

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL - 1941

B-29. Artesian Basins--Procedure for Designation.

Statute providing for administration of underground waters does not contain full procedure for State Engineer to follow in designating artesian basins. State Engineer may designate such basins by boundaries, give public notice of such designation by publication of the notice once a week for four weeks in newspapers of the county where such basin lies.

CARSON CITY, January 6, 1941.

MR. ALFRED MERRITT SMITH, State Engineer, Carson City, Nevada.
Re: Las Vegas Artesian Basin.

DEAR MR. SMITH: Reference is hereby made to your letter of January 3, 1941, requesting advice from us concerning the procedure to be followed in a designation of an artesian basin in and around Las Vegas, Clark County.

Your first question is: "What would be the proper procedure for the State Engineer to take in designating such an area?"

Chapter 178, Statutes of Nevada 1939, is the law providing for administration of underground waters. An examination of the Act fails to disclose any specific procedure for the State Engineer to follow in designating artesian areas or basins other than to provide that upon a petition signed by not less than 10 percent of the owners of the wells in any particular basin, that thereupon the State Engineer shall designate such area. The foregoing provisions being found in section 4 of the Act. The Act does give the State Engineer the power to make rules and regulations within the terms of the Act as may be necessary for its proper execution. Such authority being contained in section 1 of the Act and also in section 10.

We think that all that is necessary for the State Engineer to do in designating an area as an artesian basin or subbasin is for him to determine the area or basin and provide a boundary therefor so as to make known where the area or basin is and designate the boundaries so far as practicable.

When this has been done, we think the proper procedure would be for the State Engineer to cause to be published once a week for not less than four weeks in a newspaper in the county where the area or basin lies, giving notice therein that the area or basin has been designated and giving the boundaries thereof. This notice should be in the form of a legal notice and will undoubtedly serve to give notice to all persons interested or concerned.

Your second inquiry is to the effect: "Will it be necessary to publish a notice in the local paper, etc.?" The answer to your first inquiry takes care of the second question.

Yours very truly,

W. T. MATHEWS, Deputy Attorney-General.

B-30. Christian Science Society--Articles of Incorporation.

There is no law of the State requiring the Christian Science Society to file Articles of Incorporation with the Secretary of State, or that it or other similar religious, charitable, literary, and scientific associations even adopt Articles of Incorporation.

CARSON CITY, January 7, 1941.

MR. MALCOLM McEACHIN, Secretary of State, State Capitol, Carson City, Nevada.

DEAR MR. McEACHIN: This is in answer to your letter to me of the third instant concerning the method to be pursued in the lawful organization of the Christian Science Society of Carson City, Nevada, Incorporated. We have looked into the law on the subject and also investigated the customary method of organizing churches, et cetera, as legal entities under the old 1867 law of this State, that is to say, Nevada Compiled Laws 1929, sections 3215-3222, both inclusive, relating to religious, charitable, scientific, and other associations.

The articles of incorporation offered for filing in your office and involved in your question expressly state in the opening paragraph thereof that the particular church is seeking to organize as a corporation under said old 1867 law, as amended.

The peculiar thing about said 1867 law is that the title of the Act indicates that a group organized under that law is to be a corporation. In fact, the title expressly states that it is "to provide for the incorporation" of such associations. The body of the Act provides for the association organized under that law, and the directors thereof, to have many of the rights, powers, privileges, and authority of corporations, and imposes upon such societies or associations some of the duties and obligations of corporations.

In fact, the society so organized is referred to several times in section 5 of that Act (Nevada Compiled Laws 1929, section 3219), and in other places in the Act as an "association or *corporation*." It is further provided in section 7 of the Act (Nevada Compiled Laws 1929, section 3221) that the society or association shall "have such other general powers as are by the laws of this state granted to corporations."

The use of the word "incorporation" in the title of the Act, and the above-mentioned and other references to the society organized under the Act as an "association or *corporation*," and the above-quoted provision that it shall have the general powers of a corporation, would very

readily lead a person attempting to organize such a religious association to believe that it was to be organized and to exist as a corporation and under the general corporation laws of the State. We find, however, that there is nothing in the 1867 Act which expressly provides that such a religious association or society is to be organized as a corporation or under the general corporation laws of this State, or that it shall have articles of incorporation, or that such articles shall be or may be filed in the office of the Secretary of State.

In fact, this law provides only for the election of trustees or directors by the church, congregation, society, or association to take charge of the property and handle the business and affairs of the society or association; for the certification of such appointment or election; for the acknowledgment or proof by a subscribing witness of such a certificate of election or appointment of the trustees or directors, the recording thereof in the office of the *County Clerk* of the county where such society or association is situated, the powers, duties, and obligations of such trustees or directors and of the society or association so organized, the acquisition and disposition of property and the use of the moneys and properties of the association, certain specified rights of hearing and appeal by aggrieved persons, the making of, and compliance with, rules and regulations governing the association and its members, certain limitations as to the property which may be owned and held by the association, exemption from taxes of certain property owned and held by the association, exemption from taxes of certain property owned and held by the association; that certain fraternal, charitable, educational, and other orders and groups may acquire and hold a certain amount of real estate and personal property necessary for the proper conduct of their affairs, pursuant to the provisions of the Act; that it shall have the general powers provided by law for corporations; that all real and personal property all ready owned at the time of the passage and approval of the Act by such corporations may still be held, owned and enjoyed by them; and that the trustees thereof shall make annually a full report to the association and file a copy thereof in the office of the *County Clerk* of the county in which the association is situated.

From the foregoing, it will be seen that there is no provision in the Act for the adoption of articles of incorporation or for the filing or recording thereof in the office of Secretary of State or anywhere else; and that the only provision for filing or recording any instrument connected with the organization of the society or association is that which requires the filing of the certificate and acknowledgment of election of trustees or directors in the office of the *County Clerk* in the county in which the society is situated, and for the filing of the report by the trustees with such society or association and a copy thereof in the office of the County Clerk.

I have also investigated the matter as to how other such church, charitable, fraternal and other societies are organized under the laws of this State and as to where the evidence of their organization and existence is filed or recorded. I find that the customary method of the organization thereof is quite simple and informal, and that they file their evidence of organization and existence, *i.e.*, the above-mentioned certificate and acknowledgment only in the office of the *County Clerk* of the county in which such organizations are situated.

From the foregoing, it is the opinion of this office that there is no provision in the law for the filing of such articles of incorporation in the office of the Secretary of State, and that there is

no law requiring that such religious, charitable, literary, scientific or other associations adopt articles of incorporation or file them anywhere.

Respectfully submitted,

GRAY MASHBURN, Attorney-General.

B-31. School Law--City Superintendent of High Schools.

Nevada School Law, section 5726 N. C. L. 1929, does not provide for a city superintendent of schools. If such officer is desirable, law should be amended to create such office.

CARSON CITY, January 13, 1941.

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

DEAR MISS BRAY: Reference is hereby made to your letter of recent date requesting an opinion as to whether section 5726 N.C.L. 1929, can be construed so as to permit county boards of education to issue a four-year contract to a superintendent of a county high school, providing such superintendent has first served one year acceptably as superintendent of a county high school.

While county boards of education are given the same powers and provided with the same duties as boards of school trustees, still it is to be noted that even boards of school trustees are not authorized to appoint an officer known as superintendent of a county high school. We do not believe that the term "city superintendent" as used in section 5726 is broad enough to include a term "superintendent of county high school." We are inclined to this view for the reason that throughout the school law we find the term "principal of high schools" and "principal of county high school," but nowhere the officer known as "superintendent of county high schools." We therefore conclude that section 5726 N. C. L. 1929 does not provide for such an officer or the selection thereof by county boards of education. If such a position is desirable, such section can be easily amended to provide such an officer.

Very truly yours,

W. T. MATHEWS, Deputy Attorney-General.

B-32. Deputy Surveyor General, Salary Of.

Section 7556 N. C. L. 1929 providing for the payment of the salary of Deputy Surveyor General out of the State School Fund is contrary to section 3 of article 11 of the State Constitution, and such section should be amended to provide for the payment of his salary from

the General Fund of the State.

CARSON CITY, January 13, 1941.

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

DEAR MISS BRAY: Reference is hereby made to your letter of January 2 inquiring whether section 7556 Nevada Compiled Laws 1929, with respect to the salary of the Deputy Surveyor General being paid out of the State School Fund is a legal enactment of the Legislature.

The language of such section pertaining to the Deputy Surveyor General Reads as follows:

From and after this act becomes effective, * * * the deputy surveyor general shall receive a salary of twenty-seven hundred (\$2,700) dollars per annum, payable out of the State school fund.

Section 3 of article XI of the State Constitution provides that "all proceeds derived from any and all of said sources shall be and the same are hereby solemnly pledged for educational purposes, and shall not be transferred to any other funds for any other uses." The term "proceeds" as used in this constitutional provision includes the interest from the State Permanent School Fund which is, in effect, created by such constitutional provision. The Legislature following the mandate of the Constitution later applied the prohibition contained in the Constitution to the State School Fund itself and restricted the use of the State School Fund to the support of the public schools, and provided that no portion of the public school funds nor the moneys raised by the State tax for school purposes shall be devoted to any other object or purpose. Section 5786 N. C. L. 1929.

The policy of the framers of the Constitution was and is to devote the proceeds of the State Permanent School Fund to school purposes solely. The Legislature in the past followed such policy with respect to the State school tax which each year is added to the State Permanent School Fund to make up the State Distributive School Fund or State School Fund. It seems to us that it would be next to impossible to segregate from the proceeds of the State Permanent School Fund the amounts added thereto by the State school tax in order to permit the appropriation therefrom of money with which to pay the salary of the Deputy Surveyor General. It must be conceded that such use of the fund would not be for matters closely connected with the public school system of the State.

It is therefore our opinion that the Legislature by providing in section 7556 N. C. L. 1929 for the payment of the salary of Deputy Surveyor General out of the State School Fund infringed upon the constitutional use of such fund. We therefore respectfully recommend that section 7556 be amended so as to provide for payment of such salary from the General Fund of the State.

Respectfully submitted,

GRAY MASHBURN, Attorney-General.

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

B-33. Insurance Commissioner--Insolvent Insurance Companies.

Nevada law relating to the insurance companies and Insurance Commissioner does not authorize the Insurance Commissioner to act as a statutory receiver or conservator of insolvent insurance companies. (Note--The law was amended by the 1941 Legislature and now provides that the Insurance Commissioner may act as statutory receiver.)

CARSON CITY, January 16, 1941.

HONORABLE HENRY C. SCHMIDT, Insurance Commissioner, Carson City, Nevada.

ATTENTION MR. CAHILL.

DEAR SIR: Reference is hereby made to your letter of January 15 concerning the proposed voluntary liquidation of the Pacific American Life Insurance Company and the International Casualty Underwriters Company. It is noted that you desire to know the status of the Insurance Commissioner with respect to these companies, that is to say, you desire to know what his obligations and duties are in liquidation of them.

An examination of the insurance law of this State pertaining to the companies in question here fails to disclose that the Legislature of this State has conferred upon the Insurance Commissioner or on the State Controller, or either of them in their official capacities, any powers or duties with respect to liquidation of insurance companies. Neither does the Act creating the office of Ex Officio Insurance Commissioner provide any such powers or duties. In brief, there is no authority to be found in the laws of this State empowering the Insurance Commissioner to act as a statutory receiver or conservator of the assets of an insolvent insurance company except as it provided in section 3575 N. C. L. 1929 with respect to mutual fire insurance companies only. We have examined the general law with respect to this question and from the authorities examined we must conclude that unless a State officer is vested with the power by statute to take over the assets and affairs of an insolvent insurance company he has no authority so to do.

Most States have enacted laws providing very broad powers in Insurance Commissioners and like officers with respect to insolvent insurance companies organized under the laws of such States. The Nevada Legislature has signally failed to so provide in the Nevada laws except as above mentioned. No doubt, such a statute would be a most salutary measure and should be incorporated in the insurance laws of this State.

We note your inquiry as to whether the rights of the policy holders be protected and the reinsuring or refund of premiums on business already accepted be under the supervision of your office. It is no doubt true that the rights of policy holders are to be protected. However, where

no such duty to so protect is vested by law in the Insurance Commissioner or other State officer, then it must be assumed that in voluntary liquidation proceedings the courts of the State will protect the rights of policy holders and undoubtedly will require the reinsuring or refund of premiums on business already accepted. This, in fact, would be a duty of the court and we are sure that our courts will not fail in this duty.

Yours very truly,

W. T. MATHEWS, Deputy Attorney-General.

B-34. Legislative Expenses and Appropriations--Controller Required to Issue Warrants to Pay Same.

Where the Legislature creates a Legislative Fund out of which to pay certain enumerated expenses, including "the incidental expenses of the respective houses thereof" and makes an appropriation therefor, and then adopts a concurrent resolution of both branches of the Legislature authorizing each branch thereof to draw its warrant or warrants on the State Treasury to pay the expenses of "cleaning and renovating the Senate and Assembly Chambers of the Legislature," including the "pertinent balconies and adjoining anterooms connected therewith" and to pay for the "necessary materials and labor incident to such renovating and cleaning," and limits the amount so to be expended to \$2,500 to be paid out of the Legislative Fund so created, upon claims duly certified by the committee or committees provided for in said resolution, such legislation lawfully sets apart and allocates said portion of said fund for the purposes mentioned in said resolution.

Such cleaning and renovating clearly falls within the purposes of the expression used in said legislation "the incidental expenses of the respective houses thereof." The State Controller is not only authorized but required to draw his warrant or warrants to pay the same when claims therefor are duly approved, certified and presented to him; and the State Treasurer is sufficiently authorized and directed to pay the same, as the Supreme Court of this State has uniformly held the Legislature has power to appropriate money as it sees fit, except when prohibited by the Constitution.

CARSON CITY, January 25, 1941.

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

STATEMENT OF FACTS

DEAR MR. SCHMIDT: Some question has arisen as to whether you are legally authorized, by virtue of Senate Bill No. 1, recently enacted by the Legislature and approved by the Governor of this State on January 21, 1941, and of Assembly Concurrent Resolution No. 1 introduced by Honorable Denver Dickerson, Assemblyman of Ormsby County, dated January 21, 1941, and thereafter, but heretofore, adopted by both branches of the Legislature of this State, to draw your warrant or warrants on the State Treasury to pay the expenses of cleaning and

renovating the Senate and Assembly Chambers of the Legislature in the State Capitol and of the appurtenant balconies and adjoining anterooms connected therewith; and to pay for the necessary materials and labor incident to such renovation, as provided for in said Assembly Concurrent Resolution No. 1, to the extent of, but not to exceed, \$2,500 out of the Legislative Fund created by said Senate Bill No. 1, upon claims duly certified by the committee or committees provided for in said resolution.

It will be noted that said Senate Bill No. 1 expressly appropriates \$60,000 and constitutes it “the legislative fund”; that section 1 of that Act expressly states the purposes for which said Legislative Fund may be used, in the following language:

for the purpose of paying the mileage and the per diem of the members of the present legislature, the salaries of the attaches, *and the incidental expenses of the respective houses thereof.* (Italics ours.)

and that section 2 of that Act expressly authorizes and *requires* the State Controller to draw his warrants on said fund to comply with the above-mentioned and quoted purposes of the Act, including, among other things, the payment of the *incidental expenses of the respective houses,*” (italics ours) when properly certified in accordance with law, and authorizes and requires the State Treasurer to pay such warrant or warrants.

It will be noted that said Assembly Concurrent Resolution No. 1, after reciting, among other things, the need of the legislative halls for such cleaning and renovating, and the fact that the 1939 Legislature did not appropriate sufficient funds to complete such cleaning and renovating prior to the convening of the present Legislature, authorizes, and probably directs, the Speaker of the Assembly to appoint a committee of three Assemblymen to confer with a like committee to be appointed by the Senate “for the purpose of cleaning and renovating the halls and rooms in the State Capitol to be used for legislative purposes, such committee to have full authority to employ suitable persons to carry out the purposes” of that resolution, and sets aside or allocates (although the resolution states it is “appropriated”) the sum of \$2,500, or so much thereof as may be necessary to carry out the purposes of the resolution, *to be paid “out of the legislative fund of the State of Nevada”* to carry out the provisions (“purpose”) of the resolution. It will be noted also that the last paragraph of said resolution directs the State Controller “to allow and approve such claims as may be certified by said committee” and directs the State Treasurer to pay the same, “out of the legislative fund created” by said Senate Bill No. 1.

OPINION

Since said Assembly Concurrent Resolution No. 1 was adopted by both the Senate and Assembly of the Legislature of this State, it was the clear intention from the language used, that all the expenses of cleaning and renovating said legislative halls and rooms and of paying for the labor and material incident thereto were to be paid out of its own “legislative fund” so created by said Senate Bill No. 1, that is to say, out of the money already appropriated from the General Fund of this State by said Senate Bill No. 1 for the use of the Legislature in carrying out the purposes stated in that Act. It must be kept in mind that said resolution is not an appropriation of the money but merely an allocation of a portion of the money so already appropriated from the

General Fund of the State to constitute said Legislative Fund.

I call attention to this situation to differentiate the situation covered by said Assembly Concurrent Resolution No. 1 from situations which have sometimes arisen and which may again arise by which the State Legislature attempts to make direct appropriations from the General Fund of the State by resolution, instead of by bill enacted by the Legislature and approved by the Governor. The situation presented by said resolution is entirely different from situations which arise when the Legislature attempts by resolution rather than by legislative enactment to appropriate money from the General Fund of the State for designated purposes, or for any purpose. The Constitution definitely provides that the Legislature may appropriate money only by constitutional bills enacted by the Legislature and approved by the Governor of the State. On this point, I cite the first sentence of article IV, section 19, Nevada Constitution (compiled as Nevada Compiled Laws 1929, section 70), which I quote as follows:

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

The authorities are unanimous to the effect that, pursuant to such constitutional provisions, moneys can be appropriated from the State Treasury only by bills enacted by the Legislature and approved by the Governor. It follows, therefore, that appropriations can only be made by enactments of the Legislature approved by the Governor, that is to say, by formal bills so enacted and approved.

The present situation, however, is not such a case as is prohibited by the above-quoted language from the State Constitution. The above-mentioned resolution does not at all present the question of whether the Legislature has constitutional authority to appropriate money from the General Fund of the State by mere resolution. This is true because of the fact that the money so to be expended under the resolution has already been *appropriated* in said Senate Bill No. 1 so enacted by the Legislature and approved by the Governor. Said resolution merely relates to the constitutional right of the Legislature to expend its own funds, that is to say, the funds appropriated by it to constitute its "Legislative Fund." After money has been once so appropriated and so made to constitute said "Legislative Fund" the manner of the expenditure thereof is largely a matter within the discretion of the Legislature, so long as it keeps within the Constitution and within the purposes for which the appropriation was made and the "Legislative Fund" created. The Legislature, by the express language of said Concurrent Resolution No. 1 so adopted by both houses of the Legislature of this State, clearly intended that not to exceed \$2,500 should be expended by it out of its own "Legislative Fund" for the purpose of cleaning and renovating said legislative halls and rooms and to pay for the labor and materials incident thereto. It expressly so provided and so indicated said clear intention in a number of places in said resolution. The fact that the Legislature so intended is beyond question. This is shown by the above language quoted from the resolution.

It is also clear and beyond question that the Legislature based its authority to expend its "Legislative Fund," for the purposes mentioned in said resolution, on the following language quoted from section 1 of said Senate Bill No. 1 as to the purposes for which said Legislative

Fund might be expended:

and the incidental expenses of the respective houses thereof.

This same language is again used in section 2 of said Act. This is shown by many expressions in said resolution. In other words, the Legislature has, by its action in adopting said Concurrent Resolution, placed its own construction upon the language last above quoted, *i.e.*, “and the incidental expenses of the respective houses.” This action of the Legislature in adopting the said resolution is contemporaneous with its action in enacting said Senate bill No. 1, the Act having been approved January 21, 1941, and the resolution being dated the same day. It is a fundamental rule of construction that the Legislature may, by contemporaneous action, define or construe the language used by it in any other action taken by it; and that such contemporaneous action may be taken into consideration in construing the meaning of any other Act enacted by it or resolution adopted by it.

As to the right of the Legislature to appropriate money for this or any other purpose not prohibited by the Constitution, the Supreme Court of this State has uniformly held that the Legislature has power to appropriate money as it sees fit, except when limited (prohibited) by the Constitution. State v. Parkinson, 5 Nev. 17-31; State v. Davis, 26 Nev. 373-380; State v. Eggers, 28 Nev. 469.

The case of State v. Davis, *supra*, involves a situation where the Supreme Court of this State sustained the right of the particular agency entitled to the appropriation involved to expend the moneys appropriated for, among other things, “the current and contingent expenses” of that agency, although the above-quoted language was not included in the Act involved in stating the purposes for which the appropriation was made.

From the foregoing, it is my unqualified opinion that the Legislature having already properly and constitutionally appropriated the money constituting its “Legislative Fund,” and provided therein that one of the purposes for which the moneys in that fund may be expended, is the payment of the “incidental expenses of the respective houses thereof,” the Legislature may by such a concurrent resolution, and has by said Assembly Concurrent Resolution No. 1, legally set apart or allocate a portion of the fund so already appropriated for the purposes mentioned in said resolution. In other words, the purposes mentioned in said concurrent resolution fall within the expression used in the said Senate Bill No. 1, so enacted and approved, “the incidental expenses of the respective houses thereof.”

It is my further unqualified opinion that, under the authority and direction of section 2 of that Act, taken in connection with the provisions of said resolution, the State Controller is not only authorized but is required to draw his warrants on said fund to pay such “incidental expenses” of the Legislature in cleaning and renovating said legislative halls and rooms, when claims therefor are duly approved and certified as provided for in said resolution and the law, and that the State Treasurer is thereby authorized and directed to pay such warrants.

Respectfully submitted,

GRAY MASHBURN, Attorney-General.

B-35. Motor Vehicle Registration Law--Transfer of Title of Automobile--Community Property.

Where an automobile is community property and husband dies without testamentary disposition of his interest in the car and there are no surviving children, the motor vehicle department may issue certificate of title of the car to the surviving widow upon proof of the fact that it is community property and there are no surviving children and that the creditors of the estate have been paid.

CARSON CITY, January 29, 1941.

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

DEAR MR. McEACHIN: Reference is hereby made to your letter of January 23, 1941, concerning the transfer of title of a certain 1937 Nash sedan registered in the name of "Walter C. Gillette (Estate)." Acknowledgment is also hereby made to the letter of Attorney Clyde D. Souter wherein he advises that, in his opinion, the title to the car may be legally transferred without administration of the state. He refers to section 3397.02, Nevada Compiled Laws, Pocket Parts.

We are not advised of the date of the death of Walter C. Gillette. However, we assume that it was prior to January 15, 1940, the date of the certificate of ownership submitted with your inquiry. If on the date of the issuance of the certificate of ownership to "Walter C. Gillette (Estate)," then it would appear that the estate was in the course of administration at that time unless your office was not advised of the true state of affairs. If the estate was undergoing administration then, of course, it naturally follows that some order of the district court would be necessary to enable the administrator, the administratrix, or the widow to dispose of the automobile in question.

However, it appears from the letter of Attorney Clyde D. Souter forwarded with your communication that there has been no administration of the estate of Walter C. Gillette, and it is claimed in such letter that the surviving wife has paid all of the debts of the decedent and that the automobile in question was community property at the time of the death of Mr. Gillette. Under such circumstances the property, of course, would not be subject to administration under the Nevada law as it is so provided in section 3395.2, Pocket Part of Nevada Compiled Laws 1929.

Under this section of the law, upon the death of the husband one half of the community property vests in the surviving wife, the other one-half is subject to the testamentary disposition of the husband, and in the absence of such disposition, goes to the surviving children equally. It is further provided that in the absence of both such testamentary disposition and surviving children the entire community property shall vest without administration in the surviving wife, provided, of course, the surviving wife pays or causes to be paid all indebtedness legally due

from the estate.

We are inclined to the view that in cases where the automobile is community property and the husband should die without testamentary disposition of his interest in the car and there is no surviving children, that if it is shown to the department that such is the fact and that the surviving widow has paid or caused to be paid debts of the husband, that, in that event, it would be incumbent upon the department to issue a certificate of title to the widow. It would not be within the province of the Motor Vehicle Department to cause administration of such an estate. However, section 7 of the Motor Vehicle Act does empower the department to require an applicant for registration and transfer of registration of an automobile to furnish such information in addition to that required to be shown on the application for registration as may be necessary to satisfy the department of the truth and regularity of the application. Under such circumstances, it is our view that the department could require from the surviving widow an affidavit attesting to the facts concerning the automobile, and that it was community property and under the law of the State not subject to administration, and that there were no known creditors who might have a claim upon the automobile. Upon the receipt of such an affidavit we are of the opinion that the department could legally issue to such widow a certificate of ownership of such car and, of course, also cause to be issued proper transfer of such title from her to a purchaser.

This letter is not to be deemed to change our views with respect to the issuance of certificates of title and transfers thereof of automobiles now shown to be community property. As to such automobiles, it is our opinion that the transfer thereof should be backed by some order of court issued pursuant to section 9704 N. C. L. 1929.

We are returning herewith the letter of attorney Clyde D. Souter, together with certificate of ownership and Mr. Souter's check in the sum of \$1, the same being No. 3071, dated January 22, 1941.

Yours very truly,

W. T. MATHEWS, Deputy Attorney-General.

B-36. Federal Social Security Act--Merit System.

The Federal Social Security Law, as now amended, makes the establishment and maintenance of the merit system and the safeguard against the disclosure of information contained in application for old-age assistance mandatory and compulsory, if and when the Federal Social Security Board so requires, and the State law also requires the same, said State legislation being required by reason of the fact that, without it, the application for old-age assistance and all the records relating thereto are public records and subject to inspection to the same extent as are all other public records.

CARSON CITY, January 29, 1941.

MR. HERBERT H. CLARK, Supervisor, Division of Old-Age Assistance, State Welfare Department, Reno, Nevada.

DEAR MR. CLARK: Pursuant to your oral request for my official opinion as Attorney-General as to whether the Federal Social Security Act, as amended and approved August 10, 1939, makes it compulsory that a State establish a so-called "merit system" or establish and maintain a "personal standard on a merit basis" as a condition to Federal participation in the furnishing of old-age assistance under the Federal Social Security Act; and also as to whether said Social Security Act as so amended makes it compulsory that the State make information furnished as to applicants and recipients of old-age assistance somewhat of the nature of confidential or privileged communications, I am writing to say that it is the unqualified opinion of this office that said Federal Social Security Act, as so amended, does make it compulsory that the State establish such a merit system and also safeguard such information by making it somewhat in the nature of confidential or privileged communications. On this point, I quote as follows from title 1, section 2, of said Federal Social Security Act as so amended:

A plan for old-age assistance *must* * * * (5) provide such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit system, except that the board [Federal Social Security Board] shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employee in accordance with such methods) as are found by the board to be necessary for the proper and efficient operation of the plan.

Eliminating the exception mentioned in the above-quoted language within the parentheses, this language would require that Nevada provide a method of administration, effective after January 1, 1940, establishing and maintaining such "personnel standards on a merit basis * * * as are found by the Board (Federal Social Security Board) to be necessary for the proper and efficient operation of the plan." My information is that the Federal Social Security Board has furnished such a model proposed plan prescribing "personnel standards on a merit basis." It will be noted that the first language above quoted from said section 2 uses the word "*must*." It is evident from this language and from the fact that the Federal Social Security Board has furnished such a plan that the Federal Social Security Board considers the plan so furnished by it to be "necessary for the proper and efficient operation of the plan." It is also evident from the use of the word "must" that the adoption of some such plan is mandatory.

As to your question relating to the confidential or privileged nature of the information furnished "concerning applicants and recipients," the language of the same section of the Federal Social Security Act is as follows:

A state plan for old-age assistance *must* * * * (8) effective July 1, 1941, provide safeguards which restrict the use of disclosure of information concerning applicants and recipients to purposes directly connected with the administration of old-age assistance.

It will be noted that the Federal Social Security Act as amended again uses the word “must,” making it definite and certain that this provision as to safeguarding such information is mandatory. While this provision as to safeguarding the disclosure of the information is not effective until July 1, 1941, it is certain that the Federal Social Security Board, if it sees fit to do so, may withhold Federal participation on and after that date, unless the State provides some such safeguard. From the foregoing, it is my unqualified opinion that the Federal Social Security law does make the establishment and maintenance of a merit system and of safeguards against the disclosure of such information mandatory, and allows the Federal Social Security Board, if it sees fit, to require compliance with these mandatory provisions as a condition precedent to a continuation of Federal participation.

It is also my unqualified opinion that neither such a merit system nor the safeguarding of such information as required by the Social Security Act as so amended can be made effective without State legislation providing for the same. In other words, the application of applicants and other records, files and data concerning the same on file in either the office of the County Clerk or in the office of the State Board are public records and subject to inspection by anyone desiring to inspect them; and it is necessary to have State legislation expressly providing safeguards against the disclosure of that information; otherwise they may be used just as any other public records are used and are subject to inspection by anyone just the same as are other public records.

As to the merit system, the State Board or Welfare Department could establish a merit system; but that system would not be effective without State legislation authorizing the State Board or State Welfare Department to adopt and put into force and effect rules and regulations for the establishment and maintenance of such a merit system.

Respectfully submitted,

GRAY MASHBURN, Attorney-General.

B-37. State Salary Schedule Law--Its Application to Unemployment Compensation Division Employees.

The use of the words “clerks, stenographers and typists” as used in said law are to be liberally construed to the end that they shall include all clerical and stenographic work of any kind and nature whatsoever, as there is no reason why the salary schedule law should apply to one department of the State and not to another for the same class of work, unless the law itself expressly exempts the State department so excepted from the provisions thereof, and that was the intention of the Legislature in enacting the law.

The work to be done by a “clerk” covers all kinds of clerical work done by such employees.

Previous employment by the State even as a teacher does not fall within the classification

covered by the specifications in the Act "clerk, stenographer, and typist" and cannot be considered in determining the salary to be paid for the second two years of the employment or for subsequent periods of employment.

CARSON CITY, January 30, 1941.

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

STATEMENT

DEAR SIR: You and Honorable Frank B. Gregory, attorney for your division, requested the opinion of this office sometime ago as to the salary schedule of State employees as provided for in Nevada Compiled Laws 1929, section 7562, and more particularly as to what State employees this salary schedule covers or includes, and the "question of what previous services constitute employment necessary to qualify under the provisions of that section."

The fact of the matter is that said section 7562, which was approved March 30, 1929, was amended by the 1937 Legislature of this State, as shown by chapter 201, 1937 Statutes of Nevada, page 422; and while said section 7562 was the law from the time it was approved in 1929 up to July 1, 1937, the effective date of said chapter 201, the amended law, *i.e.*, said chapter 201, is now and has been ever since July 1, 1937, the law of this State on the questions involved in your inquiry. For your purposes, however, said 1937 amendment does not change the law, as said chapter 201 made only one change and that was with reference to the chief clerk, stenographer in the office of the Attorney-General. The law still uses in designating the employees involved the words "stenographer, typist, or clerk, and assistant State librarian," making certain exceptions as to certain State offices and departments.

Because of the fact that this office was exceedingly busy when your inquiries were made, I called you up and gave you my oral opinion and, on account of the fact that it seemed that it would be some time before we could reach your inquiry for the purpose of giving you a written opinion, I asked that you have your stenographer take down our telephone conversation and that you furnish me with a transcript of it, and that was done. In view of the fact that I expressed my views and official opinion quite fully in that telephone conversation, as shown by the transcript which you furnished me and the fact that I am still of the same opinion, I assumed that there was no immediate need of further elaboration. I now find, however, that you may need the more formal opinion of this office on the point or points involved, and am, therefore, giving you my views and official opinion in this letter, reserving the right to put it in more formal form of an official opinion later if I should desire or the need of such a formal opinion should arise, either for your use or mine.

OPINION

As stated in our telephone conversation and the transcript of your stenographer which you furnished me, it is the opinion of this office that the words used in the original section 7562 and

also in chapter 201 amending that section applies to and include all stenographic, typing, and other clerical work, and also, of course, the “assistant State librarian,” employed in all of the elective and appointive offices and departments of the State mentioned in said chapter 201. The fact of the matter is that there was not any “typist” at all in the entire State government at the time of the passage and approval of the original section 7562 on March 30, 1929; but it was the evident intent of the Legislature to cover, by the use of the words “stenographer” and “typist,” all work of the nature done by stenographers and typists, that is to say, not only the work of a stenographer in taking dictation but also in transcribing that dictation and in all other work done on a typewriting machine, and also stenotyping as now done, and all other work of that nature. It is also my opinion that the word “clerk” includes all clerical work, both that done by clerks as such, and also that done by ordinary bookkeepers, and all work of every kind and nature whatsoever of a clerical nature. The truth of the matter is that there were few if any State employees at the time of the passage and approval of the original Act in 1929 who were designated on the pay rolls or otherwise as clerks. It is my unqualified opinion that it was the intention of the Legislature to cover and include in the words used “stenographer, typist, or clerk,” all work of every kind and nature whatsoever done by stenographers, stenotypists, operators of calculating machines, typists and all work done on typewriting machines or machines of a similar nature, and all clerical work of every kind and nature whatsoever in all of the State offices and departments, both elective and appointive, except the few employees expressly excepted from the provisions of such Salary Schedule Act as contained in said chapter 201.

It is true, of course, that your department is not mentioned either in said section 7562 or in said chapter 201 amending that section, for the very simple reason that the Unemployment Compensation Division was not in existence at the time of the enactment of the original Act, and the above-mentioned fact that said chapter 201 simply followed the language of the original 1929 Act by which said section 7562 was enacted, except as that Act relates to the chief clerk-stenographer in the Attorney-General’s office. The same situation exists with reference to the present set-up of the State-Federal Employment Service, and particularly to the State Welfare Department and the Department of Old-Age Assistance. It is my unqualified opinion, however, that it was the intention of the Legislature that this salary-schedule Act should relate to these departments which were later established, for the very simple reason that the Legislature adopted this rather inclusive expression in both the original section 7562 and in chapter 201 amending it as to what employees of the State are intended to be included: “employed in any of the various offices of elective officers of the State of Nevada,” except those that are expressly excepted in that section and chapter. The fact of the matter is that said law, both as originally enacted and as so amended, names a number of departments, the heads of which are not elected. While the law does not expressly provide for the appointive officers or departments, such as yours, except those named in the law, it is my opinion that the Act should be liberally construed to the end that the same “yardstick” or measure of compensation shall be applied to all the offices and departments, whether elective or appointive, to the end that there may not be dissatisfaction and friction and that there may be some measure of uniformity in the amount of compensation to be paid to State employees. It is my view that, notwithstanding the express letter of the law does not so provide, the spirit of the law does include all employees of the State of both the elective officers and of the appointive officers and departments, except as to those employees who are expressly

excepted from the provisions of the Act; and that employees of your department are, therefore, included in the provisions of the law.

Another question is raised by your letters. It is this: Whether the State employment which is made the basis of the compensation to be paid for the three periods of time embraced in the law, *i.e.*, (1) the first two years of State employment; (2) the second two years of State employment, and (3) after four years of State employment, makes State employment in any capacity for either of the above-mentioned times, the basis of compensation in some other capacity in the employment of the State. Specifically you ask whether previous employment as a "teacher" for a term of two years (apparently by the State) prior to affiliation with the Nevada Unemployment Service Division in the capacity of a "clerk" constitutes employment which will justify payment of a salary at the rate of \$140 per month to the clerk. Certainly, my answer to this question is and must be "no." Outside of the question of educational qualifications, there is absolutely no relation between the duties to be performed by a "teacher" and that to be performed by a "clerk." The employment for two years by the State can be the basis of compensation for the second two years at the rate of \$140 per month only in cases where the duties to be performed are the same, or are in the same nature of employment. A stenographer might work many years in State employment and know absolutely nothing about the duties to be performed by a bookkeeper, and vice versa. It is employment in the service of the State in the same capacity which makes the time of the employment the basis of increased compensation. A State employee must have served in at least the same general character of work for the State for a full period of two years before he or she is entitled to compensation at the increased rate of pay for continued services for the second two-year period in the same capacity or general nature of work. It is not necessary that the classification of the employment or designation of it be the same, but certainly the general nature of the duties to be performed in the two positions must be the same. In other words, the work for the second two-year period and for the period after four years must be of the same character and nature as the work performed by the employee in the first two years of employment. The same situation applies to each of the three periods mentioned, *i.e.*, the work must be of the same general character in each of the periods in order to entitle the employee to the increased compensation provided for in the Act for the longer periods of employment.

Respectfully submitted,
GRAY MASHBURN, Attorney-General.

B-38. County Boards of Education--Vacancy in Office.

No provision in the Nevada school law to fill vacancy on county boards of education by election--such vacancies are filled by appointment by the Superintendent of Public Instruction. However, under chapter 89, Statutes of 1939, the appointment to fill a vacancy in a county board of education expires the third Saturday in March following the regular school election. Members of the county board of education are elected at the general elections held in the particular counties in the month of November. Consequently, a vacancy in the county board of education can only be filled until the third Saturday in March following a regular school election held in that month which necessitates another appointment after the third Monday in March to fill the

then recurring vacancy in the county board of education. If no candidate files for the long term of office on a county board of education at the regular general election such failure constitutes a vacancy on the board which is to be filled by the Superintendent of Public Instruction.

CARSON CITY, January 31, 1941.

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

DEAR MISS BRAY: Reference is hereby made to your letter of January 27, 1941, requesting an opinion upon the following questions:

1. If a member of a county board of education, elected for a four-year term, resigns during the first or second year of his term of office, is his successor appointed merely until the next general election, or should such member be appointed to fill the unexpired term, or for a period of more than two years?
2. If no candidate files for the long term office on a county board of education at the regular general election, should the appointment of some qualified person for the position be until the first Monday in January following the next regular general election or should the appointment run for the full four-year period and expire on the first Monday in January following the second general election after the appointment?

Answering inquiry No. 1: Section 5823 Nevada Compiled Laws 1929 provides, with respect to the filling of vacancies on the county boards of education, as follows:

If at any time a vacancy shall occur on said board, it shall be the duty of the Superintendent of Public Instruction to appoint a member for the unexpired term.

Attorney-General Diskin, in his Opinion No. 383, dated August 25, 1930, in reply to a similar inquiry under the same statute, held that the appointment to fill such vacancy should be for the residue of the unexpired term and not until the next election. With respect to the power provided in said section 5823 for the Superintendent of Public Instruction to fill the vacancy for the unexpired term, we concur with Attorney-General's opinion. However, a most anomalous situation was created by reason of the inclusion in chapter 89, Statutes of Nevada 1939, of a provision that a member of the county board of education appointed to a vacancy on such board shall not extend beyond the third Saturday in March following the next regular school election. Chapter 89 purports to amend section 5712, Nevada Compiled Laws 1929, which said section related and relates to vacancies in boards of school trustees and not county boards of education. The inclusion of the provision relative to county boards of education in chapter 89 was certainly a most erroneous piece of legislation. Boards of school trustees are elected at school elections at a totally different time and place from members of county boards of education and certainly have no relation to the election or the appointment to fill vacancies on county boards of education. However, the result of legislation had by chapter 89 is that a person appointed to fill a vacancy on county boards of education may hold office by reason of such appointment only until the third

Saturday in March following a regular school election subsequent to his appointment. When that time comes, under chapter 89, the term of office ends. However, there is no provision in the law for an election to fill vacancies on county boards of education. Such vacancy is to be filled always by appointment. The effect of chapter 89 then, with respect to the filling of a vacancy on county boards of education, is to create another vacancy which can only be filled by the Superintendent of Public Instruction by appointment to fill the unexpired term of such vacant office. It is clear that the language contained in chapter 89 with respect to the ending of the term of an appointed member of a county board of education should be stricken therefrom by proper amendment.

Answering inquiry No. 2: If no candidate files for the long term office on a county board of education at the regular general election, such failure in our opinion constitutes a vacancy on the board which is to be filled by the superintendent of public instruction in accordance with section 5823 Nevada Compiled Laws 1929 for the unexpired term pertaining to such vacancy subject to the qualification now contained in the law by reason of the inept provision in said chapter 89, and on and after the third Saturday in March following the next regular school election, which is the limitation upon the term of such appointed member, another appointment will be necessary for the purpose of filling the balance of the unexpired term. Certainly said chapter 89 should be amended without fail.

Sincerely yours,

W. T. MATHEWS, Deputy Attorney-General.

B-39. State Grazing Act.

State Grazing Board is not authorized to enter into cooperative agreements with State Board of Stock Commissioners, but are limited to entering into agreements with Federal agencies.

NOTE--As indicated in the opinion immediately following this letter, the 1941 Legislature amended the Taylor Grazing Act to permit cooperative agreements between the Grazing Board and State officials and boards.

CARSON CITY, February 8, 1941.

MR. PHIL M. TOBIN, Secretary Nevada Grazing Board, District No. 2, Winnemucca, Nevada.

DEAR MR. TOBIN: This will acknowledge receipt of your letter of February 6, 1941.

We have held that funds available for construction and maintenance of range improvements and related matters may be used to cover predatory animal control and cricket control as long as such control is exercised for the maintenance and preservation of the range. As I attempted to indicate in my letter of February 3, there is some doubt in our minds as to

whether or not your grazing districts can enter into cooperative agreements with the State Board of Stock Commissioners, since section 6 of your Taylor Grazing Act specifically states:

In the case of any project involving construction and maintenance of range improvements and related matters, as provided for in this act, and within any grazing district established under the provisions of the Taylor grazing act, such project or projects shall be undertaken only under cooperative agreements entered into on the part either of the state boards or the boards of county commissioners, as the case may be, and the federal officials in charge of the grazing district concerned.

It appears that this section is a definite limitation upon the grazing boards and, since the grazing boards are not specifically authorized to enter into cooperative agreements with the State Board of Stock Commissioners but are limited to entering into agreements with Federal officials, we have some doubt as to the cooperative agreement suggested in your letter of January 28. We accordingly suggested that this feature might be covered by a legislative amendment. In addition to this suggestion, we note that the expenditure is to be made for cattle theft control and though undoubtedly this is a worthy and necessary expenditure, it seems to us that such expense is not used solely for the maintenance and preservation of the range but, as you have indicated, is a direct police measure. Therefore, even though we were to hold that your grazing board could enter into an agreement with the State Board of Stock Commissioners, it might be extremely doubtful if grazing funds could be used for cattle theft control.

In view of this additional doubt not expressed in our letter to you of February 3, it seems doubly clear that some statutory amendment must be secured. As I have previously indicated to you and likewise to Mr. Tapscott, this office is only too happy to be of any possible assistance in clarifying your problem and the somewhat similar problem presented by Mr. Tapscott.

Sincerely yours,

ALAN BIBLE, Deputy Attorney-General.

B-40. Constitutional Question--Sectarian Teaching.

Under facts stated in inquiry, crippled children are placed in sectarian hospital solely as patients and without any attempt to instruct or guide them in religious tenets. Constitutional amendment against using public funds for sectarian purposes cannot be construed to prevent necessary hospitalization in sectarian institutes where no instruction of any kind is imparted.

CARSON CITY, February 11, 1941.

MORSE LITTLE, M.D., Division Director, Nevada State Department of Health, Division of Maternal and Child Health and Crippled Children Services, Room 12, Fordonia Building, Reno, Nevada.

DEAR DR. LITTLE: This will acknowledge receipt of your letter of February 7, 1941, in

which you ask whether or not State funds allotted to the Nevada State Department of Health for use on the crippled children's program can be used in hospitalizing such children in the St. Mary's Hospital, Reno, Nevada. You further state that the St. Mary's Hospital is a sectarian institution, and that no other space is available for the hospital service which you propose to give.

In our opinion State funds may be used to hospitalize crippled children in the St. Mary's Hospital, and such use does not violate article XI, section 10, of the State Constitution.

Article XI, section 10 of the State Constitution reads as follows:

No public funds of any kind or character whatever, State, county, or municipal, shall be used for sectarian purposes.

This constitutional provision has been construed in the case of State v. Halleck, 16 Nev. 377, and the court there held that State money could not be used for the support of the Nevada Orphan Asylum of Virginia City because it would be used in part at least for sectarian purposes. It is to be noted in reading this case that the children in the orphan asylum were given definite religious instruction.

Such, we are told, would not be true in the present case. The crippled children are to be placed in St. Mary's Hospital purely and simply for necessary hospitalization and treatment, and would be accepted and received on the same basis as any other pay patient. There is no attempt of any kind to instruct or guide the patients in religious tenets.

We do not believe that the constitutional amendment, strict as it seems, was intended to prevent necessary hospitalization in sectarian hospitals where no instruction of any kind was imparted. It therefore appearing to us from the statement of facts that the State funds are not to be used for sectarian purposes but are to be used for the care and treatment of crippled children, devoid of any religious instruction, we do not believe that the constitutional provision applies.

Sincerely yours,
ALAN BIBLE, Deputy Attorney-General.

B-41. Appropriations--Predatory Animal Control.

In the absence of a specific appropriation or a special statute authorizing the expenditure of receipts from the sale of furs salvaged under the Predatory Animal Control Act, such receipts must be placed to the credit of the General Fund. In order to secure the benefit of the money salvaged from such selling, a relief Act may be drawn authorizing the transfer from the General Fund to the Predatory Animal Control Fund.

CARSON CITY, February 11, 1941.

DR. EDWARD RECORDS, Executive Officer, Department of Agriculture, Post Office Box

1027, Reno, Nevada.

Attention HENRY C. SCHMIDT, State Controller.

DEAR DR. RECORDS: This will acknowledge receipt of your letter of February 7, 1941, requesting an opinion from this office.

