

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL - 1943

1. District Attorneys—Eligibility and Qualification—Lander County.

CARSON CITY, January 16, 1943.

MR. SAM F. PEACOCK, *Chairman, Board of County Commissioners, Lander County, Austin, Nevada.*

DEAR MR. PEACOCK: This will acknowledge receipt of your letter of January 4, 1943, received in this office on January 6, 1943.

From a statement of facts, it appears that Gordon W. Rice filed for District Attorney of Lander County on July 31, 1942, and was thereafter, at the election on November 4, 1942, duly elected District Attorney. We understand that the County Commissioners thereafter issued a commission to this effect. After the commission issued, Mr. Rice filed an oath of office. On the 11th day of December 1942, he applied for a bond under the provisions of the State Bond Trust Fund Act of 1937, which application was filed on December 15, 1942, and was approved on December 18, 1942, on which date the State Board of Examiners issued a bond pursuant to the act. On December 12, 1942, Gordon W. Rice appointed Arthur Platz as his deputy during his absence while on service in the United States Army, and we are advised that he assigned all his compensation to his deputy.

At the time Mr. Rice filed his declaration of candidacy, he was not a resident of Lander County, nor has he ever become a resident of Lander County. He was a bona fide resident of Washoe County, State of Nevada.

We are advised by the Judge Advocate General's office of the Selective Service that Mr. Rice volunteered for officers training and that in doing so he was inducted under the provisions of the "Selective Training and Service Act of 1940," and regulations pursuant thereto. It was further stated that he was inducted as a private for an indefinite period of time, and that at the end of the necessary training period he would either be accepted and commissioned as an officer with the rank of Second Lieutenant, or would be returned to civilian life to await a further call and induction as a private into the Army.

Under this statement of facts and for the reasons hereinafter stated, we have reached the following conclusions:

1. Gordon W. Rice was eligible to file for the office of District Attorney, was duly elected, and thereafter properly qualified.

2. Under the provisions of chapter 34 of the 1941 Statutes of Nevada, Gordon W. Rice should be considered as on a furlough or leave of absence during his period of training and service, and under this Act it is our opinion that there is no vacancy in the office.

3. It is our opinion that Mr. Rice could not make an effective appointment of a deputy before January 4, 1943, but since he was entitled to the office on that day, he may now make a proper appointment of the deputy of his choice.

Eligibility and Qualification.

There is no statutory enactment requiring a District Attorney to be a bona fide resident of the county which he represents. Sections 2071 and section 618 of Nevada Compiled Laws 1929 only require that a District Attorney shall be a bona fide resident of the State of Nevada. Under the ruling of the Supreme Court in the case of Schur v. Payne, [57 Nev. 286](#), Mr. Rice is a qualified elector under the provisions of our Constitution so as to be eligible for the office of District Attorney of Lander County. Your attention is directed to this case in support of the validity of his declaration of candidacy.

In this connection, we believe that the laws of the State of Nevada should be changed so as to provide that every officer running for office in the State of Nevada be a bona fide resident of the district, township, city, town, or county which he represents.

Section 2 of article XV of the Constitution, and section 4925 Nevada Compiled Laws 1929 provide that as a condition precedent to entering upon the office an officer shall take an oath. Under the statement of facts, it appears that Mr. Rice conformed with this requirement. See sec. 4791 N.C.L. 1929.

Section 2072 of Nevada Compiled Laws 1929 provides that the District Attorney shall execute and file with the County Clerk a bond as a condition for the faithful performance of his duties, the penalties of the bond to be fixed by the Board of County Commissioners. Under the statement of facts, it appears that the State Board of Examiners approved Mr. Rice's application and issued a bond on December 18, 1942. If the bond meets the penalty set by the Board of County Commissioners, it appears that this bond should be approved by them. From the foregoing, it is our opinion that Mr. Rice properly qualified so as to entitle him to the office of District Attorney of Lander County on January 4, 1943.

Mr. Rice Falls Under Provisions of Chapter 34, 1941 Statutes.

This is the third opinion which this office has written since December 1, 1942, construing chapter 34 of the 1941 Statutes. Although this law is not as clearly and fully drawn as it should be, it nevertheless expresses a very clear, unmistakable legislative intent to grant those entering the military service under the Selective Service Act a leave of absence or furlough with the right of reemployment upon return to civilian life and upon compliance with certain stated conditions.

Under date of December 23, 1942, we advised the District Attorney of Ormsby county that a County Commissioner inducted pursuant to the Selective Service Act did not constitute the holding of an office under the Government of the United States contemplated in section 9 of article IV of the Nevada Constitution. We further said:

The question in this case then is, should this article of our Constitution be interpreted to mean that a citizen, holding a state office, upon whom, under the Constitution and laws of the United States, additional duties are imposed by the President in aid of the raising and maintenance of an army for the prosecution of a great and necessary war, forfeits his office by reason of his acceptance of that which it would be unlawful and unpatriotic for him to decline?

We think not, and are of the opinion that to answer otherwise would be an unwarranted reflection alike upon the intelligence and the patriotism of those by whom the article in question was incorporated in the Constitution.

It is true in that case that we stated that the County Commissioners had the right to make a temporary appointment during the County Commissioner's absence. We so held because as you know County Commissioners have no right whatsoever to appoint deputies to act for them.

Section 4799 Nevada Compiled Laws 1929 lists certain conditions upon which a public office becomes vacant, among which are nonresidence or failure to discharge duties for three months. This statute, it seems to us, is inapplicable in a case where the public officer clearly brings himself under the provisions of chapter 34 of the 1941 Statutes.

As we stated in the Felesina case, we do not believe that induction as a private constitutes the holding of an office under the United States Government. The Articles of War, in part, read as follows:

The word officer as used herein shall be understood to designate commissioned officers; the word soldier shall be deemed to include noncommissioned officers, musicians, artificers and privates and other enlisted men.

The term of officers as used in the United States Army and Navy is understood to designate commissioned officers and does not include noncommissioned or warrant officers. (See 36 Am. Jur. Sec. 51, page 217. Also see *Hartigan v. United States*, 196 U.S. 169). Since we do not believe that a private, whether he has voluntarily enlisted or whether he is drafted, can be considered to be holding an office under the United States Government, we do not believe that the case of *State v. Sadler*, 25 Nev. page 173, applied. In that case, Leonard Lord, a State Senator, accepted the appointment as a commissioned officer in the United States Army with the rank of Major. Since Mr. Rice was inducted as a private, is still a private, may continue to be a private, the mere fact that he is taking officers training does not for the present at least bring him within the provisions of the *Sadler* case, and, although we do not feel it is necessary at this time to decide a moot question even if Mr. Rice were to become a commissioned officer, we seriously doubt if he would fall under the *Sadler* rule in view of the 1941 legislative enactment. We realize, of course, that the Legislature cannot pass laws which contravene the Constitution, but we likewise believe that, in view of the fact that Mr. Rice is on a leave of absence or furlough from his usual duties as District Attorney, has assigned all compensation, and has taken no part in the conduct of the office, he may not be considered during the period of his furlough or leave of absence as holding a civil office of profit within the State under the constitutional provision hereinbefore noted. Our authority for this contention is the case of *McCoy v. Los Angeles*, 114 P. (2d) 569. IN an action to determine title to office, the Supreme Court of California, under a constitutional provision identical with our constitutional provision, held that a Major in the Marine Corps Reserve did not lose his office of County Construction Engineer upon being called to active duty. The court said:

It was never the intent or purpose of article IV, section 20, of the Constitution of this state to discourage public employees from rendering military or naval service, to deter them from answering or induce them to evade such a call, or to tend to impede the federal government in its effort to mobilize the citizenry, or interfere with efforts to meet a major emergency. The constitutional provision can neither be construed nor applied to effect such a result. Its primary object, as declared in the early case of *People v. Leonard*, 73 Cal. 230, 14 P. 853, 854, is to prohibit a conjunction of a federal and a state office of profit in the same person, without any condition whatever; that is, to prevent "dual office-holding by one person under two separate and distinct governments, and the separation of the allegiance justly due one by its officers from that due to another power." The reason for the prohibition ceases and the constitutional provision is inapplicable in

a case where the duties, compensation and rights of the holder of a state office, and his opportunity to exert any influence therein, are suspended and inchoate while he is rendering temporary patriotic service to his country under a military or naval commission.

Appointment of Deputy.

The Lander County salary statutes, 1931 Statutes of Nevada 194, do not provide for the appointment or compensation of a Deputy District Attorney for Lander County. However, under section 4848 Nevada Compiled Laws 1929, all prosecuting attorneys are authorized to appoint deputies, providing, of course, that they are responsible for their compensation. Section 4850 provides how the appointment shall be made, and it is suggested that these sections be carefully followed. It is noted that a prosecuting attorney is authorized to appoint a deputy, but that no mention is made of a District Attorney. The case of *Ex Parte Esden*, [55 Nev. 173](#), specifically held that District Attorneys are prosecuting attorneys, and that section 4848 noted above gave the District Attorneys the power to appoint deputies who shall have the same power to transact all official business appertaining to said offices to the same extent as their principals.

