at a loss, however, to understand why are you are concerned with reference to this particular appropriation, as it is apparent that your duties are confined to the "Old-Age Assistance Law," and the administration thereof, not with the other matters of "direct relief, and work relief."

I have furnished you my views with reference to the matter, however, for the reason that your appointment and employment are under the State Board of Relief, Work Planning and Pension Control. If you are particularly concerned with said chapter 103 and the appropriation made therein, however, and the above answer is not sufficient for your purpose, I shall be glad to go into this matter more in detail for you or the State Board of Relief, Work Planning, and Pension Control upon further request for an elaboration.

Yours very truly,

GRAY MASHBURN, *Attorney-General.*