In 1939 the Nevada Legislature appropriated \$10,000 to be expended through the State Board of Stock Commissioners for predatory animal control. (Chapter 131, page 167, 1939 Statutes.) Pursuant to this Act, the State Board of Stock Commissioners received certain net proceeds from the sale of furs salvaged incident to their operations. On February 1, 1941, a remittance of \$3,743.82 was sent to the State Treasury and thereafter the State Controller ruled that the remittance could not be placed in the predatory animal control account but must be credited to the General Fund of the State. This ruling was based on the fact that no specific provision for the reexpenditure of cash derived from the sale of furs was contained in the 1939 Statutes. Likewise, there is no other statute applicable to this situation which specifically permits crediting such receipts to the predatory animal control fund.

It appears from your letter that the stock commissioners have made certain commitments with the United States Fish and Wild Life Service which in effect have already pledged the \$3,743.82 which is now in the General Fund. You have likewise called our attention to chapter 187, Statutes of Nevada 1913, which is section 7075 Nevada Compiled Laws 1929. This statute has not been repealed, but a careful reading of the same clearly indicated that the Controller would not be authorized thereunder to credit the stock commissioners with sales of furs. This Act specifically applies to State institutions and to the sale of articles and products which are not required for their own use and consumption. We cannot, by judicial interpretation, extend the plain terms of this statute.

In our opinion the ruling of the State Controller is correct, and, in the absence of a specific appropriation or a special statute authorizing the expenditure of the receipts involved in your inquiry, such receipts must be placed to the credit of the General Fund.

Our State Constitution, article III, section 19, specifically provides that no money shall be drawn from the treasury but in consequence of appropriations made by law, and this section has been repeatedly construed by our Supreme Court. For example, see the case of State v. LaGrave, 23 Nev. 25, wherein the court quotes favorably from the California case of Stratton v. Green, 45 Cal. 149, as follows:

By a specific appropriation we understand an act by which a named sum of money has been set apart in the treasury and devoted to the payment of a particular claim or demand. * * * The fund upon which a warrant must be drawn must be one the amount of which is designated by law, and therefore capable of definitive exhaustion--a fund in which an ascertained sum of money was originally placed, and a portion of that sum being drawn an unexhausted balance remains, which balance cannot thereafter be increased except by further legislative appropriation.

Since the specific appropriation in this instant problem was limited to \$10,000, and since there is no other mention of the use of receipts from the sale of furs either in the 1939 Act or in any other Act to which our attention has been drawn, we must hold that the State Controller has correctly placed these receipts in the General Fund of the State Treasury.

It is our suggestion, however, that since the Board of State Stock Commissioners has made certain commitments with the Federal authorities, a relief Act be prepared and submitted to the State Legislature authorizing the retransfer of the \$3,743.82 from the General Fund to the Predatory Animal and Rodent Control Fund.

Sincerely yours,

ALAN BIBLE, Deputy Attorney-General.

B-42. Unionization of School Districts.

Where the unionization of elementary school districts only is sought, then such unionization is to be had pursuant to section 5732 N. C. L. 1929. If in the unionization proceedings it is sought to include a high school district, then the proceedings must be held pursuant to the Act of the Legislature of 1925, the same being sections 5967-5975 N. C. L. 1929.

CARSON CITY, February 21, 1941.

HON. RICHARD R. HANNA, District Attorney, Yerington, Nevada.

Attention MISS MILDRED BRAY, Superintendent of Public Instruction.

Re: Unionization of School Districts.

DEAR SIR: Reply is hereby made to your letter of February 7 requesting an opinion as to whether section 83 of an Act concerning public schools is still in force and effect. It is noted that sometime back you had a conversation with Mr. Bible of this office concerning the question and that you gathered from him that there was some question whether such section was repealed by implication when section 77 of such Act was amended in 1917.

Said section 83 is section 5732 N. C. L. 1929, and of course section 77 of the same Act is now section 5727 N. C. L. of 1929. It is clearly apparent that section 5727 does not relate to the unionization of school districts. Perhaps you misunderstood Mr. Bible and that his informal opinion of the matter was directed to sections 5967-5975 N. C. L. 1929. Such sections specifically deal with the unionization of school districts.

Directly answering your inquiry, we advise, after due consideration, that section 5732 is still effective as to unionization of elementary school districts only.

An examination of the 1925 Union of School Districts Act, the same being said sections 5967 to 5975, inclusive, N. C. L. 1929, discloses that the Legislature provided a new Act with the respect of the unionization of school districts, and were it not for the fact that in section 2 of such Act and in section 4 of such Act, the Legislature specifically required that two members of the Board of Education in such Act provided for, shall be elected from the high school district involved in the unionization proceedings. We would be inclined to hold that such 1925 Act by the most evident implication repealed section 5732 and section 5733, N. C. L. 1929 as the very first part of section 5967 certainly provides for the unionization of elementary school districts as well as joining them with high school districts. But later on in the Act, the requiring two members to be elected from the high school district, precludes the application of such 1925 Act to the unionization of elementary school districts only.

In view of the foregoing it is our opinion that where the unionization of elementary school districts only is sought that such unionization may be had pursuant to section 5732 N. C. L. 1929. On the other hand, if in the unionization proceedings a high school district is to be joined therein, then the proceedings must be held pursuant to the 1925 Act, and the board of education of such union district must be appointed, and thereafter elected in conformity with such 1925 Act. In brief the 1925 Act provides for the unionization of elementary school districts and high school districts and no other. It is even most doubtful that such Act could be made to apply to the unionizing of two or more high school districts.

Yours very truly,

W. T. MATHEWS, Deputy Attorney-General.

B-43. County Officers--Deputy Sheriffs, Number To Be Employed in Lincoln County.

Only two permanent deputy sheriffs may be appointed or employed in Lincoln County under the present law, one of them to reside at Pioche and be ex officio jailer at a salary to be fixed by the Board of County Commissioners not to exceed \$150 per month plus \$15 as jailer, making a total of \$165 therefor, and the other at a salary not to exceed \$150 per month, both of which salaries shall be "allowed, audited, and paid as salaries of other county officers." Additional deputies may be provided by the Board of County Commissioners in cases of emergency to serve "only as long as such emergency exists."

CARSON CITY, March 3, 1941.

HONORABLE JERRY THOMPSON, Assemblyman of Lincoln County, Assembly Hall, State Capitol, Carson City, Nevada.

DEAR MR. THOMPSON: Pursuant to your request of this morning, I am writing you this letter as my official opinion with reference to the number of deputies the Sheriff of Lincoln County may legally employ permanently pursuant to chapter 141, 1937 Statutes of Nevada, pages

309, 310, inclusive, particularly section 4 thereof.

Said section 4 reads as follows:

The sheriff may employ not more than two deputies, each at a monthly salary to be fixed by the board of county commissioners, not in excess of one hundred fifty (\$150) dollars per month, to be allowed, audited, and paid as salaries of other county officers, and upon satisfactory evidence produced by the sheriff to the board of county commissioners that an emergency exists, that an additional deputy or deputies are needed, the commissioners may authorize the sheriff to appoint one or more deputies to serve only as long as such emergency may exist, at a rate fixed by the board of county commissioners in each particular instance, not in excess of sixty-two and one-half (62 ½ cents) cents per hour, to be allowed, audited and paid by the county only upon production of satisfactory evidence that such services were actually rendered; *provided further*, that the sheriff may appoint other deputies who shall serve without compensation; *provided further*, that the deputy sheriff who resides at the county seat shall be ex officio jailer and shall receive additional compensation therefor not to exceed fifteen (\$15) dollars per month.

It is my opinion that the Sheriff of Lincoln County may employ, under this section of the law, only two regular and permanent deputy sheriffs in said Lincoln County, one of them to reside at Pioche and be ex officio jailer at a salary to be fixed by the Board of County Commissioners not to exceed \$150 per month plus \$15 per month as such jailer, making a total salary for such deputy-jailer not to exceed \$165 per month and the other regular permanent deputy at a salary not to exceed \$150 per month, both of which salaries are to be “allowed, audited and paid as salaries of other county officers.”

The above-mentioned two deputies are the only deputy sheriffs the Sheriff may employ regularly and permanently. Said section 4 provides, however, that “upon satisfactory evidence produced by the Sheriff to the Board of County Commissioners *that an emergency exists* that an additional deputy or deputies are needed *the Commissioners may authorize the Sheriff to appoint one or more deputies to serve only as long as such emergency may exist.*” The compensation of such “emergency” deputies is to be fixed by the Board of County Commissioners “*in each particular instance*” at not to exceed 62 ½ cents per hour during such emergency, to be allowed, audited, and paid by the county “*only upon production of satisfactory evidence that such services were actually rendered.*” The Sheriff may appoint such “other” deputies, however, as he may need; but, in no case shall such “other” deputies be paid any compensation at all under the law.

It will be noted from the express language of said section 4, above quoted, that the Sheriff of Lincoln County may appoint only two regular and permanent deputies, and that their salaries shall be as above stated. May I particularly emphasize the fact that it is only in cases of “emergency” that the Sheriff may appoint other deputies than the above-mentioned two regular permanent deputies, and that such an emergency must be shown to exist to the satisfaction of the board by “satisfactory evidence produced by the Sheriff”--that an *emergency* actually exists.

Some question has arisen as to what is or what constitutes an “emergency” under the law. The best definition of the word “emergency” as used in the law is found in 20 Corpus Juris, page 499, from which I quote as follows:

An unforeseen occurrence or combination of circumstances which called for an immediate action or remedy; a sudden or unexpected occasion for action; a sudden or unexpected happening; in a case of casualty or unavoidable accident--in an event or occasional combination of circumstances which calls for *immediate action or remedy*; exigency.

In notes 4 to 11, inclusive, many cases of the courts of last resort are cited to sustain the above-quoted definitions of the word “emergency.” In note 10(a) a distinction is made between the meaning of the word “exigency” and the meaning of the word “emergency,” from which I quote as follows: “An emergency is more pressing and naturally less common than an exigency.” In other words, it takes more to constitute an “emergency” than it does to constitute an “exigency.”

You will remember that when you and the Sheriff and chairman of the Board of County Commissioners of your county called at my office with reference to this matter, the Sheriff agreed with my construction of this section of the law, and said that he had felt all along that the law was not sufficiently broad to make it definite and certain that he, with the approval of the Board of County Commissioners had the right to appoint deputy sheriffs over and above the two regular and permanent deputies. I expressed the same opinion as to this section of the law as I have expressed in this letter, and all present seemed to agree with that construction. I believe I explained at that time, however, that the law seemed to leave it to the County Commissioners to determine when the “emergency” mentioned in said section 4 exists upon the presentation of “satisfactory evidence” to the board, and that, since the board had appointed the extra deputies, it was apparent that, in its opinion, the emergency mentioned in that section would exist, and that, therefore, no harsh censure or criticism should be indulged in as against the board or the Sheriff for the appointment of the extra deputies. I am still of this view.

The fact remains, however, that the courts would probably hold that the “emergency” which must exist as a basis for the appointment of the extra deputies does not exist. I believe, therefore, that this particular section 4 should be amended so as to provide definitely for the appointment of such deputies as are needed, assuming that the county may need more than two regular and permanent deputies.

Hoping that this opinion will be helpful to you and others concerned, and with my best wishes and the assurance that this office shall always be glad to be of service to you and the other members of the Legislature, I am,

Sincerely yours,

GRAY MASHBURN, Attorney-General.

B-44. Corporation Law--Banking Corporations--Trust Companies--Building and Loan Associations.

Articles of incorporation, which trench upon subdivision 10 of section 4 of the 1925 corporation law with respect as to whether such corporation might engage in the banking business, trust company business, or building and loan association business, must contain a proviso to the contrary.

CARSON CITY, March 6, 1941.

HON. MALCOLM McEACHIN, Secretary of State, Carson City, Nevada.
Attention MISS LITTLEFIELD, Deputy.

DEAR MISS LITTLEFIELD: Reference is hereby made to my letter of February 18 concerning the Articles of Incorporation of the State Line Pumice Products Company, and also to the enclosed letter to your office from Mr. Pitkin.

Upon the receipt of Mr. Pitkin's letter, this office again went over the matter very carefully and we are still of the opinion that subdivision (b) of article three of the articles trench upon the provisions contained in subdivision 10 of section 4 of the 1925 corporation law. In fact, an opinion of this office back in 1913 was along similar lines, and we think that an article so broadly drafted as that under consideration here, if allowed to stand, should be limited in its effect, as there is danger of people in other States assuming from the language used that the corporation formed for an entirely different purpose would, in fact, engage in the banking business or the trust company business, which, of course, could not be done under the laws of this State.

In order that no company may be embarrassed in the transaction of its own business, we are willing to modify the opinion expressed in our letter of February 18 to the extent of allowing the questioned subdivision in the third article to stand, provided a proviso is added at the end thereof to the effect that nothing in these articles of incorporation shall be deemed to empower the corporation to engaged in banking business, trust company business, or building and loan association business. We think the articles of incorporation should contain such a proviso.

Yours very truly,

W. T. MATHEWS, Deputy Attorney-General.

B-45. Senate Bill No. 57--1941 Session of the Legislature.

Senate Bill No. 57 does not run counter to any Federal law prohibiting transmission of intelligence by wire or otherwise relating to horse racing, book making or pool selling.

CARSON CITY, March 6, 1941.

HONORABLE JERRY THOMPSON, Assemblyman, Lincoln County, Carson City, Nevada.

DEAR MR. THOMPSON: Pursuant to your request of this date as to whether Senate Bill No. 57 if enacted into a law would violate or run counter to any Federal statute.

I have examined the Federal laws very carefully and fail to find any Federal statute prohibiting the transmission of intelligence by wire or otherwise, relating to horse racing, book making or pool selling. In order to make certain that I had not overlooked any Federal Act on the question, I also contacted the United States District Attorney's office and was advised by that office that they knew of no Federal statute on the question. Therefore, I must advise that there is no Federal law on this question.

It may be that the Federal Communications Commission could by rule prohibit the transmission of such intelligence, but so far as I have been able to ascertain, no such rule is now in existence.

Trusting this will give you the information desired, I am

Yours very truly,

W. T. MATHEWS, Deputy Attorney-General.

B-46. Corporation Law--Doing Business in the State.

Foreign corporations selling merchandise through a resident agent in this State, upon orders taken by such agent based on samples carried by him, but the merchandise being shipped from the store or place of business of the corporation out of the State to the customer in this State, does not constitute doing business in Nevada within the meaning of the law requiring corporations to qualify in this State.

CARSON CITY, March 11, 1941.

MR. MALCOLM McEACHIN, Secretary of State, Carson City, Nevada.

DEAR MR. McEACHIN: Reference is hereby made to your letter of February 14 requesting our advice on whether certain foreign corporations would be deemed to be doing business in this State under the facts as stated in your letter and accompanying correspondence. This office has been very busy ever since the receipt of your letter, particularly with legislative matters; also, Mr. Bible was out of the office the greater part of such time due to business of the office requiring his attendance elsewhere. It has been absolutely impossible to deal with the question until today.

It may be said that what constitutes doing business in a State by a foreign corporation is a most complex question and the line of demarcation between what will constitute doing business in a State and thus require such foreign corporation to qualify in that State, and what transactions such foreign corporation may carry on in a State without so qualifying is most closely drawn.

You inquire whether a foreign corporation selling merchandise through a resident agent in this State, upon orders taken by such agent based on samples carried by the agent, but the merchandise being shipped from the store or place of business of the corporation out of the State to the customer, and such orders being subject to acceptance out of State constitutes doing such business in this state as would subject such foreign corporation to the laws of this State requiring qualifications herein.

After careful examination of the law, we have come to the conclusion that the transaction of such foreign corporation does not constitute doing business in Nevada within the meaning of the laws of this State requiring foreign corporations to qualify in this State. We think such transactions fall squarely within the case of *Dickerson Publishing Company v. Bryan*, 60 A. L. R. 983, wherein the court held that where one was appointed general sales manager in a State, for a foreign corporation, with authority to appoint and train salesmen, does not render the filling of orders of himself and his salesmen doing business within the State, without securing a permit to do business in the State. Such case is followed by a long annotation, being at page 994, citing many cases to the same effect.

Your second inquiry was directed to a foreign corporation which proposes to solicit offers for the purchase of oil royalties by a resident salesman in this State, which salesman may deduct commission from the offers to purchase royalties solicited in this State. Such offers to purchase, however, must be accepted by the foreign corporation in the State where its oil lands are situated.

It seems to us that the oil royalty transaction is very similar to the transaction concerning the purchase of merchandise, and we are inclined to the view that such company would not necessarily have to qualify in this State in order to offer for sale oil royalties in the manner specified above.

Very truly yours,

W. T. MATHEWS, Deputy Attorney-General.

SYLLABUS

300. Appropriations.

Assembly Bill No. 67, appropriating funds for Public Service Commission with which to administer the motor carrier licensing law, does not violate section 5 of article IX of the Constitution.

INQUIRY

CARSON CITY, March 13, 1941.

Assembly Bill No. 67, being the general appropriation bill introduced at the present session of the Legislature, contains in section 16 thereof a proposed appropriation for the Public Service Commission “for the purposes of carrying out the provisions of chapter 165 Statutes of 1933, as amended,” which appropriation is to be made from the “State Highway Fund.”

Will such appropriation for the purposes stated be contrary to section 5 of article IX, Constitution of Nevada, as amended by Assembly Joint Resolution No. 30, adopted by the vote of the people at the 1940 November election, and the Federal Road Aid Act of June 18, 1934?

OPINION

Section 5, article IX, of the Constitution as amended at the 1940 November election provides:

The proceeds from the imposition of any license or registration fee and other charge with respect to the operation of any motor vehicle upon any public highway in this state and the proceeds from the imposition of any excise tax on gasoline or other motor vehicle fuel shall, except costs of administration, be used exclusively for the construction, maintenance, and repair of the public highways of this state.

As shown by the preamble to Assembly Joint Resolution amending such constitutional provisions, one of the reasons for the amendment was the fact that Congress, in the Federal Aid Road Act of 1934, denied Federal road aid to a major extent to any State that diverts the proceeds from the imposition of any registration fees, license fees, gasoline and kindred taxes on motor vehicle owners and operators to other uses than for the construction, improvement, and maintenance of highways and *administrative expenses in connection therewith*.

The Federal Aid Road Act of 1934, being section 12, chapter 586, 48 U. S. Statutes 995, containing the prohibitory language, permits the use of such proceeds for “administrative expenses” in connection with the construction, improvement, and maintenance of Federal aid highways.

Chapter 165 Statutes of Nevada 1933, has for its very purpose the providing of funds for the use of constructing and maintaining highways by the imposition of license fees on trucks and busses used in the carrying of persons and property on the highways of this State. The moneys collected under this Act are deposited in the State Highway Fund. The Public Service Commission was and is by such chapter made the administrative agency to enforce the law and collect the license fees. It was, and is, authorized by the Legislature to employ inspectors, necessary clerical assistance, and to purchase necessary supplies and equipment to carry out the purposes of the Act both in said chapter 165 and the 1935 amendments thereto found at 1935 Statutes, page 268, and which is the authority for the provisions of section 16 of Assembly Bill

No. 67.

The term “administration” as used in the constitutional amendment in question was used in its commonly known sense and meaning. It means “the act of administering; government of public affairs; the service rendered, or duties assumed in conducting affairs; the conducting of any office or employment; direction; management; * * * *the persons collectively intrusted with the execution of laws and the superintendence of public affairs.*” Webster’s Dictionary (italics ours).

The Public Service Commission through its operatives and assistants was and is empowered to “administer” chapter 165 and its amendments, and in so administering such law, it was producing funds for highway purposes and thereby was and is engaged in the “administration” of a most important phase of highway construction, maintenance, and repair. The conclusion, it seems to us, must be that section 16 of Assembly Bill No. 67, is a provision clearly falling within the exception contained in section 5, article IX of the Constitution, as amended, reading: “except costs of administration,” and is not in violation thereof, and that it also squares with the similar provision in the Federal Road Aid Act: *provided, always*, such appropriation will not be used for any other purpose than the enforcement of the motor carrier law and the collection of license fees thereunder.

Respectfully submitted,

GRAY MASHBURN, Attorney-General.

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

THE COMMITTEE ON WAYS AND MEANS OF THE ASSEMBLY.

SYLLABUS

301. State Highway Engineer--State Parks.

Imposition of additional duties as superintendent of state parks upon State Highway Engineer by chapter 88, Statutes 1935, not in conflict with section 5 of article IX of the Constitution.

INQUIRY

CARSON CITY, March 14, 1941.

Chapter 86, Statutes of Nevada 1935, creates the State Park Commission and provides that the State Highway Engineer alone shall be ex officio Superintendent of State Parks without compensation.

Does the imposition of additional duties upon the State Highway Engineer by said chapter 86 now conflict with the amendment to section 5, article IX, Constitution of Nevada, as adopted at the 1940 November election, providing that proceeds from the imposition of license or registration fees, other charges and gasoline excise tax on the motor vehicles, shall, except costs of administration, be used exclusively for the construction, maintenance, and repair of public highways of this State, in view of the fact that the salary of the State Highway Engineer is by law required to be paid from the State Highway Fund?

OPINION

Section 1 of chapter 86, Statutes of 1935, provides that: “The State Highway Engineer, by virtue of his official position of such State Highway Engineer, shall be the ex officio Superintendent of State Parks, under the direction of the commission * * *.” We think such language created an office separate, apart, and distinct from the office of State Highway Engineer. Such is the law of this State as declared by the Supreme Court of Nevada in 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. In Denver v. Hobart, supra, the court said:

The offices of lieutenant governor and warden of the state prison were as distinct as though filled by different persons. The duties and obligations of the one are entirely independent of the duties and obligations of the other.

We think such is the situation here. The duties imposed on the Superintendent of Parks by said chapter 86 are entirely independent of and distinct from the duties imposed on the State Highway Engineer by the State highway law.

The Legislature in 1935 provided the ex officio office of Superintendent of State Parks and imposed its duties on the State Highway Engineer. Said Legislature was presumed to know that the State Highway Engineer had numerous duties to perform under the State highway law and was required by that law to devote his whole time to such duties. Section 5322 Nevada Compiled Laws 1929. It is reasonable to suppose the highway law contemplates that the “whole time” means the reasonable office hours of the State Highway Engineer. The duties imposed by said chapter 86 on the Superintendent of State Parks consists of suggestions and assistance to the State Park Commissioners. See section 6 of the Act, and as amended at 1937 Statutes, 421. The Act does not contemplate the active superintendence of State parks by such superintendent, but only requires that he give advice and assistance to the commission of an advisory nature, which no doubt the 1935 Legislature and the Legislature of 1937 thought could well be given by the State Highway Engineer as Superintendent of State Parks without in any way interfering with his duties and obligations as State Highway Engineer. So long as the duties imposed by the law in question do not prevent the State Highway Engineer from performing all of his duties as such during the time required by the State highway law, we are of the opinion that there can be no conflict between the duties as are now imposed by said chapter 86, and as amended, on the Superintendent of State Parks and the duties imposed by the State highway law as now affected by the constitutional amendment in question on the State Highway Engineer.

Respectfully submitted,

GRAY MASHBURN, Attorney-General.

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

THE COMMITTEE ON WAYS AND MEANS OF THE ASSEMBLY.

SYLLABUS

302. Motor Vehicles--Exemption from Registration--Boulder Dam Area.

No Federal reservation has been created in or about the Boulder dam area--all motor vehicles subject to Nevada laws in such area.

INQUIRY

CARSON CITY, March 24, 1941.

Are motor truck operators, operating motor trucks on the public highways of this State within the so-called Boulder Dam Reservation, subject to the licensing provisions of the Motor Vehicle Carrier Regulation and Licensing Act, i.e., chapter 165, Statutes of Nevada 1933, as amended?

OPINION

Chapter 165, Statutes of Nevada 1933, and as amended provides, inter alia, that all carriers by motor vehicle, with certain exceptions not material here, shall, before commencing operations on the public highways of this State, obtain the proper license and pay the statutory fees therefor. These provisions apply alike to residents and nonresidents when operating or contemplating the operation of their vehicles in this State. The public highways of this State, as the same are defined in the law in question here, extend to, through, and over the area embraced within the so-called Boulder Dam Reservation, and all motor truck or motor busses operated in that area are subject to the provisions of said law. We understand some motor vehicle operators claim immunity from the licensing provisions of the law upon the ground they are operating wholly within a United States Reservation, *i.e.*, the so-called Boulder Dam Reservation.

There has been no Federal reservation established in the Boulder Dam area. No immunity from the licensing or any other provision of chapter 165, Statutes of 1933, and as amended, exists in such area, except as to the United States Government. The question of whether any such reservation had been created in this State in the area named was long ago settled adversely to the contentions of such motor vehicle operators now claiming exemption upon such ground in the case of Six Companies, Inc., v. De Vinney, 2 Fed. Supp. 693. The court there held, inter alia, that the United States had not acquired exclusive jurisdiction over the area

claimed as a reservation, and further, in brief, that no reservation wherein the United States could exercise exclusive jurisdiction to the exclusion of the Nevada taxing or other laws had been created. Recently the Supreme Court of the United States in *Silas Mason Co. v. Tax Commission*, 302 U. S. 186, held that a contractor engaged in the construction of the Grand Coulee Dam for the United States on a Federal reservation must pay the State occupation tax assessed to contractors because the United States had not acquired the exclusive jurisdiction over the land where the contract was to be performed and that the State taxing laws applied.

We conclude that all motor truck and motor bus operators operating motor trucks and busses on the public highways of this State in or about the Boulder Dam area or elsewhere in the so-called Boulder Dam Reservation, whether residents or nonresidents of the State are subject to all the provisions of chapter 165, Statutes of 1933, and as the same has been amended.

Respectfully submitted,

GRAY MASHBURN, Attorney-General.

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

THE PUBLIC SERVICE COMMISSION OF NEVADA.

SYLLABUS

303. Employment Security.

Executive Director of Employment Security Department is proper State officer to furnish documents and information to Federal Social Security Board, requisition funds under Wagner-Peyser Act, select personnel of such department, and expend moneys from Unemployment Compensation Administration Fund. Assembly Bill No. 32 (Chap. 59, 1941 Statutes).

INQUIRY

CARSON CITY, March 24, 1941.

Due to the enactment of Assembly Bill No. 32 into a law by the 1941 Legislature, wherein the Employment Security Department was created to assume the administration of the Unemployment Compensation law and the Employment Service law under the supervision of one director, an opinion is requested on the following queries:

1. What person is now authorized to furnish documents and information to the Federal Social Security Board; to request a grant of funds under Title III of the Social Security Act or under the Wagner-Peyser Act, and to represent the Employment Security Department in connection with such grants?

2. What are the powers and duties of the Executive Director as to the selection and employment of the personnel for the Unemployment Compensation Division, the Employment Service, and the Employment Security Department?

3. What person has the authority to expend and to authorize the expenditure of moneys from the Unemployment Compensation Administration Fund, and to what office is payment of moneys under Title III of the Social Security Act or the Wagner-Peyser Act to be made?

OPINION

Assembly Bill No. 32 was enacted into a law by the 1941 Legislature and will become, so we are advised, chapter 59 of the 1941 Statutes. The Act has for its purpose the consolidation of the administration of the Unemployment Compensation Division and the Employment Service Division into one department under one administrative head. A reading of the Act discloses the legislative intent to be that only one officer, designated as the "Executive Director," shall exercise the functions of and perform the duties of the administrative and executive head of both divisions, whereas under the old law a division of administrative authority was vested in the director of the Unemployment Compensation Division and the Labor Commissioner. The new Act provides no duties for the Labor Commissioner. It provides no administrative authority for him in the administration of the Unemployment Compensation Law or the Employment Service law. We think that all the powers and duties lodged in the Labor Commissioner under the old law have been transferred to the Executive Director of the Employment Security Department. It is most evident that such is the fact by reason of the express repeal of sections 10, 11, and 12 of the Unemployment Compensation law, and also the repeal of all Acts or parts of Acts in conflict with the provisions of the new Act. See section 12 of Assembly Bill No. 32. (Chap. 50, 1941 Stats.)

Answering Query No. 1. The Executive Director of the Employment Security Department is the person now authorized to furnish documents and information to the Federal Social Security Board. Section 4a, section 4(I), chap. 59, 1941 Stats. Such director is empowered to requisition funds under Title III, Social Security Act and under the Wagner-Peyser Act, and to represent the Employment Security Department in connection therewith. Section 9, Unemployment Compensation law, as amended at 1939 Stats. 128; section 4a, section 4(I), section 8, chap. 59, 1941 Stats.

Answering Query No. 2. The Executive Director is empowered to select the personnel of the Employment Security Department and fix the compensation and duties thereof. This certainly implies employment thereof. Section 4d, chap. 59, 1941 Stats. The personnel of the Unemployment Compensation Division and the Employment Service Division have been transferred from those divisions to the Employment Security Department by section 2 of the Act and by reason thereof have become the personnel of such department. New personnel will undoubtedly occupy the same status.

Answering Query No. 3. The Executive Director is the person now having the authority to expend moneys and to authorize the expenditure of moneys from the Unemployment

Compensation Administration Fund. Such fund is now appropriated and made available to such director by section 2 of the new Act, and he is authorized to make expenditures in the administration of the Unemployment Compensation law. Section 4, chap. 59, 1941 Stats. If the Executive Director is now empowered to requisition funds from the Social Security Board, and also under the Wagner-Peyser Act, and we have so held in the answer to Query No. 1, above, we think it necessarily follows that he is the person to receive payment of such moneys so requisitioned and deposit the same with the State Treasurer. Section 9, Unemployment Compensation law, as amended at 1939 Stats. 128; section 8, chap. 59, 1941 Stats.

Respectfully submitted,

GRAY MASHBURN, Attorney-General.

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

ALBERT L. MCGINTY, Executive Director, Employment Security Department.

B-47. State Highway Department--Official Bonds of Certain Officers or Employees Thereof--State Board of Examiners Furnish.

The bonds required by Assembly Bill 240, now approved and published as chapter 100, 1941 Statutes of Nevada, pages 142-144, are required by law to be made by the State Board of Examiners under the so-called "State Bond Trust Fund Act," being chapter 193, 1937 Statutes of Nevada.

CARSON CITY, March 31, 1941.

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

DEAR ROBERT: I have just received your letter of 28th instant in which you ask certain questions with reference to Assembly Bill No. 240 passed by the Legislature and which the Governor recently approved, and which inquiry I am answering as follows, placing my answer immediately following each question.

1. Do the official bonds required by said Assembly Bill No. 240 require that you, the Assistant State Highway Engineer (Mr. Mills) and the Auditor of the State Highway Department (Mr. Pohl) give your bonds as required by that Act under the State Bond Trust Fund Act or from a surety company?

It is my unqualified opinion that all these bonds should be given under the State Bond Trust Fund Act.

The State Bond Trust Fund Act, that is to say chapter 193, 1937 Statutes of Nevada, section 1, page 409, provides among other things, that any and all officers of the State, county,

township, incorporated cities and irrigation districts “whose official duties have to do with the handling of funds of the State, counties, townships, incorporated cities or irrigation districts and *who are required by law to furnish personal or surety bonds*” shall furnish such bonds under and as required by said State Bond Trust Fund Act, *i.e.*, said chapter 193.

Again, section 3 of that chapter, page 410, requires and is in the following language: “Every State, county and township official, and his or her *deputy*, and officials of incorporated cities and irrigation districts and their deputies in the State of Nevada, required by law in his or their official capacity to furnish surety bond, or bonds, shall apply to the State Board of Examiners for surety * * *. This bond shall have full force and effect as a surety and shall serve all purposes of bonds required by statute from State and county officials or officials of incorporated cities, townships, or irrigation districts in the State of Nevada.” The last paragraph of said section 3 states the circumstances under which such officers, deputies, etc., may obtain bonds other than said State bonds or bonds under said State bonds under said State Bond Trust Fund Act. The only situation in which such bond from other sources may be obtained is when the State Board of Examiners, and “*for any reason,*” rejects applications therefor.

Since you direct your inquiry particularly toward the bonds so required for the Assistant State Highway Engineer (Mr. Mills) and the Auditor of the State Highway Department (Mr. Pohl), it is apparent, I believe, that they may not be considered “officers or deputies” but merely employees, and, therefore, that they may not come under the provisions of that Act. The Attorney-General has consistently held, since the enactment of this State Bond Trust Fund Act, that this law applies to all officers, deputies, and employees who are required by law to furnish bonds. There seems no good reason why the law should apply to “officers,” or “officials,” or “deputies” who handle public funds and not apply to employees who handle funds, if and when both are required by law to give bonds. It is our opinion, therefore, that said State Bond Trust Fund Act applies to both the Assistant State Highway Engineer and the Auditor of the State Highway Department, and that the bonds required of them by said Assembly Bill No. 240 should be given under and as required by that Act.

As to the amount of the bonds for the Assistant State Highway Engineer and the Auditor of the State Highway Department, said Assembly Bill No. 240 fixes the amount of their bonds, respectively, in the following language: “the Assistant State Highway Engineer and the Auditor of the State Highway Department shall each take the official oath and file with the Secretary of the State a bond to the State of Nevada in the penal sum of thirty thousand dollars (\$30,000) for the faithful performance of their duties, respectively, as such Assistant State Highway Engineer, and as such Auditor, and for the proper expenditure of the moneys constituting said revolving fund, drawn upon checks or vouchers signed by them or either of them, in accordance with law, and to render a true account to said Board of Directors of all moneys so expended on checks drawn or signed by them or either of them, said bonds to be approved by the Governor.” You will note that the above-quoted language not only fixes the amount of their respective bonds but also requires that each of them take the “official oath,” *i.e.*, the oath of office. This in itself is a designation by the legislature of this State, approved by the Governor, of these two positions as offices and the persons occupying them as “officials.” You will note also the conditions stated in the above-quoted language upon the happening of which the penalties of the bonds shall apply.

2. Do the premiums on these bonds come from the State Bond Premium Fund or from the State Highway Fund?

The very last sentence of said Assembly Bill No. 240, indicates the answer to this question in the following language: "The premium upon such bonds, if surety bonds be furnished, shall be paid from the *State Highway Fund*." (Italics mine.) There seems no good reason why the fund from which the premiums shall be paid if furnished under the State Bond Trust Fund Act should be different from the fund out of which they should be paid if furnished by a "surety company." By tracing the language "if surety company bonds be furnished" back through the various Acts requiring bonds, it will be seen that this seems to be a hangover from the old system of furnishing personal surety bonds or surety company bonds for State officers.

In any event, it is the opinion of this office that these premiums should be paid out of the State Highway Fund. Although there is an item in the general appropriation bill for the present biennium, *i.e.*, chapter 199, 1939 Statutes of Nevada, section 52, of \$6,000, and in the present General Appropriation Act of \$6,500 to pay "state officers' bond premiums," it is our information furnished by the State Controller's office that this bond premium item may not be sufficient to pay the premiums on the bonds of all State officers, especially those not contemplated in the budgets for the two bienniums.

3. Is it necessary for the Assistant State Highway Engineer (Mr. Mills) and the Auditor of the State Highway Department (Mr. Pohl) to take out State bonds at the present time or may they continue along with the surety company's bonds that they now have until they expire, which will be in August 1941?

Inasmuch as the premiums have, no doubt, already been paid on their respective bonds for the current year, *i.e.*, until August 1941, as indicated by your inquiry, it is my opinion that such bonds will be just as effective for the remainder of the current year for which the premiums have been paid as they have been up to this time; and that it is in the interest of economy, and therefore, for the best interests of the State, that the taking out of these bonds await the time of the expiration of the surety company's bonds for which premiums have already been paid, *i.e.*, until August 1941. It is, therefore, my opinion that it is not necessary for them to take out new bonds and pay the premium therefor under the State Bond Trust Fund Act until the time of the expiration of the current year for which the premiums have already been paid.

Respectfully submitted,

GRAY MASHBURN, Attorney-General.

304. Constitutional Law--Tax Exemption for Educational Purposes--Out-of-State College.

Out-of-State educational institution is not exempt from taxes on lots of land situated in Nevada under Nevada law exempting from taxation "schoolhouses," with lots appurtenant

thereto, owned by any legally created school district within the State; also “nonprofit private schools with lots appurtenant thereto,” as unimproved lots of land situated in Ely, Nevada, cannot certainly be “appurtenant” to a college situated in Salt Lake City.

STATEMENT

CARSON CITY, April 1, 1941.

Westminister College, located at Salt Lake City, Utah, is a Presbyterian College--an educational institution incorporated and chartered under the laws of the State of Utah and rules and regulations of the Presbyterian Church.

On October 11, 1935, Mrs. Suzannah Renshaw, a resident of Elko, Nevada, seems to have entered into an agreement with said college, although the instrument before me is not signed by her, although it is entitled “AGREEMENT.” It is signed by Westminister College by H. W. Reherd, President, and recites, among other things, that Mrs. Renshaw had deposited in escrow in Elko, Nevada, a deed to certain lots, pieces or parcels of land in Ely, Nevada, describing the same by number of the lots and number and letter of the blocks in which said lots are situated. The instrument does not expressly state whether this deposit in escrow was pursuant to an agreement between the parties thereto; but the fact that the instrument before me is signed by the college through its president and recites that the deed had been so deposited in escrow makes it evident that the college and its president knew of the deposit in escrow and indicates that the deposit in escrow was by agreement between the parties to the written instrument (Agreement) before me. The statement also recites that said deed was not to be delivered to the grantee (Westminister College) until the death of Mrs. Renshaw. In it the college agrees, among other things, that, “upon the demise of the party of the first part (Mrs. Renshaw) the *net income* of this property or the *net income* from the proceeds of the sale of this property--called the Renshaw Fund, shall be offered as *loans* to girls residing in Nevada who are attending or plan to attend Westminister College”; that “these *loans* shall not exceed \$200 to any one girl in any one year and shall bear interest not to exceed three percent per annum”; that only girls whose character has been investigated by the President of the college and recommended by him as worthy are to receive such *loans*; that if there be any excess over and above that which is so loaned in any one fiscal year “of Westminister College,” such excess shall be conserved for future use for girls from Nevada, except that, when said Renshaw Fund grows to as much as \$50,000, the trustees of Westminister College are authorized “to extend the borrowing privilege to girls *outside* the State of Nevada, giving Nevada girls the first chance to borrow the available funds”; and that, if and when said Renshaw Fund grows to \$75,000 and there remains in that fund in any one fiscal year “of Westminister College” any net income thereof not loaned after proper effort has been made to lend the same, then the remainder thereof “may be expended by Westminister College according to the direction of the Board of Trustees of the college.”

It is apparent from said “Agreement” now before me and the provisions thereof as above stated, that only the income from said property or from the proceeds of the sale thereof may be used by said college for loans to girls attending the college; that the money so furnished to these girls constitutes mere *loans*, not gifts, to them, bears interest at the rate of three percent per

annum, and must be repaid and again become a part of said Renshaw Fund; that after said fund grows to be as large as \$50,000, such portion of the income thereof as may not have been so loaned to Nevada girls may be loaned to “girls *outside* the State of Nevada”; and that when said fund grows to be as large as \$75,000 and there remains net income therefrom which has not been loaned in any one fiscal year, after proper effort has been made to lend it, the remainder of that income for that fiscal year “of Westminister College” may be expended as the Board of Trustees thereof may direct. The word “remainder” as so used seems to refer to the “income” from said fund, not to the principal of said Renshaw Fund; and it is not clear from said “Agreement” before me and so signed by said Westminister College through its President what is to become of the principal of said Renshaw Fund, whether it is to eventually become the property of Westminister College or shall remain a perpetual fund, and the net income thereof alone be used for such loans, to girls attending that college as provided for in said agreement. It is possible that this uncertainty may be cleared up by the escrow agreement or instructions referred to in the instrument now before me; but this may not necessarily be material for the determination of the question involved in the inquiry now before this office or in the official opinion of this office now requested.

The information furnished this office is that the taxes on the property involved have been paid as they fell due up to the present time, or at least up to the time the taxes on the assessed valuation thereof for the year 1940 became due. It also appears from the information before this office that Mrs. Renshaw is now deceased but there is nothing to show when she died, or whether the taxes which have been paid were paid by Mrs. Renshaw prior to her death or by Westminister College, especially since her death. This, however, is not material to the determination of the question involved or to this official opinion on the point of law involved, except as it might indicate that Westminister College has heretofore acquiesced in the taxability of the property involved by paying the taxes thereon. However, we do not believe that the mere payment of the taxes on property which would really be exempt from taxation under the Constitution and laws of this State would preclude the taxpayer from claiming exemption after coming to the conclusion that the property is legally exempt from taxation.

INQUIRY

Under the facts and circumstances above stated, is said Westminister College, located in Salt Lake City, Utah (out of the State of Nevada), entitled to exemption from taxation on said lots of land so situated in Ely, Nevada, under the provisions of the Constitution and laws of this State, and more particularly chapter 82, 1937 Statutes of Nevada, pages 156-158, inclusive, first subdivision of section 5 as thereby amended, being Nevada Compiled Laws 1929, section 6418 as so amended?

OPINION

The language above referred to and upon which the inquiry is based, *i.e.*, said chapter 82, 1937 Statutes of Nevada, section 5 as amended, first subdivision, reads as follows, the claim for exemption being apparently based upon that portion thereof which we have italicized:

All lands and other property owned by the State, or by the United States, or by any county, incorporated farm bureau, municipal corporation, irrigation, drainage or reclamation district, town or village in this state, and all public schoolhouses, with lots appurtenant thereto, owned by any legally created school district within the state; *also nonprofit private schools with lots appurtenant thereto*, and furniture and equipment.

The only theory upon which it could possibly be claimed that these lots are exempt from taxation would seem to be the theory that they are “appurtenant” to a nonprofit private school, although that school is situated outside of the State of Nevada and the lots are situated in the State of Nevada and they lie a long way from said out-of-State nonprofit private school. This theory that said lots are “appurtenant” to that school cannot possibly be maintained. Under no theory of the law could lots so far away from Westminster College be considered “appurtenant” to that private school. It is fundamental that, even in a deed to land, the land conveyed must be described with sufficient definiteness in the deed as to identify it, and that only such land as is so explicitly described is conveyed by a deed. In other words, it would be difficult indeed to convince anyone that because I have a deed to lots three and four in a certain block, and the habendum clause of the deed recites that there is also conveyed to me the tenements, hereditaments, and “appurtenances” thereunto belonging or in anywise appertaining, the deed also conveys to me lot five in the same block. The point is that the word “appurtenant” so used does not convey to the grantee any other or more land than is expressly and specifically described in the deed.

Since the whole question depends upon whether the word “appurtenant” as used in the above-quoted subdivision of said section 5, as amended, renders the lots so situated in Ely, Nevada, exempt from taxation as being “appurtenant” to Westminster College so located in Salt Lake City; or, in other words, whether these lots in Ely, Nevada, are “appurtenant” to Westminster College in Salt Lake City, Utah. I am here quoting some of the definitions of the word “appurtenant” as contained in Words & Phrases Judicially Defined, First, Second, Fourth and Fifth Series, as follows:

(1) The word “appurtenant” will only carry with it easements and servitudes used and enjoyed with the lands for whose benefit they were created, and even an easement will not pass unless it is necessary to the enjoyment of the thing granted. *Humphreys v. McKissock*, 11 Sup. Ct. 779, 781, 140 U.S. 304, 35 L. Ed. 473; *Ogden v. Jennings*, 62 N. Y. 526, 530 (cited and approved in *Griffiths v. Morrison*, 12 N. E. 580, 582, 106 N. Y. 165); *Newport Illuminating Co. v. Assessors of Taxes of Newport*, 36 Atl. 426, 429, 19 R. I. 632, 36 L. R. A. 266; *Whyte v. Builders’ League of New York*, 52 N. Y. Supps. 65, 67, 23 Misc. Rep. 385 (citing *Griffiths v. Morrison*, 106 N. Y. 165, 12 N. E. 580); *In re Metropolitan Elevated Ry. Co.*, 2 N. Y. Supp. 278, 282; *Cleary v. Skiffich*, 65 Pac. 59, 63, 28 Colo. 362, 89 Am. St. Rep. 207; *Fond du Lac Water Co. v. City of Fond du Lac*, 52 N. W. 439, 442, 82 Wis. 322, 16 L. R. A. 581. *Words & Phrases Judicially Defined*, 1st series, vol. 1, p. 478, 479.

(2) A thing is appurtenant to something else only when it stands in the relation of an incident to a principal, and is necessarily connected in the use and enjoyment of the latter. Words & Phrases Judicially Defined, 1st Series, vol. 1, p. 482 (1st col.) And cases there cited.

(3) A thing is deemed to be incidental or “appurtenant” to land when it is by right used with the land for its benefit, as in the case of a way or watercourse, or of a passage for light, air, or heat from or across the land of another. Words & Phrases Judicially Defined, 1st Series, vol. 1, p. 482 (top of 2d col.).

(4) The term “appurtenant,” in its legal common acceptance, implies a thing as belonging to, accessory, or incident to some other thing. As used in its connection with land, it means a thing used with the land and for its benefit, annexed to and connected therewith; so that an appurtenant of a railroad implies that it is incidental to, connected and used with, the road, as a part of and essential thereto, such as depots, stations, switches, and switching yards, and the like. Words and Phrases Judicially Defined, 1st Series, vol. 1, p. 485 (2d col.).

(5) An exemption from taxation of the capital stock of a railroad company and the road, with fixtures and “appurtenances,” including workshops, warehouses, and vehicles of transportation, does not include a hotel building erected within the space which the company is entitled to hold for a right of way, though it is built under a lease from the company, and is a convenience to passengers and a means of profit to the road. The ticket offices, however, which are kept within such buildings are exempt. Words & Phrases Judicially Defined, 1st Series, vol. 1, p. 485 (2d col.).

(6) The word “appurtenant” means attached to, or belonging to, and in law the term “appurtenance” usually means something appertaining to another thing as principal, and passing as an incident to such principal. Words & Phrases, Second Series, p. 261 (2d col.), and cases there cited.

(7) Nothing passes by term “appurtenances” except land indispensable to use and enjoyment of property conveyed. Words & Phrases, Fourth Series, p. 187 (2d col.), and cases there cited.