It was clearly Mr. Rice's intent to take a leave of absence and appoint a deputy to act in his stead with all of his ordinary powers during his military service in the Army. We are unable to find any authority, however, for making appointment prior to the time that the appointing power is actually entitled to the office himself. It is, therefore, our advice and suggestion to you that, in order to save any future controversy on this point, Mr. Platz, who is now acting as Deputy District Attorney under the appointment of December 12, 1942, secure a new appointment from Mr. Rice showing the date after the principal was entitled to office.

On December 4, 1942, we advised the District Attorney of Esmeralda County that the newly elected County Recorder was inducted into the armed services under the provisions of the Selective Service Act, could legally appoint a Deputy County recorder to act during his absence, providing he paid her compensation.

In our opinion there is nothing in Mr. Rice's actions that contravene the provisions of the Hatch Act.

If we can be of further assistance to you in working out this problem, do not hesitate to let us know.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

2. Employment Security—Statutory Lien—Employment Security Act—Limitation.

CARSON CITY, January 20, 1943.

MR. ALBERT L. MCGINTY, *Executive Director, Employment Security Department,
Nevada Unemployment Compensation Service, Carson City, Nevada.*

Attention: Roy M. Whitacre, Supervisor, Accounts and Benefits.

DEAR SIR: Reference is hereby made to your letter of January 18 requesting the advise of this office as to the life of a lien filed in accordance with section 14.2 of the Employment Security Act.

Ordinarily, the statute providing a statutory lien also provides the length of time the lien is to

run. However, section 14.2, while creating a statutory lien does not place any specific limitations thereon with respect to time. The rule is, we think, that in such case a lien continues in affect until satisfied by payment thereof or until the property upon which the lien attaches has been lost or destroyed. However, we think the statutory lien created by section 14.2 occupies the same status in the laws of this State as tax liens on real and personal property.

The Supreme Court of Nevada in *State v. Yellow Jacket Silver Mining Company*, [14 Nev. 220](#), affirmed the proposition that the statute of limitations applied to the State as well as to individuals, and that such statutes applied to the State in enforcement of the collection of taxes by suit, notwithstanding the fact that the tax statutes created a lien of indefinite duration. Upon the holding of this case, we think that while a lien is created by section 14.2 of Employment Security Act, nevertheless, it would be incumbent upon the department to bring an action to enforce the lien within three (3) years after the creation thereof, or else the right to enforce the lien would be lost. The limitation on the right to bring an action upon the lien would be lost. The limitation on the right to bring an action upon the lien in question is governed by the provisions of section 8524 Nevada Compiled Laws 1929, wherein it is provided that actions upon a liability created by statute can only be commenced within three (3) years.

Respectfully submitted,

ALAN BIBLE, *Attorney-General*.

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

3. Old-Age Assistance—State Welfare Board—Appropriation Travel and Living Expenses.

CARSON CITY, January 26, 1943.

MR. HERBERT H. CLARK, *Supervisor Division of Old Age Assistance, P.O. Box 1331, Reno, Nevada.*

DEAR MR. CLARK: Reference is hereby made to your letter of January 21 inquiring whether members of the State Board of Relief, Work Planning, and Pension Control, also known as the State Welfare Board, may be paid travel expenses and actual living expenses while attending board meetings at Reno.

An examination of the Statutes pertaining to your opinion to your question, we think, discloses that such members may be paid travel and living expenses from the "State Welfare Fund." Such is the plain implication contained in section 6 of the 1937 State Welfare Act, the same being chapter 127 of the 1937 Statutes. Said section 6 was reenacted in 1941 wherein the appropriation for the present biennium was made. The 1941 Act being chapter 145 of the Statutes of 1941.

We conclude that members of the State Welfare Board may be paid their necessary travel and living expenses while away from home in performance of the duties connected with such board.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

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

4. United States Senators and Other State Officers Not Entitled to Sets of Nevada Compiled Laws 1929—Property of State of Nevada.

CARSON CITY, January 27, 1943.

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

DEAR MR. McEACHIN: This is in answer to your letter to me of 23d instant with reference to the request of a Federal officer, a United States Senator, for a set of Nevada Compiled Laws 1929.

You cite Nevada Compiled Laws 1929, section 7109.03 as a section of the law which governs the "distribution" (not the sale or giving away or donation) of this set of books, and also referred to the section immediately following that section, that is to say section 7109.04, which mandatorily requires the return of said books to the "State Librarian" by the "officers of the State of Nevada" upon the expiration of their term of office or the charging of the value thereof to them in the event they fail to return them. You have correctly quoted the law; and the entire law being Nevada Compiled Laws 1020, section 7109-7109.08, as compiled in the Supplement to Nevada Compiled Laws which is 1931 Statutes of Nevada, chapter 2, pages 1, 2.

Said chapter provides a rather complete statement as to the ownership of said set of books and also as to the method of handling them. Under the provisions of this law, even the State officers never own such sets of books so furnished them. They always belong to the State. They are mere loans by the state to the particular *State offices* to whom they are "distributed" by the State Librarian. Pursuant to this plan merely *loaning* the books to the State officers, none of the books are ever taken out of the State offices at the end of the term of office of said State officers or of the vacation of these offices. Each set is marked with a certain number. The Attorney-General's set is marked "Set No. 16," and all them are stamped: "Property of the State of Nevada, to be returned to the State Librarian as per Statutes of Nevada 1931, Chap. 2." All the sets "distributed" to State officers bear stamps containing the same words; and each has the number of the set written in pen and ink on the inside cover of each volume of the set.

The above-mentioned situation clearly and definitely shows that these books are not and never become the property of the various State offices or State officers. No State officers has ever claimed that they belong to him.

In addition to the foregoing, it will be noted that said chapter 2 expressly provides that these sets of books are to be "distributed" to State offices alone as distinguished from Federal offices. The record shows that none of these sets of books has ever been furnished to any United States Senator or any other office or officer of the United States. The policy has been to "distribute" them (only) to offices or officers of the State of Nevada as distinguished from officers of the United States; and that policy is clearly supported by the above-mentioned chapter 2.

The fact of the matter is that very few of these sets of the law were furnished free to the State by Bender-Moss Company, San Francisco, California, the publisher thereof. Even the counties of the State buy their own sets for their own county offices and county officers directly from Bender-Moss Company. So many new departments and offices of the State have been established since 1931 that it is difficult to find a sufficient number of these sets available to furnish the two branches of the Legislature the number of sets which it is necessary for them to have for their use. The Legislature really needs ten times as many of these sets of Nevada Compiled Laws as are available for them. In fact, we believe that some of the sets furnished the Legislature are temporarily taken from other officers.

For the foregoing reasons, it is our opinion that the law does not provide for the *distribution*

(loaning) of these sets of books to United States Senators or other offices or officers of the United States, but that the distribution thereof is limited to State offices and officers. It certainly does not provide for a sale or gift of these sets of books to any office or officer, either State or Federal.

Nevada Compiled Laws 1929, section 7414, cited by you, has no application at all to these sets of Nevada Compiled Laws. It refers alone to session laws of the Legislature and the legislative Journals, and they alone are to be furnished to members of Congress.

Respectfully submitted,

ALAN BIBLE, *Attorney-General*.

By GRAY MASHBURN, *Deputy Attorney-General*.

5. State Police Bill Regular Legislative Enactment.

CARSON CITY, February 8, 1943.

HON. E.P. CARVILLE, *Governor of the State of Nevada, Carson City, Nevada*.

MY DEAR GOVERNOR: On February 5, 1943, you asked me to check the legislative history of the so-called "State Police Bill"; to advise you whether or not it had been enacted by the people of the State of Nevada as a referendum measure under section 2, article XIX of the Constitution; and if not a referendum measure, whether or not such State Police Law could be amended.

The present State Police Law was enacted at a special session of the Legislature in 1908, chapter 4. The question on the official ballot at the General Election held November 3, 1908, submitted the approval of this law to the people as a referendum measure. At such election the question of its approval received 9,954 votes in approval and 9,078 votes in disapproval thereof. The highest total vote in that election was 24,442 votes for the Presidential Electors and the highest total vote for a State office was 23,780 votes cast for the three candidates for Justice of the Supreme Court.