(8) An easement is an “appurtenance.” Words & Phrases, Fifth Series, p. 464 (2d col.), and cases there cited.

A thing is appurtenant to something else only when it stands in the relation of an *incident* to a principal and is necessarily connected in the use and enjoyment of the latter. 4 C. J., p. 1471.

A mere easement may, without express words, pass as an incident to the principal object of a grant; *but it would be absurd to allow the fee of one piece of land, not mentioned in the deed, to pass as an appurtenant to another distinct parcel, which is*

expressly granted, by precise and definite boundaries. 4 C. J., p. 1471, note 49(a).

To the same effect are the Nevada decisions as to the meaning of the word “appurtenant.” In the early Nevada case of Fogus v. Ward, [10 Nev. 269](#), it is held that by the established rules of construction the last clause in the premises of the deed must be held to refer to the preceding clause and limited to the estate therein particularly described. To the same effect have been the decisions of the Supreme Court of this State on the subject ever since said case of Fogus v. Ward, *supra*.

From the foregoing, it is our unqualified opinion that said lots so situated in Ely, Nevada, are not appurtenant to Westminister College located in Salt Lake City, Utah; and that the same are not exempt from taxation in the State of Nevada.

Respectfully submitted,

GRAY MASHBURN, Attorney-General.

HONORABLE JOHN W. BONNER, District Attorney, White Pine County, Ely, Nevada.

SYLLABUS

305. Employment Security.

Executive Director of Employment Security Department is the officer authorized by Chap. 59, Statutes of 1941, to requisition on behalf of the State moneys deposited with United States Secretary of the Treasury in the Unemployment Trust Fund.

INQUIRY

CARSON CITY, April 3, 1941.

What person is authorized by chapter 59, Statutes of Nevada 1941, creating the Employment Security Department of this State, to requisition moneys from the State’s account in the Unemployment Trust Fund in the United States Treasury?

OPINION

Chapter 59 Statutes of 1941 created the Employment Security Department. Its purpose being to consolidate the administration of the Unemployment Compensation law and the Employment Service law of this State under one officer or head, designated and known as the Executive Director. Opinion, Attorney-General No. 303.

As shown in the foregoing opinion, the Executive Director is now vested with all the powers and duties heretofore vested in two officers, to wit, the Labor Commissioner and the

Director of the Unemployment Compensation Division. Section 9(c) of the Unemployment Compensation law, as amended at 1939 Statutes, page 128, provided that moneys should be requisitioned from this State's account in an Unemployment Trust Fund on deposit in the United States Treasury. Said section 9(c) as construed in our opinion No. 276, dated March 27, 1939, provided the authority whereby the Director of the Unemployment Compensation Division could requisition moneys from the Unemployment Trust Fund. The duties of the Director of the Unemployment Compensation Division are now vested in the Executive Director of the Employment Security Department.

We are advised that Albert L. McGinty, formerly Director of the Unemployment Compensation Division, is now the duly appointed, qualified and acting Executive Director of the Employment Security Department of the State of Nevada. As such Executive Director, Albert L. McGinty is now vested with the legal authority to requisition, on behalf of the State of Nevada, through its Employment Security Department, moneys deposited with the Secretary of the Treasury of the United States in the Unemployment Trust Fund.

Respectfully submitted,

GRAY MASHBURN, Attorney-General.

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

ALBERT L. MCGINTY, Executive Director, Employment Security Department of the State of Nevada.

B-48. State Grazing Act.

Under 1941 amendment to Taylor Grazing Act, grazing boards may appropriate money for cattle theft control and enter into agreements with State Board of Stock Commissioners for work thereunder.

CARSON CITY, April 5, 1941.

MR. PHIL M. TOBIN, Secretary Nevada Grazing Board, District No. 2, Winnemucca, Nevada.

DEAR MR. TOBIN: General Mashburn has handed me your letter of April 1, 1941.

It is our opinion that the Taylor Grazing Act, as amended by the 1941 Legislature (Assembly Bill No. 261 which has been passed and approved) is broad enough to permit your grazing boards to make appropriations for cattle theft control and, likewise, permits your grazing boards to enter into agreements with the State Board of Stock Commissioners for such work.

Section 4, as it has been amended, states that the funds may be used for "any other purpose beneficial to the stock raising and ranching industries and, in turn, the counties situated

within the grazing district concerned.” This language is certainly very broad, and if your grazing board passes resolutions setting out the fact that cattle theft control is beneficial to the stock raising and ranching industries, then it appears to us that such expenditure may be made. Likewise both the Act and the title have been so amended as to permit your State grazing boards to enter into cooperative agreements not only with the Federal officials but with State officials and boards as well. In view of the law as it now stands, we believe you may safely appropriate funds for cattle theft control and enter into agreements for their expenditure with the State Board of Stock Commissioners.

Very truly yours,

ALAN BIBLE, Deputy Attorney-General.

SYLLABUS

306. Inspectors of Public Service Commission; Under Chapter 188, 1941 Statutes of Nevada. Amending Motor Carrier Licensing Act, Being Chapter 165, 1933 Statutes of Nevada--
Disposition of Funds Appropriated and Collected and Duties of Inspectors.

(1) The balance of 1939 appropriation remaining to the credit of Public Service Commission on April 1, 1941, reverts to State Highway Fund, inasmuch as the money originally so appropriated was taken from the State Highway Fund.

(2) It was not the intention of the Legislature that the State Highway Fund be reimbursed from the “15% principal” created by said chapter 188, 1941 Statutes of Nevada, but the moneys so derived were to be used to pay administrative costs incurred and paid out by the Public Service Commission from January 1, 1941, to April 1, 1941, as provided for in section 2 of said chapter 188.

(3) Such employees are not to be known as highway patrolmen or policemen, but one of them “Chief Official Inspector”; another as “Assistant Inspector”; and the others simply as “Inspectors”; and they must not perform police duties as such inspectors, except those reasonably necessary in enforcing the Public Service Commission laws relating to public carrier fees and laws relating to motor vehicle registration.

The title of said chapter 188 is sufficiently broad to cover the provisions of the body of the Act; and, on this point, the Act is a constitutional and valid law.

(4) In considering the principal upon which 15% thereof for administrative expenses may be lawfully calculated, the law blocks off such collections into calendar years, not fiscal years. The Public Service Commission may, therefore, lawfully expend for such administrative purposes 15 % of the moneys so collected for the entire calendar year 1941, beginning January 1, 1941, although only about nine (9) months of that calendar year still remain after said law became effective and during which said 15% is to be expended for said purposes; and said

Commission need not await the beginning of the fiscal year, July 1, 1941, before it may legally begin to expend said 15% of such collections. After the end of the calendar year 1941 (December 31, 1941), said 15% is calculated upon such collections for each entire calendar year beginning January 1 and ending December 31 of each year.

STATEMENT

CARSON CITY, April 10, 1941.

Senate Bill No. 124 was enacted into a law by the 1941 Legislature. It is now chapter 188, Statutes of 1941, and became effective for practical purposes on April 1. Such statute amends sections 21, 22, and 26 of the Motor Carrier Licensing Act of 1933, which Act is chapter 165, Statutes of 1933, as amended from time to time by later sessions of the Legislature. The new Act empowers the Public Service Commission to employ one chief official inspector, an assistant inspector and such other inspectors as it may deem necessary for the efficient administration of the law, and also to employ a clerk-stenographer for the purpose of expediting the administration of the law. The costs of administration of the law by the Public Service Commission is to be paid from the State Highway Fund. Such costs, however, are limited to an amount of not to exceed fifteen percent of the amount collected under the Motor Carrier Licensing Act, and the Act further provides "that for the purpose of carrying out the provisions of this Act, all money collected on and after January 1, 1941, under the provisions of this Act, shall be construed to be the principal upon which the fifteen percent (15%) hereinafter stated shall apply." Section 1, S. B. No. 124. The Act further provides that the Public Service Commission may fix the compensation of its inspectors and clerk and provide for their necessary expenses; "provided, however, that no expenditure shall be made, or obligation incurred, under this Act in excess of fifteen percent (15%) of the amount collected under this Act." Section 2, S. B. No. 124.

It is further provided in section 3 of said bill that the Public Service Commission and its inspectors shall enforce all rules and regulations of the commission pertaining to the Act and shall assist in the enforcement of the laws relating to the registration of motor vehicles.

Section 2 of the bill amends section 22 of the Motor Carrier Licensing Act. Said section 22 originally provided the Public Service Commission with two inspectors whose salaries and expenses were paid out of an appropriation from the State Highway Fund, the last appropriation therefrom in 1939 being \$25,300 for the biennium ending June 30, 1941. For the first three months of 1941 there has been expended from this appropriation the amount necessary to maintain such inspectors for the first three months of 1941.

The State Highway Department also expended certain sums of money from the State Highway Fund for the first three months of 1941 for patrol service on the highways in assisting in the enforcement of the Motor Carrier Licensing Act and Motor Vehicle Registration Law, such expenditure being in payment of salaries and expenses of additional patrolmen.

The following queries are directed to the operation and effect of Senate Bill No. 124:

INQUIRY

1. Does the remaining portion of the appropriation made in 1939 for the costs of administration of the Motor Carrier Licensing Act now revert to the State Highway Fund.
2. Do the provisions of Senate Bill No. 124, relating to the computation of the fifteen percent principal sum from which the costs of administration are to be paid, require the reimbursement of the State Highway Fund from such fifteen percent for expenditures made from the highway fund for administrative costs incurred by the Public Service Commission and the State Highway Department in patrolling the highways for licensing and like purposes from January 1, 1941, to April 1, 1941?
3. What is the effect of the language contained in section 26 of the Motor Carrier Licensing Act as amended by section 3 of Senate Bill No. 124, on the language contained in section 22 of the same Act as also amended by section 2 of said bill, reading, “and such other duties as may be assigned to them by said Commission”; also, is the title of Senate Bill No. 124 broad enough to cover the enforcement of the Motor Vehicle Registration Act by the inspectors provided in said bill?
4. Does the fifteen percent of all moneys collected by the Public Service Commission apply to the calendar year 1941, or to the fiscal year ending June 30, 1941?

OPINION

Answering Query No. 1. Section 4 of Senate Bill No. 124 repeals all Acts and parts of Acts in conflict with the provisions of the bill. Section 5 provides that the bill shall become effective from and after its passage and approval. The bill provides for a new appropriation made in a different manner from the appropriation for the same purpose in the 1939 appropriation law. The new appropriation became effective for use upon the approval of the bill, which approval for all practical purposes was April 1, 1941. The method of appropriation provided in the bill is so arranged as to be retroactive in effect to January 1, 1941, and thus operates to provide funds for the administration of the law as amended by the bill from and after the effective date thereof. The Legislature is presumed to know the state of the law on the subject on which it legislates. Clower Valley Land & Stock Co. v. Lamb, [43 Nev. 375](#).

The Legislature had knowledge of the appropriation made in 1939, and that on the effective date of the new Act there would be enough money in such appropriation to provide the Public Service Commission with sufficient funds to administer the law, had such law not been amended, to June 30, 1941. However, having amended the law for the administration of which the 1939 appropriation was made and therein added more inspectors and included therewith the original inspectors and clerk, and provided for the payment of the salaries and expenses thereof out of the new appropriation from and after the effective date of the bill, and limited the source of the appropriation to the moneys collected by the Public Service Commission, which last limitation did not apply to the appropriation of 1939, and limited the amount of the appropriation

that could be used for such purpose to fifteen percent thereof for the balance of year 1941 and following years, it is most clear the Legislature did not intend that from and after the effective date of the new Act (April 1, 1941) that the Public Service Commission should use the portion of the 1939 appropriation then remaining to its credit and at the same time apply the new appropriation to the payment of its costs of administration.

It is our opinion that the portion of the 1939 appropriation remaining to the credit of the Public Service Commission, being originally appropriated from the State Highway Fund, reverts thereto as of April 1, 1941.

Answering query No. 2. Statutes are presumed to have prospective operation only, unless a retroactive operation is clearly manifest from the provisions thereof. Milliken v. Sloat, 1 Nev. 573; Wildes v. State, 43 Nev. 388; Viriden v. Smith, 46 Nev. 208.

The only retroactive provision in Senate Bill No. 124 is the provision in section 1, reading:

Provided further, that for the purpose of carrying out the provisions of this act, all moneys collected on and after January 1, 1941, under the provisions of this act, shall be construed to be the principal upon which the fifteen percent (15%) hereinafter stated shall apply. (Italics ours.)

The next reference to the “fifteen percent” is contained in section 2 of the bill. After providing for the employment of the inspectors and clerk-stenographer, the Public Service Commission is empowered to fix their compensation and provide for their necessary expenses, but limited in the amount thereof in the following language: “*Provided, however, that no expenditure shall be made, or obligation incurred, under this Act in excess of fifteen percent (15%) of the amount collected under this Act.*”

The first above-quoted statutory provision is retroactive in its operation only so far as it creates the “principal” upon which the limited amount of administrative cost thereafter shall apply. The second above-quoted statutory provision was and is not effective or operative until on and after the effective date of the new Act. The Public Service Commission had no authority to appoint new and additional inspectors, or to fix the compensation of any of the inspectors old or new or its clerk until the effective date of the new Act. (The salaries of the two old inspectors and clerk being fixed in the Motor Carrier Licensing Act, 1935 Statutes, page 22.) The Public Service Commission had no authority to submit claims for administrative costs under the new Act until such costs were incurred thereunder and after its effective date. All operations under the new Act, except the creation of the “principal” from which the thereafter administrative costs were to be paid, were and are prospective only.

The Legislature being presumed to have knowledge of the state of the law on the subject on which it legislates, knew that under the original law the claims for administrative costs had been allowed and paid from the State Highway Fund for at least three months of 1941, beginning January 1, and that such claims were presented by the Public Service Commission against its

appropriation therefor, and from the State Highway Department to cover its costs in assisting in patrolling the highway for licensing purposes. The Legislature knew that the administrative costs aforesaid would be allowed and paid under the old law and from the source therein provided until the Legislature itself directed otherwise and made effective its later direction in that regard. The Legislature made no provision in the new Act for refunding to the State Highway Fund from the “principal” created in the new Act any moneys to cover administrative costs incurred prior to the effective date thereof. If such a provision had been incorporated in the Act it would have had retroactive effect in that it would have required the reimbursement of the State Highway Fund for administrative cost incurred and paid prior to the effective date of a new Act, and of which the State and its departments had then had the benefit, at the expense of the funds derived from one licensing law and department not theretofore required to finance all of the administrative costs of enforcement of assisting in the enforcement of another licensing law and department as is now required by the new Act.

A statute will not be construed to operate on past transactions, unless the legislative intent that it shall so operate is clearly manifest. *Wildes v. State*, supra.

Reimbursement of the State Highway Fund is not clearly or at all manifested in Senate Bill No. 124.

Questions relating to the wisdom, policy, and expediency of statutes are for the people’s representatives in Legislature assembled, and not for other departments of State Government to determine. *State v. Dickerson*, [33 Nev. 540](#); *Worthington v. District Court*, [37 Nev. 214](#); *State v. Park*, [42 Nev. 386](#); *City of Reno v. Stoddard*, [40 Nev. 537](#).

It is therefore our opinion that the Legislature did not intend that the State Highway Fund was to be reimbursed from the “fifteen percent principal” created in and by Senate Bill No. 124 for administrative costs incurred and paid from January 1, 1941, to April 1, 1941.

Answering Query No. 3. Section 2 of the bill provides that the Public Service Commission may employ the inspectors necessary for the efficient administration of the Act, “and such other duties as may be assigned to them by said commission.” Section 3 in turn provides that the commission and its inspectors “shall enforce all rules and regulations of the Public Service Commission pertaining to this Act, and shall assist in the enforcement of all Acts or parts of Acts pertaining to the registration of motor vehicles, but shall not be given police power except for the enforcement of this Act and Acts pertaining to the registration of motor vehicles.” The language quoted from section 3 of the bill is clearly a limitation on the language quoted from section 2, and limits the duties that may be assigned to the inspectors by the commission to those specifically mentioned in section 3, the language in section 2 being construed and limited by the expressly mentioned duties provided in section 3, the familiar rule of statutory construction, “*expressio unius est exclusio alterius*” applies. *Ex Parte Arascada*, [44 Nev. 30](#). These employees must, however, be known as “inspectors” under the law as amended, not as patrolmen; and they must not perform police duties as such “inspectors,” except those reasonably necessary in enforcing the Public Service Commission laws relating to truck license fees as so amended, and the laws relating to motor vehicle registration.

Further answering query No. 3 relating to the validity of the title of the bill in question. The title of Senate Bill No. 124 is the title of the Act of which the bill was and is amendatory. Such title was drawn in question in Tonopah & Goldfield R. Co. v. Nevada-California Transportation Co., 58 Nev. 234, wherein it was asserted that the title was not comprehensive enough to cover a section of the Act requiring a common motor carrier of property in intrastate commerce to obtain a certificate of public convenience before operating on the highways of this State, and therefore such section was unconstitutional. The court held to contrary, holding that the title was sufficient and the section constitutional.

In the very recent case of State et al. v. Lincoln County Power District No. 1, No. 3313, decided March 21, 1941, the Supreme Court of Nevada had under consideration the title of the power district law of this State. (Chapter 72, Statutes 1935), reading:

An act providing for the creation of power districts; prescribing powers and duties of such districts; and authorizing such districts to conduct and operate utilities for the production, transmission or distribution of electric energy, and to issue bonds and providing for the payment of such bonds, and other matters relating thereto.

The body of the Power District Act provided that such districts when created should be and constitute municipal corporations, a subject clearly not embraced in the foregoing title. The court held the title sufficient and thus established such districts as municipal corporations whose property thereupon became exempt from taxation.

The motor vehicle registration law has for one of its purposes the licensing of motor vehicles, the fees for which are deposited in the State Highway Fund for the same use as fees collected by the Public Service Commission under the law in question. The ultimate purpose being the same, it is clearly within the province of the Legislature to provide that the inspectors under Senate Bill No. 124 may assist in the enforcement of the registration law. And in view of the recent decisions of the Supreme Court relating to the validity of titles of Acts, we hold that the title of Senate Bill No. 124 is broad enough to cover the provisions of section 3 of the bill.

Answering Query No. 4. The licensing of motor vehicles and the collection of the fees therefor are placed on an annual basis, beginning with the first of each calendar year. Section 17, chap. 165, 1933 Stats.

Senate Bill No. 124 does not change this provision of the law. By providing January 1, 1941, as the starting point in the computation of the "fifteen percent principal," the Legislature clearly intended to follow the calendar year theretofore provided for licensing the vehicles and collecting the fees thereon. It is, therefore, our opinion that the fifteen percent of all moneys collected under Senate Bill No. 124 applies to the calendar year 1941, expendable during the remaining nine months of 1941, and that thereafter such fifteen percent will apply only to the calendar year in which it is collected with no carry-over from one calendar year to another.

Respectfully submitted,

GRAY MASHBURN, Attorney-General.

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

HON. CHARLES B. SEXTON, Chairman Public Service Commission, Carson City, Nevada.

Attention:

HON. E. P. CARVILLE, Governor of Nevada.

HON. H. C. SCHMIDT, State Controller.

307. Taxation--Disposition of Moneys Received Upon Sale of Property Purchased by County at Delinquent Tax Sale.

(1) Proceeds of property deeded to county on delinquent tax sale should be apportioned to various funds for which taxes were levied, both State and county funds, except as to patented mining claims so sold.

(2) As to proceeds of such sales of patented mining claims, such proceeds should be apportioned to the General Fund of the county.

STATEMENT

CARSON CITY, April 15, 1941.

Chapter 44 of the 1933 Statutes of Nevada provides that the County Commissioners of the various counties of the State shall sell patented mining claims which have become the property of any count through the operation of the revenue laws of the State, upon compliance with certain conditions and requirements. Section 2 of the 1933 law provides as follows: "Any and all sums received under the provisions of this Act shall be paid into the General Fund of the county." Section 1 of the 1933 law was amended by chapter 19 of the 1935 Statutes.

Section 2 of the original Act was not amended.

INQUIRY

Lander County has given leases with option to buy on several patented lode mining claims, title to which has vested in Lander County through operation of the revenue laws of the State, and since a sale of these claims is anticipated, what application should be made of the moneys received from such sales?

OPINION

Under date of July 13, 1939, page 164 of the Attorney-General's 1938-1940 Biennial

Report, it was held that under the general revenue laws of the State that the proceeds of sales of property deeded to the county for delinquent taxes should be apportioned to the various funds for which taxes were levied, including the taxes due to the State. This opinion was based upon sections 6448, 6462, 6463, 6465, and 6466 of the Nevada Compiled Laws of 1929. The last amendment to any of these sections was the amendment to section 6462 by the 1927 Legislature.

It is to be noted that in 1933 the Legislature enacted the law relating to the sale of patented mining claims. This law is confined to the sale of patented mining claims, title to which is vested in the county, and since the Legislature added section 2 which provides that any and all sums received under the provisions of the Act shall be paid into the general fund of the county, we feel that it was not their intention to apply the general revenue laws of the State but to make a special provision for the disposition of funds received from the sale of patented mining claims. Likewise, it is to be noted that the 1941 Legislature did not amend the general revenue laws or the patented mining claim law so as to change the method of apportionment. In our opinion, the 1933 Act which is limited to the sale of patented mining claims clearly provides that all sums received from such sales shall be paid into the General Fund of the county, and, therefore, that in sales of this character it will not be necessary to apportion the proceeds between the State and counties in accordance with the tax rate for the years in which the property became delinquent.

Respectfully submitted,

GRAY MASHBURN, Attorney-General.

By ALAN BIBLE, Deputy Attorney-General.

HONORABLE HOWARD E. BROWNE, District Attorney, Austin, Nevada.

B-49. General Appropriation Act--Traveling Expenses of Deputy Superintendent of Public Instruction.

Sections 53 and 54 of chapter 199, 1939 Statutes, govern with respect to the transfer of \$100 from the traveling account of the Deputy Superintendent of Public Instruction of the First District to the traveling account of the Deputy Superintendent of Public Instruction of the Fourth District, and such transfer can be legally made.

CARSON CITY, April 19, 1941.

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

DEAR MR. SCHMIDT: Reference is hereby made to your letter of April 18 inquiring whether a request for the transfer of \$100 from the travel account of the Deputy Superintendent of Public Instruction of the First District to the travel account of the Deputy for the Fourth District, which request has been approved by the Board of Examiners, constitutes a valid transfer of such money in view of section 5662 Nevada Compiled Laws 1929, which said section limits

the travel expenses of any one Deputy Superintendent to \$900 in any one year.

The appropriation upon which the transfer will operate was made in 1939 in the general appropriation law enacted at the 1939 session of the Legislature. Such appropriation provided traveling expenses of the district deputies in the sum of \$900 for the biennium, which appropriation, apportioned among the five Deputy Superintendents of Public Instruction, would amount to \$900 for each deputy per annum. Section 33, chapter 199, 1939 Statutes. Section 53 of the same chapter provides that upon the written application of the officer, board or commission concerned, and with the written consent of the State Board of Examiners, the State Controller is authorized to make a transfer of not to exceed twenty-five per centum of any item in said chapter apportioned for the support of such office, board or commission, or department, and that such transfer can be made from one item to another except as to the item concerning salaries. It is provided in section 54 of said chapter that all Acts and parts of Acts in conflict with this Act are hereby repealed, including all Acts and parts of Acts which provide appropriations for the purposes outlined in this Act.

In the case of McCracken v. State, 41 Nev. 49, the question arose as to which law governed with respect to the payment of traveling expenses of a Deputy Superintendent of Public Instruction, that is to say, whether the general appropriation law governed or section 13 of the School Code, which section is now section 5662 Nevada Compiled Laws 1929, and said section was in substantially the same form as it is today excepting that the limitation contained in the statute was \$800 instead of \$900. That case dealt with the situation where the amount of money appropriated in the general appropriation law was less than the amount mentioned in said section 13. However, the court held that the general appropriation law superseded and suspended said section 13. It further held that the Act should be construed in pari materia and, following the rule in such cases, the appropriation law, being the latter expression of the legislative will, would control where there was a conflict in the provision. It was further held in the McCracken case that in the absence of a General Appropriation Act, then section 13 could be utilized as making an appropriation, but that where an appropriation was made in the general appropriation law, such appropriation shall supersede said section 13.

In view of such case and in view of the language contained in sections 53 and 54 of chapter 199 of the 1939 Statutes, we conclude that the request for the transfer of \$100 mentioned in your letter having been approved by the Board of Examiners, constitutes a valid and legal transfer.

Yours very truly,

W. T. MATHEWS, Deputy Attorney-General.

B-50. State Highway Department--County Road Work.

In those cases where county's participation with State Highway Department in building roads is strictly limited to the employment of day labor, the county has authority to spend over

\$500 without advertising.

CARSON CITY, April 24, 1941.

HONORABLE PETER BREEN, District Attorney, Esmeralda County, Goldfield, Nevada.

DEAR PETE: This will acknowledge receipt of your recent letter requesting our opinion as to the county's authority to spend over \$500 in participating with the State Highway Department in building a road from Silver Peak to Nivloc.

We believe that you have correctly analyzed the statutes governing this question and that since this is a day labor job, the county has authority to pay its share of the work in the sum of \$1,000.

Section 1963 of the Nevada Compiled Laws of 1929 does provide that contracts over \$500 must be advertised, but this same section likewise provides that it is not applicable to contracts for the construction and repairs of bridges, highways, streets, or alleys, where the same conflicts with other Acts in relation to bridges, highways, streets, or alleys. Thus, we are governed in this particular case by the highway laws of the State. Although section 6393 provides that when work is let by contract to exceed \$500, which shall be done only upon public notice and to the lowest responsible bidder, this section, however, likewise contains a proviso that public roads or highways in the county may be improved or repaired by the County Commissioners by the employment of day labor without letting contracts to the lowest responsible bidder, irrespective of the probable cost of said work. It should be noted the section was last amended in 1913.

Our general highway law was enacted in 1917 and section 33 thereof provides that the State Highway Engineer may supervise certain county work upon the request of the Board of County Commissioners. Section 34 provides that the Department of Highways may accept donations of money, labor, and materials to be expended or used upon the State highways. These sections which are later in point of time from section 5393, as amended, clearly indicate that the County Commissioners may spend in excess of \$500 in cooperation with the State Highway Department in the building, improving, or repairing of public highways in the county, so long as this work is done by the employment of day labor and under the supervision of the State Highway Engineer.

Sincerely yours,

ALAN BIBLE, Deputy Attorney-General.

SYLLABUS

308. School Teachers.

Teacher employed as a coach in teaching at least one-half of each school day is entitled to credit for a full school year's teaching.

STATEMENT OF FACTS

CARSON CITY, April 30, 1941.

Mr. X was employed by the Board of Education of Washoe County as a coach in the Reno schools during the 1923-1924 school year at a salary of \$1,000. This salary was paid from the same fund as other teachers' salaries, and Mr. X was engaged as a practice teacher during part of the regular school day and handled all coaching of the athletic teams. He taught and coached at least one-half of each school day. He was listed as a regular member of the teaching staff of the school and held a valid teaching certificate during the 1923-1924 school year.

INQUIRY

How much teaching credit toward the 30 years required for retirement can be granted under the facts in this case to this teacher who holds a valid teaching certificate?

OPINION

In our opinion this teacher is entitled to credit for a full school year's teaching. Section 1 of the 1937 Retirement Salary Act defines the word "teacher," in part, as follows:

The term "teacher" as used in this act shall mean every person who has served or is serving (1) as a legally qualified teacher in or a principal or superintendent of the public schools of the State of Nevada * * *.

The only provision in this section as to the computation of teaching credits deals with legally certified teachers who are employed for less than a full school year. We are unable to find any other standard for computing teaching credits in the Retirement Salary Act.

We are likewise advised by the Secretary of the Retirement Salary Fund Board that the teacher in this case accepted Plan No. 1 of the 1937 Act, and that he pays into the Retirement Salary Fund the same amount per year as that paid by any other full-time school teacher who has accepted this same plan.

From the above, and since it clearly appears that Mr. X is a legally qualified teacher and that he has taught part time for the full 1923-1924 school year, we conclude that he is entitled to a full year's credit.

Respectfully submitted,

GRAY MASHBURN, Attorney-General.

By ALAN BIBLE, Deputy Attorney-General.

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

B-51. Motor Vehicle Carriers Act.

Under Section 7, 1933 Motor Vehicle Carriers Act, applicant is entitled to a formal hearing.

CARSON CITY, May 1, 1941.

MR. C. B. SEXTON, Chairman Public Service Commission, Carson City, Nevada.

DEAR MR. SEXTON: This will acknowledge receipt of your recent letter with which you enclosed a copy of the protest of the Tonopah and Goldfield Railroad Company filed in the matter of the application of the Nevada-California Transportation Company for a certificate of public convenience and necessity.

Your letter states that as you interpret the protest it asks your commission to deny the Nevada-California Transportation Company the right of having the matter formally heard. We have carefully read the protest and are unable to see any allegation which would lead to this conclusion, or any prayer which specially asks that a hearing be denied.

In our opinion, your commission must afford the applicant the privilege of a formal hearing. Apparently, the application is made under section 7 of the 1933 Motor Vehicle Carriers Act, as amended, and this provision specifically requires that the Public Service Commission, upon the filing of an application, shall fix a time and place for hearing thereon and shall proceed in the matter according to the provisions of the laws of this State made applicable thereto. Likewise, the Public Utilities Act specifically provides for a hearing in all cases where the commission either issues or refuses to issue a certificate of public convenience. On questions of judicial review, the Public Utilities Act and the Motor Vehicle Carriers Act have been construed in pari-materia, so that it clearly appears to us irrespective of which Act controls, a hearing is contemplated.

Our attention has not been directed to any provision of the law, and we know of none, which would enable your commission to safely deny the applicant his right of hearing. We might even go further and add that in our opinion a statute denying the applicant the right of hearing might be judicially construed as depriving him of the due process of law guaranteed by our Constitution.

Sincerely yours,

ALAN BIBLE, Deputy Attorney-General.

SYLLABUS

309. Appropriations--Nevada State Livestock Show Board--Elko County Fair--Fallon State Fair.

Chapter 89, 1941 Statutes, providing appropriation for fiscal years 1941-1942 for purpose of aiding said show board in holding livestock show at Elko does not preclude use of appropriation after June 30, 1941, and June 30, 1942. Chapter 105, 1941 Statutes, wherein appropriation was made for the State Fair at Fallon for fiscal years 1941-1942 does not preclude use of appropriation after June 30, 1941 and June 30, 1942.

STATEMENT

CARSON CITY, May 1, 1941.

The 1941 Legislature by section 1 of chapter 89 Statutes of 1941, amended section 8 of the Act creating the Nevada State Livestock Showboard, i.e., section 3910 N. C. L. 1929, and in said amended section appropriated the sum of \$3,000 out of the General Fund of the State for each of the fiscal years 1941 and 1942 for the purpose of aiding said showboard in holding livestock shows in Elko. Pursuant to section 3912 N. C. L. 1929, the State Livestock Showboard is empowered to cooperate with the Elko County Agricultural Association, District No. 4, in the holding of the Elko County fair, and said livestock showboard is empowered to hold the State livestock show at the same time and in the same place as the Elko County fair. The State Controller has heretofore required that expenditures from the State appropriations made in past years be incurred before claims are presented to him for payment. These expenditures cannot be ascertained and identified until after the county fair is held. Such fair is always held in the fall of the year, usually, if not always, in the month of September. For the year 1941 the fair will be held after the close of fiscal year 1941.

INQUIRY

Does the fact that chapter 89, Statutes of 1941 appropriates the sum of \$3,000 for each of the fiscal years 1941 and 1942, preclude the use of the appropriation for the 1941 fiscal year after June 30, 1941?

OPINION

Section 3910 N. C. L. 1929, as amended by section 1, chapter 89, 1941 Statutes, reads:

The sum of three thousand (\$3,000) dollars for each of the fiscal years 1941 and 1942 is hereby appropriated out of any moneys in the general fund of the state treasury, not otherwise specifically appropriated, to aid the Nevada State livestock showboard in holding livestock shows at Elko, Nevada.

No other amendment of the State Livestock Showboard Act was enacted by the 1941

Legislature. No amendment changing the purpose of such Act appears in the law since the enactment thereof in 1929.

Elko County Agricultural Association, District No. 4, was created in and by the Act to form agricultural districts in this State, enacted in 1885, which Act is now sections 327 to 334, inclusive, N. C. L. 1929. Such district is deemed to be a State institution and is empowered to hold an annual fair or exhibition of all the industries and industrial products in the district at such time and place as the association may deem advisable. Section 33, supra. The annual fair so authorized has been for many years known as the Elko County Fair.

The State Livestock Showboard is, by section 3906 N. C. L. 1929, expressly authorized and directed to hold a livestock show at Elko in the following language:

The Nevada state livestock showboard shall hold a state livestock show at Elko, Nevada, in connection with the Elko County fair.

In section 3911 N. C. L. 1929, the following language appears:

It shall be proper and lawful for the Nevada state livestock showboard to cooperate with Elko county agricultural association, district No. 4, in the holding by the latter board of the Elko County fair, and it shall be lawful and proper to hold the state livestock show at the same time and at the same place as the Elko County fair, and to cooperate with the said Elko County board in the construction of improvements, the awarding of premiums and prizes, the payment of expenses, including the salaries and wages of employees, and the payment of labor and materials and the expenditures of money for the purposes aforesaid.

The law is clear upon the proposition that the Elko County Agricultural Association is empowered to hold an annual fair at such time and at such place as it may deem advisable. It is also clear that the State Livestock Showboard is expressly directed to hold a State livestock show at Elko at the same time and in connection with such annual fair. There has been no change in the law in this respect. It is left to Elko County Agricultural Association to fix the date of the fair, and when such date is fixed it is then incumbent upon the State Livestock Showboard to so arrange that its livestock show be held at the same time and in connection with such fair.

It further appears from the law that the Elko County Agricultural Association must present certificates showing the expenditures for fair purposes after the incurring thereof, including the payment of premiums, before the Board of County Commissioners may pay the claims therefor out of county-aid moneys appropriated for that purpose. Sections 337 and 339 N. C. L. 1929. It is a fundamental rule that State appropriations shall not be expended until the services, labor, supplies, etc., authorized by law to be secured or acquired, shall actually have been so secured or acquired, shall actually have been so secured or acquired prior to the submission and payment of claims therefor, so that the Nevada State Livestock Showboard may well be precluded by the laws under which it operates from submitting claims for its expenditures in connection with the Elko fair until such fair is actually held, the expenditures made and

identified, even though such fair is not held until after June 30, 1941.

Did the Legislature by the enactment of chapter 89, 1941 Statutes, intend that the appropriation for the fiscal year 1941 must be used prior to July 1, 1941? We think not. To so construe such chapter would require the ignoring of the legislative intent and purpose of the Acts providing for the fair and livestock show discussed hereinbefore, which intent and purpose as we have seen has not been expressly or at all changed by the Legislature.

The Legislature is presumed to have knowledge of the state of the law upon which it legislates. Clover Valley L. & S. Co. v. Lamb, 43 Nev. 375.

It is the intent of the statutes in question here that there be held an annual fair at a time to be fixed by the county association at which fair the State association shall participate. The 1941 appropriation statute itself contemplates expenditures for two annual fairs or shows. To hold that the 1941 appropriation must be used prior to the expiration of the 1941 fiscal year would be to nullify another part of the same Act, *i.e.*, the provision giving the State Livestock Showboard the power to hold its show at the same time and place of the Elko County fair.

It will not be assumed that one part of a legislative act will make inoperative or nullify another part of the same act, if a different and more reasonable construction can be applied. 2 Lewis Sutherland, Stat. Const., 732, quoted with approval in Nye County v. Schmidt, 39 Nev. 456.

Courts in construing statutes must presume a legislative intendment of reasonable operation of all parts of the statute. Nye County v. Schmidt, supra.

In Nevada Cornell S. M. v. Hankins, 51 Nev. at pages 432, 433, the Supreme Court said:

No sounder, no saner, no wiser rule for the interpretation of statutes was ever announced than that stated by Lord Capbell in Reg. v. Skeen, 5 Jur. N. S. (Engl.) 151, 21 L. J. M. C. 91, as follows: "Where by the use of clear and unequivocal language, capable only of one construction, anything is enacted by the legislature we must enforce it, although, in our own opinion, it may be absurd or mischievous. But, if the language employed admit of two constructions, and according to one of them the enactment would be absurd and mischievous, and according to the other it would be reasonable and wholesome, we surely ought to put the latter construction upon it as that which the legislature intended.

"All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language which would avoid results of this character." Goldfield Con. M. Co. v. State, 35 Nev. 178, 127 P. 77; Escalle v. Mark, 43 Nev. 172, 183 P. 387, 5 A. L. R. 1512, 25 R. C. L. 1019.

It is a well-recognized principle that statutes relating to the same matter which can

stand together should be construed so as to make each effective. Abel v. Eggers, 36 Nev. 372.

Repeals by implication are not favored, and occur only if there is an irreconcilable repugnancy, where the two acts cannot stand together. The same liberal rule of construction ought to apply in favor of a statute which might otherwise have its clear provisions made inoperative or be suspended. Abel v. Eggers, supra.

To same effect is State v. Martin, 32 Nev. 198.

In Gibson v. Mason, 5 Nev. 283, the court said:

So also it is always the first great object of the courts in interpreting statutes, to place such construction upon them as will carry out the manifest purpose of the legislature, and this has been done in opposition to the very words of an Act.

Last, but not least, it is to be noted that appropriations made to carry out the purposes of the State Livestock Showboard Act do not arbitrarily revert to the State Treasury if not entirely used during the year or the biennium. Section 3911 N. C. L. 1929, provides:

Said board may, in its discretion, permit any part of the said moneys so appropriated to accumulate for the benefit of succeeding livestock shows, or for the construction of improvements, or the acquisition of property in connection therewith, and any such surplus so permitted to accumulate shall not revert to the general fund of the state, but shall be subject to the purposes and uses of the said Nevada state livestock show board.

We think chapter 89, Statutes of 1941, contains no amendment of this provision and neither does it contain a repeal thereof. It remains in the discretion of the showboard to expend all of the appropriation for one year in that year or carry the unexpended portion over from year to year without causing a reversion thereof.

From the foregoing analysis of the statutes involved herein, and in view of the authoritative pronouncements of the Supreme Court of this State, we are of the opinion that notwithstanding the inclusion of the word "fiscal" in the appropriation amendment contained in chapter 89 Statutes of 1941, that such appropriation may be legally expended for the purposes for which appropriated after the expiration of the 1941 and 1942 fiscal years, respectively.

APPROPRIATION FOR STATE FAIR AT FALLON

Since writing the foregoing opinion, it has been brought to our attention that the Legislature in making the 1941 and 1942 appropriation for the State fair at Fallon inserted the term "fiscal" in the Act making the appropriation, so that the Act reads in this respect: "For each of the fiscal years 1941 and 1942 * * *." Chap. 105 Stats. 1941. A similar inquiry is made here as the inquiry propounded hereinbefore concerning the Elko fair.

The State fair held at Fallon is authorized by "An Act for the management and control of the State Agricultural Society by the State," which Act is now sections 315-325, inclusive, N. C. L. 1929. The Act authorizes the State Board of Agriculture, among other things, to provide for an annual fair at the city of Fallon. For many years an annual State fair has been held at Fallon in the fall of the year.

The 1939 Legislature made an appropriation of \$5,000 for each of the years 1939 and 1940 for the State fair at Fallon. Chap. 169 Stats. 1939. It is common knowledge that a State fair was held at Fallon in the fall of each of those years, and after June 30 thereof, as such fair was so held in years previous to 1939.

The 1939 appropriation was contained in an amendment to section 5 of the Act, section 319 N. C. L. 1929. Such amendment provided that the State association "shall provide for an annual fair or exhibition by the society of all the industries and industrial products of the State at the city of Fallon, Churchill County, Nevada." After inserting the appropriation above mentioned, the Legislature then said:

* * * *provided*, that after the appropriation herein referred to shall be made the said board shall be assured of a contribution on behalf of the people of Churchill County of the sum of two thousand five hundred (\$2,500) dollars for the year 1939, and a similar contribution for each year thereafter; *provided further*, that in the event no state fair shall be held at Fallon during any year the fund so appropriated by the State of Nevada shall revert to the general fund of the State of Nevada.

By this language, the Legislature clearly evidenced its intent that the *annual fair* should continue to be a yearly event at Fallon so long as the people of Churchill County contributed the sum of \$2,500 each year, and it was only in the event no fair was held at Fallon during any year that the State appropriation reverted.

The 1941 Legislature in making the appropriation contained in chapter 105 Statutes of 1941, reenacted chapter 169 Statutes of 1939, using the exact language thereof except in the following particulars only, to wit: "the sum of *four thousand (\$4,000)* dollars for each of the *fiscal years 1941 and 1942* * * *," being inserted in lieu of the words "the sum of five thousand (\$5,000) dollars for each of the years 1939 and 1940." It is clear the Legislature did not intend to make any changes in the purpose of the Act nor to limit the continuing effect of the appropriation. It is not reasonable to suppose the Legislature by simply using the term "fiscal" intended that in order to use the appropriation made for the purposes of holding the *annual State fair* in 1941 that the State Board of Agriculture must hold such fair prior to July 1, 1941, and thus upset the well-known and customary practice of holding such fair in the fall. We think the reasoning and authorities hereinbefore given and cited with respect to the Elko fair are controlling here. We, therefore, conclude that the State Board of Agriculture may legally use the funds appropriated by said chapter 105 Statutes of 1941 after July 1, 1941, and July 1, 1942, for State fair purposes, provided, of course, such fair is held annually in 1941 and 1942.

NOTE--The foregoing opinion is written upon the assumption that the term fiscal year 1941 and the fiscal year 1942, as used in the 1941 Statutes in question here, ends on June 30 of each said respective year. Section 1 of article IX of the Constitution, adopted in 1930, reads:

The fiscal year shall commence on the first day of July of each year.

No Legislature since 1930 by legislative enactment has expressly designated what shall constitute the fiscal year under such constitutional provision except in the General Appropriation Acts for the support of the State Government. In 1931 the first biennial appropriation was made under the new constitutional provision, "for the fiscal years from June 30, 1931, to July 1, 1933." Chap. 113, 1931 Stats.

In 1933, the general appropriation was made under a title reading "for the fiscal years ending June 30, 1934-1935." Chap. 196, 1933 Stats. Such title has been followed in the enactment of all subsequent General Appropriation Acts. Such Acts are limited to the support of the general government of the State.

It is interesting to note that under the original section 1, article IX of the Constitution, which read, "The fiscal year shall commence on the first day of January of each year," the Legislature provided different fiscal years for the agricultural districts, which includes the Elko district in question here and the State Board of Agriculture which provides the State fair at Fallon. Each of those associations was provided a fiscal year as follows: "The fiscal year shall be from the first of December to the first of December." Sections 318 and 332 N. C. L. 1929. In view of the language now contained in section 1, article IX of the Constitution, it could well be said that the fiscal years mentioned in chapter 89 and chapter 105 Statutes of 1941 begin on July 1, 1941 and 1942, respectively.

Respectfully submitted,

GRAY MASHBURN, Attorney-General.

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

NEVADA STATE LIVESTOCK SHOWBOARD.

STATE BOARD OF AGRICULTURE.

B-52. Inheritance Tax--State of Washington Laws--Taxation of Bequest to State University.

Capital stock in the Clay Peters Building in Reno held by a resident of the State of Washington who was there deceased and who bequeathed such stock to the University of Nevada is not subject to the tax imposed by the law of the State of Washington, because under the laws of Nevada the University of Nevada is supported in part by gifts, endowments and in some cases by charity, and therefore exempt from such taxation under the laws of the State of Washington.

The University of Nevada is subject to its pro rated share of the costs of the administration of the estate in Washington. The University of Nevada is subject to its pro rated share of the costs of the administration of the estate in Washington.

CARSON CITY, May 5, 1941.

MR. C. H. GORMAN, Comptroller State University, Reno, Nevada.

DEAR MR. GORMAN: Reference is hereby made to the letter of Attorney John W. Whitham, dated April 25, addressed to the University, relative to the proposed taxation of the bequest of 1,250 shares of capital stock in the Clay Peters Building Company of Reno by the State of Washington.

It is noted from Mr. Whitham's letter that the Inheritance Tax and Escheat Division of Washington considers that the bequest to the State University of Nevada is taxable at the rate of 10 percent in that State because the State of Nevada does not have a reciprocal provision for charities as required by Remington's Revised Statute, section 11218, which said section provides certain exemptions from the payment of inheritance tax in the State of Washington.

We have examined into the matter so far as we are able to examine the same under the Washington law, and it is our opinion that a protest should be filed with such Inheritance Tax Division protesting such ruling.

The latest Remington's Washington laws we were able to find in the State Law Library is the 1922 edition as supplemented in 1927. Section 11218, as found in the 1922 edition, provides with respect to the ruling of the Inheritance Tax Division as follows:

and all bequests and devises heretofore made to the State of Washington or to any county, city, school district or other municipal corporation therein for eleemosynary, charitable, educational, or philanthropic purposes, and all bequests and devises made to schools and colleges in the state supported in whole or in part by gifts, endowments, or charity, the entire income of which said school or college, after paying the expenses thereof, is devoted to the purposes of such institution and which is open to all persons upon equal terms, shall be exempt from the payment of any inheritance tax, and any property in this State which has been devised or bequeathed for such purposes and upon which a state inheritance tax is claimed or is owing is hereby declared to be exempt from the payment of such tax.

We assume that the Inheritance Tax Division of Washington may be laboring under the impression that Nevada has an inheritance tax law which would in some way operate upon a bequest to a Washington University made in the State of Nevada, and that this State would collect tax on such inheritance. Nevada has no inheritance tax law. Such inheritance tax law was repealed many, many years ago so that were the situation reversed at this time, the bequest to a Washington school would pass absolutely free of any taxation on the part of the State of Nevada as an inheritance tax.

Further, it is to be noted that the Clay Peters Building Company is a Nevada corporation. Section 1686 Nevada Compiled Laws 1929 specifically provides that no stocks or bonds or other securities issued by any corporation organized under this Act (1925 Corporation Act) nor the income or profits therefrom nor the transfer thereof by assignment, descent, testamentary disposition or otherwise, shall be taxed by this State when such stocks or bonds or other securities shall be owned by nonresidents of this State or by foreign corporation.

We think that our University, while being supported in part by taxation, still it receives a great portion of its financial support through the Federal land grants made to this State over a course of years, the revenue from which is devoted exclusively to educational purposes in this State and, as you know, a portion of such revenue inures to the benefit of the University. Section 3, article 11, of the Nevada Constitution provides most specifically how this revenue shall be used for educational purposes, and by this constitutional provision is dedicated solely to such purpose, and in addition thereto the constitutional provision sets apart all estates that may escheat to the State and also all property given or bequeathed to the State for educational purposes are forever dedicated to such purposes, and while this might not be deemed absolute charity within the meaning of the Washington law, still it is a well-known fact that money has been bequeathed to the University of Nevada from estates and also from individuals still living.

The University of Nevada is open to all students whether residents of Nevada or not. Further, tuition shall be free to all students whose families are bona fide residents of the State of Nevada, and tuition shall be free to all students whose families reside outside of the State of Nevada; provided, such students have themselves been bona fide residents of the State of Nevada for at least six months prior to their matriculation at the University. Section 7735 Nevada Compiled Laws 1929.

We think the foregoing constitutes a valid objection to the collection of an inheritance tax on the shares of stock in question, and should be presented to the Inheritance Tax Division of Washington.

With respect to the prorated share of the cost of the administration of the estate in Washington, we beg to advise that this is undoubtedly to be governed by the laws of Washington, and if the University, under the laws of that State and by order of the Washington court, is required to pay its pro rata share of the costs of administration, we see no escape from the payment.

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

B-53. County Owned Property--Lease and Auction of Mining Claims Which Have Become Property of the County.

Chapter 19, Statutes of 1935, providing that a citizen of the United States upon petition to

the Board of County Commissioners may thereupon enter upon mining claims that have become the property of the county and explore and develop the same, requires that at the expiration of six months or sooner the Board of County Commissioners shall execute a deed conveying the title of the county mining claims to the petitioner upon payment of the sum for which such mining claims became the property of the county. The law is mandatory.

CARSON CITY, May 5, 1941.

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

DEAR SIR: Reference is hereby made to your letter of May 2 requesting an opinion concerning chapter 19, Statutes of 1935, relating to the lease and option of mining claims which have become county property. It is noted that in your opinion the Act in question should be construed as directory, even though the word "shall" is used.

I agree that the statute in question should be construed as directory in view of the situations arising as disclosed in your letter. However, this office in opinion No. 211, dated June 8, 1936, construed the identical chapter as being mandatory. I believe you have a copy of the Attorney-General's report for 1934-1936 wherein the opinion is set forth and in view of the Supreme Court decisions with respect to the change of a law after judicial interpretation thereof, it would seem that now there is no question but what Chapter 19, Statutes of 1935, must be construed as mandatory. The 1933 Act, the same being chapter 44, Statutes of 1933, was a directory statute and was the statute involved in the Hulahan case. The Legislature of 1935 changed the word "may" to "shall," and under the doctrine enunciated by the Supreme Court in the case Esalle v. Mark, 43 Nev. 172, and Martin v. Duncan Automobile Co., 53 Nev. 212, the amendment made by the 1935 Legislature was made to meet the decision in the Hulahan case, so that as the law stands today we are bound to construe it as mandatory.

Yours very truly,

W. T. MATHEWS, Deputy Attorney-General.

B-54. License Law--Bowling Alleys.

Whether section 6664 Nevada Compiled Laws 1929 requires the payment of a license for each separate bowling alley or the place where bowling is carried on irrespective of the number of alleys is doubtful. Recommendation: That a suit be brought to determine the question.

CARSON CITY, May 10, 1941.

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

DEAR MR. TAPSCOTT: Reference is hereby made to your letter of May 8 requesting our interpretation of that part of section 6664 Nevada Compiled Laws 1929 relating to the

licensing of bowling alleys. Your inquiry is directed to the point, as we understand it, as to whether the statute contemplates the licensing of each separate bowling alley or the place wherein bowling is carried on.

It is the general rule of interpreting statutes that words used therein are used in their common, ordinary meaning unless the context of the statutes indicates differently. On examining the definition of the term "bowling alley," as contained in Webster's New International Dictionary, we find the same defined as follows:

Bowling alley--Orig., an alley for playing bowls; now, a covered place containing an alley or alleys for playing at tenpins and similar games.

If we are to use or rather construe the statute in the light of the foregoing definition, it would seem that as the term is now understood that bowling alley is the place where bowling is carried on and does not relate exclusively to each particular alley. Whether the 1915 Legislature used the term in its more modern meaning or as it originally meant, we cannot say. A search of the cases dealing with bowling alleys fails to disclose other than two cases, one of which dealt with the construction of a criminal pleading and is of no help here. The other case, *Williams v. Vincent*, 79 Pac. 121, contains the following expression:

The single question in this case is whether a bowling alley is exempt from seizure and sale on execution; the term "bowling alley" being construed to connote pieces of wood so conjoined as to present a plane surface 42 inches wide and 72 feet long, and wooden pines and wooden balls, all used in the game of bowling.

Under this definition of a bowling alley, it would seem that the term means the alley itself, and construing the statute in question with such thought in mind it would seem that such statute means that the license fee provided therein was and is a license fee for each separate alley. We are rather inclined to the view that such is the proper construction to be given the statute, as it contains the word "each" which would seem to indicate that the Legislature had in mind each individual alley in the enactment of the statute.

We are frank in saying that there is some doubt as to whether the foregoing is the proper construction of such statute. Frankly, the question is open to argument and we suggest that it would be better if a suit could be brought in Elko for the purpose of getting a court construction of the term. A particular operator could refuse to pay on all of the alleys contained in his place of business and thus lay the foundation for a suit to recover the license fee and get a court's interpretation of the term.

Very truly yours,

W. T. MATHEWS, Deputy Attorney-General.

B-55. Electric Power Companies--Franchise to Furnish Power in a Town.

Electric power Companies holding franchises to do business in the State and county not required to pay the franchise tax provided in the Nevada law on all of their business in a county when such companies extend their power lines into a town not theretofore served by them. Such companies only required to pay the franchise tax on the business derived from such town.

CARSON CITY, May 22, 1941.

Public Service Commission, Carson City, Nevada.
Attention: MR. LEE S. SCOTT, Secretary.

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

GENTLEMEN: Reference is hereby made to your letter of May 9 relative to the furnishing of electric power to the town of Golconda. It is noted that the Western States Utilities Company and the Sierra Pacific Power Company are both willing to serve the town of Golconda, provided the so-called franchise tax collected from electric power companies for school purposes in the counties where such companies operate under franchise will not be required of such companies on all of their operations as presently carried on. In brief, as we understand it, the question is whether either of such companies would be required to pay the franchise tax on all of their business in Humboldt County if either of such companies obtained a franchise to furnish the town of Golconda with electric power.

An examination of the statutes dealing with the question convinces us that as to the Western States Utilities Company it would only be required to pay the so-called franchise tax under sections 3189 and 3190 Nevada Compiled Laws 1929 upon the business carried on and derived from the town of Golconda and vicinity if served after the securing of the franchise from the Board of County Commissioners as required by sections 3183 to 3195 Nevada Compiled Laws 1929.

With respect to the Sierra Pacific Power Company, beg to advise that in our opinion if such company obtained a franchise to serve the town of Golconda and vicinity, it would only be required to pay the so-called franchise tax upon the business carried on in and about the town of Golconda for which it receives the franchise, and such payment would be governed by section 3202 Nevada Compiled Laws 1929.

Trusting this will answer your inquiry, I am,

Sincerely yours,

W. T. MATHEWS, Deputy Attorney-General.

B-56. Budget Law--District High School--Increase in Valuation of Taxable Property During the Year.

A district high school having budgeted a specific amount for district high school purposes for the current year and thereafter by reason of the increase in valuation of the taxable property of the county a sum of money in addition to that budgeted was received and sought to be used by the district high school during the current year. Held, that such surplus sum of money should inure to the benefit of the taxpayers and be carried over to the next current year as unincumbered cash balance and so written into the budget for such year.

CARSON CITY, May 27, 1941.

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

DEAR MISS BRAY: Reference is hereby made to your letter of May 15 concerning county aid to the district high school budget matter. Briefly, we gather from your letter that the amount of \$15,000 was budgeted to a district high school for the year 1940, and that a similar amount was budgeted in the so-called tentative budget for the said high school for the year 1941. That during the year 1940 the valuation of the county was raised \$1,800,000 in round numbers without a corresponding reduction in the tax rate for the high school, and that, by reason thereof, some \$6,500 over and above the \$15,000 budgeted for 1940 was realized from taxation. We understand that for the year 1941 the same district high school is asking for \$24,680 for the current school year and that it is insisting that the county aid to the district high school fund not only receive the \$24,680, but also the surplus accruing in 1940 in the amount of \$6,578. We understand your question to be as to whether the high school in question is entitled to receive the \$24,680 budgeted for the current year plus the \$6,578, or whether the sum of \$6,578 should be credited as a cash carry-over and deducted from the \$24,680.

We think the budget law contemplates that schools shall not expend more than the current year budget provides. In brief, if the high school in question budgeted \$15,000 in its county aid to district high school fund, that that is the total amount such high school would be entitled to expend during the current year irrespective of the actual money brought in by taxation. We think that in the particular situation the sum of \$6,578, being over and above the amount actually budgeted for the current year 1940, represents a surplus to be carried over to the current year 1941 and used as the unencumbered cash balance at the beginning of the current year as provided in item No. 3 of the school budget law, the same being section 3018 Nevada Compiled Laws 1929, as amended at 1935 Statutes, page 71. In brief, the \$6,578 would then be on hand and should be deducted from the \$24,680 to arrive at the amount to be budgeted for which a tax is to be levied. Otherwise, the taxpayers would not receive the benefit of increased valuation together with the surplus accruing in the particular fund. We think the budget law contemplates an entirely different situation and was enacted for the purpose of benefiting the taxpayer wherever possible.

Very truly yours,

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

310. Budget Law--Apportionment of Funds.

High school not entitled to have apportioned to it surplus over and above the amount budgeted for the current year for county aid to district high schools, which surplus was acquired by reason of increased valuation of taxable property. Such surplus constitutes unencumbered cash balance as to amount actually collected in the current year, and estimated receipts as to the amount collectible the following year, for the purposes of the following year's budget.

Board of trustees of a district high school may legally revise upward in the 1941 budget amount estimated necessary for the year 1941 for county aid to district high schools and so incorporated in the 1940 budget.

STATEMENT

CARSON CITY, June 10, 1941.

High School District A in March of 1940 filed its budget for the year 1940 and its tentative budget for the year 1941, listing therein the amount of \$15,000 as being necessary for county aid to the district high school for each of said years. A county tax was therefor levied for the year 1940 based upon the then assessed valuation of the county. During the year the assessed valuation was increased without a corresponding reduction being made in the tax rate, resulting in more money being raised for the county aid purposes than requested in the budget. The whole of the tax assessed for the 1940 budget purposes is not as yet entirely available for use. The first installment thereof being collected in December 1940, and the balance subject to collection in March, June, and August of 1941.

At the time of the revision of the budget in and for the year 1941, the high school district trustees revised said budget by increasing the amount deemed necessary for the county aid to the district high school fund over the amount requested for the year 1941 in the 1940 budget, which increase was considerably over and above the amount budgeted for the year 1940, plus the increased amount coming into said aid fund because of the increased valuation in 1940.

The high school district claims that the surplus over the \$15,000 budgeted for aid purposes in 1940, and acquired by reason of the increased valuation, should be apportioned now without regard to the requested amount of \$15,000 so fixed in the 1940 budget for the year 1940.

INQUIRY

1. Is High School District A entitled to have distributed to it in 1941 the surplus over and above its 1940 requested or budgeted amount of \$15,000 for county aid purposes?
2. Can the board of trustees of said high school revise the amount estimated in the 1940 budget as being necessary for the year 1941 county aid to the district high school fund by increasing such amount in the 1941 revised budget?

OPINION

Answering query No. 1. The budget law was enacted for the very purpose of placing the business of every county, municipality, school district or high school district in this state on a cash basis. Sections 3010-3011 N. C. L. 1929. Carson City v. Board of County Commissioners, 47 Nev. 415.

As stated in the Carson City case, such law is to “assure economy in the administration of a government, since by such a system a definite amount of money is raised and appropriated for each branch of the government for each year, beyond which no obligation can be incurred.”

High School District A by requesting county aid to the extent of \$15,000 and no more in its 1940 budget was thereafter bound by such budget for the year 1940. Sec. 5, chap. 183, Stats. 1939; sec. 5, chapter 156, Stats. 1941; sec. 3019 N. C. L. 1929.

The fact that by reason of increased valuation of taxable property within the county resulted in more money being raised by the county tax for the county aid to the high school district than was requested and budgeted in the budget for the year 1940 for such purpose does not, we think, inure to the benefit of such district and require such surplus amount to be now distributed to such district regardless of budget requirements. When the valuation of property was increased, the rate of taxation for county aid purposes at least should have been reduced. Sec. 3024 N. C. L. 1929.

The tax rate not being reduced, an amount of money was raised by such tax in excess of the budget requirements and, we think, such amount when paid into the county treasury constituted unencumbered cash balance as to the amount actually collected at the time of the preparation and revision of the 1941 budget, and that the balance thereof remaining to be collected in 1941 constitutes a part of the estimated receipts for such year and should be so incorporated in such revised budget. See section 3018 N. C. L. 1929, as amended at 1935 Statutes, page 71.

The effect of incorporating this surplus amount of money in the revised budget of 1941 would and will inure to the benefit of the taxpayers of the county in their 1941 tax bill.

It must be assumed that the high school district trustees, at the time of the preparation of the 1940 budget, knew that no county-aid money as so budgeted would be available for distribution until after the tax payment day in December 1940, and that for all practical purposes the distribution of such money could not be had until in 1941. Having budgeted a specific amount in 1940 for county-aid purposes and not doubt prepared and filed the budget with all other receipts and expenditures therein listed, and coordinated with the budgeted county-aid requirement, we think it must logically follow, in order to keep within such budget law, that no distribution of county-aid funds can now legally be made in excess of the amount so budgeted. To so distribute at the request of the trustees, we think, would contravene section 3019 Nevada Compiled Laws 1929, providing that “it shall be unlawful for any governing board * * * of any

* * * high school district * * * 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.”

Further, section 5 of chapter 156 Statutes of 1941, amending section 5 of the 1939 county-aid to district high school Act, and now in full force and effect, provides that the Superintendent of Public Instruction, in apportioning the county aid to District High School Fund shall not apportion in any calendar year an amount in excess of the amount requested in the budget by the trustees for that year.

The Legislature is presumed to know the state of the law on the subject upon which it legislates. Clover Valley Land & S. Co. v. Lamb, 43 Nev. 375.

The state of the budget law and the revenue producing laws were undoubtedly known to the Legislature at the time of the enactment of the 1939 County Aid to District High School Act and the 1941 amendments thereof. The Legislature knew that the tax levied to produce a budgeted sum of money could not produce that money for actual use or apportionment until the end of the calendar year for which the tax was levied, and that for all practical purposes the distribution of the money in the instant matter could not be had until the following year.

The budget law, as we have seen, prohibits the authorization, allowance, or contracting of expenditures unless the money for payment thereof has been specially set aside for such payment. The high school budget of 1940 in question here specifically set aside only \$15,000 as and for county aid, and such item is within the prohibitory provision of the law with respect to its use. Such amount under our revenue laws was not available for distribution until the year 1941. Since March 28, 1941, the distribution has been and is now governed by section 5 of chapter 156, 1941 Statutes. The excess amount over the \$15,000 requested and budgeted by the trustees in 1940, so raised by the increase in the valuation of the property of the county, not being included in the budget, now constitutes no part of the county aid to such district high school subject to apportionment in 1941 under the 1940 budget.

We conclude that High School District A is not entitled to have distributed to it in 1941 the surplus over and above its 1940 requested and budgeted amount for county-aid purposes.

Answering Query No. 2. Section 3018 N. C. L. 1929, as amended at 1935 Statutes, page 71, provides that “it shall be the duty of the governing board of every * * * school district, county high school, or high school district * * * in this State, between the first Monday of January and the first Monday of March of each year to prepare a budget of the amount of money estimated to be necessary to pay the expenses of conducting the public business of such * * * school district, county high school, or high school district * * * for the then current year and for the next following year * * *.”

If such statute stopped there it would no doubt then be a statutory requirement that such budget should be made for a two-year period and not subject to change with respect to the second year. But, such section, after outlining what the budget shall contain, then provides: “Upon the preparation and completion of said budget, it shall be signed by the governing board of such

school district, county high school or high school district, * * * and the several sums set forth in said budget under estimated expenditures for the then current year shall be thereby appropriated for the several purposes therein named for the said then current year, and the sums set forth in said budget for the next following year shall be subject to revision upon the preparation and completion of the next succeeding budget required under this Act * * *.”

“The next succeeding budget required under this Act” means the very next annual budget, and in view of the requirement first mentioned in the section requiring the governing board to prepare a budget in “each year,” it is clear that the Legislature intended that the budget “for the next following year” so prepared in “each year” should be subject to revision before becoming a final and binding budget for its then current year. We think the term “revision” as used in this statute is broad enough to include the right to increase the theretofore estimated requirements for the County Aid to District High School Fund as estimated and written into the “tentative budget” at the time of the preparation thereof in the preceding year.

The term “revise” means “to make a new, amended, improved, or up-to-date revision of.” Synonymous with “correct”; “amend”; “readjust.” “Revision” means “act of revising; reexamination or careful reading over for correction or improvement.” Web. New Int. Dict.

Revise or revision means to correct or amend, or to examine, with a view to making a change or changes, State ex rel. Taylor v. Schofield, 50 Pac. (2d) 896.

When the legislative body attempts to revise, it thereby assumes to make additions or changes or corrections to alter or to reform something then in force and effect. McClellan v. Brodigan, 41 Nev. 468.

Further, the context of sections 4 and 5 of chapter 183 Statutes of 1939, the 1939 County Aid to District High School Act, contemplates, if it does not expressly provide for, an annual revision of this particular item of the budget. There we find the express direction for Boards of County Commissioners to provide the necessary tax for such purpose “at the time of making the annual levy for said county” in section 4, and “it shall be the duty of the Board of County Commissioners to include in its annual tax levy the amount estimated as required to be needed, etc. * * *,” in section 5.

That conditions in any high school may so change during any calendar year as to require a revision of its budgetary requirements at the earliest opportunity cannot well be questioned. Thus the necessity of the provision in the budget law for revision of the tentative budget.

The 1941 amendment of section 5 of the 1939 County Aid to District High School Act, i.e., chapter 156 Statutes of 1941, in no way changes or does away with the right of revision of the tentative budget. Such amended section still contains the direction to Boards of County Commissioners to include the amount needed for county-aid purposes in the annual tax levy. The 1941 amendment further provides that the basis of computation of the amount needed for such purpose shall be as to high schools previously established, the average daily attendance for the school year ending June 30 of the calendar year immediately preceding the calendar year for

which the county aid is requested, which date, of course, follows after the adoption of the budget for the preceding calendar year.

We conclude that the Board of Trustees of High School District A can legally increase the amount of the estimated county aid to such high school district in the 1941 budget, at the time of the revision thereof in 1941, over and above the amount incorporated therein at the time of the preparation of the tentative budget therefor in 1940; provided, that such increase does not exceed the statutory limit for such purposes contained in section 5 of chapter 183 Statutes of 1939, and as amended by chapter 156 Statutes of 1941, and further, that all statutory conditions precedent have been complied with.

It is to be noted, however, that while the budget for the current year 1941 may contain an increased amount for county-aid purposes, still, as we have seen in answer to Query No. 1, the increased county aid so budgeted will not, and in fact cannot, be made available for apportionment until at least January 1942. The Superintendent of Public Instruction is not authorized to apportion any moneys for this purpose except as and when provided by law, and upon being advised by the County Treasurer in his quarterly report that such moneys are available as provided in said section 5, as amended by chapter 156 Statutes of 1941.

The foregoing opinion has been written upon the assumption that High School District A is a district established in a county not having a duly established county high school. However, we think the opinion also applies to high school districts in counties having county high schools, as the context of chapter 181 Statutes of 1939, and chapter 157 Statutes of 1941, relating to such latter district high schools, is practically identical with chapter 183 Statutes 1939, and chapter 156 Statutes 1941 relating to high school districts in counties not having a county high school.

Respectfully submitted,

GRAY MASHBURN, Attorney-General.

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

MILDRED BRAY, Superintendent of Public Instruction.

B-57. Statutory Construction.

Section 8 and section 10, chapter 139, 1941 Statutes of Nevada, are valid legislative enactments. Section 10 is clearly an additional section and is not an amendment to the original Act.

CARSON CITY, June 13, 1941.

DR. EDWARD RECORDS, Executive Officer, Department of Agriculture, Post Office Box 1027, Reno, Nevada.

DEAR DR. RECORDS: This will confirm in writing my opinion to you of June 10, 1941.

In our opinion section 8 and section 10, chapter 139 of the 1941 Statutes of Nevada, are valid legislative enactments. Section 8, which specifically amends section 10 of the original Act of 1929 (section 407 Nevada Compiled Laws 1929) provides that samples of seed may be submitted for analysis to the State quarantine officer under certain conditions. Section 10 of the 1941 Statutes is clearly an additional section and is not an amendment to the original Act. This section provides that none but tested and labeled seeds shall be sold. Unquestionably this section could have been more artistically drawn, and it would have been more proper for the Legislature to have specifically provided a new section number for this section. Its failure to do so does not make it invalid.

In compiling pamphlets on this said law as amended, we suggest that section 10 of chapter 139 be set up as a new section at the end of the entire Act with an explanatory provision at the end of the section reading as follows: (The above section is section 10 of the amended Act of 1941.)

Sincerely yours,

ALAN BIBLE, Deputy Attorney-General.

B-58. Department of Health.

In absence of express statutory provision amount to be paid a fiscal clerk in State Department of Health is governed by chapter 81, 1941 Statutes of Nevada.

CARSON CITY, NEVADA.

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

DEAR SIR: This will acknowledge receipt of your letter of October 29, 1941, asking whether or not the State Department of Health can pay a fiscal clerk \$150 to \$175 per month under the provisions of chapter 82, Statutes of 1941. As I orally advised you, it is our opinion that in the absence of an express statutory provision authorizing payment of this amount, your board is governed by the clear unequivocal provisions of chapter 82, 1941 Statutes. In accordance therewith, the salary scale of \$125 per month for the first two years of employment, \$140 per month for the second two years of employment, and \$150 per month thereafter must be followed. We know of no special statute authorizing your board to hire a fiscal clerk at the figure you suggest.

A short time ago this office wrote an opinion on this same subject to Honorable A. L. McGinty, Director Unemployment Compensation Division, and I am enclosing herewith for your use a copy of that opinion.

Yours truly,

ALAN BIBLE, Deputy Attorney-General.

B-59. Fish and Game Act.

Proviso contained in section 2 of chapter 108, 1941 Statutes of Nevada, does not apply to Clark County. In Clerk County catfish are to be considered as game fish.

CARSON CITY, June 13, 1941.

HONORABLE ROLAND H. WILEY, District Attorney, Clark County, Las Vegas, Nevada.

Attention HON. V. GRAY GUBLER, Deputy.

DEAR MR. GUBLER: This will confirm our telephone conversation of this morning.

It is our opinion that the proviso contained in section 3, chapter 31 of the 1935 Statutes of Nevada reading as follows: "Provided, that in all counties in this state in which there were cast at the last preceding biennial or general election two thousand two hundred and sixty-six (2,266) votes for representative in Congress, catfish shall not be deemed to be included in the term 'game fish,'" does not apply to Clark County. It is likewise our opinion that section 2 of chapter 108 of the 1941 Statutes containing a similar proviso, in defining catfish, does not apply to Clark County.

A study of the legislative history behind the enactment of the 1935 amendment reveals the following: Section 3 of the Fish and Game Act was first amended in 1933 so as to class catfish as a game fish (see 1933 Nevada Statutes page 281). The proviso noted above was added by Senator Sawyer's 1935 amendment, page 36, and was agreed upon in order to cover a problem peculiar to Churchill County. Again in 1941 the same limitation was more specifically expressed by using the 1940 general election as the standard for determining the application of the proviso.

An examination of the 1940 general election returns show that the exact number of votes specified were not cast in Clark County in 1940. It is therefore our opinion that the proviso does not apply, and that in Clark County catfish are to be considered as game fish.

Very truly yours,

ALAN BIBLE, Deputy Attorney-General.

SYLLABUS

311. Slot Machines.

Slot machines played for tokens redeemable in property and merchandise, save and except nickel-in-the-slot machines played solely for cigars or drinks, should be licensed. Such machines must pay the regular license.

STATEMENT OF FACTS

CARSON CITY, June 20, 1941.

Section 1 of the 1931 gambling law (chapter 99, 1931 Statutes, page 165) in part provides as follows:

From and after the passage and approval of this act it shall be unlawful for any person, firm, association, or corporation, either as owner, lessee, or employee, whether for hire or not, to deal, operate, carry on, conduct, maintain, or expose for playing in the State of Nevada, any game of faro * * *; or to play, maintain, or keep any slot machine played for money, for checks or tokens redeemable in money or property, without having first procured a license for the same as hereinafter provided.

Section 2 of said 1931 Gambling Act as amended by chapter 93 of the 1939 Statutes of Nevada, page 95, provides for licensing slot machines as follows:

For each money slot machine the license fee shall be ten (\$10) dollars per month, payable for three months in advance; *provided*, that when a combination of units are operated by one handle the license fee shall be the sum of ten (\$10) dollars per month, payable for three months in advance, for each and every unit paying in identical denominations operated thereby.

Section 9 of the 1931 Gambling Act provides as follows:

For the purpose of this act, the term game or games shall be construed to mean and include all games or devices herein mentioned and any slot machine or slot machines played for money or for checks or tokens redeemable in money or property.

Section 10 provides as follows:

Nothing in this act shall be construed to prohibit social games played solely for drinks or cigars served individually, or games played in private homes or residences for prizes, or nickel-in-the-slot machines operated solely for cigars or drinks.

The 1941 Legislature amended section 10201 of the Nevada Compiled Laws of 1929, insofar as pertinent to this inquiry, as follows:

From and after the passage and approval of this act it shall be unlawful for any person, firm, association, or corporation, either as owner, lessee, or employee,

whether for hire or not, to deal, operate, carry on, conduct, maintain or expose for playing in the State of Nevada, any game of faro * * *; or to play, maintain, or keep any slot machine played for money, for checks or tokens redeemable in money or property, without having first procured a license for the same as now provided for by law.

INQUIRIES

1. Whether slot machines played for tokens redeemable in property and merchandise should now be licensed.
2. If such slot machines are licensed, what license is required?
3. Are cigarettes and other merchandise commonly sold at cigar stores within the exception provided for in section 10 of the 1931 Gambling Act?

OPINION

1. In our opinion slot machines played for tokens redeemable in property and merchandise, save and except nickel-in-the-slot machines played solely for cigars or drinks, should be licensed.

Attorney-General's opinion No. 28 of the 1931-1932 Biennial Report held as follows:

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

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

We do not believe that this opinion has been changed by the 1941 amendment to section 10201 Nevada Compiled Laws 1929. It is to be noted that the 1941 amendment makes it unlawful to play, maintain, or keep any slot machine without having first secured a license for the same as now provided for by law. We believe that this clearly indicates that the Gambling Act must be construed in pari materia with the 1941 amendment, and that the licensing provisions of the Gambling Act control the playing, maintaining, or keeping of any slot machine. Therefore, we must look to the 1931 Gambling Act in order to determine what type of slot machines are to be licensed, and the former opinion of our office noted above appears to satisfactorily answer your first inquiry.

2. In our opinion slot machines played for tokens redeemable in property and merchandise, save and except nickel-in-the-slot machines operated solely for cigars or drinks, must pay the regular license set forth in section 2 of the 1931 Gambling Act as amended.

It is noted that this section specifically uses the words "each money slot machine." However, gambling games are defined in section 9 of the 1931 Gambling Act as we have noted in our statement of facts, and slot machines played for money or for checks or tokens redeemable in money or property are specifically included within the term game or games.

It may be true that certain slot machines do not dispense money but pay off in checks or tokens redeemable in money or property. Under the plain provisions of section 9, such machines, in our opinion, must carry the same license as machines dispensing money.

3. Attorney-General's opinion A-49 of the 1938-1940 Biennial Report held that a slot machine which paid off in cigarettes was exempted from the licensing provisions of the Gambling Act and fell in the same category as the nickel-in-the-slot machines operated solely for cigars and drinks, which, as we have already indicated, were exempted under section 10 of the 1931 Gambling Act.

We do not believe that the exemption provided in section 10 can be further extended, and we believe that merchandise sold at cigar stores other than cigars, cigarettes, or drinks is not within the exception provided for in section 10.

Respectfully submitted,

GRAY MASHBURN, Attorney-General.

By ALAN BIBLE, Deputy Attorney-General.

HON. MYRON R. ADAMS, Acting District Attorney, Washoe County, Reno, Nevada.

B-60. Attorney-General's Opinion No. 310--Apportionment of County Aid to District High School Fund.

Attorney-General's Opinion No. 310, June 10, 1941, does not contemplate that the Superintendent of Public Instruction apportion to the County Aid to District High School Fund the difference between the amount actually received in 1941 and the amount anticipated in the 1941 budget. The Superintendent of Public Instruction is only authorized to apportion the actual amount of money received for this purpose during the year.

CARSON CITY, June 25, 1941.

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

DEAR MISS BRAY: Reference is hereby made to your letter of June 12, 1941, referring to our Opinion No. 310 and asking further advice with respect to the apportionment of the County Aid to District High Schools Fund. The direct inquiry propounded is as follows:

Does your opinion contemplate that before the 1942 apportionment of county aid to the two district high schools in the county involved are made for 1942, that this Department first pay to the district high school in question the balance between the amount it actually received in 1941 and the amount it anticipated as a 1941 receipt from this source.

Beg to advise that our opinion does not contemplate that you apportion the difference between the amount actually received in 1941 and the amount anticipated as a 1941 receipt or rather as budgeted in and for 1941. In brief, while the high school district may legally increase the amount estimated necessary for this fund in its 1941 budget, still it cannot, by reason of our revenue laws, receive any such increase until after such increase, raised by means of taxation, has actually been paid into the Treasury. We think such an explanation is contained in our Opinion No. 310. Further, the Superintendent of Public Instruction, under the 1941 amendment to the County Aid to District High School Acts, is authorized to apportion to the respective high schools the moneys in such fund from time to time as reported to her by the County Treasurer in his quarterly report.

We beg to point out that while the budget law and the school apportionment Acts may contemplate the apportionment of moneys within the same calendar year as budgeted, still the revenue laws which set up the machinery for the collection of taxes are not coordinated with the budget and school laws and, in fact, the collection of budgeted moneys is in effect some 11 months behind the calendar year for which budgeted. We see no remedy for this situation until the Legislature shall see fit to close this gap as was done in 1931 at the time the State was placed on a different fiscal year and a short State budget adopted in order to place the State Government on a new fiscal year basis with anticipated expenditures budgeted for the coming biennium.

Very truly yours,

W. T. MATHEWS, Deputy Attorney-General.

B-61. Foreign Insurance Corporations--Foreign Surety Companies.

Following the opinion of a former Attorney-General, it is held that foreign insurance corporations and foreign surety companies are not now required to file their articles of incorporation in the office of Secretary of State.

CARSON CITY, June 26, 1941.

HONORABLE HENRY C. SCHMIDT, State Controller and Ex Officio Insurance

Commissioner, Carson City, Nevada.

DEAR MR. SCHMIDT: Your verbal inquiry of the 25th as to whether it is now necessary for foreign insurance corporations to file their article of incorporation with the Secretary of State.

While the 1941 insurance code is not perfectly clear on this point, still in view of a former opinion of this office rendered by Attorney-General Diskin, the same being Opinion No. 288, dated December 15, 1927, to the effect that the insurance laws of this State contemplate the treatment of foreign insurance corporations separately from other foreign corporations, and that under the then laws of the State relating to foreign insurance corporations, that such corporations, excepting foreign surety corporations, such foreign insurance corporations were not required to file their articles of incorporation in the office of the Secretary of State and, in view of the fact that the present insurance laws have not changed the law in this respect, as construed by Mr. Diskin, we are of the opinion that all foreign insurance corporations, including foreign surety companies, are only required to file their articles of incorporation in the office of the Insurance Commissioner. The requirement that foreign surety companies file their articles of incorporation in the office of the Secretary of State is contained in the legislative enactment which has been expressly repealed by the 1941 insurance code.

Yours very truly,

W. T. MATHEWS, Deputy Attorney-General.

B-62. Motor Vehicle Registration Law--Attorney-General's Opinion No. 297.

Section 17 of the Motor Vehicle Registration Law, as amended, and insofar as it relates to nonresidents is inconsistent with section 6a of said law and being later in position in the Statute governs so far as nonresidents are concerned. Nonresidents, even though not entitled to reciprocity, are given five days in which to comply with the provisions of section 17a. Where the law of the State of residence of a nonresident seeking reciprocity in Nevada exempts either interstate or intrastate motor carriage, or both, from the licensing provisions of such law, such nonresident is entitled to the same treatment under the Nevada law, provided the Nevada motor carrier is granted such reciprocal exemption in such other State.

CARSON CITY, June 26, 1941.

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

DEAR MR. McEACHIN: Reference is hereby made to your letter of June 14 making certain inquiries with reference to our Opinion No. 296, dated August 1, 1940, and which opinion was rendered your office in response to certain inquiries made concerning the application of section 17 of the Motor Vehicle Registration Act to nonresidents operating motor carrier vehicles. For your information, I beg to advise that Opinion No. 296 should be numbered 297, as

an error in numbering the opinion was discovered sometime later.

It is noted that you desire a clarification of such opinion with respect to query number 1 therein propounded and its answer. As we understand your letter, it is thought such answer was and is not clear as to operations conducted by a nonresident not entitled to nonresident registration under section 17(b) of the registration law in that it is now thought that such nonresident not entitled to the reciprocity provision should be required to register their motor vehicle before the expiration of the five-day period provided in section 17(a). Your letter on this point refers to section 6(a) of the registration law which requires that every owner of a motor vehicle intended to be operated on any highway in this State shall, before the same can be operated, apply to the department for and obtain the registration thereof with the thought in mind, no doubt, that as to nonresident operators of vehicles not entitled to reciprocity in this State would, by reason of such section 6(a), be required to license their vehicles before commencing operations on the highways of this State. In reply to this thought or contention, we beg to advise that section 17, in its entirety, and particularly with respect to the licensing or granting of reciprocity to nonresidents, is somewhat inconsistent with section 6(a) insofar as it relates to nonresidents and being later in position in the statute, we think, governs in this particular matter insofar as nonresidents are concerned and, in fact, constitutes a proviso relating back to section 6(a). While some of the nonresidents may not be entitled to reciprocity under section 17(b), still under the language of such section each nonresident is given the right to comply with section 17(a) in making his application for nonresident registration. Such is the language of section 17(b) in that it provides: "All such nonresident owners or operators of motor vehicles may, upon compliance with the provisions of subparagraph A of this section, operate," etc. We think this language, even though a nonresident may not be entitled to reciprocity, gives such nonresident the right to rely on the language contained in section 17(a) with respect to the necessity of applying for nonresident registration within five days after commencing to operate in this State and such, we think, was the holding in Opinion 297. However, we think the inspectors and other officers may contact such nonresidents any time within the five-day period and ascertain their status as nonresidents, operators and whether required to obtain registration in this State under section 17(b).

The next question mentioned in your letter of June 14 relates to inquiry No. 5 and its answer in Opinion 297, and the further inquiry is made as to whether in States where intrastate carriage is not exempted in reciprocal provisions of the statute as to whether this State may require registration of such intrastate carriers coming into this State from States not granting exemption as to such carriers. We think that as between interstate and intrastate carriage where the law of the State from which the operator comes into this State exempts one or the other of such classes, or both, that the law of this State permits the same treatment of such exemptions as to such operators. In brief, if one State exempts an interstate carrier and requires the licensing of an intrastate carrier, that its operators on the highways of Nevada should be treated in like manner.

Your next inquiry relates to the sixth inquiry and its answer in Opinion No. 297. Frankly, we think we answered such inquiry specifically. It is to be noted that the answer to query No. 4 in the opinion was applied to query No. 6, and in the answer to query No. 4 we stated in effect

that the law of the home State of the nonresident operator shall extend the same measure of reciprocity to a Nevada operator as the Nevada law provides *for such nonresident in a like situation* and for like carrier services.

Trusting that this will clarify the matter, I am

Yours very truly,

W. T. MATHEWS, Deputy Attorney-General.

B-63. Foreign Insurance Corporations--Foreign Surety Companies.

Following the opinion of a former Attorney-General, held that foreign insurance corporations and foreign surety companies are not now required to file their lists of officers in the office of Secretary of State.

CARSON CITY, June 26, 1941.

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

DEAR MR. McEACHIN: Reference is hereby made to our letter of June 21 with respect to the necessity of foreign insurance corporations filing their lists of officers and designation of resident agents in the office of Secretary of State.

Since the writing of such letter, we have been advised that it has been the practice since 1927 for foreign insurance corporations, excepting foreign surety corporations, to file annual statements with the Insurance Commissioner of the State, which contains the lists of officers and that this practice was established by an opinion, No. 289, of former Attorney-General Diskin, dated December 15, 1927, upon the ground that foreign insurance corporations generally were not subject to the foreign corporation laws of this State save and except that foreign surety companies were required by an Act of the Legislature to file with the Secretary of State. The above information with respect to filing was not brought to the attention of this office until after the furnishing of the letter opinion of June 21, 1941.

While this office is not in accord with the policy that foreign insurance companies were not or are not subject to the foreign corporation laws of this State as pointed out in Mr. Diskin's opinion, still in order that the opinions of this office shall be consistent with former opinions on the same subject rendered by prior Attorney-Generals, unless such opinions have been expressly changed by legislative enactment or court decision, we now beg to advise that apparently under the present state of the foreign corporation law and the insurance code of this State, no foreign insurance corporation is required to file its list of officers and designation of resident agents with the Secretary of State, and we may state that the Act of the Legislature requiring foreign surety companies to file their list of officers with the Secretary of State was expressly repealed by the 1941 insurance code. It, therefore, follows that neither foreign insurance corporations nor

foreign surety corporations are required by law to file their list of officers and designation of resident agents in the office of the Secretary of State, although the latter office is the filing office of the State for all State documents and papers, and the Secretary of State is generally the custodian of such State papers, unless the particular law dealing with the particular matter expressly requires the filing of such state papers in some other office.

Respectfully submitted,

W. T. MATHEWS, Deputy Attorney-General.

NOTE--The foregoing letter opinion modifies previous opinion on the same subject given to the Secretary of State, June 21, 1941. See Letter Opinion of that date.

B-64. Nevada Museum and Art Institute--Removal of the Dr. S. L. Lee Collection from Capitol Building.

The Dr. S. L. Lee collection previously installed in the State Capitol Building may be removed to the Museum and Art Institute Building in Carson City upon a showing by the State Board of Control that such collection would receive better care and preservation in the Museum Building than in the Capitol Building, and upon the adoption by the Board of County Commissioners of Ormsby County of a resolution consenting to the removal of such collection from the State Capitol Building to the Museum and Art Institute Building.

CARSON CITY, July 11, 1941.

HONORABLE E. P. CARVILLE, Governor and Chairman of State Board of Control, Carson City, Nevada.

DEAR GOVERNOR CARVILLE: This office has had under consideration the application of the Nevada Museum and Art Institute for the transfer of the Dr. S. L. Lee collection from the Capitol Building to the Museum and Art Institute Building, which application was addressed to you as Chairman of the State Board of Control and forwarded to this office for our advice with respect to such transfer.

We have given the matter considerable attention due to the conditions contained in the deed of gift executed by Lola W. Lee, widow of Dr. Lee, to the State of Nevada. The conditions contained in such deed are somewhat binding. It is provided in the deed that the collection shall be housed in the Capitol Building and there cared for and properly preserved forever, provided, that if for any reason whatsoever said collection shall not receive such care in said Capitol Building as will properly preserve it, or if it should be removed from said Capitol Building for any reason, other than to preserve it from fire, flood, earthquake, acts of war, or acts of God, then all right, title and interest in and to said collection conveyed to the said State of Nevada, shall thereupon vest in the County of Ormsby, State of Nevada, and said collection shall then and there be placed in the Court House of said Ormsby County.

We have given some consideration to the possibility that if the conditions of the deed are not explicitly followed, there would be a right of reverter to the heirs of Mrs. Lee. This possibility, while remote, might cause considerable trouble in the event extreme care is not used in effecting the transfer of the collection. However, we think if the State Board of Control finds as a matter of fact, and which finding should be incorporated upon its records, that the collection does not receive such care in the Capitol Building as will properly preserve it and that, in fact, better care for its preservation can be had in the Museum Building, that then the legal transfer of the collection could be had. Before the transfer of the collection, however, we are of the opinion that the consent of the Board of County Commissioners of Ormsby County should be obtained and such consent should be in writing in the form of resolution adopted by such Board. Such resolution should be in such form as would give the consent of the board of County Commissioners to the transfer without deducting or taking away any of the State's title to the property. In other words, that the resolution should be so worded as to not affect the title of the State, but, on the other hand, evidence the consent of the Board of County Commissioners to such transfer.

Trusting this will answer your inquiry concerning this important matter, I am,

Very truly yours,

W. T. MATHEWS, Deputy Attorney-General.

SYLLABUS

312. County High Schools--Semimonthly Pay Day Law Does Not Apply.

Principals, teachers, and other employees in county high schools are not entitled under the law to semimonthly pay days, as they are not State or county officers but simply school officers.

STATEMENT

CARSON CITY, July 11, 1941.

The following inquiry, in substance, has just been made of this office with reference to chapter 179, section 1, 1941 Statutes of Nevada, pages 402, 403, the so-called Semimonthly Pay Day Act relating to regular State and county officers and employees, and the official opinion of the Attorney-General asked on the inquiry.

INQUIRY

Do principals, teachers, and janitors in county high schools in this State come within the purview of said section 1 of said chapter?

OPINION

The language of said section and chapter, insofar as it relates to the above inquiry, reads as follows:

Notwithstanding any present law of this state to the contrary, all state and county officers and regular employees of this state and its counties shall be paid their salaries as fixed by law in two equal semimonthly payments.

It will be noted that the above language expressly limits the application of the law to State and county officers and regular employees of the State and its counties. It is clear that the county officers and employees contemplated in the Act are the regular county officers and employees serving as such and usually contemplated under the term county officers and employees. It is a well-known fact that county high schools are under the supervision, direction, and control of their own school boards, separate and distinct from, and not under the supervision, control, and direction of, the regular county officers. While county high schools are coextensive in area with the boundaries of the particular county, they still are a part of the school system to exactly the same extent as if they were district high schools. The only difference is that district high schools cover a smaller area within the county, while the territorial jurisdiction of county high schools is coextensive with the boundaries of the particular county itself. They are still, however, a part of the school system of the State, just as district high schools are a part of the school system of the State. County high school principals, teachers, and janitors are officers and employees of the school system, or are school officers and employees as distinguished from the general administrative county officers and employees who have to do with the regular administrative, fiscal, and other affairs of the counties. It is clear that the Legislature had no intention to include, and that the language does not include, high school principals, teachers, and janitors. For the foregoing reasons the answer to the inquiry is no.

Respectfully submitted,

GRAY MASHBURN, Attorney-General.

MISS MILDRED BRAY, State Superintendent of Public Instruction.

SYLLABUS

313. Motor Vehicles--Drivers' Licenses.

Operators' licenses only (not chauffeurs' licenses) required of Sheriffs, policemen, and other peace officers. The above-mentioned peace officers are not required to obtain chauffeurs' licenses, but only operators' licenses, as they are not employed "for the principal purpose of driving motor vehicles."

STATEMENT

CARSON CITY, July 14, 1941.

The 1941 Legislature of this State enacted and the Governor approved chapter 190, 1941 Statutes of Nevada, page 529, et seq., governing, among other things, the issuance of operators' licenses and chauffeurs' licenses to drive motor vehicles in this State. The question has arisen as to whether sheriffs, deputy sheriffs, chiefs of police and assistant chiefs of police in this State are required to obtain operators' licenses or chauffeurs' licenses as drivers of motor vehicles in this State. The statement shows that these officers are not employed "for the principal purpose of driving a motor vehicle"; and I know, from my own experience and observation, that that is a fact. The statement made to me also shows, and I know it is a fact, that it is necessary for these officers to drive motor vehicles a great deal of the time. The motor vehicles they drive, however, are not operated for hire.

INQUIRY

Pursuant to the provisions of said chapter 190, a question has arisen as to which of these licenses sheriffs and deputy sheriffs of counties of this State, and chiefs of police and assistant chiefs of police of cities in this State, are required to obtain; and I have been asked for an official opinion on this point and pursuant to the following question, in substance:

Does chapter 190, 1941 Statutes of Nevada, page 529, et seq., require sheriffs, deputy sheriffs, chiefs of police and assistant chiefs of police in this State to obtain and use operators' licenses, or does it require that they obtain chauffeurs' licenses?

OPINION

It is a well-known fact that such officers do not operate motor vehicles for hire, but merely as an incident to the performance of their official duties. The principal purpose of the operating of motor vehicles by them is not to obtain remuneration for operating them, or to operate them for hire. Their operation of such motor vehicles is a mere incident to the performance of their official duties.