Under the above statement of facts, it is the opinion of this office that the State Police bill was not approved by a majority of the electors voting at a State election so as to prevent it from being changed except by direct vote of the people. Neither was the State Police bill disapproved by a majority of the electors voting at a State election, and it, therefore, follows that the present State Police bill, chapter 4 of the Special Statutes of Nevada of 1908, sections 7434-7459 Nevada Compiled Laws, occupies exactly the same status in law as any other regular legislative enactment and is subject to such action as the 1943 Legislature may deem necessary.

Our opinion rests upon the decision of the Supreme Court of this State in the case of *Tesoriere v. District Court*, [50 Nev. 302](#), at pages 313-315 of said opinion. Section 2 of article XIX of the Constitution reads as follows:

SEC. 2. When a majority of the electors voting at a state election shall by their votes signify approval of a law or resolution, such law or resolution shall stand as the law of the state, and shall not be overruled, annulled, set aside, suspended, or in any way made inoperative except by the direct vote of the people.

When such majority shall be void and of no effect.

Judge Ducker in his concurring opinion in the above-entitled case stated that three things must occur before a law is confirmed by the people so that it cannot be amended or repealed

except by their direct vote, namely, to wit:

First, there must be a law; second, there must be the expressed wish of 10 per centum or more of the voters of the state that it be submitted to the vote of the people; and, third, a majority of the electors voting at a state election must signify approval of the law.

None of these essentials appeared in the procedure followed as prescribed by section 3 of said article 19 by which the said measure became a law. It was not a law when submitted, but a measure proposed by the legislature with the approval of the governor under the right conferred by section 3. It was not referred to the electors for their approval or rejection by the expressed wish of 10 per centum or more of the voters of the state, but by the legislature under said authority of said section 3. *It was not approved by a majority of electors voting at a state election, but by a majority of the votes cast for and against the measure. Consequently it did not by referendum become enacted into a law that could not be amended by the legislature by reason of the prohibition of section 2 of article 19. (Italics ours.)*

It is clearly in accordance with the decision of the Supreme Court that the State Police law which was submitted to the people of the State in 1908 “was not approved by a majority of the electors voting at a State election, but by a majority of the votes cast for and against the measure. Consequently it did not by referendum become enacted into a law that could be amended by the Legislature by reason of the prohibition of section 2 of article 19.”

The official returns of the 1908 election show that the approval of the Police bill received 9,954 votes, and its disapproval 9,078. If this vote represented the entire number of votes cast at such election, then, of course, there would be no question presented. The State Police law would stand approved, but such official returns show that the total vote for Justice of the Supreme Court was 23,780. A majority of this vote is 11,891 votes, thus the State Police bill received 1,937 votes less than a majority of the votes of the electors voting at the State election, and, therefore, did not receive a constitutional majority necessary to establish the State Police law as a law of this State beyond the power of the Legislature to thereafter change it.

To same effect see Attorney-General Diskin’s Opinion No. 389, Biennial Report, 1929-1930, and Attorney-general Mashburn’s Opinion No. 161, Biennial Report, 1934-1936.

Although we find no decision of this office as to the exact effect of the State Police bill, it is apparent to us that it has always been considered not as a referendum law but as a regular legislative enactment, since it has been actually amended by various legislative sessions in the past. It was amended in 1909, chapter 126; 1911, chapter 82; 1915, chapter 283; and 1923, chapter 94.

Very truly yours,
ALAN BIBLE, *Attorney-General*.

6. Public Schools—Sale of School Property.

CARSON CITY, February 8, 1943.

E.E. FRANKLIN, *Deputy State Superintendent of Public Instruction, Elko, Nevada*.

DEAR MR. FRANKLIN: This will acknowledge receipt of your letter of February 4, 1943,

received in this office February 6, 1943.

Although we are required by the State law to give opinions to Deputy Superintendents of Public Instruction, it has been the uniform policy of this office in the past, and one in which I concur, that all requests for opinions should first be directed to the Superintendent of Public Instruction with the request that she in turn submit the inquiry to this office. It seems to me that there are two very good reasons for this rule. First, it enables all opinions to be cleared through one central head or department, and in the second place, it saves duplication in those cases where we have previously given an opinion to the Superintendent of Public Instruction or to some other Deputy Superintendent of Public Instruction.

In the interest of time, however, I have called Miss Bray and she joins in your request for an opinion, since this particular question has never been asked before.

It is our opinion that chapter 176 of the 1937 Statutes of Nevada, governing the sale or lease of school property, is simply a limitation upon the school boards named therein as to the method they should follow in sales or leases of school property and should in no way be construed so as to prevent the sale of school property by boards not named therein.

In short, this 1937 law says nothing whatever about Boards of School Trustees of school districts other than those of the first class. It is our opinion, therefore, that Boards of School Trustees of school districts other than those of the first class are governed by the regular School Trustee law, namely, section 5715 Nevada Compiled Laws 1929, which section is section 67 of the 1911 school law. Subsection 1 of this section sets forth the method which School Trustees shall use in buying and selling schoolhouses, and it seems to us that this law can and should be read in *pari materia* with the 1937 law so that both laws can be interpreted so as to stand together.

I take it that the Metropolis School District is not a school of the first class and, therefore, I believe you can safely follow the general provisions of the law set forth in the section just noted, section 5715.

If we can be of further assistance please let us know.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

7. State Orphans' Home—Execution of Deeds by Directors.

CARSON CITY, February 9, 1943.

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

MY DEAR GOVERNOR: This will acknowledge receipt of your letter of January 28, 1943, received in this office February 6, 1943.

We have examined the proposed deeds to be signed by the Directors of the State Orphans' Home. Since there is no statutory authority authorizing the Directors of the State Orphans' Home or the State Board of Control to issue such a deed, it is our opinion that it will be necessary to secure a legislative Act authorizing the State Orphans' Home to deed the area specified to the Department of Highways for highway purposes.

It should be noted that the deed calls for portions of land in section 29 and section 20 in Township 15 N., Range 20 E., M.D.B. & M., containing an area of 20.25 acres. Chapter 78 of the 1941 Statutes of Nevada authorized the Directors of the State Orphans' Home to convey a portion of section 20, Township 15 N., Range 20 E., M.D.B. & M., consisting of approximately

four acres, with certain restrictions. This Act, which apparently was drawn to allow agreements to sell to the Federal Government, is not broad enough to authorize the execution of the deed which you have submitted.

I am enclosing herewith the original letter to the State Board of Control together with the attached instruments.

Very truly yours,
ALAN BIBLE, *Attorney-General*.

8. State Highway Department—Right-of-Way Over State Lands.

CARSON CITY, February 10, 1943.

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

DEAR MR. ALLEN: Reference is hereby made to your letter of February 8, together with correspondence attached thereto, relating to a right-of-way over certain land in Clark County for State highway purposes. The State land in question being under contract of sale from the State to an individual State land contractor pursuant to the laws of this State relating thereto.

It is noted that a quitclaim deed had heretofore been secured by the Highway Department from then contractor of the land for right-of-way or rather additional right-of-way to be used in reconstructing a portion of U.S. Highway No. 91. It is also noted that this particular contractor had forfeited his land contract and that the land was thereafter contracted to a new contractor.

From the correspondence forwarded this office, it appears that the question resolves itself into a proper construction of chapter 30 of the 1935 Statutes of Nevada. This chapter reserves to the State a right-of-way for State highway purposes over land belonging to the State and thereafter contracted for sale. We think a construction of the statute will answer your inquiries.

Chapter 30 provides that if and when there shall have been surveyed a definitely designated or a proposed State highway over and across State land which is subject to contract and sale by the State Land Registrar that then there shall be reserved, in the event of the sale of such land, a right-of-way of two hundred (200) feet in width for State highway purposes. It also provides that in the event, after the sale of land with such reservation, the highway shall not be constructed or that the construction thereof be abandoned by a proper State authority, then all right, title, and interest of the State of Nevada in and to the right-of-way so reserved shall revert to and become the property of the purchaser of such land.

We think that this particular statute is subject only to one interpretation. If, at the time the land is contracted for sale according to law, there has been surveyed over such land a definitely designated proposed State highway, then such land can only be contracted for sale with the reservation of a right-of-way for State highway purposes reserved at the time of the entering into such contract. That the contractor and purchaser would be required to contract for the purchase of such land burdened with such reservation. Thereafter, if such contractor forfeits his land contract, and the land then become subject to contract and sale according to law to another person, the reservation for such right-of-way follows the land and the second contractor contracts to purchase the land with the same burden of a right-of-way for State highway purposes and must enter into such contract with the knowledge of such burden.