For the foregoing reasons, it is the unqualified opinion of this office that neither sheriffs, deputy sheriffs, chiefs of police nor assistant chiefs of police in this State are required to obtain chauffeurs' licenses when they operate such motor vehicles as a mere incident to the performance of their official duties and not for hire or as a commercial enterprise. They are required, however, to obtain the regular operators' (drivers') licenses.

Respectfully submitted,

GRAY MASHBURN, Attorney-General.

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

SYLLABUS

314. Public Schools--Registers.

Although there is no Nevada statute requiring the Superintendent of Public Instruction to advertise for bids for purchase of school registers, good business and good public policy make advertising advisable. In any event, the department should secure permission of State Board of Control.

STATEMENT

CARSON CITY, July 16, 1941.

Section 5655 Nevada Compiled Laws 1929, subparagraph 12, in setting out the powers and duties of the Superintendent of Public Instruction, provides as follows:

To arrange blank forms, including school registers for teachers' contracts, and supply the same to school trustees and teachers.

The 1941-1943 appropriation bill includes an item for the purchase of school registers in the sum of \$1,250.

INQUIRIES

1. Does the Nevada law require that bids involving this amount of money (\$1,250) be advertised? If so, please refer to the specific statutes.
2. Before we proceed in this matter, should this department secure permission from the State Board of Control to expend this sum of money for the purpose designated?
3. Should the permission of the State Printing Board be obtained to have this printing done by other than the State Printing Office?

OPINION

1. There is no Nevada law requiring the advertising for bids for the purchase of school registers by the Superintendent of Public Instruction. However, we believe that good business, as well as good public policy, dictates that bids involving \$1,250 be advertised, and it is accordingly our suggestion that due public notice be given inviting bids for furnishing school registers to you.
2. In our opinion your department should secure permission from the State Board of Control before expending the amount appropriated for school registers. See section IV, chapter 122, page 155 of the 1933 Statutes of Nevada.

3. Section 7500 Nevada Compiled Laws 1929, which is self-explanatory, fully answers your third inquiry. This section reads as follows:

Should any state officer, commissioner, trustee or superintendent consider that the requirements of his office, department, or institution demand stationery, blanks, forms, or work of any character which cannot be performed in the state printing office, he shall submit the same to the board of printing control, and if it appear that, through lack of necessary machinery or appliances the work cannot be satisfactorily done in the state printing office, they shall authorize said state officer, commissioner, trustee, or superintendent to have the work performed in a commercial printing office, the cost of the same to be paid out of the contingent fund provided for the expenses of state officers or out of the fund provided for the support of the commission or institution requiring the work, as the case may be.

This office will be only too glad to assist you in the drawing of necessary notices, contracts, etc.

Respectfully submitted,

GRAY MASHBURN, Attorney-General.

By ALAN BIBLE, Deputy Attorney-General.

HON. MILDRED BRAY, Superintendent of Public Instruction.

SYLLABUS

315. Officers' Salaries--Semimonthly Pay Days.

The salaries of all State and county officers and regular employees thereof shall be paid semimonthly, as provided for in chapter 179, 1941 Statutes of Nevada, page 402, as all statutes are presumed to be valid and constitutional, although some question has been raised as to whether the title of the Act is broad enough to include the provisions of the body of the Act insofar as they relate to county officers and regular county employees.

NOTE--Either the title of the Act should be amended so as to expressly provide that said chapter relates to county officers and regular county employees, or the body of the Act should be amended so as to eliminate such county officers and employees.

STATEMENT

CARSON CITY, July 18, 1941.

Chapter 179, 1941 Statutes of Nevada, page 402, provides in the body of the Act for

semimonthly pay days for both State officers and regular employees and for county officers and regular county employees, although the title of the Act recites only that the semimonthly pay days provided for in the Act applies to “State officials and employees.” What really happened with reference to this law, which was Assembly Bill No. 244, was that it was originally drafted for the sole purpose of providing for semimonthly pay days to State officers and employees only, and both the title and the body of the Act so recited. The Legislature, however, deemed that the county officers and regular county employees should also be paid their salaries semimonthly, and changed the body of the Act, *i.e.*, section 1 thereof, by adding after the second word “State,” as it appears therein, the words “and county officers,” and after the next word “State,” as it appears in that section, the words “and its counties,” so as to make section 1 read as follows:

Notwithstanding any present law of this state to the contrary, all state and county officers and regular employees of this state and its counties shall be paid their salaries as fixed by law in two equal semimonthly payments, the first of which semimonthly payment for each month shall be for the first half of that particular month, and the second of which shall be for the last half of said month; *provided, however*, that the first half of said monthly salary shall not be paid before the fifteenth day of that month and the second half thereof before the last day of that month.

The Legislature, however, neglected to change the title of the Act so as to expressly mention therein county officers and employees. Some question has arisen in the minds of some of the county officers as to whether the above-mentioned situation violates articles IV, section 17, of the Constitution of the State and thereby renders that portion of said Act referring to county officers and employees unconstitutional and invalid. Said article IV, section 17, reads as follows:

Each law enacted by the legislature shall embrace but one subject, and matter properly connected therewith, which subject shall be briefly expressed in the title; and no law shall be revised or amended by reference to its title only; but, in such case, the act as revised, or section as amended, shall be reenacted and published at length.

The official opinion of this office has been asked therefor on the following inquiry in substance:

INQUIRY

Does said chapter 179, 1941 Statutes of Nevada, apply to counties of this State, and does it require such counties to pay the salaries of their officers and regular employees in semimonthly payments?

OPINION

Although it was quite careless on the part of the Legislature to so amend the body of the

Act without at the same time amending the title of it so as to make the title expressly apply to both State and county officers and employees, the fact remains that it is difficult for the members of the Legislature, especially the new members of it, to constantly keep in mind when making such amendments the mandatory provision of the Constitution which requires that the title of the Act shall be broad and full enough to include in its meaning the provisions contained in the body of the Act. In fact, it is difficult for both the lawyers and the courts to agree upon the exact meaning of this provision of the Constitution, and to determine in each instance when the title of an Act is sufficiently broad as to include all of the matters contained in the Act. An examination and study of the many cases decided even by the Supreme Court of our own State involving this question clearly demonstrates the difficulty which even our own Supreme Court has encountered in defining this constitutional provision so as to make it clear exactly what defects in the titles of the various Acts of the Legislature of this State which have come before our Supreme Court violates this constitutional provision.

The tendency of our Supreme Court for the past two or three years at least apparently has been to liberalize its views regarding this matter, and to hold the titles of Acts of the Legislature involving this question which have come before it sufficient when it could do so without too directly ignoring the above-quoted provisions of said section 17. In fact, the trend of the decisions of the courts of last resort throughout the Nation has also been to liberalize their decisions on this point. This trend and tendency is probably due to the well-recognized rules or statutory construction which have been adopted by the courts to the effect that the courts should sustain the constitutionality of Acts of the Legislature where this can be done without too much violence to the express provisions of the Constitutions of the States and Nation.

The most recent example of this trend of the decisions and this tendency of the Supreme Court of this State to liberalize its views on this subject is in its decision in the case of State v. Lincoln county Power District No. 1, 111 Pacific Reporter (2d), pages 528-533 (advance sheets No. 2), in which the Supreme Court says, among other things, the following:

Every presumption is in favor of the validity of a statute, Ex parte Goddard, 44 Nev. 128, 190 P. 916, and a statute will always be sustained if there be any reasonable doubt of its unconstitutionality. State v. Westerfield, 24 Nev. 29, 49 P. 554.

On the express point of the insufficiency of the title to cover the matters provided for in the body of an Act, the Supreme Court of this State referred to State v. Ruhe, 24 Nev. 253, 52 Pac. 274; also in re Walker River Irrigation District, 44 Nev. 321, 195 Pac. 327; and also Tonopah and Goldfield R. R. Co., v. Nevada-California Transportation Company, 58 Nev. 234, 75 Pac. (2d) 727, and said the court in considering those cases “at length article IV, section 17, and statutes alleged to violate its provisions. We see no reason to review the authorities cited in those cases, or restate the conclusions reached therein, and are content to say that upon the reasoning and authority of those cases we hold chapter 72, Statutes of 1935, is constitutional.”

Said chapter 72, 1935 Statutes of Nevada, pages 152-160, both inclusive, is the Act of the Legislature of this State providing for the creation of power districts in this State. It was claimed by the power district that, pursuant to the provisions of said chapter 72, all its property was

exempt from taxation. This claim was based solely upon the district's claim that a power district organized under the law became by virtue of that law a "municipal power district" and must be considered a "municipal corporation," purely by virtue of the following language quoted from section 4 of said chapter 72:

That a municipal power district may be created in any of the ways hereinafter provided, and when so created shall be considered a municipal corporation and may exercise the powers herein granted under such corporate name as the commission may designate;

and similar designations as a "municipal corporation" and as a "municipality" in a very few other places in said chapter 72.

However, neither the expression "municipal power district" nor "municipal corporation," nor "municipality" nor any other similar designation of the character of the district is contained in the title of the Act. There is no reference or language whatever to indicate the municipal character of the district so organized under said chapter 72 anywhere in the title of the Act. Notwithstanding this situation, the district claimed not only that it was a municipality, and had the character of a municipal corporation, but also that it was exempt from the payment of any taxes at all on its property solely by reason of the fact that it was so designated, as above indicated, in the body of the Act, although the title of the Act was absolutely silent on the question of this characteristic and entity as a "municipality" or "municipal corporation." In other words, the district took advantage of the use of the word "municipality," etc., in the body of the Act to exempt all of its property from taxation, notwithstanding the fact that no such entity was expressed or even hinted in the title of the Act.

In the Lincoln County power district decision the constitutionality of said chapter 72 turned solely upon the question of whether the entity so created was a municipality and, if so, whether its property as such municipality was wholly exempt from taxation. There was nothing in either the body of the Act or the title of the Act which referred in any way whatsoever to taxation. The whole question, in this regard, turned on the point as to whether the entity so created was a municipality and, therefore, its property exempt from taxation just the same as is all property belonging to incorporated cities. It was readily conceded by all persons concerned in the case that the property belonging to municipalities (incorporated cities) when properly created was wholly exempt from taxation, pursuant to the State Constitution, article VIII, section 2 (N.C. L. 1929, section 132), and pursuant to Nevada Compiled Laws 1929, section 6418, paragraph numbered "First," as amended 1931 Statutes of Nevada, page 217, and as again amended 1937 Statutes, page 156, and finally amended and as it now exists chapter 144, 1941 Statutes, page 344. The sole question then on this point was whether chapter 72 was unconstitutional because of its failure to designate in the title of that chapter that the entity to be created by it was a "municipality" and whether the Act was, therefore, in violation of said article IV, section 17, hereinbefore quoted, on account of this claimed defect in the title. It was, therefore quoted, on account of this claimed defect in the title. It was, therefore, necessary for the Supreme Court of this State to pass upon this direct question. There was not the slightest expression or even hint in the title to indicate that the purpose of the Act was to create a municipality or municipal

corporation, and certainly nothing to indicate or even hint that it was the intention to create, or that the Act would create, a tax-exempt municipality. In this situation, counsel for the district agreed with the Attorney-General and District Attorney of Clark County to bring a friendly test suit ascertaining by decision of our Supreme Court whether the district's property was actually exempt from taxation under said chapter 72.

Notwithstanding this situation, the Supreme Court of this State held in this suit that a tax-exempt municipality was created by and pursuant to said chapter 72. As indicated in the above quotation from the case, the Supreme Court held the title of the Act was sufficient, and that it was therefore constitutional, and sustained the tax-exempt status of the property of the district.

In his situation, we would certainly hesitate to hold said chapter 179 unconstitutional as to county officers, and that they are not, therefore, to have semimonthly pay days solely because of the fact that county officers are not mentioned in the title of the Act, but only in the body of the Act. This is particularly true because of the decisions of the Supreme Court of this State and the courts of last resort of other States and of the United States which hold that counties are but arms of the State to assist the State in its administrative functioning, as hereinafter set forth.

This opinion is not, of course, a criticism of the decision of the Supreme Court of this State in *State v. Lincoln County Power District No. 1*, supra, or to be considered as such, as said chapter 72 was of doubtful meaning and the very purpose of the suit was to have the Supreme Court construe the law and thereby remove the doubt as to whether the entity created thereby was a tax-free entity. We have always defended the decisions of the courts, believing that they were based upon their honest beliefs as to what the law involved really meant. We believe all good citizens should gracefully accept as the law the decisions of the courts of last resort interpreting or construing the law. We have so accepted the decisions of the Supreme Court of our State in this case. The mention of the case here is solely for the purpose of explaining our reasons for holding said chapter 179 constitutional and as providing for semimonthly pay days to county officers and regular county employees, notwithstanding the fact that such county officers and employees are not mentioned at all in the title of the Act.

In arriving at this conclusion and opinion, we have also taken into consideration the holding of the court in the *Lincoln County Power District No. 1* case to the effect that power districts created under said chapter 72 are "political subdivisions of the State" created to aid the State in its "legitimate municipal or public purpose" of supplying electric energy to the inhabitants of the State, county, or municipal corporation. (Paragraphs 9 and 10, pages 531, 532, both inclusive.) The effect of this holding that such districts are "political subdivisions of the State" is that they are also arms of the State, just as our Supreme Court has held counties are arms of the State for governmental functioning.

Certainly, no one familiar with the decisions of the Supreme Court of our State and the other courts of last resort of the other States and of the Nation will question the fact that all of these courts, including our own, have held that counties are arms of the State and, therefore, constitute the State or are a material part of it, and that their officers and employees are in the true sense of the word State officers and employees. On this point, the early decision of the

Supreme Court of this State in State v. Gracey, [11 Nev. 223, at page 228](#), used the following language:

Counties are but integral parts or local sub-divisions of the state, instituted mainly as a mens of government, and they, *and the officers thereof*, are but parts of the machinery that constitutes the public system, and designed to assist in the administration of civil government.

To the same effect is the later case of Pershing County v. Humboldt County, [43 Nev. 78](#); and we also quote as follows from the early case of State v. Hobart, [12 Nev. 408](#):

The respective county governments are a part of the state government, and belong to the same political society.

The leading cases holding that county officers, although denominated county officers, are but arms of the State, created by the sovereign power of the State for the more economical and convenient exercise of governmental powers, are Burch v. Hardwicke, 32 Am. Rep. 640; Gunter v. Atlantic Coastline Railroad, 200 U. S. 275; Ex Parte Virginia, 100 U. S. 347; and Rodgers Locomotive Works v. Emigrant County, 164 U. S. 559. There are many other prominent cases of courts of last resort holding with the above-mentioned leading cases, but which we do not cite here because they would unduly extend the length of this opinion.

For all the foregoing reasons, it is the official opinion of this office that said chapter 179, 1941 Statutes of Nevada, pages 402, 403, is constitutional and provides for semimonthly pay days for county officers and regular county employees, and that they should be paid their salaries or other compensation in semimonthly pay days on the 15th day of each month and the last day of each month as provided for in said chapter 179, but not in advance.

It must be noted, however, that this semimonthly pay day law does not apply to school officers, teachers, and employees, such as superintendents, principals, teachers, and janitors, although the particular school employing them be designated as a "county high school." This is upon the theory that all schools, even county high schools, are a part of the school system and are under school directors or school trustees, no matter if the particular high school is county-wide or its boundaries coincident with the county boundaries. Such county high schools would still be under the school system, just the same as are district high schools, although they are included within the district (the county high school) is exactly the same as the area included in the entire county. The mere enlargement of the area or district so as to include the entire county instead of only part of it does not change the character of the school and remove it from the school system, or place it under the jurisdiction of what are usually designated as county officers. It is still just as much a part of the school system as if it were only a district high school. These officers and employees are not in any sense county officers or county employees.

Respectfully submitted,

GRAY MASHBURN, Attorney-General.

C. B. TAPSCOTT, District Attorney.

SYLLABUS

316. Taxation--Penalties.

A penalty imposed for the nonpayment of the third quarterly installment of taxes, the first and second installment having been paid and the fourth installment not due to delinquent, was imposed without authority of law. Boards of County Commissioners have no authority, except under chapter 171, Statutes of 1935, to compromise tax penalties.

INQUIRIES

CARSON CITY, July 18, 1941.

1. Interpretation of section 6440 Nevada Compiled Laws 1929, as amended 1933 Statutes, page 120, is requested in the following case:

A taxpayer has paid the first and second installment of his taxes prior to the delinquent date. However, the third installment was not received by the treasurer until July 7, while the delinquent date for this particular installment was June 2. The Treasurer assessed a penalty of five percent of the amount of the third installment.

The law appears to be clear in cases where the first and second installment, as well as the third installment, is delinquent, but is not clear in the case above stated. We will appreciate your opinion as to the amount of penalty that should be collected in such a case.

2. Has the Board of County Commissioners the authority to compromise penalties accrued on delinquent taxes?

OPINION

Answering Query No. 1. Section 6440 Nevada Compiled Laws 1929, as amended by 1933 Statutes, page 120, and section 6442 Nevada Compiled Laws 1929, as amended by 1933 Statutes, page 121, provide for the imposition and collection of penalties on delinquent taxes. Both sections are penal statutes insofar as they relate to penalties and are subject to strict construction. The general rule of statutory construction is that penal statutes are to be strictly construed, and statutes imposing penalties are subject to this rule of strict construction, *i.e.*, that they will not be construed to include anything beyond the letter of the law, subject, however, to the exception that while such a statute will not be so construed as to include within its scope any Act or person not clearly intended to be included, still it will not be so construed as to defeat a plain and proper legislative intent. 23 Am. Jur. 631, sec. 37.

In State v. California Mining Co., [13 Nev. 203](#), the Supreme Court said, with respect to a tax penalty:

The provisions of the statute requiring payment of an additional percent of the tax in case of delinquency, is penal in its nature and object. Of such statutes in United States v. Morris, 14 Peters, 475, the Supreme Court of the United States says: “In expounding a penal statute, the court will certainly not extend it beyond the plain meaning of its words; for it has been long and well settled that such statutes must be construed strictly. Yet, the evident intention of the Legislature ought not to be defeated by a forced and overstrict construction.”

If the language of a statute is unambiguous, or its intention clear, there is no room for construction, but where the intention of the Legislature is in doubt, a penal statute must be strictly construed. Ex parte Todd, [46 Nev. 214](#).

If the rule of strict construction be applied to the instant case, and under the authorities it must be so applied, where the first and second quarterly installments of taxes had been paid before becoming delinquent and only the third installment was delinquent, then no penalty would attach as to such delinquent third installment because there is no penalty expressly or at all provided therefor in the statute, and, neither is there any language therein contained from which an inference can be drawn that, aside from the penalty provided for the nonpayment of the first quarterly installment of taxes, that the Legislature intended that penalties should attach to each quarterly installment separately and individually thereafter unless the prior installments beginning with the first installment were also due, owing, unpaid, and delinquent. Such is the clear, unambiguous language of the two sections of the law in question.

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

Courts have no authority to eliminate language used in a statute or to change its obvious meaning. Heywood v. Nye County, [36 Nev. 568](#).

While the rule of strict construction of the penal provisions of the statutes in question may be subject to the exception hereinabove mentioned, still such exception must be based upon some language contained in the statute itself that will lend its aid in finding a plain and proper intent of the Legislature which, in the instant matter, would indicate that each separate quarterly installment of taxes should bear a penalty and the amount of such penalty for nonpayment thereof irrespective of the delinquency of prior installments.

We submit that to find in the statutes any language from which it could be determined what penalty should be assessed for the nonpayment of the third installment of taxes alone will require the writing into such statutes a provision fixing such penalty, in brief, legislating upon the subject. Neither the executive branch nor the judicial branch of the State government possesses any legislative

power. That power rests in the Legislature alone, and if such body, intentionally or inadvertently, has so legislated that penalties cannot be assessed upon delinquent third or any other installment of taxes, the fault is in the Legislature. No executive, administrative, or judicial body or officer can correct the fault.

It is a well-settled rule that penalties not expressed are not favored, and that the court will not read or legislate into a statute forfeitures which it does not provide. United States Fidelity and Guaranty Co. v. Marks, [37 Nev. 306](#).

Entertaining the views above stated of the law on the question involved, we are of the opinion that the imposition of the penalty on the amount of the third installment of taxes, which installment alone was delinquent, was imposed without authority of law.

The statutes in question here should be amended so as to provide a definite penalty for each delinquent installment if the Legislature intends that each installment, individually, is to bear a penalty for nonpayment.

Answering Query No. 2. A Board of County Commissioners has no authority, acting alone in the matter, to compromise penalty payments on delinquent taxes. The authority for compromising delinquent taxes and assessments is contained in chapter 171, Statutes of 1933. The provision of this Act are broad enough to include the penalties on such delinquent taxes and assessments. Its provisions must be strictly followed, *i.e.*, by authorizing the District Attorney, by resolution adopted by the Board of County Commissioners, to compromise and settle such claims, which said resolution must be approved by the Attorney-General before the District Attorney may act thereon.

Respectfully submitted,

GRAY MASHBURN, Attorney-General.

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

HON. D. G. LaRUE, Superintendent of Banks and Ex Officio State Auditor, Carson City, Nevada.

SYLLABUS

317. Public Hospital Bonds, Humboldt County.

Public hospital bonds issued by Humboldt County Commissioners examined and found to be a valid, legal, and binding obligation of said county.

INQUIRY

CARSON CITY, July 21, 1941.

Are the public hospital bonds to be issued by the Board of County Commissioners of Humboldt County, Nevada, by reason of an election held in said county on Tuesday, the 5th day of November, 1940, valid, legal, and binding obligations of said county?

OPINION

This will acknowledge receipt of your letter of July 14, 1941, together with transcript of proceedings in regard to the issuance and sale of \$150,000 par value Humboldt County Hospital bonds.

We have carefully examined and studied this bond transcript. In our opinion sections 2225 to 2242, Nevada Compiled Laws 1929, as amended; chapter 70 of the 1937 Statutes of Nevada, as amended; and the applicable election laws of the State of Nevada have been fully complied with, and the bonds to be issued by the Board of County Commissioners of Humboldt County, Nevada, are valid, legal, and binding obligations of Humboldt County.

It further appears that proper and legal provisions have been made for an annual tax levy to retire this bond issue. The form of bonds and interest coupons set up in the certified copy of the resolution of the Board of County Commissioners of June 5, 1941, properly evidence the county's obligation.

You are further advised that the sale of said bonds, on which your board was the lowest bidder, was properly noticed and strictly complies with sections 6085-6092 Nevada Compiled Laws 1929. In our opinion, you may legally complete the purchase of these bonds.

We are returning herewith the complete bond transcript for your files.

Respectfully submitted,

GRAY MASHBURN, Attorney-General.

By ALAN BIBLE, Deputy Attorney-General.

HON. D. G. LaRUE, Secretary, State Board of Finance, Carson City, Nevada.

SYLLABUS

318. Motor Vehicles--Drivers' Licenses--School Busses and Trucks--Minimum Age.

Under the Uniform Motor Vehicle Operators' and Chauffeurs' License Act, Chapter 190, 1941 Statutes of Nevada, operators of school busses, and also operators of trucks hauling property for compensation, must have chauffeurs' licenses; and, in both instances the drivers thereof must be at least 18 years of age no matter how commendable their records may be for safety and proper operation of such motor vehicles, as that is a mandatory provision of said chapter 190 in both instances.

STATEMENT

CARSON CITY, July 22, 1941.

On July 10, 1941, you submitted to this office a request for an opinion on the issuance of chauffeurs' licenses under the provisions of chapter 190, Statutes of Nevada of 1941.

1. The first statement of facts under your request for an opinion dealt with the granting of chauffeurs' licenses to school children under 18 years of age who are engaged in driving school busses transporting school children to and from school. A highly commendable record of safe driving is presented by the school district involved. Part of this is due to careful examinations given each driver by a trained supervisor before the driver is employed. As it appears from the statement of facts, school busses have been operated for 25 years, covering an aggregate annual mileage of 75,000 miles, with no major accidents and but three (3) very minor accidents. During this period of time many of the school busses have been operated by drivers between 16 and 18 years of age. It is suggested that sub-paragraphs (b), (c), (d), and (e), section 11 of the Act, may possibly permit you, as administrator, to grant a chauffeur's license to drivers under 18 years of age.

2. Your second statement of facts concerns a driver who has been employed by a trucking company for the past year and a half as a truck driver in hauling property for compensation. The applicant will not be 18 until February 23, 1942.

INQUIRY

Does the "Uniform Motor Vehicle Operators' and Chauffeurs' License Act," chapter 190, 1941 Statutes of Nevada, authorize the granting of a chauffeur's license in either of the above cases?

OPINION

Since each of these statements of facts involve the granting of chauffeurs' licenses to applicants under 18 years of age, they will be answered together.

In our opinion, you, as administrator, are unable under the provisions of the new "Uniform Motor Vehicle Operators' and Chauffeurs' License Act," to grant chauffeurs' licenses to drivers under 18 years of age. We believe that a careful reading of the Act will permit of no other conclusion. Although the record presented by the school district in question is particularly commendable from the standpoint of safety, nevertheless, such a record was one that could have been properly presented before the State Legislature which has enacted the present law to aid it in determining the minimum age for granting chauffeurs' licenses. We, of course, have no authority to decide questions of policy. That is solely for the Legislature in enacting laws, and, since the Legislature has so clearly spoken on the question of a chauffeur's minimum age, we are naturally bound by its plain and unequivocal language. Section 3(c) of the Uniform Motor Vehicle

Operators' and Chauffeurs' License Act defines "chauffeur" as follows:

(c) Chauffeur; every person who is employed by another for the principal purpose of driving a motor vehicle and every person who drives a school bus transporting school children or any motor vehicle when in use for the transportation of persons or property for compensation.

The applicants mentioned in each of your two statements of facts are clearly chauffeurs within this definition.

Section 8 of the Act provides that both operators and chauffeurs, except those expressly exempted, must be licensed.

Section 9 of the Act provides certain persons who are exempt from the licensing provisions, but none of the five subdivisions apply to the instant cases.

Section 10, sub-paragraph 2, states that the department shall not issue any license hereunder to any person, as a chauffeur, who is under the age of 18 years. This is a clear, mandatory provision, and, unless we can find some qualifying language elsewhere in the Act, you, as administrator, have no discretion to change this requirement.

Section 11(b) is equally clear. It reads as follows:

(b) No person who is under the age of eighteen years shall drive any motor vehicle while in use as a school bus for the transportation of pupils to or from school, nor any motor vehicle while in use as a public or common carrier of persons or property, nor in either event until he has been licensed as a chauffeur and received a special chauffeur's license.

It is clearly apparent that, in addition to stating that no chauffeur's license shall be granted to a person under 18 years of age, the Legislature went one step further and stated that no person who is under the age of 18 years should drive a school bus or any motor vehicle while in use as a public or common carrier of persons or property. Although a special chauffeur is not clearly defined, we believe that the two classes of drivers mentioned in 11(b) are considered special chauffeurs, and that as to them the Legislature has seen fit to enact the additional requirements set forth in 11(c) and 11(d).

It has been suggested that sub-paragraphs (c), (d), and (e) of this same section 11 may give the administrator some discretion in granting chauffeurs' licenses to those under 18. Neither the administrator nor the department can promulgate rules and regulations which conflict with or vary the plain provisions of a statutory enactment. They can adopt rules and regulations only so long as they are consistent with the law. It is true that sub-paragraph (e) does allow the department, in its discretion, to impose rules and regulations for the exercise of such special chauffeurs' licenses, but it is a fundamental principle of law that the department could not legally change the definitely prescribed age limit set up in section 10(2) and 11(b) of the Act.

As we read both sub-paragraphs (c) and (d) of section 11 and as previously noted, they simply prescribe certain additional requirements which must be met before a special chauffeur's license can be granted.

Whether or not the age limit placed upon applicants who seek chauffeurs' licenses is a reasonable one is a question for the sound discretion of the law-making body of this State; but, since they have set 18 years of age as one of the requirements for obtaining a chauffeur's license, it is our opinion that you have no discretion but to follow the plain provisions of the law.

Respectfully submitted,

GRAY MASHBURN, Attorney-General.

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

SYLLABUS

319. Election Law--Initiative Petition.

Initiative petition is a "question" within the meaning of section 2471 Nevada Compiled Laws 1929 and is to be printed on the ballot pursuant to the provisions of section 2473 Nevada Compiled Laws 1929, as amended at 1941 Statutes, page 264.

INQUIRY

CARSON CITY, July 30, 1941.

Where an initiative petition initiating a law of the people is to be placed on the ballot for submission to the voters of the State, shall the petition in full be printed on the ballot, or will the title thereof printed on the ballot be a sufficient reference to such petition?

OPINION

Section 3 of article XIX of the Constitution providing for the initiating of laws by the people, while providing such section shall be self-executing, contains no provisions providing how or in what manner the initiative measure shall appear on the ballot. Such section provides, however, that legislation may be especially enacted to facilitate its operation.

Section 2471 Nevada Compiled Laws 1929, i.e., section 34, general election law, provides for the duties of the Secretary of State with respect to the submission of a constitutional amendment, *or other question* to the vote of the people. An initiative petition or measure is undoubtedly a *question* within the meaning of such section.

Section 36 of the general election law, being section 2473 Nevada Compiled Laws 1929,
as amended by Statutes 1941, page 264, provides, inter alia,

Whenever any question is to be submitted to the vote of the people, it shall be printed upon the ballot in such manner as to enable the electors to vote "Yes" or "No" upon the question submitted in the manner hereinafter provided, and the words "Yes" and "No" separated by a light-faced rule and with a square after each thereof of the size hereinbefore prescribed shall be printed upon the ballot after each question, with a brief statement of the purport of such question, in plain ordinary language which may be readily understood by the ordinary lay person. Before every question or constitutional amendment to be voted upon there shall be placed a number, to be designated by the secretary of state, in boldface type, not smaller than twenty-four point.

There is no other statutory provision relating to the placing of initiative measures on the ballot. It is clear that an initiative measure is a question to be submitted to the popular vote of the people, and as such should be so submitted and placed on the ballot in the manner and at the time provided in said section 2471, and said section 2473 as amended.

With respect to the form in which said question should appear on the ballot, we think that the title of the measure, together with a brief statement of the purpose thereof, will be sufficient.

Respectfully submitted,

GRAY MASHBURN, Attorney-General.

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

MALCOLM McEACHIN, Secretary of State.

SYLLABUS

320. Taxation--Veteran's Exemption--Community Property.

Section 6418 Nevada Compiled Laws 1929, as amended at 1941 Statutes, chapter 144, provides a veteran an exemption of community property from taxation to the full value of \$1,000, irrespective of whether the veteran's interest therein is of that value.

INQUIRY

CARSON CITY, August 8, 1941.

In view of the amendment to subdivision 7 of section 6418 Nevada Compiled Laws 1929, as contained in chapter 144 Statutes of 1941, does a veteran's exemption of community property

from taxation in the amount of not to exceed \$1,000 extend to the whole of the community property of a veteran and wife, or only to the interest of the veteran in such community property?

OPINION

Subdivision 7 of section 6418 Nevada Compiled Laws 1929, as amended by chapter 144 Statutes of 1941, reads as follows:

The real property owned and used by an post or unit of any national organization of ex-service men or women. The separate and/or community property, not to exceed the amount of one thousand dollars, of any person who has served in the army, navy, marine corps, or revenue marine service of the United States in the time of ware and who has received an honorable discharge therefrom; *provided*, that such exemption shall be allowed only to claimants who shall make an affidavit annually before the county assessor to the effect that they are actual bona fide residents of the State of Nevada, that such exemption is claimed in no other county within this state, and that the total value of all property of affiant within this state is less than four thousand dollars.

The amendment provided in the foregoing-quoted section is contained in the following words: “The separate and/or community property * * *.”

Prior to the enactment of said amendment the statute in this respect read as follows: “The property * * *.”

The pertinent question submitted here is whether by reason of the inclusion of the words “and/or community” so far changed the law as to bring within its purview the whole of the community estate, or at least sufficient of the community estate to amount to \$1,000 in value.

The exemption contained ins aid sectin 6418 with respect to community property, as it stood prior to the 1941 amendment, was of doubtful import under the universal rule that a tax exemption law must present a clear case, free from doubt, and, being in derogation of the general rule, must be strictly construed against the claimant and in favor of the public. We are advised that this doubtful exemption was brought to the attention of the 1941 Legislature and that body being informed thereon, enacted the amendment quoted hereinabove for the purpose of bringing about a change in the law so as to provide the veteran with a tax exemption reaching the community estate to the extent of \$1,000 in value, irrespective of whether the veteran’s interest therein was of that value.

We are aware of the rule requiring the strict construction of tax exemption statutes. We are also aware of the holdings of our Supreme Court with respect to statutes or amendments to statutes designed to amend statutes that have received judicial construction, and that in such cases the intent of the Legislature is to be sought and the statute construed with reference to the object intended to be thus attained.

In Gibson v. Mason, [5 Nev. 283](#), the Supreme Court said:

So also it is always the first great object of the courts in interpreting statutes, to place such construction upon them that will carry out the manifest purpose of the Legislature, and this has been done in opposition to the very words of an act.

Later, the Supreme Court in Ex Parte Siebenhauer, [14 Nev. 365](#), said:

In order to reach the intention of the legislature, courts are not bound to always take the words of a statute either in their literal or ordinary sense, if by so doing it would lead to any absurdity or manifest injustice, but may in such cases modify, restrict or extend the meaning of the words so as to meet the plain, evident policy and purview of the act and bring it within the intention which the legislature had in view at the time it was enacted.

In Escalle v. Mark, [43 Nev. 172](#), the Court said:

It is a cardinal rule of statutory construction that the legislative intent controls * * *, and in seeking the intention of the legislature in enacting a certain law we must ascertain evils sought to be remedied.

In Martin v. Duncan Automobile Company, [53 Nev. 212](#), the Court said:

The section which we have quoted was enacted subsequent to the decision of the case mentioned, and it must be presumed that it was enacted to meet the situation which was presented in that case and the ruling of the court therein. The statute quoted should be construed in accordance with the views expressed in Escalle v. Mark, [43 Nev. 172](#), 183 P. 387, 5 A. L. R. 1512, to the effect that it was the purpose of the legislature to remedy the objection theretofore existing. This was clearly the purpose of the section in question. It is broad in its scope and should be liberally construed to effectuate its purpose.

From the foregoing rules of statutory construction, it is clear that the intent of the Legislature with respect to the instant matter, is to be gathered from the amended statute and that the statute is to be construed with respect to the object to be attained thereby. That object, in our opinion, was to provide the veteran with a tax exemption with respect to the community property of the veteran and his wife to the value of \$1,000, irrespective of whether the veteran's interest therein amounted to that value or less. We think the Legislature, recognizing the doubtful import of the law with respect to such exemption as it stood prior to the 1941 amendment, amended the law for the purpose of applying the full measure of the exemption to the community estate. Therefore, it is our opinion that it was the intent of the Legislature by use of the words "and/or community property" to provide the veteran with the privilege of claiming an exemption from taxation with respect to the community property to the value of \$1,000, irrespective of whether the veteran's interest therein amounted to \$1,000; provided, of course, that the conditions imposed by said subdivision 7 of said section be complied with by the veteran seeking the exemption.

Respectfully submitted,

GRAY MASHBURN, Attorney-General.

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

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

SYLLABUS

321. Blind Persons, Relief of.

(1) Chapter 90, 1941 Statutes of Nevada, pages 129-130, making an appropriation of State funds for the relief of the needy blind, is supplemental of and should be construed as in pari materia with chapter 32, 1925 Statutes of Nevada, pages 35-36, which is compiled as Nevada Compiled Laws 1929, sections 2313-2321, which provides that counties shall furnish relief to such needy blind persons. The latter Act is merely supplemental of the earlier Act, and unless such needy blind person is receiving relief from county funds under said 1925 Act (chapter 32), he would not be entitled to receive aid from said State funds under said 1941 Act (chapter 90), and said chapter 90 would not apply to him. It is, therefore, essential to participate in said State funds under said chapter 90, that the needy blind person must at the time of his or her application for an allotment under that chapter actually be receiving relief and aid under said chapter 32.

(2) It is also necessary that such applicant be a resident in good faith of the county so furnishing him or her such relief and aid under said chapter 32 for a period of two years at the time of making application for aid from State funds in order that he or she may be entitled to receive State funds under said chapter 90.

STATEMENT

CARSON CITY, August 29, 1941.

The 1925 Legislature of this State enacted, and the Governor approved, chapter 32, 1925 Statutes of Nevada, pages 35, 36, both inclusive, wherein the Boards of County Commissioners of the various counties of the State are authorized to levy a tax not exceeding 2 cents on the \$100 of the assessed valuation of the property in their respective counties, and to cause the same to be collected, "for the purpose of creating a fund for the relief of the needy blind of their respective counties" who are residents of the particular county in which said tax is so levied. Said chapter 32 is compiled in our Compiled Laws as sections 2313-2321, both inclusive, Nevada Compiled Laws 1929.

Section 3 of that Act required that such blind persons, in order to be entitled to the relief so provided by taxation, should be residents of the county so levying the tax and so granting such

relief for only one year; but the 1929 Legislature of this State enacted and the Governor approved chapter 68, 1929 Statutes of Nevada, page 97, and therein amended the said section 3 so as to require such needy blind persons to be residents of such county for a period of *two* years in order to be entitled to such relief, and before they can legally be granted such relief. That section of the law, as so amended by said chapter 68 in 1929, has not been amended or repealed and still stands as the law of this State. It is compiled as Nevada Compiled Laws 1929, section 2315, and is in the following language:

A needy blind person in order to receive relief under this act must be a resident of this state at the time this act takes effect, or become blind while a resident of this state, *and shall be a resident of the county two years next preceding the date of the application provided for herein*.

The 1941 Legislature of this State enacted, and the Governor approved, chapter 90, 1941 Statutes of Nevada, pages 129, 130, both inclusive, and therein made an appropriation of \$6,000 for each of the years 1941 and 1942 for the express “purpose of *supplementing* the county relief now provided for needy blind in the State of Nevada. Even the title of the Act expressly states as the purpose of this Act and of the appropriation so provided for therein as being “*to supplement*” the provisions of the above-referred to and quoted 1925 Act (said chapter 32, 1925 Statutes of Nevada). It should be kept in mind that wherever the expression “needy blind persons” is used in this opinion, that expression includes also those “whose eyesight is so impaired as to come under the provisions of this Act” (both said 1925 Act and said 1941 Act, since the language is exactly the same in both Acts). Among other things, section 2 of said chapter 90 (1941 Act) defines the needy blind persons entitled to participate in said \$6,000 so appropriated as those who are blind, or whose eyesight is so impaired as to come under the provisions of the Act (1925 Act and 1941 Act) and who have “the residential qualifications to entitle him or her to the relief asked for” (relief under said Acts as needy blind persons or those whose eyesight is so impaired as to come under the provisions of the Acts), and that these and the other facts stated in said section 2 shall be shown in a sworn statement filed by the applicant with the Clerk of the Board of County Commissioners of the proper county (the county of which the needy blind person is and has been an actual resident for two years prior thereto).

Section 3 of said chapter 90 (1941 Act) also indicates that the “allotment” (allowance) made to the needy blind person pursuant thereto is *supplementary* to the allowance made for the relief of such person under said chapter 32 by the proper county of which the needy blind person is an actual resident, by stating in express language with reference to the “allotment” (allowance) that it “shall be in *addition* to the allowances made by the County Commissioners of the various counties, in accordance with the provisions” of said 1925 Act.

Under the above-mentioned circumstances and law, the proper officers of a certain county in this State have certified a certain blind person as being a needy blind person and entitled to an allotment in and share of the \$6,000 so appropriated by said chapter 90, although the particular county itself does not provide any relief at all for that person under the provisions of said chapter 32 (1925 Act), and although the person so certified as entitled to relief under said chapter 90 (1941 Act) “*is living in another county at the present time.*”

The most important matters which must be kept in mind in determining the questions involved are as follows, to wit:

(a) Whether it is essential that such a needy blind person, in order to receive an allotment or share under said chapter 90, must at the time of his or her application for an allotment under that chapter actually be receiving relief and aid under said chapter 32; and

(b) Whether, in that event, such applicant must then be a resident in good faith of the county so furnishing him or her such relief and aid under said chapter 32.

INQUIRIES

Under the facts hereinbefore stated as furnished me by the State Controller and under the laws above referred to, this office is asked for its official opinion in answer to the following inquiries:

1. Is a needy blind person, or person whose eyesight is so impaired as to come under the provisions of these Acts, and who is not receiving relief or aid under said chapter 32, 1925 Statutes of Nevada, pages 35, 36 (Nevada Compiled Laws 1929, sections 2313-2321), entitled to an allotment or share of the \$6,000 so appropriated in chapter 90, 1941 Statutes of Nevada, pages 129, 130, notwithstanding the fact that he or she is not receiving relief under said chapter 32?

2. If such person is receiving relief or aid from a county of the State under the provisions of said section 32, is it necessary that he or she be a resident of that particular county so furnishing such aid as a condition precedent to the lawful allotment or share in said \$6,000 so appropriated in said chapter 90?

OPINION

It was the clear intention of the Legislature of this State, as expressed in chapter 90, 1941 Statutes of Nevada, pages 129, 130, both inclusive, that said chapter 90 is *to supplement* said chapter 32, 1925 Statutes of Nevada, pages 35, 36, both inclusive, a part of which latter chapter is said section 2315, Nevada Compiled Laws 1929. Not only does the title of said chapter 90 expressly state that the purpose of that Act is “*to supplement*” the provisions of said chapter 32, including said section 2315, but also section 1 of said chapter 30 expressly states that the very reason for the enactment and approval of that chapter is “for the purpose of *supplementing* the county relief now provided for needy blind in the State of Nevada” (said chapter 32 was and is the only law of this State in existence for “county relief” for the needy blind persons in the State), but section 3 of said chapter 90 also expressly provides that the “allotment” from said sum of \$6,000 so appropriated “shall be *in addition to the allowances made by the County Commissioners of the various counties*” in accordance with said chapter 32.

From the foregoing, it is clear that said chapter 90 must be construed with and always considered in connection with said chapter 32. It is also clear that where a needy blind person is not being furnished “relief” under said chapter 32, as amended, the provisions of said chapter 90

are not applicable. In other words, if no county at all in the entire State was providing for the “relief” of any needy blind person under said chapter 32 (Nevada Compiled Laws 1929, sections 2313-2321), then it would be impossible to proceed under chapter 90 and use any money at all from the \$6,000 therein appropriated.

Said section 2315, Nevada Compiled Laws 1929, relates to the status of residence of the needy blind person entitled to such relief. It is the section which absolutely limits such relief to be granted by a county to the needy blind who are actual *residents* of the county granting such relief. It is mandatory under said section 2315 that a needy blind person be an *actual resident* of the county as a condition precedent to the lawful granting of such relief by that county. A county has no right at all to grant such relief to needy blind persons who are not *actual residents* of that particular county. The granting of such relief by a county or its Board of County Commissioners to needy blind persons who are not such actual residents of that county is unlawful and without any authority at all in the law.

Answering each of the above-mentioned two questions specifically, it is the unqualified opinion of this office that a needy blind person who is not receiving relief or aid from his or her county pursuant to the provisions of chapter 32, 1925 Statutes of Nevada, pages 35, 36 (Nevada Compiled Laws, 1929, sections 2313-2321, both inclusive), is not entitled to any allotment at all or to any share at all of the \$6,000 so appropriated in chapter 90, 1941 Statutes of Nevada, pages 129, 130, and that before such a needy blind person can be lawfully allotted any money at all from the \$6,000 so appropriated in said chapter 90, he or she must then be receiving relief (aid) pursuant to the provisions of said chapter 32. In other words, both chapter 32 and chapter 90 must be considered together; and the allotment under said chapter 90 cannot lawfully be made unless the needy blind person is at that very time receiving relief (aid) under the terms of said chapter 32. The allotment or relief granted under said chapter 90 must supplement or add to the relief (aid) which is then being lawfully received under said chapter 32. As to this supplementary nature of said chapter 90, we quote section 1 of said chapter 90 as follows:

For the purpose of *supplementing* the county relief now provided for needy blind in the State of Nevada, there is hereby appropriated out of any money in the treasury of the State of Nevada, not otherwise especially appropriated, the sum of six thousand (\$6,000) dollars for each of the years 1941 and 1942. Chapter 90, 1941 Statutes of Nevada, section 1, page 129.

On the same point, we quote also the following from section 3 of said chapter 90:

The allotment made under the provisions of this act to the needy blind persons, so ordered by the county commissioners of the respective counties, shall not in any manner be used to reduce any allowances to any needy blind person (under said chapter 32), but *shall be in addition to the allowances made by the county commissioners of the various counties, in accordance with the provisions of that certain act of the legislature of the State of Nevada.* (Chapter 32, 1925 Statutes of Nevada, pages 35, 36, being the same as compiled in Nevada Compiled Laws 1929, sections 2313-2321, as amended in chapter 68, 1929 Statutes of Nevada, page 97.)

1. From the foregoing, it is clear that the answer to said question 1 must be “yes.”

2. A reading of said chapter 32 makes it clear that the only needy blind person entitled to relief (aid) under that chapter is one who is a resident of the particular county so furnishing relief or aid to that person. It is clear also from that chapter that a county or Board of County Commissioners of a county cannot legally grant such relief (aid) to a needy blind person who is not a resident of the county so granting such relief or aid.

In addition to the foregoing, said section 2315 Nevada Compiled Laws 1929, as amended by chapter 68, 1929 Statutes of Nevada, page 97, and hereinbefore quoted in this opinion, makes it clear, definite, and certain that such a needy blind person must not only be a resident of the county furnishing such relief (aid) under said chapter 32, at the time such relief or aid is so furnished, but must also have been a resident of that particular county so furnishing such relief for a full period of “*two years next (immediately) preceding the date of the application*” to that county of the applicant’s residence. It is, therefore, clear, definite, and certain that the needy blind person so furnished relief or an allotment under either chapter 32 or chapter 90 must be a resident of the county so furnishing such relief or aid.