While the correspondence submitted with your inquiry does not specifically advise when the first contractor entered into the contract for the purchase of land, we assume that such contract

was entered into after the passage of chapter 30 in 1935. However, assuming that such contract was entered into prior to the enactment of such chapter, still such fact would not avail the second contractor anything. The statute definitely provides as hereinabove pointed out that when a definitely designated proposed State Highway shall have been surveyed over such land, then the reservation for the right-of-way immediately inures to the benefit of the State. Consequently, if the first contractor purchased the land without such reservation, he did deed such reservation to the State Highway Department before forfeiture of his land contract. The contract being forfeited, the right to contract and sell the land again accrued to the State. In the meantime, however, a State highway had been definitely located upon such land and, therefore the provisions of chapter 30 are applicable.

We are of the opinion that no further deeds are necessary from the second contractor of the land in question.

Whenever State highways are to be constructed over State-owned land, the Highway Department should furnish the State Registrar with sufficient data to locate such proposed right-of-way on his plats and maps so that he will be enabled, if any such lands are thereafter contracted for sale, to plot out the right-of-way.

Respectfully submitted,

ALAN BIBLE, *Attorney-General.*

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

cc TO WAYNE McLEOD, *Surveyor General, Carson City, Nevada.*

9. Taxation—Proceeds of Mines Constitutes Personal Property.

CARSON CITY, February 16, 1943.

NEVADA TAX COMMISSION, *Carson City, Nevada.*

Attention: J.G. Allard, Chief Clerk.

GENTLEMEN: Reference is hereby made to your inquiry of January 28 as to whether the assessment of net proceeds of mines is an assessment on personal property or on real property.

Your inquiry was prompted by the submission of the question to the Nevada Tax Commission by the attorneys representing the Defense Plant Corporation, which corporation, as we understand, is operating by and through the Basic Magnesium, Incorporated, certain mines in Nevada producing magnesium for the United States Government.

This opinion, in answer to your inquiry, is premised upon the proposition that the Defense Plant Corporation, which is an instrumentality of the United States Government, owns the mines in question, and that such mines are simply operated by the basic Magnesium, Incorporated, as a managing agent and not as a lessee. Such premise is based upon the statement of attorneys representing the Defense Plant Corporation to the Tax Commission on and dated December 19, 1942.

While the law of this State providing for the taxation of net proceeds of mines requires all owners and operators of mining property to make returns to the Tax Commission concerning the gross yield of the mining property and also the net yield after statutory deduction for the purpose of taxation, yet, under the circumstances of this particular case, we are inclined to the view that the net proceeds of the mines operated by the basic Magnesium, Incorporated, as managing agent for the Defense Plant Corporation, are not taxable under laws of this State.

After a thorough examination of the authorities, we are of the opinion that the net proceeds of mines under the Nevada law constitute personal property. We have found no good authority to the contrary. Net proceeds of mines, or rather the proceeds of mines, were held to be personal property by the Supreme Court of Nevada in the case of *City of Virginia v. Chollar-Potsoi M., Co.*, [2 Nev. 86](#). No contrary holding appears in *State v. Kruttschnitt*, [4 Nev. 178](#). In the case of *Forbes v. Gracey*, 94 U.S. 762, the case decided by the Supreme Court of the United States which arose in Nevada and was appealed from the United States Circuit Court for the District of Nevada, the Supreme Court said concerning the nature of ores and minerals as property as follows:

As we construe the statutes of the United States and the recognized rule of the Government on this subject, the moment this ore become detached from the soil in which it is embedded it becomes personal property.

We think it naturally follows that the net proceeds being derived from the reduction of ores and minerals after being extracted from the mines, that such net proceeds constitutes personal property.

The Defense Plant Corporation was chartered by the Reconstruction Finance Corporation under the authority of section 10 of the Reconstruction Finance Corporation Act, as amended June 10, 1941. We cannot doubt what the Defense Plant Corporation is an arm of and an instrumentality of the Federal Government. It is, we believe, the fundamental rule of taxation where the United States and a state may be concerned that unless Congress has consented that property of the United States may be taxed by a State, the power of the State to so tax does not exist. Section 10 of the Reconstruction Finance Corporation Act does provide that the real property of the Defense Plant Corporation may be taxed by a State in which such property is situated. On the other hand, such law contains an exemption, which is in effect, a prohibition on the State, exempting the personal property is situated. On the other hand, such law contains an exemption, which is in effect, a prohibition on the State, exempting the personal property of the Defense Plant Corporation from State taxation. The same exemption is contained in the amendment to the charter of the Defense Plant Corporation in practically the same language as that contained in the Federal statute.

We are, therefore, constrained to hold that the proceeds of mines constitute personal property under the law of this State. That the Defense Plant Corporation, or in fact the United States of America, being the owner of the mine from which the ore in question is extracted and by reason of the nonconsent of Congress to the taxation of such personal property, that State taxation of the proceeds thereof is not permissible.

This opinion, however, does not relate to any other mining corporation or person, but relates solely to the matters set forth in the foregoing opinion and such opinion relates to the Defense Plant Corporation and its managing agent and operator only so long as the present conditions exist.

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

10. Constitutional Law—Assembly Bill No. 85 Not Unconstitutional—Funds Derived from Sources Named in Constitutional Amendment Cannot Be Used for Flight Strips—Other Appropriations Derived from Other Sources Could Be Used.

CARSON CITY, February 18, 1943.

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

DEAR MR. ALLEN: This will acknowledge receipt of your letter of February 15, 1943, in which you state Chairman Grant of the Assembly Committee on Highways has raised the question as to the constitutionality of Assembly Bill No. 85 on the grounds that such bill might possibly conflict with section 5 of article IX of the Constitution of the State of Nevada.

The constitutional provision clearly prohibits diversions only from the proceeds and taxes specifically set forth in the section, and since it is our understanding that the entire cost of construction and maintenance of flight strips is to be paid by Federal Funds, we do not believe that Assembly Bill No. 85 is unconstitutional. The State could not use funds derived from the sources named in the constitutional amendment for building flight strips, but there would be nothing to prevent either the State or some political subdivision from appropriating money which would be derived from other sources for cooperation with the Federal Government in such construction and maintenance work. It is, therefore, our opinion that the use of the words "in part by funds provided by the State or any of its subdivisions" does not make the Act unconstitutional, since such funds in any event would be limited to sources other than those mentioned in the constitutional amendment.

It is also equally clear that State funds derived from any of the sources mentioned in the constitutional amendment cannot be used for anything other than construction, maintenance, and repair of public highways of the State, except costs of administration.

Very truly yours,

ALAN BIBLE, *Attorney-General.*

11. Nevada Hospital for Mental Diseases—Agreement Between State of Nevada and Any Company, Association, or Corporation Prohibited—Sullivan-Kelly Ditch.

CARSON CITY, February 18, 1943.

DR. R.E. WYMAN, *Superintendent Nevada Hospital for Mental Diseases, P.O. Box 2460, Reno, Nevada.*

DEAR DR. WYMAN: Replying to your inquiry received February 9, 1943, in which you requested information relative to the possibility of the State Hospital entering into an agreement to incorporate the Sullivan-Kelly ditch, and if so, the necessary procedure.

An agreement by the State of Nevada to become interested in any company, association, or corporation is prohibited by the State Constitution.

Article VIII, section 9, of the Constitution, being section 139 Nevada Compiled Laws 1929:

The State shall not donate or loan money or its credit, subscribe to or be interested in the stock of any company, association, or corporation, except corporations formed for educational and charitable purposes.

If we can be of further help, please let us know.

Respectfully submitted,

ALAN BIBLE, *Attorney-General.*

By GEORGE P. ANNAND, *Deputy Attorney-General.*

12. Constitutional Law—State Elective Officers—Salary for Ex Officio Duties.

CARSON CITY, February 19, 1943.

HON. JOHN KELLY, *Majority Floor Leader, Nevada Assembly, Assembly Chambers,*
Carson City, Nevada.

DEAR ASSEMBLYMAN KELLY: This will acknowledge receipt of your letter of February 18, 1943, in which you ask whether or not the various salary laws prescribing ex officio duties for the constitutional State elective officers conflicts with the provisions of the Constitution which states that the salary or compensation of such constitutional State elective officers shall not be changed during the term for which such officers are elected.

The Supreme Court of this State has decided this question and, in accordance with its decisions, it is our opinion that compensation for ex officio duties may be made effective immediately, and does not conflict with the Constitution.

The first constitutional provision bearing upon your question reads as follows:

The legislature may, at any time, provide by law for increasing or diminishing the salaries or compensation of any of the officers whose salaries or compensation is fixed in this constitution; *provided*, no such change of salary or compensation shall apply to any officer during the term for which he may have been elected. (Article XV, section 9.)

The Supreme Court in the case of *Crosman v. Nightingill*, [1 Nev. 232](#), held: “The constitutional restriction imposed by section 9, article XV, is doubtless intended only to prevent the increase in salary or compensation of officers, as such officers, or for duties naturally belonging to their positions, and can scarcely be extended to prevent the allowance of a compensation to officers upon whom duties or responsibilities in no wise connected with their offices are imposed.”

The second constitutional provision was explained in the case of *State v. LaGrave*, [23 Nev. 373](#), at page 382, as follows:

In *State ex rel. H.C. Cutting, Superintendent of Public Instruction, v. C.A. LaGrave, State Controller*, [23 Nev. 120](#), the court said: “The office of superintendent and the various ex officio offices mentioned in these statutes are each a separate and distinct office, and their being vested in the same person does not change their nature in this respect.” The court cited *State v. Laughton*, [19 Nev. 202](#); *People v. Durick*, 20 Cal. 94; *Kinsey v. Kellogg*, 65 Cal. 111.

Under the above authorities the offices of secretary of state, of ex officio clerk of the supreme court, and the office of reporter of the decisions of the supreme court are separate and distinct duties, in no way naturally pertaining to the duties of the secretary’s office, and he performs these duties, we are of opinion that there is no provision of the constitution that prohibits the legislature from providing for paying him for said services. (*Love v. Baehr*, 47 Cal. 364.)

Your particular attention is directed to the case of *Love v. Baehr*, 47 Cal. 364.

Your attention is also called to the “Recommendations of the Attorney-General to the Forty-first Session of the Legislature,” particularly to page 14 thereof, in which he specifically states: “Additional compensation for new ex officio duties may be made effective, however,

immediately.”

Very truly yours,
ALAN BIBLE, *Attorney-General*.

13. War Bonds—No Authority to Invest Reserve Funds in U.S. War Bonds.

CARSON CITY, February 19, 1943.

HON. DUANE MACK, *Assemblyman from Douglas county, Assembly Chambers,
Carson City, Nevada.*

DEAR ASSEMBLYMAN MACK: This will acknowledge your recent request for our opinion as to whether or not a reserve fund could be created by the town of Gardnerville, which fund could be invested in the United States War Bonds or other sound security.

As you know, the fiscal management of our counties, cities, towns, etc., is governed by the budget law, sections 3010-3025 Nevada Compiled Laws 1929, as amended, and since such management is placed on a cash basis, it is our opinion that in order to accomplish the purpose stated in your inquiry it would be necessary to amend this fiscal budget law enabling reserve funds to be created for investment in bonds and possible postwar use.

If we can be of further assistance to you in this office, please let us know.

Very truly yours,
ALAN BIBLE, *Attorney-General*.

14. Public Schools—Emergency Loans May Be Repaid With Federal Funds—Lanham Act.

CARSON CITY, February 25, 1943.

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

DEAR MISS BRAY: Reference is hereby made to your inquiry of February 10, 1943:

During the past two years several school districts in Nevada, located in national defense areas and eligible for Federal funds under the Lanham Act (Public Law No. 137) have incurred emergency loans to maintain and operate schools in their districts, when the usual State, county, and district funds for school purposes were not adequate to support the increased enrollment, due to defense industries, application for Federal funds having been duly filed and awaiting final action in Washington.

Some of these school districts include the Paradise school district in Clark County, Duck Creek school district, Railroad Pass school district, Toiyabe school district, and the Tungsten school district. In no case was the special tax levied to repay the emergency loan within the statutory period, since the trustees of these districts and the State Board of Finance were assured that, within the year, the Federal funds sought for the maintenance and operation of these schools would be available.

The point on which I need your advice now is whether the emergency loan so incurred may now be repaid from the Federal funds allocated to the various

districts for the maintenance and operation of the schools, without the necessity of a legislative Act authorizing the district to pay the emergency loan with other than funds derived from a special tax for that purpose.

You see, the only need for the emergency loan in each case was as to provide immediate funds for the payment of teachers' salaries, purchase of textbooks and supplies, and other operation costs, pending the approval of the application for Federal funds. In other words, the emergency loan money was used merely as an advance until the Federal funds were available to pay the operating expenses of the school.

If special legislation is required, will you please advise whether the emergency loan law should be amended so as to provide that school districts, incurring emergency loans under the circumstances above cited, may repay the loan with the Federal funds later received for the operation of the school, or whether a new Act covering this subject matter should be enacted; also, whether, in the latter case, there should be a separate Act covering the transaction regarding the emergency loans and use of Federal funds for each separate school district.

An examination of the Federal Acts disclose:

Public Law 137—77th Congress; Title 42, section 1532, U.S.C.A.:

Whenever the President finds that in any area or locality an acute shortage of public works or equipment for public works necessary to the health, safety, or welfare of persons engaged in national defense activity exists or impends which would impede national defense activities, and that such public works or equipment cannot otherwise be provided without the imposition of an increased excessive tax burden or an unusual or excessive increase in the debt limit of the taxing or borrowing authority in which such shortage exists, the Federal Works Administrator is authorized, with the approval of the President, in order to relieve such short * * *.

(c) To make loans or grants, or both, to public and private agencies for public works and equipment therefore, and to make contributions to public or private agencies for the maintenance and operation of public works, upon such terms and in such amounts as the Administrator may consider to be in the public interest * * *

Subchapter 111, title 42, section 1531, U.S.C.A., Declaration of Policy:

It is hereby declared to be the policy of this subchapter to provide means by which public works may be acquired, maintained, and operated in the areas described in section 1532 of this title. As used in this subchapter, the term "public work" means any facility necessary for carrying on community life substantially expanded by the national defense program, but the activities authorized under this subchapter shall be devoted primarily to schools, waterworks, sewers, sewage, garbage, and refuse disposal facilities, public sanitary facilities, works for the treatment and purification of water, hospitals and other places for the care of the sick, recreational facilities, street and access roads.

Section 1533, Title 42, U.S.C.A., subdivision (b):

No department or agency of the United States shall exercise any supervision or control over any school with respect to which any funds have been or may be

expended pursuant to this subchapter, nor shall any terms or conditions of any agreement under this subchapter relating to, or any lease agreement under this subchapter relating to, or any lease, grant, loan, or contribution made under this subchapter or on behalf of any such school, prescribe or affect its administration, personnel, curriculum, instruction, method of instruction, or materials, for instruction.

The Duck Creek, Railroad Pass, Toiyabe, Paradise, and Tungsten School Districts located in a national defense area in Clark County, State of Nevada, come within the provisions contained under Title 11, section 202, Public Law 137—77th Congress, “An Act to expedite the provisions of housing in connection with national defense, and for other purposes,” approved October 14, 1940, as amended. Title 11 (c) “To make loans or grants, or both, to public and private agencies for public works and equipment therefor, and to make contributions to public or private agencies for the maintenance and operation of public or private agencies for the maintenance and operation of public works * * *.” The policy of the Government declared in subchapter 111, title 42, section 1531, U.S.C.A. defining “public works” explains such term to “mean any facility necessary for carrying on community life substantially expanded by national defense program, but the activities authorized under this subchapter shall be devoted primarily to schools * * *,” naming other welfare and health projects.

Increased enrollment of pupils in the Clark County public schools was due to the national defense activity in that county. Additional teachers were needed immediately. The current expenses of the schools were greatly increased. School funds were inadequate to meet this demand, and it became necessary for the school districts to borrow money under the provisions for an emergency loans. Application to the Federal Works Administration through the Federal Securities Agency, Office of Defense, Health and Welfare Service, for Federal funds under the provisions of Public Law 137 has been made by the several school districts for the maintenance and operation of the schools without the levy of a special tax for that purpose.

Under subsection (c) Title 11 of the so-called Lanham Act (Public Law 137), approved October 14, 1940, the Federal Works Administration is authorized to make loans or grants for the purposes specified in the Act. The policy declared is to the effect that the activities authorized shall be devoted primarily to schools; including other activities authorized shall be devoted primarily to schools; including other activities for health and general welfare. The Act also provides that assistance may be extended when the need could not be provided without the imposition of an increased excessive tax burden or an unusual or excessive increase in the debt limit of the tax burden or an unusual or excessive increase in the debt limit of the taxing or borrowing authority in which such shortage exists.

A loan of Federal funds to the school districts of Clark County, under the conditions surrounding the schools within the national defense area, would not grant the relief contemplated by the Lanham Act.

It is our opinion therefore:

The Federal funds allocated to the various school districts received upon the applications submitted to the Federal Works Administration are a grant or contribution and not a loan.

The emergency loans, together with the interest thereon, may be discharged and paid with such funds. The State Board of Finance when granting authority to the School Trustees to make the emergency when granting authority to the School Trustees to make the emergency loans were informed that a special tax levy sufficient to pay the same would not be made, since these loans

could be repaid with the Federal funds. When these funds are received they will be placed in the various general school funds. In order to authorize the Boards of Trustees to pay the emergency loans and interest it will be necessary to secure an Act of the Legislature authorizing the Boards of Trustees in the various districts to consolidate their emergency loan funds with their general school funds and pay therefrom the emergency loans and interest. The Act should authorize the Boards of Trustees of the various school districts within the national defense area to consolidate the emergency loan fund with the general school fund; deposit the Federal funds allotted to the districts in the general school funds and direct the Trustees to repay the several emergency loans.