It should also be noted, in connection with the statutory requirement of residence of the county so furnishing relief, that section 2 of said chapter 90 contains much of the language and many of the expressions used in section 4 of said chapter 32, 1925 Statutes of Nevada, pages 35, 36, and that both of said chapters require that the Board of County Commissioners of the county of the applicant’s residence shall be satisfied, among other things, that the applicant “has the residential qualifications to entitle him or her to the relief asked for” (residence in the county furnishing the aid), and that such evidence shall “be in writing; subscribed by such witnesses, subject to the right of cross examination by the board of county commissioners or other persons.” The similarity of the language used in these sections of said chapter 32 and of said chapter 90, as well as the expression “residential qualifications” as used in both of them seem conclusive of the fact that said chapter 90 is supplementary to said chapter 32, and that they must be construed together, and make it definite and certain that the needy blind person must be a bona fide resident of the county furnishing such relief before he or she can be entitled to said relief aid, or allotment.

From the foregoing, it is the unqualified opinion of this office that the answer to said question 2 must be “yes.”

Summarizing the foregoing, we are of the opinion that, in order to be lawfully entitled to an allotment out of or share of the \$6,000 so appropriated by said chapter 90, it is essential that a needy blind person meet the following qualifications:

(a) Be actually receiving at that time relief (aid) from the county of his or her residence under and pursuant to said chapter 32 from money raised by taxation of the taxpayers of that particular county levied pursuant to that chapter; and

(b) Be, at that time, an actual bona fide resident of the particular county so furnishing relief (aid) under the provisions of said chapter 32.

Respectfully submitted,

GRAY MASHBURN, Attorney-General.

HON. HENRY C. SCHMIDT, State Controller, Carson City, Nevada.

SYLLABUS

322. State Land--Game Refuge--Governor's Proclamation--Status of Land.

Land acquired by the State of Nevada in exchange for State land previously granted to the State by the United States, occupies the same status under State land laws as the land occupied that was exchanged therefor and became subject to contract and sale. Game refuge purportedly created on State land without Governor's proclamation being issued therefor not a legal game refuge.

STATEMENT AND INQUIRY

CARSON CITY, September 3, 1941.

Certain areas of land in Clark County, being situate in T. 22 S., R. 61 E., T. 21 S., and T. 22 S., R. 62 E., M. D. B. & M., were patented to the State of Nevada by the United States in that certain patent No. 1058854, dated October 6, 1932. The grant of the land to the State was and is in fee simple, and no restrictions or reservations were written into the patent, save and except that the grant was subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights; the right of the Bell Telephone Company to a right-of-way over a portion of the land; and there was reserved a right-of-way over such land for ditches and canals constructed by the authority of the United States, and reserving to the United States all oil, coal, or other minerals found in the land, together with the right to prospect for and mine said minerals pursuant to the rules and regulations of the Secretary of the Interior.

The said areas of land, as well as other land granted in said patent, was granted to the State pursuant to chapter 499, 44 U. S. Statutes, which said chapter contained no reservations other than those appearing in the patent. Said chapter 499 authorized the exchange of lands of the United States for lands of the State of Nevada in an amount of not to exceed 30,000 acres, which said State lands were offered to and exchanged with the United States and were withdrawn from contract and sale pursuant to chapter 68, page 106, Statutes of Nevada 1925, as amended by chapter 40, page 63, Statutes of Nevada 1927, the same now being sections 5555-5559 Nevada Compiled Laws 1929. The land in question was listed to the State after the selection thereof by the State long prior to the issuance of the patent, and a reputed game refuge was purportedly

created in and upon said areas at or about the time of the listing of the land to the State.

No record of the creation and establishment of such game refuge is in existence. No proclamation of the Governor creating such game refuge was ever issued.

An opinion is requested upon the following query:

What is the present status of such land and can the Governor now, by proclamation, open the said areas of land to contract of sale so as to permit the State Land Register to dispose of such land in like manner as all other State selected lands?

OPINION

The land in question is the property of the State. Of this there can be no question. The title to such land is a fee simple title with the exception of the reservations stated above, and which reservations are not material here, granted in and by a patent issued and delivered to the State by the United States. A patent issued by the United States is the highest evidence of title. Round Mountain M. Co. v. Round Mountain Sphinx M. Co., [36 Nev. 543](#).

After the vesting of the title of the land in the State, the State had and has the right to use and/or dispose of the land according to its laws, even if it did not have such right after the listing of said land to the State and before the issuance of the patent. Upon the exchange of land being consummated pursuant to the 1925 State Act and the Act of Congress of 1926 (both Acts above mentioned), we think the land in question acquired by the State in the exchange then occupied the same status as the State land exchanged therefor occupied prior to the withdrawal from contract and sale by the 1925 Act, and became subject to the State laws with respect to its use and disposition. To hold otherwise would impute to the Legislature an intent to violate section 3, article XI of the Constitution of Nevada, providing in effect that all land granted to the State by the United States and the proceeds thereof are solemnly pledged for educational purposes. Such intent is not to be presumed. It is therefore our opinion that the land in question, at least upon the delivery of the patent therefor to the State, unless it can be said a game refuge had or has been created thereon in such manner and form as to withdraw it from entry.

First, it may be reasonably said that even though a game refuge is created upon State land, that this in itself does not under the law necessarily mean that such land is thereby entirely withdrawn from contract and sale. Game refuges and sanctuaries can be and are established on privately owned land pursuant to section 3114 Nevada Compiled Laws 1929. There is nothing contained in the Nevada law that expressly withdraws State-owned land from contract and sale even though a game refuge is established thereon. The law only goes to the point of prohibiting hunting thereon. (See section 3116 Nevada Compiled Laws 1929.)

It might not be practical for a game refuge to be created on State land which would be subject to contract and sale, but as a legal proposition we think there is no law requiring the withdrawal of such land from contract and sale when a game refuge is created thereon. But be that as it may, the authority for the creation of game refuges on State land is contained in section 3115 Nevada Compiled Laws 1929, reading:

The governor of the state shall select, designate, and set aside by proclamation suitable areas described by metes and bounds of the public domain of Nevada, not exceeding twenty-five in number, such areas to be known as state recreation grounds and game refuges or public shooting grounds.

Thus it appears that before a game refuge can be legally created on State land that there must be a proclamation by the Governor setting aside certain land, particularly described, as a game refuge. By use of the term proclamation, the Legislature intended public notice of the creation of such refuge to be given. This is one condition that must be met before a valid game refuge could or can be created. The absence of such proclamation concerning the creation of the game refuge in question, we think, is fatal, and that by reason thereof no game refuge was legally or at all created and established on the land in question.

Whether the Governor can abolish a game refuge when once created on State land by proclamation, by issuing a proclamation so abolishing such refuge, we need not inquire here. Suffice it to say no game refuge having been legally created on the land in question here, and such land occupying the status of State land theretofore exchanged for it, and therefore being State land subject to disposition pursuant to the State laws providing for the sale thereof, such land is now subject to contract and sale without any action on the part of the Governor with respect thereto.

Respectfully submitted,

GRAY MASHBURN, Attorney-General.

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

WAYNE McLEOD, Surveyor General.

Attention:

HON. E. P. CARVILLE, Governor.

SYLLABUS

323. Elections--Registration Law.

Selectees for the armed forces of the United States who are qualified electors of the State but who are not registered voters may register as such voters prior to their induction into the service, notwithstanding the statutory time for registration for the primary or general election has not arrived. Such selectees already inducted into service may have registration cards furnished and register without the State and return such registration cards to their respective County Clerks for filing.

INQUIRY

CARSON CITY, September 4, 1941.

1. Can a selectee about to be inducted into the armed forces of the United States who is a qualified elector of the State but who is not a registered voter, now register as such voter prior to his induction?

2. Can such selectee, being a qualified elector, now in the service, but who was not registered as a voter prior to his induction from this State into the service, be registered without the State and without appearing before the proper registrar in this State?

OPINION

Answering Query No. 1. Section 11 of the registration law, being section 2370 Nevada Compiled Laws 1929, as amended at 1935 statutes, page 111, provides:

Registration offices shall be open for registration of voters for any primary or general election, Sunday and legal holidays excepted, from and after the first day of May in any general election year, except as otherwise provided in this act, up to the twentieth day next preceding such election, and between the hours of 9 a.m. and 5 p.m.; *provided*, that the office of the county clerk, as ex officio registrar, shall be open for registration of voters for any election, other than a primary or general election, for not more than 60 days nor less than 20 days prior to the date of such election, at such times as said office is open for the transaction of his business as county clerk; *provided further*, that during the ten days previous to the close of registration the registration office shall be open evenings until 9 p.m.

It may be that the inference to be drawn from such section is that registration of qualified electors is not to be had at any time other than the time expressly stated in the statute. Such inference, we think, is correct as to all qualified electors in ordinary times and under normal and ordinary circumstances. It is to be noted, however, that there is no prohibition in such section, nor do we find any such prohibition elsewhere in the law, prohibiting the County Clerk registering voters or accepting registration at some other time, except for special and municipal elections. The language pertaining to primary and general elections means that as to such elections the registration office *shall* be open for registration during the period of time there mentioned. Such language does not expressly limit registration to that particular time as does the language immediately following relating to elections other than primary and general elections.

The Supreme Court in *Turner v. Fogg*, 39 Nev. at page 414, said:

It is well settled that election laws are to be liberally construed to enable the largest participation in all elections by qualified electors.

Section 2 of Article II of our Constitution provides:

For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, nor while engaged in the navigation of the waters of the United States or of the high seas; nor while a student of any seminary of learning; nor while kept at any almshouse or other asylum, at public expense; nor while confined in any public prison.

Section 2 of the Registration Act, being section 2361 Nevada Compiled Laws 1929, provides:

No person shall be deemed to have gained or lost such a residence by reason of his presence while employed in the military, naval, or civil service of the United States, or of the State of Nevada; nor while engaged in the navigation of the waters of the United States or of the high seas; nor while a student at any seminary or other institution of learning, nor while kept at any almshouse, or other asylum, at public expense.

We think the section of the law providing the time for registration is to be construed in *pari materia* with the above-quoted constitutional provision and section 2361, *supra*, and, also, that a liberal construction is to be given the section so providing the time in which registration *shall* be open for primary and general elections, to the end that selectees who are qualified electors desiring to register, but who, through circumstances not of their own choosing and which circumstances are beyond their control, will not be able to be personally present and register during the statutory time such registration will be open, will be given the right and afforded the opportunity to register at a time preceding the statutory opening of registration so that they may exercise their right of franchise.

It is therefore our opinion that selectees for the armed forces of the United States who are qualified electors of this State, but who are not registered voters, and who are about to be inducted into the service of the United States are entitled to present themselves before their respective registrars, preferably the County Clerk, and register, notwithstanding the statutory date for the opening of registration for the primary and general election next following has not arrived.

Answering Query No. 2. In opinion No. 208, dated July 17, 1918, a former Attorney-General of this State, dealing with almost the identical question, arising under the same registration law that is now in effect, held that citizens of Nevada who were compelled to live in Washington by reason of their connection with the United States Government were entitled to demand and receive from the registrar registration cards which, when properly filled in and verified without the State, must be accepted by the registrar and the applicant registered as a voter in this State. There has been no material change in the registration law since the foregoing opinion was rendered, and section 12 thereof has not been amended in any respect. Selectee citizens of this State are now in the same position as were the citizens of this State compelled to

remain in Washington at the time of registration mentioned in the foregoing opinion. We adopt such opinion as the opinion on the question here. Opinion No. 208 was addressed to the County Registrar of Ormsby County. We quote therefrom:

It may be argued that by the use of the words "appearing before," in the said section 12, the Legislature intended that every elector of the State, irrespective of whether or not his duties keep him in some other State, was required to appear personally in order to register. Such may be the strict technical meaning of the word "appear," but, as is well known, every summons issued by any court requires the defendant to appear within the time specified, and in a vast majority of the cases the appearance is not made personally but by attorney. The validity of such an appearance has never been questioned. One of the meanings of "appear" is "to present one's self." If an elector of Nevada, living in a foreign State, should deliver to the registrar by mail or otherwise the registration card with the blanks properly filled and as required by said section 12, "making satisfactory answers to all questions propounded by the County Clerk touching the items of information called for by such registration card," he certainly presents himself to the registrar as an applicant for election and gives such registrar the information necessary, in his judgment, as to whether or not the applicant is an elector of the State of Nevada and entitled to registration. Having enacted the provisions of section 2, above quoted, it would be a manifest distortion of the law to assume from the language of section 12 that the Legislature intended that every such elector living outside the State of Nevada is required to present himself in person before the registrar for the purpose of registration.

It is the opinion of this office that it is your duty to mail registry blanks to any person living outside of the State applying for them, and, upon receipt of the same with blanks properly filled and the cards signed and verified by the applicant for registration, it is your duty to treat the applicant as properly registered if you are satisfied with the information therein contained.

We therefore conclude that a selectee for the armed forces of the United States, who being a qualified elector of this State and who was not registered as a voter at the time of his induction into the service may register as such voter while in the service and without the State, by having furnished to him a proper registration card by the County Clerk of the county of his residence and properly filling in such card, signing the same and subscribing to and having verified the affidavit on said card, returning the same to the County Clerk for filing. The verification of the affidavit to be made by a commissioner appointed by the Governor of this State in the State where such verification is had, or by a Notary Public or Judge of a court of record having a seal. Section 8998 Nevada Compiled Laws 1929.

Respectfully submitted,

GRAY MASHBURN, Attorney-General.

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

JAY H. WHITE, State Director of Selective Service.

SYLLABUS

324. Motor Vehicles--Operators' and Chauffeurs' Licenses--Department Ignoring Courts' Suspension.

(1) While District Attorneys, Justices of the Peace, Sheriffs and other peace officers, as well as all other persons for that matter, have the right to recommend that the department ignore the action of courts in suspending licenses of drivers of motor vehicles for violations of the old drivers' license law in effect prior to July 1, 1941, such recommendation is merely advisory and does not impose any mandatory duty upon the department to comply with it, as there is nothing in the law to require the department to comply with such recommendation.

In fact, chapter 161, 1939 Statutes of Nevada, section 1, page 243, prohibits Justices of the Peace and other judges from suspending sentences they have imposed, and makes it mandatory that they revoke or suspend the licenses of such drivers upon the second or any subsequent convictions under the law, in addition to the imprisonment specified in that law; and the department has no supervisory power over the courts of their action in such cases.

The department has not, of course, any judicial power to duty under the law. Its duties and powers are merely administrative. The duties of the court in punishing drunken driving are set forth in chapter 161, 1939 Statutes of Nevada, page 243, and in the unamended portion of chapter 166, 1925 Statutes of Nevada, pages 254-258, not in said chapter 190, 1941 Statutes of Nevada. The mandatory duties of the department as distinguished from its permissible (authorized) duties are set forth in said chapter 190, sections 10, 33 and 38; and its permissible duties are set forth in sections 29, 30, 31, and 34 of said chapter 190, as segregated herein in order to distinguish the mandatory duties of the department from its permissible (authorized) duties.

(2) The department is the sole judge as to what motor vehicle drivers are dangerous on the highways to the public safety and public welfare, and as to who should be issued or refused drivers' licenses, except that it is bound by the judgments of the courts suspending such licenses.

(3) Said chapter 190, section 25, paragraphs 3 and 3(b), makes it mandatory that the department note on its records the suspension of such licenses for violations of the law, both under the old law in existence prior to July 1, 1941, and said new Uniform Motor Vehicle Operators' and Chauffeurs' License Act, the said chapter 190. It is necessary, therefore, that the department be furnished with the record of such convictions by the courts, and especially of such suspensions and revocations by the courts. This is a mandatory duty of the courts.

(4) There was no provision for reciprocity as between the States as to the suspension and revocation of drivers' licenses under the old law; but section 31 of said chapter 190 provides for

such reciprocity between this State and the other States by authorizing the department to recognize suspensions and revocations of drivers' licenses in other States, and to refuse such licenses accordingly.

(5) The department is authorized to refuse to issue drivers' licenses to any drivers whose licenses have been canceled or revoked in any other State, or to cancel or revoke such licenses as have already been issued for the reasons specified in said chapter 190, section 31.

(6) Under the old drivers' license law in effect up to July 1, 1941, the department may take into consideration convictions, suspensions, cancellations or revocations for violation of the drivers' license laws in other States in determining whether it will grant such drivers' licenses in this State; but it is not mandatory that the department grant such a driver a hearing before the appeal board provided for in said chapter 190. Under said chapter 190, particularly section 34(b) thereof, it is mandatory that the department immediately notify such driver of the suspension or revocation of his license in any other State, and give him an opportunity to be heard by said appeal board within 20 days after the receipt of his request for such hearing; and the department has the right to subpoena witnesses, including the licensee, to testify at such hearings, and must either rescind or extend such suspension, and may revoke such licenses altogether.

STATEMENT

CARSON CITY, October 18, 1941.

UNIFORM MOTOR VEHICLE OPERATORS' AND CHAUFFEURS' LICENSE ACT

The 1941 Legislature of this State enacted chapter 190, 1941 Statutes of Nevada, pages 529-542, both inclusive, and therein provided that it may be cited as the "Uniform Motor Vehicle Operators' and Chauffeurs' License Act" which Act was approved by the Governor of this State on March 31, 1941. The last section of the Act, *i.e.*, section 52, provides that it shall take effect from and after June 30, 1941. The Act is not only a comprehensive law on the subject, but is also quite complicated. Like practically all other new laws, certain uncertainties become manifest when it is placed in operation; and certain difficulties arise in giving it force and effect. While it purports to contain seven different articles, the sections of the Act are numbered consecutively from the beginning to the end of the Act and, therefore, ignore the division of the Act into articles. In view of the fact that the sections are numbered consecutively throughout the Act beginning with section 1 and ending with section 52, the division of the Act into articles should be ignored and reference made to the sections alone, omitting the number of the article in which the particular section referred to is found. This plan avoids many complications and some confusion which would exist if the articles themselves were referred to in citing the provisions of the Act. We shall, therefore, follow this plan in our opinions.

Prior to our present 1941 Act, this State had a law providing, among other things, for the licensing of drivers of motor vehicles, the said old Act being chapter 164, 1931 Statutes of Nevada, pages 267-269, inclusive, which Act was repealed and superseded by said chapter 190, 1941 Statutes of Nevada.

This State also had a law providing, among other things, for the punishment of intoxicated drivers of motor vehicles in this State, the same being chapter 166, 1925 Statutes of Nevada, pages 154-158, inclusive, compiled as Nevada Compiled Laws 1929, sections 4350-4373. The last amendment of section 2 of said chapter 166 (Nevada Compiled Laws 1929, section 4351) is in chapter 161, 1939 Statutes of Nevada, page 243, which is still in force and effect, and the law of this State specifying the punishment to be inflicted by the courts upon those found guilty of driving motor vehicles while “*either intoxicated or under the influence of intoxicating liquors, or of stimulating or stupefying drugs*” (drunken drivers or drug addicts in this State). The punishment so specified applies to both resident and nonresident drivers of motor vehicles in this State. Among other things, section 1 of said chapter 161 makes it mandatory that the person found guilty of the violation of the Act be punished for the *first* violation “by imprisonment in the county jail for not less than 30 days nor more than 90 days, or * * * be deprived of his license to operate a car in this State for a period of not less than 30 days nor more than one year.” It also makes it mandatory that a person found guilty of a *second* or *subsequent* violation of said provisions of the Act “shall be punished by imprisonment in the county jail for not less than 30 days nor more than 90 days *and in addition thereto shall be deprived of his license to operate a car in this state for a period of not to exceed one year.*” (Italics ours)

From the foregoing, it will be seen that it is optional with the magistrate as to whether the person convicted of a *first* offense shall be deprived of his license to operate a car. This option of the magistrate is removed, however, as to the *second* or *subsequent* offense. In other words, it is mandatory under said chapter 161 that the magistrate deprive the driver of his license to operate a car in this State every time the person is convicted of a *second* or *subsequent* offense. The magistrate has absolutely no option as to whether he shall deprive such a driver of his license in cases of *second* or *subsequent* convictions. He must deprive the driver of his license in that event if he is to comply with the law as written. However, this is a matter for the courts, not for this office or for the Highway Department or for the administrator under said chapter 190, or for any other administrative officer. It is a judicial matter to be administered by the courts of this State. It must be assumed, however, that the courts will abide by and enforce the law as written, and not exercise discretion where such discretion in imposing punishment is denied them by the law.

The last sentence of said section 1 of said chapter 161 mandatorily prohibits a judge or justice of the peace from suspending sentences imposed by him under said chapter 161 or any part thereof, and reads as follows:

No judge or justice of the peace in imposing such sentence, shall suspend the same or any part thereof.

This prohibition applies to a sentence depriving an operator of a motor vehicle of his license, as well as any other punishment imposed by the sentence. There is not, therefore, any provision of the law of this State permitting a court to suspend or revoke a punishment imposed upon a driver of a motor vehicle who is found guilty of and sentenced by the court for driving a motor vehicle while either intoxicated *or under the influence of intoxicating liquor, or of stimulating or stupefying drugs* (italics ours), or of putting such a driver under probation as is

sometimes reported. Such suspension, revocation, cancellation, or probation is mandatorily prohibited by the last above-quoted sentence.

It must be kept in mind that the penalties to be inflicted under said chapter 190, 1941 Statutes of Nevada, and as provided for therein, are penalties to be inflicted and imposed by the “department,” not by the courts. In fact, the only portion of said chapter 190 which requires anything to be done by the courts is found in section 32 and in section 39 thereof. Said section 32(a) simply provides only that the court in which a person is convicted of any offense for which this Act makes mandatory the revocation of his operator’s or chauffeur’s license by the department “shall require the surrender to it of all operator’s and chauffeur’s licenses then held by the person so convicted” in this State (both resident and nonresident drivers in this State) and that the court “shall thereupon forward the same (the licenses), together with a *record* of such conviction, to the department.”

Section 32(b) provides also that every such court (even municipal courts) shall forward to the department a record of the conviction of any person in that court for any violation of any of said laws of the State, or of any municipal ordinance regulating the operation of such motor vehicles, and may recommend to the department the suspension of the operator’s or chauffeur’s license of the person so convicted.

Said section 39 simply provides for an appeal to the courts from certain decisions, rulings and actions of the department, as specified in said section 39. In other words, the action of the department is not final where the person has been denied a license or whose license has been canceled, suspended, or revoked by the department, except where such cancellation or revocation is made mandatory by the provisions of said chapter 190, but the person involved has the mandatory right to appeal from such action of the department to a court of record in the county where such person resides. This right of appeal continues for a period of 30 days from and after such objectionable action by the department; and the court has jurisdiction to, and it is its mandatory duty to, give the commissioner 30 days’ written notice of the time and place of hearing, and at that time to take testimony and examine into the facts of the case and determine whether the person involved is entitled to the license or is subject to suspension, cancellation or revocation of his license.

COURT JURISDICTION--LIMITATION THEREOF

Said sections 32 and 39 seem to be the only portions of said chapter 190 which impose any duty at all upon any court. In other words, practically all of said chapter 190 deals solely with the rights, privileges, and duties of the department, rather than of the courts, and with the rights, privileges, and duties of drivers of the motor vehicles specified in said chapter, and their duties to obtain licenses either as operators or chauffeurs of such motor vehicles. This chapter 190 does not, therefore, repeal either chapter 166, 1925 Statutes of Nevada (Nevada Compiled Laws 1929, sections 4350-4373), or chapter 161, 1939 Statutes of Nevada, or the provisions of any of the other criminal laws of the State of Nevada relating to motor vehicles, insofar as the courts and their duties are concerned. In other words, the courts still look to said chapter 166 and said chapter 161 to determine their jurisdiction and duties in the trial and punishment of drivers

of motor vehicles, except as to their duties to require drivers convicted in their courts to surrender their licenses to them (the courts) and then forward such licenses, together with a record of such conviction to the department, and except to recommend to the department the suspension of the licenses of such persons so convicted, as provided for in said section 32 of said chapter 190, and except to hear the above-mentioned appeals provided for in said section 39.

DEPARTMENT JURISDICTION

All other matters provided for in said chapter 190 are matters which are solely within the jurisdiction and authority of the department, *i.e.*, the State Highway Department of the State of Nevada, and the administrator thereof and the officers and agents thereof.

It seems from the statement that the first three inquiries arose from the fact that a person was convicted in a Nevada court for drunken driving and his driver's license, issued under the old law, was suspended for a year; that such period of suspension has not yet expired and the suspension is still in effect; and that the person so convicted has applied for, or may apply for, a license under the provisions of said chapter 190, the new 1941 Uniform Motor Vehicle Operators' and Chauffeurs' License Act.

INQUIRIES

1. Do the District Attorney, the Justice of the Peace who tried the case, and the Sheriff of the county have authority to get together and recommend that sentences suspending operators' licenses for motor vehicle law violations imposed under the old law which was in effect prior to July 1, 1941, the effective date of the 1941 Uniform Motor Vehicle Operators' and Chauffeurs' License Act?

2. If said District Attorney, Justice of the Peace and Sheriff have the authority to request that such suspensions of licenses be ignored, do we have authority to comply with such request and issue licenses under said new law to the persons whose licenses were so suspended, notwithstanding such former convictions and existing suspensions? In other words, it is compulsory that the department comply with such requests, or may the department disregard such requests and refuse to issue licenses under the new law to the persons whose licenses were so suspended?

3. Is the department required to issue licenses to such persons so recommended by the District Attorney, Justice of the Peace and Sheriff, and upon such requests of theirs, without making proper notation on the record showing that their original licenses have been suspended for violations of the law?

The same inquirer who propounded the foregoing questions (the administrator under said chapter 190) on the same day but by separate letter asked the official opinion of this office on the following three additional questions as to convictions and suspensions of drivers' licenses in States other than the State of Nevada, which we shall number consecutively 4, 5, and 6:

4. Are suspensions which have been legally made in other States operative as suspensions in the State of Nevada, even though they were made under and while our old law relating thereto was in effect?

5. What is the status in this State of convictions of drivers of motor vehicles in other States under their laws which involve persons owning drivers' licenses' issued under the new 1941 Uniform Motor Vehicle Operators' and Chauffeurs' License Act (said chapter 190)?

6. In the case of such convictions in other States, would this department have to give the persons so convicted a hearing before the appeal board provided for in said Uniform Motor Vehicle Operators' and Chauffeurs' License Act (said chapter 190) before or in order that such convictions be operative in this State under the Nevada law, either the old law or said new 1941 law?

OPINION

1. We shall simplify Inquiry No. 1 by eliminating therefrom the exception in the parentheses beginning with the word "except" and ending with the word "highways," as that exception is immaterial to the inquiry and this opinion, and also by assuming that the word "authority" as used therein simply means the right or power of the officers therein named to so recommend, rather than any express statutory provision making it their duty to recommend (advise) one way or the other on the point; and that the word "suspended" as used therein simply means ignored. It will be noted that there are two kinds of suspensions referred to in the inquiry, or rather suspensions of two different things so mentioned. The first refers to the action of the courts in "suspending operators' licenses." The second, where the word "suspended" is used, refers to the recommendation of the three officers named to the department to suspend the court's suspension of such licenses. In other words, the first suspension is the court's suspension of licenses, while the second suspension mentioned relates to the suspension of the courts; suspension of the licenses. Since the last suspension mentioned clearly implies that the action desired by them is that the department simply ignore the court's suspension of the licenses, we shall assume in this opinion that the word "suspended" means ignored. In other words, what the inquiry contemplates as the action advised by the officers and to be complied with by the department is that the department ignore the suspension of the drivers' licenses made by the courts. The point is that the two ideas of suspension relate to different things, or the suspensions relate to two different things; one, the action of the courts; the other, the desired action of the department. It must be kept in mind that where the word "department" is used in these inquiries and in this opinion, it simply means the Nevada State Highway Department acting through the administrator, who is the State Highway Engineer, and the other officers and agents thereof duly authorized to administer said chapter 190. (See chapter 190, section 6, page 530.)

With the foregoing clarifying remarks in mind, we shall now simplify said inquiry No. 1 by restating it in the following language:

1. RESTATED INQUIRY NO. 1

Do the District Attorney, Justice of the Peace who tried the case, and the Sheriff of the county have the right and power to recommend or advise the department to ignore the action of the courts suspending drivers' licenses for motor vehicle law violations imposed under the old law which was in effect prior to July 1, 1941, so that those persons whose drivers' licenses were suspended by the courts may be legally issued drivers' licenses under the provisions of said chapter 190, the new 1941 Uniform Motor Vehicle Operators' and Chauffeurs' License Act?

It is the unqualified opinion of this office on said Inquiry No. 1, both in its original form and in its revised form, as above stated, that, while the District Attorney, Justice of the Peace who tried the case, and the Sheriff of a county have the absolute right and power to recommend (advise) the department to ignore the action of the courts in suspending motor vehicle drivers' licenses for violation of the motor vehicle law imposed under the laws of the State in effect prior to and up to July 1, 1941, either acting separately or jointly, such action of said county officers is merely advisory to the department and does not, therefore, impose any mandatory duty upon the department to ignore such former courts' suspensions. In other words, such recommendation or advice, if made is merely advisory; and such officers have no right or power to require the department to ignore such courts' suspensions of drivers' licenses.

It will be noted that the question assumes that courts, in imposing sentences for motor vehicle law violations, have the right to suspend, *i.e.*, may lawfully suspend sentences imposed by such courts for such law violations *under the old law*. The fact of the matter is that the last sentence of section 1, chapter 161, 1939 Statutes of Nevada, page 243, absolutely and mandatorily prohibits judges and justices of the peace from suspending sentences imposed by them (both jail sentences and sentences depriving operators of their drivers' licenses as provided for in said chapter 161). Said last sentence of said section 1 reads as follows:

No judge or justice of the peace, in imposing such sentence, shall suspend the same or any part thereof. Chapter 161, 1939 Statutes of Nevada, page 243.

That is still the law of this State as it stands today. In fact, the whole of said chapter 161 is still in force and effect and the law of this State. It is the only law specifying the penalties which may be imposed on drunken drivers of motor vehicles by the courts. For this reason, we here quote the whole body thereof as follows:

SECTION 1. Section 2 of the said act entitled above, being section 4351 N. C. L. 1929, is hereby amended to read as follows:

Section 2. It shall be unlawful for any person or persons, while either intoxicated or under the influence of intoxicating liquor, or of stimulating or stupefying drugs, to drive or conduct any vehicle on any street or highway in this state. Any person who shall violate the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county jail for not less than 30 days, nor more than 90 days, or the person so convicted shall be deprived of his license to operate a car in this state for a period of not less than 30 days nor more than one year; upon a subsequent conviction for an offense under the provisions of

this section, the person so convicted shall be punished by imprisonment in the county jail for not less than 30 days nor more than 90 days and in addition thereto shall be deprived of his license to operate a car in this state for a period of not to exceed one year. No judge or justice of the peace, in imposing such sentence, shall suspend the same or any part thereof. Chapter 161, 1939 Statutes of Nevada, page 243.

It will be noted from the above that, on the first conviction alone, courts (justices courts and all other courts, on appeals and otherwise) have the option of imposing a county jail sentence or of depriving the driver of his license to operate his motor vehicle for the period of time therein specified. On the second or any subsequent conviction, however, this option as to depriving the driver of his license is denied the courts, and it is absolutely mandatory, if the law is complied with, that the courts, *in addition to the imprisonment* specified for such later convictions, *shall deprive the driver of his license* to operate his motor vehicle in this State for a period of not to exceed one year. It is important to keep in mind that it is mandatory that the courts, on such later convictions, must deprive the driver of his driver's license, if they are to comply with the law. There can be no question as to the meaning of the word deprive. It certainly means that the courts shall take such drivers' licenses away from the drivers of motor vehicles so convicted, and now, since said chapter 190 was enacted and approved, they must send such licenses back to the department to be dealt with by the department, if they comply with the law. So far as we know, the justices of the peace and other courts to which convictions are appealed or reviews had on certiorari are complying with this mandatory provision of the law. Certainly, the department has no supervisory power over the courts. Like all other administrative offices and departments, the action of this department is subject to review by the courts. As to this department, this subjection to the courts is expressly provided for in section 39 of said chapter 190, in the following language:

SEC. 39. Any person denied a license or whose license has been canceled, suspended or revoked by the department, except where such cancellation or revocation is mandatory under the provisions of this act, shall have the right to file a petition within 30 days thereafter for a hearing in the matter in a court of record in the county wherein such person shall reside, and such court is hereby vested with jurisdiction and it shall be its duty to set the matter for hearing upon 30 days' written notice to the commissioner, and thereupon to take testimony and examine into the facts of the case and to determine whether the petitioner is entitled to a license or is subject to suspension, cancellation or revocation of license under the provisions of this act. Chapter 190, Statutes of Nevada, section 39, pages 539, 540.

It follows from the foregoing that there is no provision of the law under which suspensions of sentences imposed for violations of the motor vehicle law, especially for drunken driving, may be legally had either under the old law or under the new 1941 Uniform Motor Vehicle Operators' and Chauffeurs' License Act. Since there is no such thing as a legal suspension of such sentences for drunken driving, then it must follow that there is nothing for said District Attorney, Justice of the Peace, and Sheriff of the county to recommend that the department ignore. There would simply be nothing in existence for the department to ignore.

It must be kept in mind that there is nothing in said new 1941 Motor Vehicle Operators' and Chauffeurs' License Act (said chapter 190) which imposes and judicial duty on courts of Justices of the Peace or other courts, except to determine appeals from the action of the department as provided for in said above quoted section 39. The only other duty, right, or jurisdiction of courts provided for in said chapter 190 is as provided for in section 32 of that Act, which reads as follows:

SEC. 32. (a) Whenever any person is convicted of any offense for which this act makes mandatory the revocation of the operators' or chauffeurs' license of such person by the department, the court in which such conviction is had shall require the surrender to it of all operators' and chauffeurs' licenses then held by the person so convicted, and the court shall thereupon forward the same, together with a record of such conviction, to the department.

(b) Every court having jurisdiction over offenses committed under this act, or any other act of this state or municipal ordinance regulating the operation of motor vehicles on highways, shall forward to the department a record of the conviction of any person in said court for a violation of any said laws other than regulations growing, standing or parking, and may recommend the suspension of the operators' or chauffeurs' license of the person so convicted.

(c) For the purposes of this act the term "conviction" shall mean a final conviction. Also, for the purpose of this act a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction. Chapter 190, 1941 Statutes of Nevada, section 32, pages 537, 538.

A reading of this section 32 reveals the fact that the only duty of any court under that section is merely to require the surrender to it of such drivers' licenses when drivers of motor vehicles are convicted of offenses for which said chapter 190 makes it mandatory that the department revoke such drivers' licenses, and the other administrative duties of forwarding such revoked drivers' licenses to the department, *together with a record of such convictions*, and also to forward to the department a record of the conviction of any person in said court for violation of said laws, and to recommend to *your department* that *it* suspend the licenses of such convicted drivers. It should be noted that the duties of such Justices of the Peace and courts in this regard are all administrative, except on appeals as provided for in said section 39. It should also be noted that the suspension mentioned in the last portion of said section 32(b) and which suspension the court may only recommend, not make, is a suspension of the license by your department, not by the Justice of the Peace or of the court. Let me impress the fact that the limit of the court's right, power, and jurisdiction, even in such a case, is merely to *recommend* to the department that the department itself, not the court, suspend the driver's licenses.

The important thing to keep in mind in operating under said chapter 190 is that the duty of enforcing said chapter 190 is definitely imposed upon the department, and, of course, the law enforcement officers of the State, not the courts, except administrative duties of the courts as

provided for in said section 32(a) and (b) and the judicial duty imposed upon the courts on appeal under said section 39. Other than as above indicated, the entire operation of said chapter 190 is for the department, not the courts. The entire duty relating to the issuance, denial, suspension and revocation of drivers' licenses is imposed in the department by said chapter 190. Notwithstanding any such recommendations, or any other recommendations which may be made by any officer or person, the department still has authority and it is still its duty to exercise its own discretion and refuse to issue drivers' licenses for cause, and also to cancel, suspend and revoke them for cause, as provided for in section 10 and in sections 29, 30, and 31, and in sections 33 and 34 of said chapter 190, and to otherwise enforce, through the proper officers, the provisions of said 1941 Uniform Motor Vehicle Operators' and Chauffeurs' License Act.

The department, is, therefore, unhindered in carrying out the provisions of the Act, through the proper officers, except as provided for on appeals under said section 39. It should always be kept in mind, however, by the administrator and other officers and employees of the department that they should not act arbitrarily or autocratically, or unreasonably, in performing the duties imposed upon them by said chapter 190. They should always keep in mind that when they do so act, their conduct is always subject to supervision and correction by the courts, as provided for in said section 39. They should also always keep in mind the fact that, when the court acts and enters its judgment and sentence, they are bound by that judgment and sentence, and must respect it and abide by it. As to punishments which may be inflicted by the courts upon those found guilty of drunken driving or driving while under the influence of stimulating or stupefying drugs, such courts get their right, power, authority, and jurisdiction to impose such punishments under said chapter 161, 1939 Statutes of Nevada, page 240, and from the unamended portion of said chapter 166, 1925 Statutes of Nevada, pages 254-258, both inclusive, not from said chapter 190; and, as to other violations of the criminal provisions of the motor vehicle laws, the courts get their jurisdiction from those laws, not from said chapter 190.

It is most important that your Drivers' License Department created under said chapter 190 keep things in mind constantly in the administration of this law:

(a) It is mandatory under section 10 of said chapter that your department refuse to issue such drivers' licenses to any of the persons mentioned in paragraphs numbered 1, 2, 3, 4, 5, 6, 7, and 8 of that section.

(b) It is mandatory that your department revoke any drivers' license when it receives a record of the conviction of such driver for any of the offenses mentioned in paragraphs 1, 2, 3, 4, 5, and 6 of section 33 of said chapter 190.

(c) It is mandatory that your department refuse to issue a drivers' license to any person to operate a motor vehicle in this State whose license or right or privilege to operate such motor vehicle in some other State than the State of Nevada has been suspended or revoked during such suspension in such other State. This is the clear import of section 38 of said chapter 190.

(d) It is permissible (authorized) under the Act, as distinguished from what is mandatory on your department as stated in paragraphs (a), (b), and (c) above, that your department cancel

any drivers' license when it determines that the licensee was not entitled to it when it was issued to him, or that he failed to give the required or correct information in his application, or when it is determined that he committed any fraud in making such application; and it is mandatory upon the driver that he surrender the license so canceled and that any chauffeur, under such circumstances, also surrender his badge to your department, as provided for in section 29 of said chapter 190.

(e) It is permissible (authorized) as distinguished from the above-mentioned mandatory provisions of the Act, for your department to suspend the license of any motor vehicle driver, even without any preliminary hearing, upon a showing by the records of your department, *or any other sufficient evidence*, that the driver is guilty of any of the offenses mentioned in paragraphs 1, 2, 3, 4, 5, 6, and 7 of section 34 of said chapter 190.

(f) It is permissible (authorized) as distinguished from said mandatory requirements, for your department to either revoke or suspend the drivers' license of any nonresident motor vehicle driver in the same manner and for the same causes as such licenses of resident motor vehicle drivers may be suspended or revoked. This is the clear meaning of section 30(a) of said chapter 190.

(g) It is permissible (authorized) as distinguished from the above-mentioned mandatory requirements of the Act, for your department, upon receiving a record or knowledge of the conviction in this State of a nonresident driver of a motor vehicle for offenses under the motor vehicle laws of this State, to forward a certified copy of such record to the motor vehicle administrator in the State of which such convicted driver is a resident.

(h) It is also permissible (authorized) as distinguished from the above-mentioned mandatory requirements of the Act, for your department to *suspend or revoke* the drivers' license of any resident of this State, or the license or privilege of a nonresident of this State to drive a motor vehicle in this State, upon receiving notice or knowledge of the conviction of such person in another State of an offense in that State, which, if committed in this State, would be grounds for the suspension or revocation of such driver's license, apparently in either State. This is the clear meaning and import of section 31 of said chapter 190. In view of the fact that this is an authorization for reciprocity between this State and other States on this subject of suspension or revocation of drivers' licenses, we believe it worth while to here copy this section 31 in full, as follows:

SEC. 31. *Suspending Resident's License Upon Conviction in Another State.* The department is authorized to suspend or revoke the license of any resident of this state or the privilege of a nonresident to drive a motor vehicle in this state upon receiving notice of the conviction of such person in another state of an offense therein which, if committed in this state, would be grounds for the suspension or revocation of the license of an operator or chauffeur. Sec. 31, chapter 190, 1941 Statutes of Nevada.

We have dealt with the mandatory provisions of said chapter 190 as distinguished from the permissible provisions thereof, or the mere authorizations thereof, at such length in the

immediately preceding paragraph for the reason that we believe that it is important to impress upon the administrator and those engaged in the administration of said chapter 190 exactly what provisions thereof are mandatory upon or absolutely required of your department, and exactly what provisions thereof are merely advisory upon your department or permit or authorize it to act. These distinctions between the things which the law absolutely requires your department to do as to suspensions, cancellations and revocations of said drivers' licenses and those which the law merely authorizes or permits your department to do, are matters which those engaged in the administration of said chapter 190 should always keep in mind.

2. OPINION ON INQUIRY 2

This inquiry is answered in large measure by the quotation and citation of authorities heretofore given in this opinion. It is only necessary, therefore, to say that it is not compulsory that the department comply with such requests or recommendations or advice of such District Attorneys, Justices of the Peace and Sheriffs. Your department may properly disregard the same and refuse to issue licenses under the new law to persons whose licenses were so suspended. This is especially true when the administrator and his assistants have good cause to believe that the operation of a motor vehicle on the highways by such person would be inimical to public safety or welfare, as provided for in section 10 of said chapter 190, particularly under paragraph 8 of that section which reads as follows:

SEC. 10. The department shall not issue any license hereunder;

8. To any person when the administrator has good cause to believe that the operation of a motor vehicle on the highways by such person would be inimical to public safety or welfare.

In other words, your department has complete right and authority to exercise its own discretion as to what persons would be dangerous to public safety or the public welfare if permitted to drive motor vehicles, and to issue or refuse to issue drivers' licenses accordingly. In the first place, said officers, while they have the right to recommend or advise, have absolutely no right to compel or require your department to act according to their requests, except your department is bound by any judgment of any court suspending such licenses until the time of such suspension as provided for in the judgment expires.

3. OPINION ON INQUIRY 3

This inquiry is answered by our opinion on Inquiry No. 2 above. It is sufficient to say that your department is not required to either issue or refuse to issue drivers' licenses to such persons in accordance with the recommendations or advice of such officers, either with or without making proper notations on the record showing that their licenses have been suspended for violations of the law. In this connection, the law definitely and positively provides that such notations shall be made upon the records of your department. Section 25 of said chapter 190, paragraphs 3 and 3(b) reads as follows:

SEC. 25. The department shall file every application for a license received by it and shall maintain suitable indices containing, in alphabetical order:

3. The name of every licensee whose license has been suspended or revoked by the department and after each such name note the reasons for such action.

(b) The department shall also file all accident reports and abstracts of court records of convictions received by it under the laws of this state, and in connection therewith maintain convenient records or make suitable notations in order that an individual record of each licensee showing the convictions of such licensee and the traffic accidents in which he was involved shall be readily ascertainable and available for the consideration of the department upon any application for renewal of license and at other suitable times.

It is our opinion also that records of court convictions suspending or revoking drivers' licenses even prior to the effective date of the new 1941 law, *i.e.*, July 1, 1941, should also be furnished your department. This is necessary in order that your department may have a record of such convictions upon which the action of your department may be based on present or future applications for drivers' licenses. This record is much needed in order that your department may check the correctness of the information as to convictions furnished by applicants in their applications with that record. Without such record, there would be no way for your department to check the correctness of the information so furnished by applicants in their applications, misstatements as to which is made a felony (perjury) by section 41 of said chapter 190, which reads as follows:

SEC. 41. Any person who makes any false affidavit, or knowingly swears or affirms falsely to any matter or thing required by the terms of this act to be sworn to or affirmed, is guilty of perjury and upon conviction shall be punishable by fine or imprisonment as other persons committing perjury are punishable.

4. OPINION ON INQUIRY 4

There does not seem to be any provision requiring reciprocity as between this State and any other State or nation in the matter of the suspension and revocation of drivers' licenses. It appears, therefore, that there was not anything in the law prior to the effective date of said chapter 190 requiring this State to comply with or recognize suspensions of drivers' licenses in any other State. However, section 31 of said chapter 190 does provide reciprocity, or rather provides that your department may extend reciprocity to any other State in this regard and recognize in this State the suspensions and revocations of such drivers' licenses made in other States. In addition to this, section 34(a), and particularly paragraph 7 thereof, authorizes your department to recognize such suspensions, cancellations and revocations made in other States. Said section 34, paragraph 7, are in the following language:

SEC. 34(a). The department is hereby authorized to suspend the license of an operator or chauffeur without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee:

7. Has committed an offense in another state which if committed in this state would be grounds for suspension or revocation.

5. OPINION ON INQUIRY 5

The status in this State of convictions of drivers of motor vehicles in other States under their laws which involve persons owning drivers' licenses issued under said chapter 190 is that your department is authorized to refuse to issue drivers' licenses to any such drivers, or to cancel or revoke, for the reasons specified in said chapter 190, drivers' licenses which have already been issued to such drivers. This is provided for in section 31 of said chapter 190.