Respectfully submitted,

ALAN BIBLE, *Attorney-General*.

By GEORGE P. ANNAND, *Deputy Attorney-General*.

15. State Welfare Board—Disposition of N.E.R.A. Equipment.

CARSON CITY, March 2, 1943.

MR. HR. R. MARTIN, *Chairman, State of Welfare Board, Post Office Box 2190,* Reno, Nevada.

DEAR MR. MARTIN: This will acknowledge receipt of your letter of February 26, 1943, received in this office today, March 2, 1943.

Your letter states as follows:

With the cessation of the N.E.R.A. program the question of proper disposition of equipment has arisen.

Because the State Welfare Board has not the use for nor the facilities to care for all the equipment accumulated by the N.E.R.A. for the administration of the program, the board desires to relinquish custody of such equipment to the proper State agency.

In your opinion to whom or to what agency may the State Welfare Board release control of the N.E.R.A. property? By what proceeding can this transaction be best accomplished?

Receipts for equipment loaned to various Federal, State, and local agencies will also be relinquished to the proper agent of the State of Nevada.

I discussed this question with both Mr. Henrichs and Mr. MacKenzie on last Thursday afternoon.

In my opinion the State Welfare Board may release control of equipment under its supervision to the State Board of Control of the State of Nevada. The Governor of the State is the chairman of this board. See Statutes of Nevada 1933, page 155.

Sections 3 and 4 of the above Act provide as follows:

SEC. 3 Said board shall have supervision over and control of the state capitol building, the capitol grounds, and state waterworks, the state printing office building and grounds, and all other state buildings, grounds, and properties not otherwise provided for by law.

SEC. 4 Said board shall control the expenditure of all appropriations for furnishing, repairing, and maintaining said buildings and grounds, offices, and property connected therewith; for defraying all contingent expenses of all state and other offices about buildings; for transportation of books and documents and

for storage and transportation of state property. No officer or department shall expend more than fifty (\$50) dollars without authorization therefor first obtained from the board of control; *provided*, that the provisions of this section shall not be deemed to apply to the University of Nevada, hospital for mental diseases, state orphans' home, Nevada state prison, Nevada school of industry, the state highway department, nor the state printing department.

There being no other law providing for the disposition or supervisory power over the property mentioned in your inquiry, it is our opinion that the State Board of Control has ample authority and means to receive and properly care for the property formerly belonging to the N.E.R.A..

As I indicated to Mr. Henrichs and Mr. MacKenzie, I am not at all certain that this property is all State property, but acting upon the assumption that it is until such time as the Federal Government has made proper proof of claim and title, I believe that possession and control should be retained by the State.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

16. Public Schools—County Aid to District High Schools.

CARSON CITY, March 5, 1943.

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

DEAR MISS BRAY: This will acknowledge receipt of your letter of March 4, 1943, received in this office March 5, 1943.

Your inquiry reads as follows:

Section 4 of chapter 181, 1939 Statutes of Nevada provides, in part:

A levy of twenty-five (25¢) cent special tax and said fifteen (15¢) cent special tax must be provided for before any county tax levied for the support of said district high school.

In a certain district high school, located in a county having a county high school, the trustees have levied a nine (9¢) cent special district tax for the high school and six (6¢) cent tax for the transportation of high school students. The Board of County Commissioners of that county ask whether such district high school comes within purview of the above-quoted portion of section 4 of the County Aid to District High School Act.

Section 4, chapter 181, 1939 Statutes being section 6078.03 Nevada Compiled Laws 1929, provides:

In counties having one or more regularly established county high schools, the board of school trustees of a district in which a special tax of twenty-five (25¢) cents be levied on each one hundred (\$100) dollars of assessed valuation of said school district, the returns of said special tax levy to be used for elementary or high school purposes as needed; and, in addition to the twenty-five (25¢) cent tax levy as above required, the board of school trustees shall direct that a special levy of fifteen (15¢) cent be levied on each one hundred (\$100) dollars of assessed valuation of the district for the support of said district high school, if such levy is

needed to help provide for the expenses of said district high school. A levy of twenty-five (25¢) cent special tax and said fifteen (15¢) cent special tax must be provided for before any county tax is levied for the support of said district high school.

Section 5, chapter 181, 1939 Statutes, was amended in chapter 157, 1941 Statutes, being section 6078.04 Nevada Compiled Laws 1929. The only amendment in section 5 changed the wording “shall provide by special county (high school levy) funds for the aid of such school district” to read “shall provide y special county (aid to district high school levy) funds for the aid of such school district.”

In the event the amount received from such special tax is not sufficient for the support of the elementary and district high school, the school district would then be entitled to the relief provided in section 3 of the Act.

Section 5 reads as follows:

If the special tax levies provided for in section 4 of this act, together with any funds which may be derived from state and county apportionments and any other source are insufficient for the support of said elementary and district high school, then the county board of education of the county in which said schools shall exist shall provide, by special county aid to district high school tax levy, funds for the aid of such school district when the following precedent conditions in any year of the required aid exist:

1. That the said district high school is already established and is complying with the legal requirements of the state for such high school.
2. That the tax levies provided in section 4 of this act are insufficient to provide necessary funds for the support of said district high school and the elementary school.

* * * * *

3. That, on or before February 10 of each year, the Board of school trustees of said school district shall have submitted to the county board of education the regular school budges for said elementary and high schools, together with a supplemental statement showing the amount of money required to be raised by county tax for the school district.

When the board of school trustees of the district in which said district high school shall exist shall have met the above requirements of section 4 and 5 of this act, then the county board of education of that county shall fix the county aid to district high school tax at a figure which will provide not to exceed one hundred dollars (\$100) per high school student as shown in the petition for the newly established district high school in the event that the high school has not been operating for one school year, or an average daily attendance for the school year ending June 30 of the calendar year immediately preceding the calendar year for which the county aid to district high school is requested in the event that said district high school has been operating for at least one school year.

In our opinion, the district high school mentioned in your letter is entitled to county aid as the trustees have levied a total special tax of fort (40¢) cents and if the amount received together with any funds which may be derived from state and county apportionment and any other sources are insufficient for the support of the elementary and district high school.

Respectfully submitted,
ALAN BIBLE, *Attorney-General*.
By GEORGE P. ANNAND, *Deputy Attorney-General*.

17. Public Schools—C.C.C. Property—Transfer to State Superintendent—Disposition of.

CARSON CITY, March 16, 1943.

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

DEAR MISS BRAY: Reference is hereby made to your memorandum to Hon. E.P. Carville, Governor of Nevada, dated March 10, 1943, received in this office on the same date, concerning the transfer of C.C.C. Camp SCS-3, Panaca, and C.C.C. Camp G-122, Las Vegas, to you, as State Superintendent of Public Instruction.

Transfer of the C.C.C. property located in Camp G-122 at Las Vegas and Camp SCS-3 at Panaca, Nevada, was made to the State Superintendent of Public Instruction by the Government consignor under an order for the liquidation of the Civilian Conservation Corps. The Deputy Superintendent of Public Instruction and the Board of School Trustees at Panaca accepted these camps for the State Superintendent. Later the State Superintendent signed shipping tickets completing the transfer to the State of Nevada. The transfers were made as indicated on the shipping tickets (inventories):

Authority or Req. NO.: Ltr. HNSC. Transfer of CCC Camps to State of Nevada School Authorities. Directed to be shipped or delivered to Superintendent of Public Instruction, State of Nevada.

The Shipping Tickets were on forms "War Department Q.M.C. Form No. 434, Revised January 3, 1935. Consignor, District Quartermaster, Pocatello District, CCC, Pocatello, Idaho." Tickets numbered C-1447-3, property of Camp SCS-3, Panaca; C-1448-3 Camp SCS-3 Panaca; and C-1444-3, C-1445-3, Camp G-122, Las Vegas.

In reply to a letter by the State Superintendent of Public Instruction to Andrew S. Thompson, CCC Sub-District Executive, the following letter was received November 11, 1942:

I have your letter of November 9 addressed to Mr. Huff.

The CCC Camps at Las Vegas and Panaca were transferred to your office in accordance with directives from our higher headquarters. In the process of liquidating the Civilian Conservation Corps the various camps are transferred to organizations having a need for them and once a transfer is completed the camp becomes the property of the agency receiving it. This may clear up your question regarding the use to which you can put the Las Vegas camp; leave it in place or remove it to some more advantageous location. This also applies to the Panaca camp. It seems to me that your only responsibility in connection with these camps is the same as that in connection with any other property of the State of Nevada, for when you sign the Shipping Tickets covering the two camps those camps become the property of the State of Nevada. Since the C.C.C. is being liquidated there is little likelihood that a camp will again be established at Las Vegas.

It is my understanding that the Grazing Service at Las Vegas is desirous of obtaining some of the smaller buildings at the Las Vegas camp. Grazing Service

officials have been advised to contact your office relative to a transfer of buildings from the Department of Public Instruction to the Grazing Service.

I trust that this letter will serve to answer your questions and that you will find it possible to receipt and return the Shipping Tickets within a short time.

Labor-Federal Security Appropriations Act, 1943, approved July 2, 1942 (Public Law 647—77th Congress) provides in part:

For all necessary expenses to enable the Director of the Civilian Conservation Corps to provide for the liquidation of the Civilian Conservation Corps and the conservation and disposition of all of the property of whatever type (including camp buildings, accessories, equipment, and machinery of all types) in use by said Corps. * * *

Notwithstanding the provisions of the Act of December 23, 1941 (Public Law 371), the Director of the Civilian Conservation Corps is authorized, during the fiscal year 1943, to dispose of any camp buildings, no longer needed for Civilian Conservation Corps purposes, and housekeeping and camp maintenance equipment necessary in connection therewith, by transfer, with or without reimbursement, to other Federal agencies or, upon such terms as may be approved by the Administrator, Federal Security Agency, to any State, county, municipality, or nonprofit Organization for the promotion of conservation, education, recreation, or health * * *. And provided further, That such buildings and equipment shall first be tendered to the War Department and Navy Department for use in prosecution of the war, or the Civil Aeronautics Administration, which departments or agency shall have sixty days from the date of notification of availability of such buildings and equipment to accept such tender.

The transfer of property to the State Superintendent of Public Instruction was made by the Government consignor according to the provisions of this Act for educational purposes.

As to the authority of the State Superintendent of Public Instruction to receive the transfer of such property; the State Superintendent has already accepted it in her official capacity and, as stated in the letter of Mr. Thompson, Sub-District Executive, once a transfer is completed the camps become the property of the agency receiving it. The State Superintendent of Public Instruction is not authorized by statute to receive any grant, devise, bequest, donation, or gift or assignment of property. However, the State Superintendent is now in possession of certain property of the United States Government donated for educational purposes.

The Trustees of the various school districts are authorized to hold property as a corporation. Section 5689 Nevada Compiled Laws 1929:

All property which is now vested in or shall hereafter be transferred to the trustees of a district, for the use of schools in the district, shall be held by them as a corporation.

Section 5722, Nevada Compiled Laws 1929:

The board of school trustees of the respective school districts of the State of Nevada are hereby given such 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 the public schools are established, and to promote the welfare of school children.

It is, therefore, our opinion that the State Superintendent of Public Instruction now in possession of the property of the C.C.C. camps can transfer to the trustees of the various school

districts items of property received from the Government and required by the various school districts.

Transfers may be made by surrendering possession of the various buildings and equipment to the different school districts and agencies of the Government and receiving from them written acknowledgment, following the general form of the Shipping Ticket from the Civilian Conservation Corps.

Opposition of Owner to Removal of Property.

It appears from the record that the use of land for the establishment of Camp SCS-3 at Panaca was donated to the United States without any charge or compensation whatever. A copy of the lease was forwarded to the State Superintendent by M.A. Stephens, Executive Assistant to the Director, on January 14, reading as follows:

Enclosed is a copy of the lease covering the camp site of CCC Camp SCS-3, Panaca, Nevada. This was secured as a result of inquiries addressed to this office by Senators McCarran and Scrugham.

You will note that the conditions which provide for the removal of all property, buildings, or improvements have been underscored in red. It is hoped that the copy of this lease will be the means of definitely settling the matter of your right to remove former government property from this site. (*Underscoring set forth here in italics.*)

OFFICE OF THE QUARTERMASTER GENERAL

MRS. F.C. PACE

FREE RENTAL AGREEMENT

Name of Camp and Symbol Number: *Panaca SCS-3, Ft. Douglas District.*

Desiring to contribute to the successful operation of the Civilian Conservation Corps, I hereby donate to the United States for a work camp for the Civilian conservation Corps, without any charge or compensation whatever, a leasehold interest for *twelve* months, beginning on the *first* date of *July* 1941 and ending on the *thirtieth* day of *June* 1942 with the right of renewal until *June 30, 1948.*

DESCRIPTION

Being Lots 3 and 4, Block 22 and Lots 3 and 4, Block 39, and the southerly ½ of the portion of 4th St., lying between B. St., and C St., in the City of Panaca, Lincoln County, Nevada, as recorded in the office of the County Recorder of Lincoln County, Nevada, and including all the appurtenances and improvements thereon.

The United States to shall have the right to terminate this lease on giving written notice to the lessor thirty days prior to such termination.

The United States shall have the privilege of making such improvements on said property that are essential to the successful operation and welfare of said camp, *and shall have the privilege of removing from said land within ninety days after the termination of said term, any and all property, buildings, or other structures or improvements that may have been placed thereon by the United States.*

The United States to have for Civilian Conservation Corps purposes the right of access to said land by existing roadways and trails over adjoining lands owned by me, and to improve and repair such roadway and trails; to take from *a pipe line* located about *inside* of said campsite sufficient water needed in conducting said camp, together with a right-of-way for a pipe from said *pipe line* to the campsite; and to use from lands in the vicinity of the campsite down and standing dead timber for firewood, and other camp purposes.

In testimony whereof I have set my hand this *Thirtieth* day of *May* 1941 at *Panaca, Nevada.*

MRS. F.C. PACE

Signature of Donor

Witness:

ROBERT W. PERSHING

Hq. Ninth Corps Area,

Presidio of San Francisco, California

Accepted this *Thirtieth* day of *May*, 1941.

Certified True Copy:

John E. Vacek

JOHN E. VACEK

Captain, C. of E.

JAMES C. WARD

Major, Cavalry,

Actg. Asst. Adjutant General.

Relative to the question of transferring certain property to the County commissioners for removal to the County Hospital for nurses' quarters. The property was transferred to the State Superintendent of Public Instruction, under the general provision of the Federal Act, for educational purposes and includes further provisions for the promotion of conservation, recreation, or health. Authority is, therefore, given the State Superintendent of Public Instruction to transfer the property not required for school purposes to the County Commissioners for use or nurses' quarters.

Transfer of Property to Reimburse the County Expenditures.

While the school trustees may sell the property for school purposes under the provisions of the statute providing for such sale, there is no authority indicated which would permit the State Superintendent of Public Instruction or the trustees to transfer any property received from the Government to the County Commissioners for the purpose of sale in order to reimburse the county for its expenditure in rental paid for the land.

Transfer to the District Grazing Service.

Buildings and equipment not required for school purposes may be transferred to the District Grazing Service. Such transfer is within the provisions of the Federal Act for the promotion of conservation.

Use of Buildings and Equipment for Civil Aeronautics Administration.

Public Law 647 contains a provision that such buildings and equipment shall first be tendered to the War Department, the Navy Department, or the Civil Aeronautics Administration for use in prosecution of the war.

The request of Dr. C.C. Crawford, Coordinator of Aeronautics at the University of Southern California in Los Angeles, early in December 1942, requesting use of certain buildings to establish a Pilot Training Program in Las Vegas should be granted.

The transfer was made to the State Superintendent during the latter part of October 1942. The request of Dr. C.C. Crawford for the property was made early in December 1942. No record appears that this property was offered to the Civil Aeronautics Administration and under the provisions of the Federal Act, if it was offered, they should have a period of at least sixty days in which to accept such tender. The State Superintendent of Public Instruction should, therefore, transfer this property to the government agency for civil aeronautics under the direction of Dr. C.C. Crawford.

Property for Use of USO.

Dormitory No. 4 of the Las Vegas Camp, as you state in your letter, is now being used as a USO hall for recreational purposes. The State Superintendent of Public Instruction should convey this property to the organization by a form of transfer hereinabove described.

Respectfully submitted,

ALAN BIBLE, *Attorney-General.*

By GEORGE P. ANNAND, *Deputy Attorney-General.*

18. Boulder Canyon Project Adjust Act—Fund Received Under Act To Be Placed in General Fund of State Treasury—Attorney-General Not Disqualified of Suit.

CARSON CITY, March 16, 1943.

HON. H.L. COVINGTON, *Chairman, Ways and Means Committee, Assembly Chamber, State Legislature, Carson City, Nevada.*

DEAR ASSEMBLYMAN COVINGTON: This will acknowledge receipt of your letter of March 16, 1943, in which you state that the Ways and Means Committee of the Assembly have under consideration Assembly Bill No. 179, introduced by Assemblyman Boak on March 12, 1943.