6. OPINION ON INQUIRY 6

Under the old law, *i.e.*, the law in force and effect up to July 1, 1941, the effective date of said chapter 190, such convictions and suspensions, cancellations, or revocations in other States are not necessarily effective in the State of Nevada, except that your department may take into consideration any record or knowledge it may have as to such convictions, suspensions, cancellations, or revocations in determining whether or not it will grant such persons drivers' licenses. Under said chapter 190, and particularly under section 34(b), it is mandatory that your department immediately notify the driver in writing of such suspension or revocation and, upon his request therefor, afford him an opportunity for a hearing as soon as practical within 20 days after receipt of such receipt. This hearing shall be had in the county where the licensee resides, unless the department and the licensee agree that such hearing may be had in some other county. Witnesses may be subpoenaed to attend such hearing and required to testify under oath as to the facts involved, and to produce books and papers which are relevant, and the department may require a reexamination of the licensee. Upon such hearing, the department must either rescind its order of suspension or, upon good cause, may extend the suspension of such licenses, or may revoke such licenses altogether.

Respectfully submitted,

GRAY MASHBURN, Attorney-General.

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

SYLLABUS

325. Department of Health.

Under the Nevada statutes a Federal health officer must be properly licensed in the State of Nevada before acting as a local health officer.

STATEMENT OF FACTS

CARSON CITY, September 24, 1941.

The Federal Government with Clark County's financial cooperation has agreed to furnish an additional health officer to take care of increasing health problems brought about by the great increase in population in Clark County. The health officer to be named is under the direct control of the Federal Government. He holds an M.D. degree from an accredited college of the United States and, we are likewise informed by you, he has been licensed to practice medicine in other adjoining States. He does not hold a license to practice medicine or osteopathy in the State of Nevada.

INQUIRY

Under the above set of facts, must the Federal health officer be a licensed doctor or osteopath in the State of Nevada before he can act as a local health officer?

OPINION

In our opinion the Federal health officer must be properly licensed in the State of Nevada before acting as a local health officer.

Section 6 of the Public Health Act of the State of Nevada as originally enacted in 1911, and as amended in 1913, contained no qualifications as to a local health officer. However, in 1919 the State Legislature required that local health officers shall be "learned in sanitary science, public health practice and the diagnosis of infectious diseases." This section as amended by the 1919 Legislature has remained unchanged. It is a well-established rule of law that we must look to the individual State statutes in order to find the requisite qualifications for appointment. See 29 C. J. Sec. 20, page 246.

In addition to the qualifications noted above, the local health officers are empowered and it is made part of their duty to investigate cases of dangerous, contagious, or infectious diseases and to take the necessary steps to prevent, suppress, and control such diseases. See sec. 5265 Nevada Compiled Laws 1929.

Likewise, the local health officers are charged with certain duties in connection with the control, prevention, and cure of venereal diseases. See 1937 Statutes of Nevada, page 387. Many other instances may be cited from the public health and companion Acts which lead us to the belief that the local health officer is in many cases engaged in the practice of medicine.

Since a local health officer must be learned in the diagnosis of infectious diseases, and since in turn he is charged with the duty of investigating and diagnosing and preventing such diseases, it is our opinion that he is practicing medicine as the same is defined in section 13 of the Medical Practice Act (sec. 4102 Nevada Compiled Laws 1929). This Act, insofar as pertinent to your inquiry, reads as follows:

For the purposes of this act the words "practice of medicine, surgery and obstetrics,"

shall mean * * * to investigate or diagnosticate or to offer to investigate or diagnosticate any physical or mental ailment, or disease, of any person, or to give surgical assistance to, or to suggest, recommend, prescribe or direct for the use of any person, any drug, medicine, appliance or other agency, whether material or not material, for the cure, relief or palliation of any ailment or disease of the mind or body, or for the cure or relief of any wound, fracture, or bodily injury, or deformity, after having received or with the intent of receiving therefor, either directly or indirectly, any money, gift, or any other form of compensation. It shall also be regarded as practicing medicine within the meaning of this act if any one shall use in connection with his or her name, the words or letters "Dr.," "Doctor," "Professor," "M.D.," or "Healer," or any other title, word, letter or other designation intended to imply or designate him or her as a practitioner of medicine, or surgery, or obstetrics in any of its branches; *provided*, that nothing in this act shall be construed to prohibit gratuitous services of druggists or other persons in cases of emergency, or the domestic administration of family remedies, and this act shall not apply to commissioned surgeons of the United States army or navy in the discharge of their official duties, nor shall it apply to professional or other nurses in the discharge of their duties as nurses, nor to physicians who are called into this state for consultation, and who are legally qualified to practice in the state where he or she resides.

The exemptions noted in the above section of the law do not cover the Federal health officer mentioned in your statement of facts, and although it may be wise public policy to grant a temporary license under such circumstances, unfortunately the Legislature has not seen fit to do so. Obviously we cannot read into the law this additional exemption.

It appears from your statement of facts that the Federal health officer is a graduate of an accredited school and is likewise admitted to practice in several other States. Section 6 of the Medical Practice Act, as amended by the 1931 Legislature (being section 4095 Nevada Compiled Laws 1929) allows the Medical Board to admit by reciprocity. Under the law, your board again meets on the first Monday in November, so it is very clear to us that the Federal health officer can at that time appear before your board in order to be examined and admitted by reciprocity.

We appreciate that there is much work to be done in the Clark County area, and we feel that it is well within your discretion to permit the Federal health officer to establish himself in Clark County in order to set up such administrative machinery and to make such preliminary investigations, short of actual practice of medicine, as may be necessary.

We are likewise calling to your attention that section 12 of the Osteopathic Act, insofar as pertinent to the foregoing inquiry, provides as follows:

Osteopathic physicians and surgeons licensed hereunder shall have the same rights as physicians and surgeons of other schools of medicine. Osteopathic physicians licensed hereunder shall have the same rights as physicians and surgeons of other schools of medicine, with respect to the treatment of cases or the holding of offices in public institutions. Section 5001 Nevada Compiled Laws 1929.

This office has previously held that since physicians and surgeons have the right to practice optometry, and that since osteopathic physicians are given the same rights as physicians and surgeons, they, too, have the right to practice optometry. Attorney-General's Opinion No. 179, 1925-1926 biennium.

Accordingly, we are of the opinion that a duly licensed osteopathic physician or surgeon would be qualified under our law to act as an health officer.

In closing, we believe that it is significant that the Legislature has required a local health officer to be learned in the diagnosis of infectious diseases, and that they have made it his duty to diagnose such diseases. The Legislature, having prescribed the qualifications, has also set up the method of determining whether or not the applicant is learned and whether or not he is qualified to practice medicine by the enactment of the Medical Practice Act and the Osteopathic Act, both of which Acts require certain examinations before anyone professing to have the necessary qualifications can be admitted to practice in the State.

Although it is of no binding legal effect, it is significant that we are advised by the State Board of Health that to the best of their knowledge every local health officer in the State of Nevada during the past 20 years has been a licensed physician and surgeon, with two or three exceptions, in which exceptions the local health officer was a licensed osteopath.

Respectfully submitted,

GRAY MASHBURN, Attorney-General.

By ALAN BIBLE, Deputy Attorney-General.

DR. FRED M. ANDERSON Secretary, State Board of Medical Examiners, Carson City, Nevada.

Attention:

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

SYLLABUS

326. Taxation--Assessment of Property After Sale for Delinquent Taxes.

Property bid in by private individual, property assessed to such individual during period of redemption and thereafter if not redeemed; assessments made to county treasurer where property bid in by such treasurer at the sale thereof.

INQUIRY

CARSON CITY, October 9, 1941.

Where real property is sold for delinquent taxes, thereafter during the two-year period of redemption should the County Assessor list such property on the real property roll of his county in the name of the delinquent taxpayer and include such assessment in the total assessed valuation of the county, or should the property be assessed to the County Treasurer during such period, and if the property is assessed to the county treasurer, should the assessed valuation and amount of taxes thereof be included in the total of valuations and taxes listed on the county rolls?

OPINION

Section 6448 Nevada Compiled Laws 1929, provides, inter alia: “Until the period of redemption has expired, the property described in the certificate of sale shall be assessed to the person named in such certificate of sale * * *.” The “person named in the certificate of sale” is the person bidding in the property, whether such person is a private individual or the County Treasurer in his official capacity.

It is provided in section 6462 Nevada Compiled Laws 1929 that where the County Treasurer bids in the property at a delinquent tax sale, that thereafter such treasurer and his successor in office shall hold such property in trust for the use and benefit of the county and State. The section further provides:

When the time allowed by law for redemption shall have expired, and no redemption shall have been made, the officer who made such sale shall execute and deliver to such treasurer who bought in such property a deed of the same, in trust as aforesaid; and such treasurer, and his successors in office, upon obtaining a deed of any property, in trust as aforesaid, under the provisions of this act, shall hold such property in trust until the same is sold * * *.

Section 6463 Nevada Compiled Laws 1929 provides that while the property is held in trust by the County Treasurer, he or his successor may rent such property, collect the rents thereon, and from such rents pay (1) the costs and taxes for which the property was sold, (2) the taxes thereafter accruing on the property, and (3) any balance remaining after the payment of the taxes to the General Fund of the county.

Section 6465 Nevada Compiled Laws 1929 provides:

During the time any property is held in trust, under the provisions of this act, it shall be annually assessed to such treasurer, and his successors in office, in the same manner that the taxable property of private persons is assessed, except that such assessment shall express that it is made against him as a trustee. But no proceedings shall be taken to enforce the collection of such taxes against the trustee. When the property is sold or rented for sufficient to pay the taxes and costs legally chargeable against such property, then the same shall be, by the trustee, fully paid; and in case any parcel of property shall not be of sufficient value to pay all the tax, costs and percentage legally chargeable against the same, then the board of commissioners,

upon a sale of such property, may remit the balance of such taxes over and above its value.

From the foregoing sections of the revenue law, it is clear that upon the sale of real property for delinquent taxes that the subsequent assessment of such property thereafter must be made to the persons and for the periods of time as follows:

1. Where the delinquent property is bid in by a private individual the subsequent assessments during the two-year period of redemption must be made to such individual, and, of course, if the property is not redeemed the assessments are to continue to be made against such individual until a new owner is shown of record.

2. Where the property is bid in by the County Treasurer, the subsequent assessment of the property, during the period of redemption, and thereafter where such property is not redeemed, and also until the property is sold, is to be made to the county treasurer as trustee for the benefit of the county and State.

With respect to the question of whether the valuation of and amount of the tax on property assessed to the County Treasurer should be included in the total of valuations and taxes listed on the county tax rolls, we are of the opinion such valuation and tax should be extended on the rolls each year and included in the total valuation and tax for that year. Section 6465, *supra*, provides that during the time any property is held in trust under the provisions of the Act, "*it shall be annually assessed to such treasurer, and his successors in office, in the same manner that taxable property of private persons is assessed.*" (Italics ours.) This language is clear and means that the same method of assessment is to be had as is had with respect to a private individual and which method of assessment includes the extending of the assessment on the tax rolls in its entirety.

Respectfully submitted,

GRAY MASHBURN, Attorney-General.

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

THE NEVADA TAX COMMISSION, Carson City, Nevada.

SYLLABUS

327. District Attorneys.

Duties of District Attorneys in connection with preparation of necessary papers and checking steps of County Board of Education in perfecting a bond issue constitute a part of the District Attorney's official duties without additional compensation.

INQUIRY

CARSON CITY, October 14, 1941.

Do the services performed by a District Attorney for a County Board of Education in connection with a bond election to secure funds with which to construct a new high school building (embracing the preparation of a Certificate of Necessity and Determination, board minutes, forms for election elements, a thorough check of all steps set forth in the statutes for bond elections, etc.) constitute a part of the District Attorney's official duties as contemplated by statute, or is he entitled to compensation therefor from the County High School Fund?

OPINION

The matter of perfecting an issuance of bonds for county high school purposes, which includes the construction of a new high school building, is governed by sections 5904 to 5913, inclusive, Nevada Compiled Laws 1929. A perusal of these sections discloses that after the County Board of Education has advised the Board of County Commissioners that a bond issue is necessary for high school purposes that it then becomes the duty of the Board of County Commissioners to order the bond election for the county and to thereafter take all of the necessary statutory steps for the holding of such election, perfecting the bond issue, and issuing the bonds. None of these duties are to be performed by the County Board of Education. District Attorneys are the legal advisers of the Boards of County Commissioners, as well as the legal advisers of County Boards of Education, and, we think, it is incumbent upon District Attorneys, in any event, to perform legal services for their Boards of County Commissioners as required in the foregoing cited sections without additional compensation. It is specifically provided in section 5912, supra, that "no additional allowance, fee, or compensation whatever shall be paid to any officer for carrying out the provisions of this Act." We think that this language applies to District Attorneys as well as other county officers.

Section 2076 Nevada Compiled Laws 1929, as amended at 1935 Statutes, page 19, provides as follows:

The district attorney shall draw all indictments, when required by the grand jury; shall defend all suits brought against his county; 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; he shall also draw all legal papers and transact the legal business of the school districts within his county, and such other legal duties as may be required of him by the school trustees of the school districts within his county; and he shall also perform such other duties as may be required of him by law.

It is clear that under this provision of the law, District Attorneys are required to transact all the legal business of school districts within their counties, and we think that such section as amended qualifies and amends section 5763 Nevada Compiled laws 1929, which section provided that District Attorneys must give, when required, and without fee, their opinions in writing to School Trustees. The amended section 2076 certainly qualifies, it is does not in fact

repeal, section 5763. The District Attorneys being required under the law of this State to perform all legal services required by School Trustees, it follows, we think, that by reason of the language contained in section 5828 Nevada Compiled Laws 1929, as amended at 1931 Statutes, page 32, reading “the county high school shall be under the same general supervision and shall be subject to the same laws, rules, and regulations governing the other schools of the state school system,” that County Boards of Education are entitled to the same services of District Attorneys without additional compensation that Boards of School Trustees are entitled to.

Entertaining the views above set forth, we are constrained to answer your inquiry in the negative, and hold that he is not entitled to additional compensation from the County High School Fund.

Respectfully submitted,

GRAY MASHBURN, Attorney-General.

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

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

SYLLABUS

328. County Hospitals.

In those cases where the District Attorney is clearly disqualified to act, the Board of Trustees of a county hospital may employ and compensate independent counsel.

STATEMENT OF FACTS

CARSON CITY, October 23, 1941.

Chapter 81 of the 1941 Statutes, being entitled “An Act to appropriate money for direct relief and work relief in cooperation with the government of the United States of America; to provide for an agency to certify relief labor to the work projects administration and other federal work programs employing relief labor; to assist in the cost of distributing federal surplus commodities to school lunches and to state and county charitable institutions throughout the State of Nevada; for the purpose of providing the necessary means of issuing federal food stamps to the needy of the State of Nevada; for the purpose of paying the cost of distribution to the needy of Nevada of clothing and household articles made by work projects administration sewing units, and other matters relating thereto,” provides in section 2 thereof, as follows:

This money shall be paid to the federal emergency relief administration for Nevada in installments of three thousand dollars (\$3,000) per month, the first installment to be paid on or before the fifteenth day of April 1941, and a like amount thereafter on

or before the fifteenth day of each calendar month for the period of nineteen (19) months; *provided, however*, that in the event the federal government shall discontinue its employment relief, said monthly payments to be the federal emergency relief administration for Nevada shall likewise be discontinued.

A similar Act was passed by the 1939 Legislature of the State of Nevada. See chapter 103 Statutes of Nevada 1939. Both the 1941 and 1939 Acts were patterned after chapter 97 of the 1935 Statutes of Nevada which was an Act authorizing the State of Nevada to provide for employment relief in cooperation with the Government of the United States of America. The 1935 Act likewise provided that definite sums of money should be paid each month to the Federal Emergency Relief Administration for Nevada and to be expended by said Federal Emergency Relief Administration for the purpose of direct relief, work relief, and the purchasing of supplies and materials for work relief only, and expenses incidental thereto within the State of Nevada.

Section 13 of the emergency relief appropriation Act of 1937 (50 U. S. Stats. 352) provided in section 13 thereof, that the Works Progress Administrator was authorized and directed to liquidate and wind up the affairs of the Federal Emergency Relief Administration, and funds available to said administration should be available for such purpose until June 30, 1938.

INQUIRY

1. In view of the provisions of the Emergency Relief Appropriation Act of 1937, is the Board of Examiners authorized to approve claims for \$3,000 per month payable to the Federal Emergency Relief Administration for Nevada as provided in section 2, chapter 81 of the 1941 Statutes of Nevada?

2. If such payments can be continued, can the State Welfare Board or the State Board of Relief, Work Planning and Pension Control be substituted in place of the agency now handling the \$3,000 monthly payments?

OPINION

Answering Query No. 1. Your first question is answered in the affirmative. We believe that the 1935, 1939, and 1941 Legislatures did not intend to limit and tie down the State's cooperation with the United States Government to any one specific Federal Agency but rather to cooperate just as long as the Federal Government was furnishing employment relief. The title of the 1941 Act is clear on this point. The State is providing money (1) for the purpose of paying the cost of direct relief, work relief and the purchase of supplies and materials for work relief and expenses incidental thereto; (2) for the purpose of providing a certifying agency; (3) for the purpose of assisting in the costs of distribution of Federal surplus commodities; (4) for the purpose of providing a means for issuing Federal food order stamps; and (5) for the purpose of paying certain costs of distribution. As long as the money is being used for these express purposes and as long as the Federal Government has not discontinued its employment relief, your Board of Examiners should legally continue to allow claims in the sum of \$3,000 per month

payable to the Federal Emergency Relief Administration for Nevada, even though this Emergency Relief Administration may actually now be known by some other alphabetical designation.

Practically the same question was presented to this office by Honorable Richard Kirman, then Governor of the State of Nevada, and under the date of November 16, 1935, his inquiry was answered by Attorney-General Mashburn as follows:

You ask, in effect, whether chapter 97 of the 1935 Statutes of Nevada, page 216, and the title of the Act is broad enough to warrant the State Board of Examiners in further issuing bonds under the authority of that chapter “to any other Agency of the Federal Government, other than the Federal Emergency Relief Administration for Nevada” which may be created by the Federal Government as the successor of said Federal Emergency Relief Administration of Nevada, and having “*practically the same powers and authority in providing work relief and purchase of supplies and materials for work relief.*”

It is the unqualified opinion of this office that said chapter 97 is broad enough, both in its title and in the provisions of the body of the Act to authorize the Board of Examiners to continue to issue the bonds provided for in the Act at the rate of \$26,000 per month for the period of twelve (12) months, notwithstanding the fact that the name of the agency through which this relief is to be administered may be or may have been changed. It will be noted that this Act is remedial legislation, and it is a fundamental rule of construction of the law that remedial legislation must be liberally construed. It will be noted that the purpose of the Act and of providing the money by the issuance and sale of bonds for the purposes of the Act, as provided for in section 1 of the Act is for the payment of “*the costs for direct relief, work relief, and purchase of supplies and materials for work relief.*” It will be noted also that this purpose is to be carried out “*in cooperation with the Government of the United States of America,*” not in cooperation with some definitely named agency of the Federal Government. In other words, it is the opinion of this office that the agency named in the Act through which this money is to be expended for “direct relief, work relief, and the purchase of supplies and materials for work relief,” is a secondary consideration, and of little or no importance insofar as carrying out the purposes of the Act is concerned and wholly immaterial. It is well known to you, and to all others who were actively engaged in considering the facts and circumstances which led up to the passage and approval of this Act, and the motivating purposes of it, that there was a great deal of unemployment in the State and a great deal of need of relief of the nature provided for in the Act, and that the Federal Government refused or it at least threatened to refuse to contribute money for these purposes unless the Federal money was matched by State money to the extent of \$26,000 per month. The purpose of the adoption and approval of this Act was to obtain money to match this Federal money to that extent and to thereby secure Federal money to pay “*the cost of direct relief, work relief, and the purchase of supplies and materials for work relief.*” In other words, the very purpose of the Act was to secure money to cooperate with

the Federal Government in this relief and relief work, not to turn the money over to some particularly designated agency of the Federal Government or the State Government. It was not the purpose of the Act to name the agency through whom this relief work was to be done, but the definite and express purpose of the Act was to secure this State money and contribute it, "*in cooperation with the Government of the United States of America*" for the wholesome and remedial purposes mentioned in section 1 of the Act, *i.e.*, "for direct relief, work relief and purchase of supplies and materials for work relief."

For the foregoing reasons it is the unqualified opinion of this office that the State Board of Examiners is unquestionably authorized under the Act to continue the issuance and sale of these bonds to the extent of \$26,000 per month for the period specified in the Act, or so long, within that period, as the Federal Government requires such contribution as a condition precedent to its contributions for the purposes named in the Act.

Although it is true that the officially titled Federal Emergency Relief Administration was superseded by the Works Progress Administration by virtue of the 1937 Emergency Relief Appropriation Act, it is likewise true that the same general purposes of employment relief, both work and direct, were carried forward by the Work Relief Act of 1938 (52 U. S. Stats. 809), by the Emergency Relief Appropriation Act of 1939 (53 U. S. Stats. 927) and by the Emergency Relief Appropriation Act of 1941 (54 U. S. Stats. 611).

A legislative research of Federal statutes therefore leads us to the conclusion that the United States has not discontinued its employment relief. We have, in addition, been furnished by Honorable Gilbert C. Ross, the former Works Progress Administrator for Nevada, a statement of relief employment expenditures by the Federal Government from January 1, 1941, through July 31, 1941. These expenditures by the Federal Government for employment relief within the State of Nevada total \$925,891.75, and in addition to this amount \$65,615.86 has been spent by the Federal Government for the value of food stamps.

Answering Query No. 2. Your second question is answered in the negative. In our opinion, the Nevada Legislature in 1941 very specifically provided that payments in the sum of \$3,000 per month should be made to the Federal Emergency Relief Administration for Nevada. It did not provide, as was within its province to provide, that the money should be transferred to either the State Welfare Department created by chapter 127 of the 1937 Statutes of Nevada or to the State Board of Relief, Work Planning and Pension Control created by chapter 138 of the 1935 Statutes of Nevada. It has been urged that the State Welfare Department could perform the duties now being performed by the N. E. R. A. of Nevada, which agency was set up to aid in administering Federal emergency relief in the State. It has likewise been urged that the State Welfare Department already has a force of welfare workers and investigators who could perform many of the duties now being performed, for example, by the certifying agency of the N. E. R. A. Both of these statements may be true, but unless we can find in the Act itself something authorizing such transfer, the question is one for the Legislature rather than for judicial interpretation.

We believe that the opinion given by this office in 1935, which is reaffirmed in our present answer to your first inquiry, clearly shows that the purpose of the State was to cooperate with the Government of the United States of America through some Federal emergency relief agency, even though this agency may not at the present time be known as F. E. R. A., W. P. A., or E. R. A., just as long as that agency, whatever its name or title, was continuing employment relief and was using the State's money for the purposes noted in section 1 of the 1941 Act.

In addition, a careful examination of the Act creating the State Board of Relief, Work Planning and Pension Control does not vest in that board the authority to receive the \$3,000 monthly appropriation. On the contrary, the powers and duties of such board are best expressed in subparagraph 8 of section 3, as follows:

To cooperate with and advise the federal emergency relief administrator for Nevada and such other boards or officers of the federal government as are now or may hereafter be empowered to administer federal relief, either work or direct, in the State of Nevada.

This particular power and duty seems clear and unequivocal. Unquestionably the W. P. A. Administrator will be only too happy to meet and cooperate with such board and to receive the board's advice as to the expenditure of the \$3,000 provided in chapter 81 of the 1941 Statutes. This will, in a measure, provide a State check by a State agency over the amount of money appropriated each month for our State's cooperation with the Federal Government. In addition, we are advised that the disbursing officer of the W. P. A. Makes a monthly report as to each cent of State money expended, with a detailed breakdown of the exact purpose for which such money was expended. The W. P. A. Administrator will no doubt, upon request, furnish you and the State Controller with duplicates of this monthly account.

In addition, the State Welfare Board should receive from the W. P. A. Administrator monthly statements to the end that it may definitely determine how State money is being spent and that it is being spent for the purposes set forth in the 1941 Statutes. Of course, such monthly payments should be discontinued whenever the Federal Government discontinues its employment relief within the State of Nevada. We suggest, that in light of the constitutional provision, claims for materials and services should not be paid in advance, and no claim should be allowed until it has been actually incurred and is due, and has been submitted to the Board of Examiners and received its approval.

Reference to the State Welfare Act, supra, does not authorize or empower the State Welfare Board to accept and expend the money appropriated by chapter 81 of the 1941 Statutes. A careful reading of each of the duties of the State board as set forth in section 3 of the Act leads us to the conclusion that although the State Welfare Board may assist and cooperate with the Federal and State agencies charged with relief, there is no specific mandate that it do so, nor is there any authority conferred upon the board to bind the Federal agency by its acts.

The Legislature having failed to provide even in 1939 or in 1941 that the functions of the

Federal Emergency Relief Administration for Nevada should be transferred to the State Welfare Department or the Board of Relief, Work Planning and Pension Control, we know of no way the money appropriated by chapter 81 of the 1941 Statutes can be legally transferred to either of these boards.

We have heretofore expressed ourselves as believing that as long as the money is being used for the five purposes set forth in section 1 of the 1941 Statutes and as long as the Federal Government has not discontinued its employment relief, the Board of Examiners should continue to allow claims in the sum of \$3,000 per month to the proper Federal agency in charge of work and direct relief. It was heretofore noted that the Federal Government was still engaging in employment relief within the State of Nevada; that it had expended \$925,891.75 for such employment relief during the first seven months of this year, and that it had expended an additional \$65,615.86 for direct food distribution and food stamps. We reiterate that on this showing, the Federal Government has clearly not discontinued employment relief.

Is that \$3,000 appropriated each month being used for the purposes set forth in section 1 of the 1941 Act? According to the financial statement furnished this office by the Works Progress Administrator for Nevada, approximately \$700 is spent per month for surplus commodity distribution; approximately \$1,300 is being spent per month for the certifying agency; approximately \$275 per month is spent for work and direct relief; and approximately \$330 per month is spent for accounting office salaries. It seems, therefore, that the State moneys are being used for the purposes set forth in the 1941 Act and, although it is argued that a small percentage of the State money actually goes to work and direct relief, it should be borne in mind that there is no express provision among the purposes of section 1 of the 1941 Act that any specific or special amount of money be used for any one of the enumerated purposes. Since the great majority of work and direct relief is paid for directly by Federal appropriation, it seems natural to us that this particular item would be comparatively small.

Respectfully submitted,

GRAY MASHBURN, Attorney-General.

By ALAN BIBLE, Deputy Attorney-General.

HON. E. P. CARVILLE, Governor of the State of Nevada, Carson City, Nevada.

SYLLABUS

329. Federal Emergency Relief Administration.

The Board of Examiners is authorized to approve claims for \$3,000 per month payable to the Federal Emergency Relief Administration for Nevada, as provided in section 2, chapter 81, 1941 Statutes of Nevada. The State Board of Relief, Work Planning and Pension Control is authorized to cooperate with the Federal agencies in administration of relief.

STATEMENT OF FACTS

CARSON CITY, October 14, 1941.

The Board of Trustees of your county hospital presented the Board of County Commissioners with a petition asking for a special election to determine if a tax should be levied for the construction, equipment, and maintenance of additional buildings at the hospital pursuant to section 2225 of the Nevada Compiled Laws of 1929, as amended by the Statutes of 1931, page 231.

The Board of County Commissioners in turn asked its District Attorney as to the legality of said petition. The District Attorney in compliance with the request wrote an opinion in which he set forth the legal requirements as to the test for the sufficiency of qualified signers. He likewise held that the petition as presented did not comply with the requirements of the Nevada law.

The Board of Trustees of the county hospital desire to employ independent counsel to take necessary steps in order to prove that the number of signatures complies with the law and, in addition, that the petition is a legal document.

INQUIRY

Is the Board of Trustees of the county hospital authorized to employ and compensate independent counsel to aid and assist it?

OPINION

In our opinion, where the District Attorney is clearly disqualified to act, the Board of Trustees of the county hospital may employ and compensate independent counsel. Under the above statement of facts, we believe that the District Attorney would be clearly disqualified to represent the Board of Trustees of the county hospital.

Section 2076 of the Nevada Compiled Laws of 1929, as amended by Statutes of Nevada, page 19, reads as follows:

The district attorney shall draw all indictments, when required by the grand jury; shall defend all suits brought against his county; 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; he shall also draw all legal papers and transact the legal business of the school districts within his county, and such other legal duties as may be required of him by the school trustees of the school districts within his county; and he shall also perform such other duties as may be required of him by law.

Section 2080 N. C. L. 1929 reads as follows:

The district attorney shall, without fees, give his legal opinion to any assessor, collector, auditor, or county treasurer, and to all other county, township or district officers, within his county, in any matter relating to the duties of their respective offices.

Section 2228 N. C. L. 1929, as amended by the Statutes of Nevada 1937, page 195, relating to the powers and duties of the hospital trustees insofar as pertinent to this inquiry reads as follows:

* * * Said board of hospital trustees shall have power to appoint a suitable superintendent or matron, or both, and necessary assistants, and to fix their compensations, and shall also have power to remove such appointees; and shall in general carry out the spirit and intent of this act in establishing and maintaining a county public hospital. * * *

As noted from the copy of the District Attorney's opinion attached to his inquiry to this office, he has advised the Board of County Commissioners, among other things, that the petition presented to it "in respect to the amount sought to be levied is not in due form and in conformity with the requirements of the above sections of the Nevada law."

One of the mandatory duties placed upon the District Attorney is to "defend all suits brought against his county," section 2076, supra. If mandamus proceedings could be brought to compel the County Commissioners to call a special election, it would be the District Attorney's first duty to defend his county and his Board of County Commissioners.

Under such circumstances, he is clearly disqualified to act for the Board of Hospital Trustees. It should be noted, however, that this applies only to the special set of facts presented by your inquiry. The District Attorney is the legal adviser for the Board of Hospital Trustees and is charged with the duty of furnishing it with legal opinions. Section 2080, supra. Except where the Board of Hospital Trustees finds it necessary to bring legal action to collect claims due to the hospital and except in cases such as the one presented by the above statement of facts in which the District Attorney is disqualified, it is our opinion that the Board of Hospital Trustees must look to its own District Attorney for his advice and assistance.

The District Attorney being disqualified, is the Board of Hospital Trustees authorized to employ and compensate independent counsel? We believe the Board is so authorized. Section 2228, supra, empowers the Board to "in general carry out the spirit and intent of this act in establishing and maintaining a county public hospital." If the members of the Board of Hospital Trustees are of the opinion that an election is necessary and that it is for the best interests and the welfare of the hospital to call such an election, then obviously it seems to us the board must have the power to employ and compensate counsel to effectuate this purpose, in those instances where the District Attorney is disqualified.

This office previously held that the section of the school law giving a Board of School

Trustees “reasonable and necessary powers, not conflicting with the Constitution and laws of the State of Nevada as may be requisite to attain the ends for which public schools are established, and to promote the welfare of school children” was broad enough to authorize the board to employ independent counsel. (Attorney-General’s Opinions 1911-1912, page 76. Also, see Attorney-General’s Opinion No. 178, 1919-1920 Biennium.)

We feel that section 2228 is likewise broad enough to authorize the employment and compensation of independent counsel.

Although the Legislature in 1935 broadened the duties of the District Attorney beyond that of merely giving legal opinions to school districts (see section 2076, as amended, *supra*), the reasoning of the Attorney-General in the opinion just noted is none the less compelling and cogent in the problem which you have presented.

In conclusion, we repeat that where the District Attorney is disqualified and, as in this case, would be charged with the higher duty of defending his county in case of suit, the Board of Hospital Trustees may employ and compensate counsel to act for it.

You are undoubtedly familiar with the case of McKay v. Washoe General Hospital, 55 Nev. 336, and we feel that this case should be called to the attention of the Board of Hospital Trustees so that when they contact independent counsel, they do so with the doctrine of the McKay case in mind. Whether or not the County Hospital Trustees can, under the present statutes and the present set of facts presented by your inquiry, bring suit is, of course, a question of basic importance.

Respectfully submitted,

GRAY MASHBURN, Attorney-General.

By ALAN BIBLE, Deputy Attorney-General.

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

SYLLABUS

330. State Officers and Employees--Traveling Expenses and the Statutory Restriction Thereof.

(1) Traveling Expenses--The expression “traveling expenses” as used in chapter 37, 1939 Statutes of Nevada, page 34 (being compiled as Nevada Compiled Laws 1929, section 6943), is not synonymous with the expression “living expenses” as used therein, but is distinguishable from “living expenses.”

This law, however, mandatorily requires such traveling within the State by officers and employees of the State to be made by public conveyance or limits the amount

expended therefor, when a trip is made by private conveyance, so as not to exceed the amount charged by public conveyance, except under the three conditions named in that section of the law and herein set forth as “a,” “b,” and “c.” If such travel be made by private conveyance, it is mandatory that the claim to the State Board of Examiners for reimbursement of such expenses expressly set forth one or more of said three statutory conditions which authorize such travel to be made by private conveyance instead of by public conveyance, as it is an easy matter to do so and said Board of Examiners, which is charged both by the Constitution and the statutes of this State with the duty of auditing such claims, is entitled to this consideration, especially since it is only when it appears “to the satisfaction of the Board of Examiners” that such travel by private conveyance is justified that it may be done in that way instead of by public conveyance. Since said Board of Examiners was considered by the framers of the Constitution of sufficient importance that they established it in the Constitution itself (one of only two or three State Boards created by the Nevada Constitution), the members of it should certainly not be expected to sign their approval of such “traveling expense” claims on the dotted line simply because some State officer or employee presented such a claim to them without anything to indicate whether it was made by private conveyance or by public conveyance, or why it was made by private conveyance instead of by public conveyance as the law contemplates. This important board should not be expected to approve such claims without said information.

“Tips,” as such, are not a part of “traveling expenses,” although the exact amount such State officers and employees are required to pay for handling their baggage and for “taxicab” fares are a legitimate part of such traveling expenses when specified as such in such claims.

(2) Living Expenses--It is apparent from the expression used by the inquirer in his second question “flat allowance of \$5 per day,” that he intended to direct his inquiry to the provisions of the law relating to “living expenses,” not traveling expenses, and fell into error in choosing the language to express the point on which he desired the official opinion of this office. There certainly could not be any such thing as a “flat allowance of \$5 per day” for traveling expenses. Neither is there any such thing in the law as a “flat allowance” of any amount for living expenses. Said chapter 37 authorizes and expressly limits living expenses to the amount “actually” expended by the claimant for his living expenses, and then further limits that amount to a sum “not to exceed \$5 per day.” It would be illegal, therefore, for any State officer or employee, or District Judge, to be paid more than \$5 per day while traveling in this State in the performance of his official duties, to reimburse him for moneys paid out for living expenses, or any part thereof which he has not “actually” expended for that purpose. The chief word in the statutory provision permitting a refund of such living expenses is the word “actual,” not the words “\$5 per day.” There is not, therefore, any such thing as a “flat allowance.”

(3) The purpose of mentioning “\$5 per day” for living expenses is simply to place a

ceiling, maximum or limit, on the amount per day which may be lawfully refunded if actually expended. There is, therefore, a double limitation in the law as to the amount which can be lawfully refunded for such living expenses within this State-- the first being the amount actually paid out by him therefor, and the second being not to exceed \$5 per day.

(4) No, the amount of such living expenses which may be lawfully refunded to such officer or employee is not "an allowance" in any sense of the word, the excess of which, over and above the money actually expended by him, he may lawfully keep for his own personal use. In other words, no State officer or employee may lawfully profit by claiming more from the State than he actually expended for his living expenses on such trips, as that would have the effect, indirectly, of increasing the amount of his salary or compensation.

An "allowance" for living expenses in contemplation of such trips and in advance of the making of them cannot lawfully be made. These payments are to cover moneys thereto actually paid out by such officers and employees prior to presentation of claims therefor. Advances for such living expenses cannot lawfully be made.

(5) Said chapter 37 contemplates the filing of an itemized expense account, showing the amount actually expended by such an officer or employee each day for the time it required to make the trip.

(6) A claim in general terms for a stated number of days required for the trip, without detail or itemization thereof for each separate day, does not furnish the State Board of Examiners and the State Controller the necessary information upon which to properly audit, allow, and pay such a claim. It is, therefore, the duty of said Board of Examiners and said State Controller to disallow any such claim made in general terms and without detail or itemization thereof for each day required by the trip.

INQUIRES

CARSON CITY, November 6, 1941.

We have recently been asked by the Nevada State Controller for the official opinion of this office as to the meaning of chapter 37, 1939 Statutes of Nevada, page 34, providing for the reimbursement of traveling expenses of State officers and employees while traveling within the State in the performance of their official duties for such expenses actually incurred and paid out by them. The main point on which this inquiry is made is as to whether said chapter 37 provides a flat amount of \$5 per day for such traveling expenses, no matter whether the full amount thereof has actually been expended by such officers and employees, or limits the amount thereof to the money *actually* paid out by such State officers and employees to pay their own living expenses in such traveling within the State, but not exceeding in any event \$5 per day.

This is such an important matter and is being handled, especially within the past few

months, in so many different ways by the various State officers and employees, that it is worth while to quote the body of the letter of inquiry in full, insofar as it relates to the point of inquiry, which letter is in the following language:

A definition is requested as to the meaning of the travel expense clause of chapter 37, 1929 Statutes. Many elected officers or appointed officers, and other state employees, and district judges, required to travel in performance of their duties, seem to have construed such statute meant a flat allowance of \$5 per day to cover expenses. My construction always has been that the \$5 allowed under such statute is the maximum that may be expended by such individuals traveling in pursuance of their duties. Gradually all have come around to that view, with the exception of two or three who still seem to cling to the thought that they were allowed \$5 a day flat, and do not file an itemized expense account. My interpretation of the statutes has always been that travel claims, or any other claims against the state, must show a detailed account upon which such claim is based, for otherwise the Controller would have no means of knowing whether such travel claim is a proper and legal one. Your interpretation, if in accordance with my intention, would give added weight to such contention, and would facilitate the payment of such claims.

INQUIRIES

1. What is the meaning (definition) of the expression “traveling expenses” as used in said chapter 37, 1939 Statutes of Nevada, page 34?
2. Does said chapter 37 provide for a “flat allowance” of \$5 per day, in every event, to cover such traveling expenses?
3. What is the purpose of mentioning “\$5 per day” for living expenses in said chapter 37, that is to say, is it the maximum or limit of the amount which may be refunded to such officers and employees to repay them the moneys theretofore paid out by them each day for their living expenses, or is it a flat sum which may be paid them by the State in every instance for living expenses each day, no matter whether such officer and employee has expended that amount per day in his living expenses or a less amount than \$5 per day?
4. Is the amount so paid to such officers and employees for living expenses an “allowance” at all out of which they are to pay their living expenses and keep for their own personal use the excess, if any, over and above what they have *actually* paid out for living expenses, or is the money so paid expressly for the sole purpose of refunding to or reimbursing such officers and employees for the money actually paid out by them for actual expenses of such traveling?
5. Does said chapter 37 contemplate the filing of a claim in the form of an *itemized expense account*, or will a general statement of the total amount of such claim, without detail or itemization, be sufficient to meet the requirements of said chapter 37 and justify approval thereof by the State Board of Examiners and the approval and payment thereof by the State Controller?

6. Does such a generalized claim, without detail or itemization thereof, furnish said State Board of Examiners and State Controller sufficient information upon which they can properly audit, allow, and pay such a claim, as the law requires them to do before such a claim can be lawfully paid, that is to say, does such a generalized statement of claim furnish said board and Controller the necessary information from which they actually *know* that such a claim is correct and entitled to approval and payment, as the law requires that said board and Controller must know before claims against the State can be legally allowed and paid?

OPINION

Before giving our opinion on each of the above-mentioned specific inquiries, we call attention to the fact that none of the inquiries is directed to the question of “traveling expenses” as distinguished from “living expenses” as provided for in said chapter 37. Notwithstanding this situation, however, we desire to call attention to the fact that “traveling expenses” as provided for in said chapter, and the payment or refund thereof, are expressly limited to traveling within the State of Nevada by *public conveyance*, or rather to an amount charged therefor which shall “not exceed the amount charged by public conveyance” when traveling is done by *private conveyance*, except (a) when traveling by private conveyance is “more economical,” or (b) when, owing to train or stage schedule or for other reasons (not excuses) traveling by public conveyance is “impractical,” or (c) when part of the route traveled “is not covered by public conveyance”; and even in the event that either, any, or all of said exceptions exist, it is absolutely necessary that the existence thereof must be made to appear “*to the satisfaction of the Board of Examiners*” (in the body of the claim itself) that the exception or exceptions relied upon as justifying traveling by *private conveyance* actually exist. It will be noted that it is not only necessary that at least one of the above exceptions exists, but that its existence is also made to appear to the satisfaction of the State Board of Examiners before the State Board of Examiners can legally approve the claim for such “traveling expenses” by private conveyance rather than by public conveyance. How can the Board of Examiners ascertain that any such exception exists with reference to any particular trip made by a State officer or employee in the performance of official duties unless its existence be expressly stated in the body of the claim for traveling expenses by private conveyance? The situation as it actually exists at the present time is that practically all travel by State officers and employees *within the State of Nevada* is done by automobile, either an automobile privately owned by the particular officer or employee or by a State-owned automobile. Very little traveling within the State is done by such officers and employees, in the performance of their official duties, by railroad, or by bus (public conveyance). There are very good, valid, and sufficient reasons why this traveling should be done by automobile, rather than by public conveyances such as railroads, busses, etc. Schedules of public conveyances are such as to make it not only very inconvenient but also expensive to the State for such officers and employees to travel by public conveyance. Such officers and employees would have to spend much time in waiting for a public conveyance after they have finished their work before they could return to their offices or places of employment. In addition to this, many places which it would be necessary or advisable for them to visit on such trips are not on the railroads or bus routes; and they would simply have to make another trip by private conveyance to reach those places if they made the trip between the place where they start and the place of final destination by public

conveyance instead of by private conveyance in the first instance. There are many other good reasons why these trips should be made by the officers' or employees' private automobile rather than by public conveyance--reasons which would not only save the State time but also save it money in making these trips which it is necessary to make in the performance of official duties.

It is important, however, that the claim itself for such traveling within the State by private conveyance shall state the reason why the trip is made by private conveyance rather than by public conveyance as said chapter 37 contemplates. It is an easy matter to state either one of the three reasons lettered "a," "b," and "c" on pages 3 and 4 hereof for not making the trip by public conveyance. It would require only a few words to do so; and so specifying said reason or reasons in the body of the claim itself would furnish the State Board of Examiners the necessary information for traveling by private conveyance so that it would be made to appear "to the satisfaction of the Board of Examiners" that it is necessary or for the best interests of the State (not of the officer or employee) to travel by such private conveyance in making the particular trip *within the State*. The law requires that there must be something to show the board that it is necessary or for the best interests of the State that such trip be made by private conveyance. The board cannot lawfully approve such a claim for traveling expenses by private conveyance except in cases where it is shown that it was necessary or for the best interests of the State (the taxpayers of the State) that the trip be made by private conveyance for one of the reasons so hereinbefore lettered "a," "b," and "c." Neither can the State Controller lawfully issue his warrant to pay such a claim nor the State Treasurer pay it unless such a showing is made. There is only one proper and feasible way to so show the existence of one of these three exceptions so lettered "a," "b," and "c." That way is by stating the existence of such exception or exceptions in the body of the claim itself. Since the Board of Examiners itself must base its action upon these claims from the personal knowledge of the members of the Board, and the law definitely provides that claims against the State cannot be paid without the approval of the board, it is entitled to this consideration and to have the reason or reasons why the particular State officer or employee makes the trip by private conveyance instead of by public conveyance. Certainly, the State Board of Examiners cannot be expected to call each of the many State officers and employees, who travel within the State on official business, before it to tell the members of the board orally why he or she makes the trip by private conveyance rather than by public conveyance. Many such claims are presented to the board while the officer or employee is absent from the State capital where the Board of Examiners always meets regularly twice each month. It is certainly unreasonable to expect that the Board of Examiners, State Controller, and State Treasurer will audit, allow, and pay such claims for traveling expenses by private conveyance simply because some other officer or employee of the State files a claim for such traveling expenses by private conveyance. The law requires that they act only upon their own knowledge and information furnished them by the State officers and employees so traveling by private conveyance, not just because a claim of this kind is presented to them. Such claims are usually sworn to by the State officer or employee making such trips and the solemnity of this oath furnishes the State Board of Examiners, State Controller, and State Treasurer a somewhat more solid basis for allowing and paying such claims than does the mere filing of a claim for such traveling expenses without any explanation as to why the trip is made by private conveyance rather than by public conveyance.

The framers of the Constitution considered the Board of Examiners, the State Controller,

and the State Treasurer of enough importance that they established this board and these offices by the Constitution of the State itself. They also prescribed the duties of this board and of the State Controller and State Treasurer in the State Constitution. It was contemplated that they should do more than simply sign their names on the dotted lines constituting their approval of such claims just because someone asked them to do so. In fact, both the Constitution and the statutory laws of the State require them to “audit” all claims against the State before they approve and pay them. They are entitled to have, and must have, the necessary information in detail before they can legally audit, allow, and pay such claims. Too much of a disposition has grown up among the other State officers and employees to the effect that the members of the State Board of Examiners, State Controller, and State Treasurer should approve and pay their claims simply because they file them. They seem to believe, and certainly assume, that the board, Controller, and Treasurer should allow and pay their claims simply because they file them. That is not the function of either the board or Controller or Treasurer. The Constitution and laws of the State assume that the State Board of Examiners, Controller, and Treasurer should act independently and upon their own knowledge and information, not upon what anybody tells them or not simply because somebody presents a claim in general terms or without sufficient itemization and detail to properly inform these officers, and without giving them the necessary detailed information in the body of the claims themselves upon which they can base their action on such claims.

This necessity and requirement for detailed information in the body of the claims themselves is not because of any lack of confidence the board, Controller, and Treasurer have in the State officers and employees or in their honesty and integrity. Usually the board, Controller, and Treasurer find when they investigate the facts that such claimants have perfectly good reason (one or more of the reasons specified in said chapter 37 and mentioned in the exceptions lettered “a,” “b,” and “c” herein) for traveling by private conveyance rather than by public conveyance. Such officers and employees almost always have the reasons so specified for traveling by private conveyance rather than by public conveyance when their traveling expenses are based upon travel by private conveyance. It would take only a few words in the body of a claim to show such reason or reasons, as compared with the vast amount of time it would take the State Board of Examiners, Controller, and Treasurer to investigate and ascertain this fact. Since all the time of all these officers, both the approving and paying officers and also the traveling officers and employees, belongs to the State and is paid for by the State, it is simply a matter of economy that the traveling officers and employees be required to show in their claims their reasons for traveling by private conveyance instead of by public conveyance. It is also very much in the interest of accuracy and compliance with the law, and for the best interests of the State and the taxpayers thereof that such traveling officers and employees state in the body of their claims their reasons, which they know better than anyone else, for traveling by private conveyance rather than by public conveyance. Both the law and the public interest require the statement of such reasons in the body of the claims. It is certainly no reflection upon the honesty or integrity of such traveling public officers and employees that they be required to so state their statutory reasons in the language of said exception or exceptions in the body of their claims, since the Constitution and laws of this State require it.

It should be kept in mind that said chapter 37 deals only with traveling and living expenses incurred and paid out in making trips *within the State*, not out of the State. There is

another law of the State which relates to and governs such “traveling expenses” and “living expenses” of such State officers and employees on trips made out of the State. The same general principles apply, however, to trips made out of the State as apply to trips made within the State, except that the maximum amount of the living expenses on trips made out of the State is \$10 per day instead of \$5 per day, the maximum amount allowed per day for trips made within the State.

SPECIFIC INQUIRIES ANSWERED

We shall now give our official opinion to the six specific inquiries as hereinbefore set forth on pages 2 and 3 hereof, numbering our answers to each of such inquiries consecutively in the order in which said inquiries are hereinbefore set forth, as follows:

1. The expression “traveling expenses” as used in said chapter 37, 1939 Statutes of Nevada, page 34, is of such clear and definite meaning that it is difficult to understand why that expression should ordinarily require definition. It certainly covers all expenses that are necessarily incident to traveling (transportation) by such State officers and employees in the performance of their official duties, within the State of Nevada. This expression “traveling expenses” simply means the expenses of and incident to transportation of such officers and employees, that is to say, railroad fares, pullman fares, bus fares, by public conveyance or by private conveyance, for the last of which the statute definitely and expressly provides a mileage basis of 7 ½ cents per mile for the distance so traveled by private conveyance. This question of the meaning of “traveling expenses” is so thoroughly discussed and defined hereinbefore on pages 3 to 9, both inclusive, of this opinion, that it is certainly not necessary to further discuss and define this expression at length here. It certainly means nothing more than the payment of the fare for such transportation by public conveyance as charged by such public transportation utilities when such trips are made by public conveyance, or a refund upon a mileage basis of the miles actually traveled by private conveyance at the rate of 7 ½ cents per mile when such trips are made by private conveyance. It also includes a refund of a reasonable amount of moneys necessarily paid out by the State officer or employee for the transportation or handling of his baggage, including what is ordinarily termed “tips” to the person or persons so handling such baggage, and for necessary traveling by taxicab or other private conveyance enroute or at the place of destination.

Because of the use of the expression “flat allowance of \$5 per day to cover expenses” in the letter of inquiry, we doubt very much whether it was the intention of the inquirer to ask for a definition of the expression “travel expenses” or traveling expenses. Certainly, the \$5 per day provision of said chapter 37 does not relate in any way whatever to the traveling expenses of such officers; and the letter of inquiry, taken as a whole, indicates that it was the intention to direct the inquiry, taken as a whole, indicates that it was the intention to direct the inquiry to the meaning of the expression “living expenses” as used in that chapter. This law certainly deals with two elements of expense incident to such travels within the State by State officers and employees. One of them is “traveling expenses” while the other is “living expenses.” The language of said chapter 37 makes a distinction between these two elements of expense. For this reason, we quote here section 2 of said chapter 37 in full and as follows, as that section is the only portion of said chapter 37 which deals with either of these questions, *i.e.*, “traveling expenses” or “living

expenses”;

When any district judge, state officer, commissioner, or representative of the state, or other state employee shall be entitled to receive his *necessary* traveling expenses in the transaction of public business within the state, such expenses shall include his *actual* living expenses, not to exceed five dollars per day, but the amount allowed for traveling by a private conveyance shall not exceed the amount charged by public conveyance; *provided, however*, that where it appears to the satisfaction of the board of examiners that travel by private conveyance is more economical or where it appears that, owing to train or stage schedule or for other reasons, travel by public conveyance is impractical, or in case where a part of the route traveled is not covered by public conveyance, the board of examiners, in its discretion, is authorized to allow for traveling by private conveyance an amount not to exceed seven and one-half cents per mile so traveled.

It will be noted from the above that in dealing with “living expenses” the above-quoted law does not use the word “subsistence” at all. It uses the expression “living expenses”--not the word subsistence. A tendency has grown up to consider the word “subsistence” as being the proper word to designate and cover the words “living expenses.” The fact is that the printed forms for such claims for “traveling expenses” use the word “subsistence” and not the expression “living expenses” at the head of the column indicating the items of the claim for what the statute calls “living expenses.” This is clearly an error, for the very simply reason that the word “subsistence” and the expression “living expenses” are not synonyms. Subsistence contains a few elements not contained in living expenses. On the other hand, the expression “living expenses” covers a few items not included in the meaning of the word “subsistence.” In other words, the words “subsist” and “subsistence” include even clothing, while the expression “living expenses” incident to such travels certainly does not include clothing. On the other hand, the expression “living expenses” as used in the above-quoted law may include moneys expended for telephone calls made in the performance of such official duties, and a number of other small items which are not in any sense subsistence. The proper and sensible thing, therefore, is to get back in our forms for such claims to the statutory expression “living expenses” and eliminate altogether the word “subsistence” as used in the forms for such claims.

Neither the expression “living expenses” as used in the law nor the word “subsistence” includes, however, expenses of entertainment either for such State officers and employees so traveling or for friends and associates and others they may entertain on such trips. The only expenses which may be legally refunded are such as are expended for actual living expenses of the officers or employees themselves, and cannot legally include moneys paid out by them for food and entertainment of their friends, associates, and others. It is certainly not within the contemplation of the law that any State officer or employee may make himself “a good fellow” at the expense of the State or the taxpayers of the State. Money spent by such State officers and employees in such traveling to cultivate friendships and make good impressions for themselves should and must be a personal matter, and should and must be paid out of their own personal funds. Certainly, expenses of attending shows or other places of entertainment, even for such traveling officers and employees themselves, cannot be legally refunded to them out of State

moneys and therefore at the expense of the taxpayers of the State. If such expenses for themselves cannot be so legally paid, then the expenses incident to feeding and entertaining friends, associates and others and making themselves "good fellows" cannot be so legally refunded out of State moneys. These are for personal pleasures and must be paid, if at all, out of their own personal funds. This is true, no matter how great the inclination of such officer or employee may be to reciprocate for entertainment theretofore furnished them without expense to the State.

2. Said chapter 37 does not provide for a "flat allowance," or any other allowance in fact, of \$5 per day in every event to cover such traveling expenses, or even to cover "living expenses." Again, we believe that the inquirer did not intend this question to relate to "traveling expenses" at all, but to "living expenses" of such officers and employees. The provision for "not to exceed \$5 per day" has no relation whatever to "traveling expenses" but relates solely to what the law calls "living expenses." Even as to living expenses the \$5 per day provided for in the statute is not a "flat allowance." It is the maximum which may be refunded for such living expenses of such officers and employees while traveling in the performance of their official duties if and only if as much as \$5 per day has then been *actually* and necessarily paid out by them each day on such trips for that purpose. The test of the amount which can be lawfully refunded per day for such "living expenses" is the amount *actually* expended per day. The words "actual" and "necessary" are both used to limit such expenses. The \$5 per day mentioned in the statute is neither a "flat allowance" nor a "flat" sum which lawfully may be paid per day for such living expenses. The only amount which lawfully can be refunded to such officers and employees is the amount they really and *actually* pay each day for their "necessary" personal living expenses, which amount shall not in any event exceed \$5 per day. They are not lawfully entitled to receive any more than that. The only time any such officer or employee is lawfully entitled to \$5 per day therefor is when the moneys actually paid out by him therefor amount to as much as \$5 per day. The amount *actually* and *necessarily* paid out by him is the limit of the amount he is lawfully entitled to have refunded to him, but in no event more than \$5 per day. It was never the intention of this law to refund to any such officer and employee even one cent more than he *actually* pays out of his own pockets for such "*necessary*" personal living expenses. It was never the intention of the law that any such officer or employee may indirectly increase his salary or compensation by a refund of even one cent more money on his claim than he has *actually* paid out. The allowance and payment of such claims must, therefore, be limited to the amount *actually* paid out each day by such officers and employees, but not, in any event, in excess of \$5 per day.

3. As shown by our answer to Inquiry No. 2 above, the purpose of mentioning \$5 per day for living expenses in said chapter 37 is to show and definitely express the maximum or limit of the amount which may lawfully be refunded to any such officer or employee to repay him the moneys theretofore *actually* paid out by him each day for his living expenses on such trips, not a flat sum which may be refunded to him for each day, no matter how much less than that such officer and employee may have actually paid out. The use of the expression "\$5 per day" is simply to express the limit above which he cannot be lawfully repaid. The amount *actually* paid out by him each day therefor is the only amount he can be lawfully refunded for his living expenses on such trips. The actual expenditure therefor is the limit of the lawful refund.

4. The amount so paid to such officer or employee for his living expenses on such trips is not an "allowance" in any sense of the word out of which he is to pay future expenses of a trip which is thereafter to be made by him. In other words, the amount so paid cannot be lawfully paid in advance of the making of the trip. It can be lawfully *refunded* to him only to reimburse him for moneys which he has already paid out for his living expenses on such trip. The Constitution and laws of this State absolutely forbid any advancement of any money whatever to cover contemplated or future expenses or expenditures. It is simply a question of refunding or reimbursing for moneys then already paid out by the claimant. The same principle is involved in the payment of every claim against the State. No claim can lawfully be allowed and paid until the services covered thereby have been actually rendered, or the moneys therein covered have actually been expended, or the goods, merchandise, supplies, and materials covered therein have actually been delivered. In other words, no moneys can lawfully be advanced to cover future or contemplated indebtedness or expenditures of any kind or nature whatever. Claims can only be lawfully allowed for indebtedness then already incurred, services then already rendered, or goods, merchandise, supplies, and materials then already delivered.

5. Said chapter 37 certainly contemplates the making out and filing of a claim in the form of an *itemized expense account*. A general statement of the claim, or even of the total amount of the claim, without a detailed and itemized statement of each item thereof, is not sufficient to meet the requirements of this law. A mere general statement of a claim is never sufficient to justify the approval by the State Board of Examiners, or the approval and payment thereof by the State Controller and the State Treasurer. It is absolutely necessary that every claim against the State be itemized and show in detail each item covered by such claim. The inquirer for this opinion, in his above-quoted letter of inquiry, is absolutely correct in his statement that any such claim, in order that it may be lawfully audited, approved, and paid must be itemized or "show a detailed account" of each item thereof, in order that the State Board of Examiners, State Controller, and State Treasurer may properly and intelligently audit the same, and, if found correct, lawfully allow and pay the same. There could not possibly be any other intelligent and sufficient basis upon which to audit, allow, and pay the same. There could not be any other basis for such audit, allowance, and payment except the mere guess that the claimant was fair, truthful, and honest in such a generalized statement of claim. As hereinbefore stated, these officers are not supposed to allow and pay any claim against the State except in cases where they are furnished sufficient information in the claim itself from which they can know with reasonable certainty that the claim is not only correct but lawful.

Too much of a disposition has grown up to shorten the statements of claim made in such claims. There is too much of a disposition to economize in the use of words in such claims, always at the risk of loss of money to the State and taxpayers thereof, in paying unjust and excessive claims. While words should not be wasted, a sufficient number thereof should be used to permit the members of the State Board of Examiners and the State Controller and the State Treasurer to *know* that the claim is correct and lawfully payable from State funds, rather than to leave them to suspect or hope that it is correct and lawfully payable. Too often claims for such "living expenses" are presented which do not show the number of days required for the trip, or the number of miles actually traveled in making the trip by private conveyance. Too often are claims for living expenses presented in something like the following form: "Living expenses for

trip to Las Vegas, Nevada, on official business, October 8-12, 1941, \$25.00,” without any statement at all as to whether both the days mentioned, *i.e.*, October 8 and 12, were actually included in the time of the making of the trip, or whether only one of them was included, or whether the trip was made between the two days, excluding both of them. It would be an easy matter to merely mention after the days expressed “both days inclusive” or the expression “only one day included” if that were the fact, and to also state immediately thereafter the expression “making a total of 5 days” or whatever other number of days were actually devoted to the trip. In the preparation and filing of claims for traveling expenses by private conveyance, too much of a tendency has grown up to simply show that the trip was made from Carson City, Nevada, to Las Vegas, Nevada, without stating definitely the number of miles so traveled. The fact is that there are several (three or more) recognized routes which may be properly traveled between the two places, involving a different number of miles in each instance, depending upon the route traveled. There is no reason in the world why a claimant filing a claim for any such expenses should not state the number of miles he traveled in making the trip. This is one of the things which is absolutely necessary in order to furnish the State Board of Examiners, State Controller, and State Treasurer the necessary basis upon which to determine whether the amount claimed as such traveling expenses is correct and may be lawfully allowed and paid.

On the question of itemizing such claims for “living expenses” these claims should be itemized for each day and such expenditures specified separately for each day, as the law clearly indicates that such claims should not be based upon the average expenditure for the number of days devoted to the trip. In other words, each claim should state, for instance, the amount paid for breakfast, also the amount paid for lunch, and the amount paid for dinner, the amount paid for incidentals each day and other miscellaneous expenses which may be properly covered by the expression “living expenses,” all separately stated for the particular day. Each item of expenditure should be expressly and separately stated for each of the days involved; and the total amount of such living expenses for the particular day carried forward to the column in the printed claims headed “total.” The preparation of claims in this form would enable the State Board of Examiners, State Controller, and State Treasurer to pass upon such claims intelligently and in the manner contemplated by the Constitution and laws of the State governing their official duties. It would also enable them to determine whether such living expenses were less than \$5 for certain of the days devoted to the making of the trip, and whether such expenditures were more than \$5 for any particular day, or whether the claim is based upon a “flat” sum, or average sum for each such day. This is information to which the State Board of Examiners, State Controller, and State Treasurer are entitled before they can intelligently pass upon and lawfully allow and pay such claims.

6. As hereinbefore indicated, generalized claims, without detail or itemization thereof, as above stated, do not furnish the State Board of Examiners and State Controller sufficient information upon which they can properly audit and lawfully allow such claims, or the Controller sufficient information upon which he can properly and lawfully allow and issue his warrant to pay such claims, or the State Treasurer sufficient information upon which he can lawfully pay them.

Respectfully submitted,

GRAY MASHBURN, Attorney-General.

HON. HENRY C. SCHMIDT, State Controller, Carson City, Nevada.

B-65. Grazing Boards.

Grazing boards cannot enter into cooperative agreements with boards of county commissioners of the respective counties within the district, but under clear provisions of grazing Acts such agreements must be between State Grazing Board or Board of County Commissioners on the one hand and the Federal or State officials on the other.

CARSON CITY, November 10, 1941.

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

DEAR MERWYN: This will acknowledge receipt of your letter of October 22, 1941, in which you ask whether or not a cooperative agreement can be made between the Nevada Grazing Board and the Board of County Commissioners of the respective county within the district. Chapter 183 of the 1941 Statutes of Nevada, which amends sections 4 and 6 of chapter 67 of the 1939 Statutes of Nevada, authorizes the State Grazing Boards to enter into certain cooperative agreements. In our opinion, section 6 is clear and unequivocal in that it specifically provides as follows: "Such project or projects shall be undertaken only under cooperative agreements entered into on the part either of the State Grazing Boards or the Boards of County Commissioners, as the case may be, and the Federal official in charge of the grazing district concerned." Likewise, projects other than construction and maintenance of range improvements are authorized only "under cooperative agreements entered on the part of the State Grazing Boards and either the Federal or State officials, as the State Grazing Boards concerned may decide, who are in charge of whichever governmental department, division, bureau, service, board, or commission happens to be in charge of and have jurisdiction over the kind of a project concerned."

We believe that under the provisions of section 6, cooperative agreements were between the State Grazing Boards and Board of County Commissioners on the one hand and the Federal or State officials on the other. It may well be argued that County Commissioners are in a broad sense State officials and State agencies, but even if we adopt this broad definition, we would still be required to look to some statute which would give a Board of County Commissioners the power to expend money for spring and well development. Unfortunately, we cannot read into the State Grazing Act this power. We have likewise carefully examined the other powers which have been conferred by other statutes upon the Boards of County Commissioners and we are unable to find from them any express authority authorizing the Boards of County Commissioners to spend money for spring or well development.

There may be some State agency which has the authority to enter into cooperative agreements for this expenditure, but our attention has not been directed nor do we know of such an agency.

As to the question raised by Mr. Phil Tobin's letter to you concerning the withdrawal of certain unexpended balances in the hands of the Division of Grazing, it seems clear that section 6 of the 1941 amendment in the last paragraph thereof clearly authorizes the restoration of such funds to each of the counties within the grazing district entitled thereto.

If we can be of any further assistance in helping the State Grazing Board in solving this problem, do not hesitate to call upon us.

Sincerely,

ALAN BIBLE, Deputy Attorney-General.

B-66. Office of Public Officers--Eligibility--Deputy.

A deputy in a public office is an officer. No person can be eligible to a public office in Nevada who is not a qualified elector under section 3, article 15, Constitution of Nevada.

CARSON CITY, November 10, 1941.

MESSRS. DONALD PHILLIPS AND STANLEY CAMPBELL, Office of County Clerk, Pioche, Nevada.

GENTLEMEN: Reference is hereby made to your letter of November 7 wherein you inquire as to the law pertaining to the age of deputies. We assume that you refer to deputies in public offices of this State.

A deputy in a public office is an officer. No person can be eligible to any office in this State who is not a qualified elector under the Constitution. Section 3, article XV, Constitution of Nevada. A qualified elector is a citizen of the United States of the age of twenty-one years and over who shall have actually resided in this State six months and in the district or county thirty days preceding any election. Section 1, article II, Constitution of Nevada.

It follows that in order for a person to be a qualified deputy or public officer, such person must be at least twenty-one years of age and a qualified elector of the State.

Trusting this will answer your inquiry, I am

Yours very truly,

W. T. MATHEWS, Deputy Attorney-General.

B-67. Tax Penalties Charged Against Bankrupt.

Tax penalties incurred by a bankrupt during time that estate was in possession or charge of referee or conciliation commissioner are legal charges against the bankrupt estate.

CARSON CITY, November 10, 1941.

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

DEAR JUDGE WINTERS: This will acknowledge receipt of your letter of November 5, 1941, together with a copy of the assessment roll applying to the Paulsen case and a copy of Mr. T. L. Withers' letter of October 27 to the County Treasurer.

Our research shows a considerable divergence as to whether or not taxes due to a political subdivision by a bankrupt estate include penalties. We just recently presented this problem to Judge Norcross in the Roberts Mining & Milling Company case, wherein penalties were allowed which had accrued during the time the bankrupt estate was in the hands of the referee.

From your statement of facts, it appears that Mr. Paulsen filed a petition in bankruptcy under the provisions of the Fraser-Lemke Act on March 17, 1939, and that the matter was referred to a conciliation commissioner. Thereafter and on December 2, 1940, certain taxes became due and delinquent. Under this set of facts, we are of the opinion that the case of Boteler v. Ingels, 308 U.S., page 57, is conclusive and we suggest that you in turn call this case to Mr. Withers' attention, since it appears to us that the facts as given by you are very similar to the facts before the U.S. Supreme Court in the Boteler case. The Boteler case held that section 57J of the Bankruptcy Act, which is also cited by Mr. Withers in his letter and which barred the allowance of debts owing to Federal, State, or local governments, as penalties, except for the amount of pecuniary loss sustained, etc., prohibits the allowance of tax penalties only as incurred by the bankrupt prior to the bankruptcy. Since the penalties incurred by Mr. Paulsen in this case were not incurred prior to bankruptcy, but were, on the other hand, incurred during the time that the estate was in possession and in charge of the referee or conciliation commissioner, we believe that the penalties are a legal charge against the bankrupt estate and should be paid.

I am enclosing herewith a copy of this opinion for your use.

Highest personal regards and very best wishes.

Sincerely,

ALAN BIBLE, Deputy Attorney-General.

SYLLABUS

331. Public Schools.

The bonds issued by the Board of School Trustees of Wendover School District, Elko County, Nevada, and the bond transcript in support thereof, have been examined and the bonds found to be a valid, legal, and binding obligation of said district.

INQUIRY

CARSON CITY, November 22, 1941.

Are the bonds issued by the Board of School Trustees of Wendover School District, Elko County, Nevada, a valid, legal, and binding obligation of said district?

OPINION

We have carefully examined the bond transcript submitted to you by Honorable C. B. Tapscott, District Attorney of Elko County, Nevada, relative to the issuance of the Wendover School District bonds.

We find that the provisions of section 5836-5848 Nevada Compiled Laws 1929, as well as the general school laws applying to school electins, have been carefully followed. In addition, the election held on October 11, 1941, was held in accordance with chapter 70, page 141 of the 1937 Statutes of Nevada, which is the so-called two-ballot-box election law. The result of this election showed a unanimous vote in each ballot box in favor of the issuance of the bonds.

The amount of the bonds being within the constitutional and statutory limitations, and the Nevada election laws pertaining thereto having been complied with, it is our opinion that the bonds issued by the Wendover School District are a valid, legal, and binding obligation of said district.

Respectfully submitted,

GRAY MASHBURN, Attorney-General.

By ALAN BIBLE, Deputy Attorney-General.

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

B-68. State Employees--Overtime--Splitting Vacations.

Payment for overtime of State employees on monthly salaries cannot be lawfully made, as there is no law authorizing it.

While there is nothing in the law which expressly prohibits the splitting of vacations of

15 working days with pay, section 7279 Nevada Compiled Laws 1929 refers to such vacations as “a (one) leave of absence” with salary, which indicates that it was the intention of the Legislature that there should be only one such vacation each calendar year, and that the whole 15 working days should be taken at one time and as one vacation.

The law, however, leaves the fixing of the time of such vacation to the head of the particular office or department; and it seems better to leave this matter to the head of each office or department instead of having a fixed definite rule governing the matter, as there are advantages as well as disadvantages in either method of procedure.

CARSON CITY, December 6, 1941.

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

DEAR ROBERT: Answering your letter to me of the 28th ultimo as to whether overtime may be paid State employees on monthly pay roll, I have to say that such overtime payments cannot be legally made. There is no such thing as daily hours of employment insofar as State employees under monthly employment are concerned. The Legislature has never established lawful hours of employment insofar as State employees on monthly pay rolls are concerned. It would certainly make a difficult situation if the Legislature should do so, especially where monthly salaries have been fixed either by law and appropriations made to pay each of such salaries, or where the salaries of employees are fixed by the particular department in which such employees are employed.

As to splitting vacations, there is nothing in the Act permitting vacations with fifteen working days which prevents splitting such vacations, except that the Act providing for such vacations, Nevada Compiled Laws of 1929, section 7279, refers to this matter as a “leave of absence.” You will note from this quoted expression that it is in the singular, and in addition thereto it uses the article “a.” Certainly the article “a” is not in the plural. In fact, the whole expression “a leave of absence” is in the singular number.

For the foregoing reasons, I fear we would be compelled to hold that the expression means only one leave of absence during the calendar year, which, in turn, would no doubt mean one vacation. However, it is far better to leave this matter in the hands of the head of the particular department or office in which the State employee is employed, to the end that the matter of whether it is one period of leave of absence may be handled for the convenience of the department or office.

It would certainly be more convenient, usually, if the employee or officer took his or her entire vacation in one period than it would be if he or she cut the fifteen working days into various small periods of two or three days at a time. If the latter plan is to be adopted, it would certainly require a lot of bookkeeping in order to properly keep the time of each employee and see to it that he or she did not take more than the fifteen working days. The particular employee should not be left entirely free to keep his or her own time, as the law very definitely places this responsibility in the head of the particular office or department in which the vacationing

employee is employed.

Taking the entire fifteen days vacation (leave of absence) in one period has the additional advantage to the State and from the standpoint of the taxpayers of avoiding the present quite general tendency to cut the vacation period up into several periods so as to include in each period a number of nonworking days--in fact, more nonworking days than could be gotten in one vacation period.

This matter of splitting vacations as discussed above is merely to call attention to the unsatisfactory situation which would inevitably result from splitting vacations, and is not for the purpose of holding or giving an official opinion to the effect that it cannot be done. Again, I believe it should be left to the head of the particular department so as to handle it in a way which will be as convenient as possible to the employee without injury to the taxpayers of the State, and without leaving the matter in such a condition that the taxpayers of the State might be injured by the plan adopted.

Yours truly,

GRAY MASHBURN, Attorney-General.

B-69. Highway Department--Drivers License Division. Hearings By--Blockades of Highways by Division to Force Purchase of Licenses--Appeals to What Court.

(1) Section 34(b) of the drivers license law, i.e., the "Uniform Motor Vehicle Operators' and Chauffeurs' License Act," being chapter 190, 1941 Statutes of Nevada, page 539, which provides for an "opportunity for a hearing" before the Motor Vehicle Drivers License Division pursuant to request therefor by persons whose licenses have been suspended, does not expressly provide any officer or board before whom any such hearing may be had; but it does provide that the "commissioner or his duly authorized agent may administer oaths and issue subpoenas"; and since the law is silent as to the board or person who shall conduct such hearings, it is our opinion that they may be lawfully conducted by either the "commissioner" of said division mentioned in the Act, whoever he may be, probably yourself as "administrator," or by "his duly authorized agent."

(2) There is no authority in the law for any officer or member of said Drivers License Division to blockade highways for any purpose, as none of them has any police powers under the Act and their only express authority is "to demand" such licenses of people whom they believe have no such licenses.

(3) As to the courts having jurisdiction of appeals, the law is silent on the question; and the fact is that the courts themselves determine in what cases they have jurisdiction; and this is a matter to be determined by the lawyers and courts involved.

CARSON CITY, December 6, 1941.

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

DEAR ROBERT: In view of the fact that I have been suddenly called back to Washington, D.C., on a pressing and important matter of official duty for the Colorado River Commission, I am answering your inquiries attached to your letter to me of 17th ultimo as follows, with the understanding that you may use these answers to serve your purposes as the official opinion of this office until we have time to prepare our more formal official opinion, which we reserve the right to do later if we feel so inclined.

1. This question inquires as to who should constitute the "Board of Hearing" as set forth in section 34-b of chapter 190, 1941 Statutes of Nevada, page 359. The fact of the matter is that no board at all is provided for in that section or in any other portion of that chapter relating to such hearings. This section simply provides that the department shall afford the licensee in question "an opportunity for a hearing." Later on in this subsection b, it is provided that the "Commissioner" (yourself) or his duly authorized agent may administer oaths and issue subpoenas. From the language used in that subsection b, it is evident that either any commissioner appointed by you as administrator, or his duly authorized agent may conduct the hearing. I find no language in said subsection b which even mentions any "board." I suggest that someone in the Drivers' License Division of the Highway Department be designated by you with full authority to conduct such hearing in each particular instance where the licensee demands an opportunity to be heard.

It seems to me that the Legislature probably became confused over the proper designation, using the word "commissioner," where it intended to refer to the "administrator." I find no place in the definitions in the first seven sections of the Act which defines the word "commissioner" or designates the officer to whom that term might refer.

It certainly is not necessary for the highway board to conduct such hearings. The administrator may conduct the hearing if authorized by you to do so. I do not understand from a hurried reading of the entire said section 34 how you get the idea that it is necessary to have a "Board," as, upon such hurried reading, I do not find anything at all even hinting at the fact that it is necessary to have a board to conduct such a hearing. One person is sufficient to conduct a hearing if duly authorized by you to do so.

2. It is my opinion, as expressed to you, Mr. Raby Newton, and Bernard Hartung in my office a few days ago, that the administrator is not authorized through his regularly appointed deputies or otherwise to establish "blockades." They are authorized, however, to demand from drivers whom they believe have no driver's licenses the exhibition of such licenses in order that they may determine the particular driver in question has a proper driver's license. This can be enforced when the particular driver is willing to exhibit and does exhibit his driver's license, or when a court requires it, or when the applicant is applying. Neither the administrator nor any regularly appointed deputies and assistants has any police power to make arrests or blockades on highways. The Act really should be amended so as to require you and your assistants to take such action as is necessary to enforce the Act and exhibition of driver's licenses in order to ascertain whether questioned drivers have proper licenses. Absolutely no police power is

conferred by the said chapter 190.

3. Your third question is one relating to the jurisdiction of courts. That is a matter which only the courts involved may lawfully determine. In other words, when an appeal is filed in court, the licensee must have an attorney, and it is for him to determine to what court he will appeal. If he makes a mistake and appeals to the wrong court or one which has not jurisdiction to hear the same the court will surely dismiss the appeal. That is a matter about which we need not worry. Insofar as the department is concerned, the District Attorney of the particular county will, upon request, represent you and your department in the particular case. This whole matter is one to be determined by the lawyers involved and the judge of the court or Justice of the Peace to which appeal is taken.

Yours truly,

GRAY MASHBURN, Attorney-General.

B-70. Unemployment Security Department--Director--Authorized to Receive Grants of Money Under Social Security Act and Wagner-Peyser Act.

Director of the Nevada Employment Security Department is the officer designated by the employment security law to receive grants and payments of money from the Federal Social Security Board and United States Treasury for the purpose of unemployment compensation administration in this State and also under the Wagner-Peyser Act for employment service purposes.

CARSON CITY, December 6, 1941.

MR. ALBERT L. MCGINTY, Executive Director, Employment Security Department, Nevada Unemployment Compensation Service, Carson City, Nevada.

Attention MR. FRANK B. GREGORY, Attorney.

DEAR SIR: Reference is hereby made to your letter of December 1, and also to the enclosed letter dated November 18 from James G. Bryant, Regional Representative, Social Security Board, relative to the matter of who should be the payee on checks covering grants of money to the State of Nevada available under the Wagner-Peyser Act and the Social Security Act.

We note from Mr. Bryant's letter that our Opinion No. 303 has been drawn in question by reason of certain language contained in section 7534 Nevada Compiled Laws 1929 relating to the State Treasurer and reading as follows:

He shall receive and keep all moneys of the State not expressly required by law to be received and kept by some other person.

It is further noted from Mr. Bryant's letter that he states the Executive Director "is not expressly required to receive the funds," and that as far as the Unemployment Compensation funds are concerned he has the same relation to the State Treasurer as the State Controller has with relation to the general funds of the State of Nevada. In our opinion, Mr. Bryant is in error with respect to this statement, for the reason that with respect to the Unemployment Compensation Fund he is authorized to receive moneys going into such fund. See section 9 of the Unemployment Compensation law, as amended, at pages 428, 429, Statutes of 1941.

With respect to section 7534 Nevada Compiled Laws 1929 as applied to funds coming to the Unemployment Compensation Division or to the Executive Director of the Security Department, it is our opinion that as to the compensation fund the Executive Director has full authority to receive such funds before depositing the same with the State Treasurer. Further, it is to be noted that with respect to the compensation and administration fund the statute provides that "all moneys in this fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the state treasury." We think this particular fund comes under the provision of law provided in the above section 9 for the receipt and deposit of the compensation fund. We find no other provision in the statutes of this State relating to special funds as to how and when they shall be deposited.

We think the same reasoning applies to moneys received under the Wagner-Peyser Act, and beg to advise we see no reason for reconsidering or revising our Opinion No. 303.

Very truly yours,

GRAY MASHBURN, Attorney-General.

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

B-71. Taxation--Gasoline Tax--Contractors on Roads Constructed by Federal Government--Exemption of Contractors from Gasoline Tax.

Contractors contracting with the Federal Government to construct roads not instrumentalities of Federal Government--such contractors not entitled to gasoline tax refund under Nevada statutes. Boulder City area not a Federal reservation. Pursuant to chapter 144, Statutes of Nevada 1935, State has ceded partial jurisdiction over the land acquired by United States for ammunition depot at Hawthorne but has reserved the right to tax all property on such land excepting property of the United States.

CARSON CITY, December 13, 1941.

MR. J. G. ALLARD, Statistician and Chief Clerk, Nevada Tax Commission, Carson City, Nevada.

DEAR MR. ALLARD: Reference is hereby made to your letter of December 3 relative to the refund of gasoline taxes paid to contractors and subcontractors who have contracts to construct roads for the Federal Government at Hawthorne and Boulder City. You inquire whether gasoline used in the construction and maintenance of roads open to public use, but constructed and maintained by the Federal Government on United States property, is subject to such gasoline tax refund.

The term highway as defined in the gasoline tax statute of 1935 is defined as follows: "Highway shall mean every way or place of whatever nature open to the use of the public, for purposes of surface traffic, including highways under construction." Section 1b, chapter 74, Statutes of 1935.

Section 5 of said chapter 74 provides that the provisions of the Act shall not apply to motor vehicle fuel (gasoline) sold to the Government of the United States for the official use of such Government. However, the dealers are required to report the sale of such gasoline and proper claim for refund thereof required to be made within the statutory period of time. It thus appears from the State law that in order to in effect exempt gasoline from the excise tax, so far as the United States is concerned, that such gasoline must have been acquired by the United States for official use of the Government. Nowhere in the State law is it provided that a contractor with the Government is entitled to an exemption or a refund by reason of his contract with the Government.

We think that even though the United States is constructing the highways in question here, nevertheless such highways are public highways within the meaning of the Nevada law, and if constructed by the Government through the means of contractors, that such contractors are not immune from the State gasoline tax by reason of such contract, and neither are such contractors instrumentalities of the Federal Government. We think this proposition is well established in the case of *Trinityfarm Co. v. Grosjean*, 291 U. S. 466, wherein the Supreme Court of the United States had under consideration an analogous case of contractors constructing levies in the aid of navigation of the Mississippi River for the United States Government and by reason of their contracts claimed immunity from State taxation of gasoline used by such contractors in the performance of their contract. The Supreme Court held to the contrary, and held that the State excise tax on gasoline so used was not invalid as a tax on a means or instrumentality of the Federal Government, its effect, if any, upon that Government being remote.

In *James v. Dravo Contracting Co.*, 302 U. S. 134, the Supreme Court of the United States dealt with an analogous situation wherein the contractors were constructing locks and dams for the United States in the Ohio River and the State assessed the contractors a large sum in taxes and penalties upon the gross amounts received from the United States under these contracts. The contractors claimed immunity by reason of their contracts with the Federal Government, but the Supreme Court of the United States held that such a tax was not invalid where imposed by a State upon a contractor with United States as laying a direct burden upon the Federal Government, even though the imposition of the tax might increase the cost to the Government of the work contracted to be done. The court in the Dravo case went into the question of the exclusive jurisdiction of the United States over the area where the dams and locks

were constructed and, notwithstanding its findings thereon, held that the State had the right to collect the tax and, further, that such contracts did not establish the contractors as such instrumentalities of the United States as would absolve them from State taxation.

Recently the Supreme Court of the United States in the cases of *Alabama v. King & Boozer* and *Curry v. United States of America*, both cases decided November 10, 1941, and reported in 86 *Lawyers Ed.*, pages 1 and 6, had before it the question of whether the Alabama sales tax of 2 percent on sales of lumber to contractors engaged in the construction of army camps for the United States in Alabama, on cost plus contracts, were liable for the payment of the State sales tax. It was contended in those cases that the Government under the contracts being required in certain instances to pay the lumber bills and other bills in connection with the contract, and that the imposition of the sales tax would increase the cost to the Government, that such contractors were immune from the payment of such tax. It was also contended that the contractors were such instrumentalities of the Federal Government as would render them immune from State taxation. However, the Supreme Court held to the contrary and required the contractors to pay the sales tax imposed.

It is to be noted that in the Boulder City area there is and has been no Federal reservation legally or at all created. In the Hawthorne area, there has been a partial ceding of State jurisdiction over the area by the State of Nevada by the enactment of chapter 144 Statutes of Nevada 1935. However, it is to be noted that the State reserves the right to tax within such area. Such tax, of course, not being applicable to property of the United States Government, but as to all other property, and we think also as to the imposition of the gasoline tax, the State has ample authority to impose the tax.

Yours very truly,

W. T. MATHEWS, Deputy Attorney-General.

B-72. Taxation--Property of Foreign Truck Lines Operating Through Nevada.

Motor trucks belonging to a foreign trucking company which are operated into and through the State of Nevada in interstate commerce are subject to the ad valorem tax on the trucks as assessed under the Nevada law.

CARSON CITY, December 19, 1941.

Nevada Tax Commission, Carson City, Nevada.

Attention MR. J. G. ALLARD.

GENTLEMEN: You have submitted to this office correspondence had between your commission and the attorneys for the Ringsby Truck Lines, Inc., which corporation operates trucks over the highways of the State of Nevada and which trucks, according to the

correspondence, are engaged in interstate commerce only.

It is noted from the correspondence that the corporation attorneys object to the assessment upon the following grounds: (1) That the physical property of the corporation, while being operated in the State in interstate commerce, is not used directly in the operation of its business in the State of Nevada; and (2) if the taxing statutes of this State be construed as authorizing the assessment in question, that then the same would be unconstitutional because it would authorize an interference with interstate commerce contrary to the commerce clause of the Federal Constitution.

We think both of the objections above stated are not well taken. The contention of the corporation that its property is not used directly in the operation of its interstate business in this State because it does no intrastate business and therefore not covered by section 5 of the Tax Commission Act, we think is an erroneous contention. Section 5 provides that the Tax Commission shall establish the valuation for assessment purposes of any property of an interstate nature including the property of motor truck companies, together with their franchise, and it further provides that said commission shall establish and fix the value of the franchises, if any, and all physical property used directly in the operation of any business of any motor truck company in this State. We think such language does not mean that the property must be used by a motor truck company in its business in the State in such a manner as to constitute intrastate business or interstate business into the State, but that it means that any property used by the motor truck company in its business as an interstate character and being within the State during the transaction of such business is assessable under such statute. The general revenue law of this State, which must be construed in pari materia with the Nevada Tax Commission Act, provides that all "property of every kind and nature whatsoever, within this State, shall be subject to taxation," except certain enumerated properties not material here. (Section 6418 Nevada Compiled Laws 1929, as amended 1941 Statutes 344.) The amendment noted to the section in nowise changes the quoted portion of the section.

The Supreme Court of Nevada, in the case of State v. Wells, Fargo & Company, 38 Nev. 505, construed the above section of the law and the constitutional provision providing for the taxation of all property in a case dealing with the taxation of the Wells, Fargo Express Company property, which included its franchise and the valuation of the property used as interstate commerce, and held that such statute required the taxation of all property within the State, including property used in interstate commerce. So that there can be no question as to the right to tax all physical property at least within the boundaries of the State, even though such property is used in interstate commerce. The decision in the Wells Fargo case was affirmed by the Supreme Court of the United States at 248 U. S. 165.

The motor truck corporation in question here, as we understand it, operates its trucks through the State of Nevada in interstate commerce between the State of California over the highways of Nevada into and through the State of Utah and beyond. In so doing its operations are analogous to the operations of an interstate railroad, and at least ever since the case of Pullman's Car Co. v. Pennsylvania, 141 U. S. 18, it has been the law of the land that property such as pullman cars operated upon a railroad are subject to State taxation, even though engaged

in purely interstate business. To quote briefly from such case:

The cars of this company within the State of Pennsylvania are employed in interstate commerce; but their being so employed does not exempt them from taxation by the State; and the State has not taxed them because of their being so employed, but because of their being within its territory and jurisdiction. The cars were continuously and permanently employed in going to and fro upon certain routes of travel. If they had never passed beyond the limits of Pennsylvania, it could not be doubted that the State could tax them, like other property, within its borders, notwithstanding they were employed in interstate commerce. The fact that, instead of stopping at the State boundary, they cross that boundary in going out and coming back, cannot affect the power of the State to levy a tax upon them. The State, having the right, for the purposes of taxation, to tax any personal property found within its jurisdiction, without regard to the place of the owner's domicil, could tax the specific cars which at a given moment were within its borders.

Such is undoubtedly the position of the motor truck corporation in question here, and undoubtedly such company is using its trucks habitually within the State in the transaction of its interstate business, even though it does not actually transact any business within the State, either interstate business into the State or intrastate business herein.

It was well said in the case of *Johnson Oil Co. v. Oklahoma*, 290 U. S. 158:

The basis of the jurisdiction (to tax) is the habitual employment of the property within the State. By virtue of that employment the property should bear its fair share of the burdens of taxation to which other property within the State is subject.

And again in *Union Tank Line Co. v. Wright*, 269 U. S. 275, it was held that a State may tax movables of a foreign corporation, which are regularly and habitually employed therein, although devoted to interstate commerce.

In *Virginia v. Imperial Coal Co.*, 293 U. S. 15, the Supreme Court said with respect to the taxation of property used exclusively in interstate commerce as follows:

Property having its situs within the taxing State is not exempt from a nondiscriminatory property tax merely because the property is used in interstate commerce. Corporations engaged in interstate commerce should bear their proper share of the burdens of the government under whose protection they conduct their operations, and nondiscriminatory taxation of their property although used in interstate commerce, as this Court has frequently said, affects that commerce only incidentally and is not inconsistent with the constitutional immunity from the imposition of direct burdens. * * *

It is not the character of the property that makes it subject to such a tax, but the fact that the property has its situs within the State and that the owner should give appropriate support to the government that protects it. That duty is not less when the

property is intangible than when it is tangible. Nor are we able to perceive any sound reason for holding that the owner must have real estate or tangible property within the State in order to subject its intangible property within the State to taxation.

We are dealing, as we have said, with an ad valorem property tax, and not with a privilege tax. Respondent is not taxed upon the privilege of engaging in interstate commerce, and decisions, cited by the state court, holding such taxes to be invalid are not apposite.

In *Eastern Air Transport, Inc. v. South Carolina Tax Commission*, 285 U. S. 147, the Supreme Court held that a State tax of six cents per gallon on sales of gasoline bought by an air transport company for use in its planes, which traversed the State in interstate commerce and stopped at several places therein, but transported no passengers or freight between those places, whether such tax was viewed as a tax on property or as an excise tax, was not a direct burden on interstate commerce and that the assessment of such tax was within the power of the State.

It should be borne in mind that the question here is dealing with an ad valorem tax on property assessed under the general revenue laws of the State and not with excise taxes, license taxes or fees, or privilege taxes, and that cases dealing with these latter types of taxes have no bearing on the question here.

We think that the assessment of the ad valorem tax in question on property of the motor truck company is a valid assessment with respect to the right to levy such assessment.

This office reserves the right to incorporate the foregoing letter in a formal opinion if deemed necessary.

Respectfully submitted,

GRAY MASHBURN, Attorney-General.

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

B-73. State Grazing Boards.

State grazing boards may enter into cooperative agreements with the Federal Government in which they agree to furnish both labor and materials for the completion of range improvement projects.

CARSON CITY, December 26, 1941.

MR. HULING E. USSERY, District Grazier, Grazing Service, Post Office Box 459, Reno, Nevada.

DEAR MR. USSERY: This will confirm our recent oral conversation and your written

opinion concerning the cooperation of the State Grazing Boards with the United States Department of the Interior. Your letter is directed to the State Grazing Act of 1939 (Statutes of Nevada, chapter 67) as amended by chapter 183 of the 1941 Statutes.

We recently answered an inquiry submitted by Hon. Merwyn Brown, District Attorney of Humboldt County, in which we held that in our opinion the 1941 amendment to the State Grazing Act did not permit the State Grazing Boards to enter into cooperative agreements with the various Boards of County Commissioners, but that in our opinion the 1941 amendment specifically limited cooperative agreements to the State Grazing Boards and Boards of County Commissioners on the one hand and the Federal or State officials on the other. During our oral conversation you will recall that we discussed this opinion with you and that your question was not one in which the State Grazing Boards were to enter into cooperative agreements with the Board of County Commissioners, but rather as has been the adopted practice in the past of a cooperative agreement between the State Grazing Boards and the United States Government through its Grazing Service. It is our understanding that in order to facilitate the hiring of forced labor it is the desire of the Grazing Boards, as well as the Federal Government, to acquire common labor on short notice for the completion of certain projects, and that the Federal Government desires to enter into a cooperative agreement whereby the Grazing Boards of the State specifically undertake to furnish the common labor for the various range improvement projects. Your question is directed to the legality of such an agreement.

In accordance with our oral opinion, we believe that under the 1941 Statutes the various State Grazing Boards are authorized to enter into cooperative agreements whereby they undertake as part of the consideration of the agreement to furnish labor and materials, as well as an actual cash outlay. Reference to the cooperative agreement form of July 1939, Form No. 1-377, indicates that the furnishing of labor and materials has been considered an adequate consideration in the past. The agreement in part reads: "It is hereby agreed that each of the parties hereto will furnish such labor and such materials as are listed on the reverse side of this form, which listing, when approved by the parties hereto, shall become a part of this agreement." Section 6 of the 1941 Statutes in our opinion does not limit the cooperative agreement to one of pure monetary consideration. Insofar as pertinent to your inquiry, it reads: "Such project or projects shall be undertaken only under cooperative agreements entered into on the part either of the State Grazing Boards, or Board of County Commissioners, as the case may be, and the Federal officials in charge of the grazing district concerned."

In conclusion, we believe that the various State Grazing Boards may, in their discretion, enter into cooperative agreements with the Federal Government, in which they covenant and agree to furnish both labor and materials for the completion of range improvement projects.

Sincerely yours,

ALAN BIBLE, Deputy Attorney-General.