We have carefully studied this bill and fully realize the seriousness and importance of the question therein involved. As you know, it is the constitutional and statutory duty of the Attorney-General to represent and defend the State and its officers. The Attorney-General and his deputies are under oath to do this. This office, on June 30, 1942, wrote an opinion upholding the constitutionality of chapter 141, 1941 Statutes of Nevada, as valid expression of the legislative will. The present 1943 Legislature has amended this Act so as to place all funds received under the Boulder Canyon Project Adjustment Act in the General Fund of the State Treasury. (Senate Bill No. 2, chapter 7, 1943 Statutes of Nevada.)

It is the opinion of this office that this amendatory Act is an equally valid and constitutional expression of the legislative will.

If and when a suit should be brought against the State or its officers by Clark county I believe that this office is in a position to defend such suit and I do not believe that either myself or either of my deputies is disqualified from fairly and honestly defending such suit and fully protecting the State's interests.

Your letter suggests and appropriation of \$10,000 to be used by this office in defending this suit. I do not at this time foresee the necessity of incurring additional expense. However, it is entirely possible that contingencies may arise and that the work in this office will become so heavy that additional legal assistance may be necessary. Accordingly, your suggestion of \$10,000 to provide an emergency which may be used for payment of additional counsel, if needed, and payment of additional costs and expenses of suit, if any, is entirely acceptable.

Very truly yours,

ALAN BIBLE, *Attorney-General.*

19. Salaries—Exceptions to Salary Increase for Clerks, Stenographers, Etc.

CARSON CITY, March 25, 1943.

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

DEAR MR. SCHMIDT: This will acknowledge receipt of your letter of March 22, 1943, received in this office March 23, 1943.

You direct our attention to Assembly Bill No. 77 which recently passed the Legislature and after approval by the Governor became chapter 73, 1943 Statutes.

You ask two questions concerning this Act, namely, to wit:

1. What present departments under the Merit System should be considered as being defined as excepted from the provisions of the Act as worded in lines 1, 2, 3, 4, and 5?

2. What would be the status of departments such Old-Age Assistance, Child Welfare, and other departments if they are not included in the exceptions mentioned in question one above, but also not specifically mentioned in the various offices to which the Act should apply, as listed on lines 5, 6, 7, 8, and 9?

In answer to question No. 1, it is our opinion that the only department excepted under the Merit System is the Nevada Employment Security Administration Department as set up and defined in chapter 59, 1941 Statutes of Nevada.

In answer to question No. 2, it is our opinion that the Act specifically applies only to stenographers, typists, clerks, and assistant state librarian employed in the following departments: "Any of the various offices of the elective officers of the State of Nevada, the Bank Examiner, Labor Commissioner, Public Service Commission, State Board of Health, Department of Highways, State Engineer, and State Library." It seems very clear to us that those departments which are not specifically mentioned above do not come within the provisions of this Act.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

20. Salaries—Deputies and Chief Clerks—Employees State Printing Office.

CARSON CITY, March 26, 1943.

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

DEAR MR. SCHMIDT: This will acknowledge receipt of your letter of March 25, 1943, asking for our interpretation of Assembly Bill No. 76, chapter 135 Statutes of Nevada 1943.

Your inquiry is as follows:

The question has arisen as to the meaning of Assembly Bill No. 76 granting pay raises to certain deputies and chief clerks. In this bill is also mentioned, in general terms, the employees of the State Printing Office. A doubt has arisen as to whether the provision for the State Printing Office is proper, since neither the Legislature nor any State agency has ever fixed a salary for the State printers in their various classifications. They are working on an hourly basis and paid on an hourly basis at the scale fixed by their union.

The title of the Act reads "To provide additional compensation for certain State appointive officers and for the employees of certain State elective and appointive officers."

"SECTION 1. From and after the passage and approval of this Act * * * the employees of the State Printing Office * * * shall in addition to the salary now fixed for each said employee, receive additional compensation at the rate of twelve (12%) percent of said salary, which said additional compensation at said rate shall be included in and paid by the salary warrants issued to said appointive officers and the employees of elective and appointive officers herein named."

It is our opinion, from the reading of the title of the Act and the entire statute, that the Legislature intended the additional compensation to apply to all employees of the State Printing Office, for services rendered, whether or not such compensation may be termed "salary" or "wages." The word "salary," "compensation," or "wages" is the recompense or consideration

paid to a person for services. Webster defines the word "salary" to be "the recompense or consideration stipulated to be paid to a person for services; annual or periodical wages or pay; hire." *School Com'rs. of City of Indianapolis v. Wasson*, 74 Ind. 133, quoting Webster's Dictionary. In the case of *White v. Hayden* (Cal.), cited in 59 Pacific, page 118, "salary and wages are synonymous. Both mean a sum of money periodically paid for services rendered (And. Law Diet.), and it is immaterial how the value of the services is ascertained."

It appears to us to be the clear and the unmistakable intention of the Legislature to provide additional compensation as set forth in the statute to the employees of the State Printing Office, and that the additional twelve (12%) percent should be included in the warrants issued to such employees.

Respectfully submitted,
ALAN BIBLE, *Attorney-General*.

21. Budgets—Publication Of.

CARSON CITY, April 1, 1943.

MR. J.G. ALLARD, *Chief Clerk, Nevada Tax Commission, Carson City, Nevada.*

DEAR MR. ALLARD: This will acknowledge receipt of your letter of April 1, 1943, in which you ask our interpretation of section 3018 Nevada Compiled Laws 1929, as amended by chapter 44, 1935 Statutes of Nevada, section 2, relative to budgets for cities, towns, and school districts, and in particular if the unincorporated town of Austin, Lander County, Nevada, should publish its budget.

Section 3018 Nevada Compiled Laws 1929, as amended, provides:

Upon the preparation and completion of said budget, it shall be signed by the governing board of such city, town municipality, school district, county high school or high school district, or educational district * * * and in cities or municipalities it shall be filed with the city clerk; and if of a town, school district, county high school, or high school district or educational district, it shall be filed with the auditor or recorder of the county wherein such town * * * is situated, and the estimated receipts and expenditures for the then current year and the aggregate valuation and tax rates as shown by said budget shall then be published once, at least fifteen days prior to the date when such budget shall become effective. * * *

There are but two provisions wherein publication of the budget is not required. One, "that when the estimated receipts and expenditures of a county high school are included in the budget of the county wherein such high school is situated, no publication of such receipts and expenditures shall be required other than in section 3 of this Act." Second, "that whenever the budget filed by a Board of School Trustees shows that the estimated receipts from the semiannual school apportionments, without any special district tax upon the property of the school district, will be sufficient to provide the funds necessary to maintain properly the work in said school district for the current year and for the next following year, as required by law, the publication of the budget of such school district shall not be required."

It is our opinion that you are correct in your understanding that all budgets with the exception of school budgets as noted must be published, even when estimated receipts equal or exceed

estimated expenditures.

Respectfully submitted,
ALAN BIBLE, *Attorney-General*.
By GEORGE P. ANNAND, *Deputy Attorney-General*.

22. County Commissioners—Power to Increase Compensation of Constables During Term of Office.

CARSON CITY, April 6, 1943.

HON. GEORGE F. WRIGHT, *District Attorney, Elko, Nevada*.

DEAR MR. WRIGHT: Pursuant to your phone call of yesterday relative to the power of Boards of County Commissioners to increase relative to the power of Boards of County Commissioners to increase the compensation of Constables during their term of office. I have examined the statute relating thereto, the authorities submitted by you and others.

Apparently there is a hopeless conflict in the authorities upon the question presented. Some of the authorities may be dismissed as being controlled by specific language of the Constitution of the State in which the question arose. Other authorities, while dealing with the question in a general way, are not in point. We are inclined to the view that the precise question is to a great extent governed by the rule pertaining to the delegation of legislative power. Section 20, article IV, of our Constitution is the authority empowering the Legislature to authorize the Boards of County Commissioners to establish and regulate the compensation of township officers. This constitutional provision, we think, means that the Legislature must empower Boards of County Commissioners to so act by a statute. This the Legislature has done in the Act of 1929, the same being sections 2201-2205 N.C.L. 1929. The provisions of this Act make it the mandatory duty of the Boards of County Commissioners at a regular meeting in July of any year preceding the election of township officers to fix the compensation thereof for the ensuing term. Nowhere in the Act has the Legislature empowered the Boards of County Commissioners to increase or decrease the salaries so fixed. It may be said, the Act containing no prohibition against such practice, that the Boards of County Commissioners could change any time with respect to increasing or decreasing the salaries once so fixed. We do not think such was the intent of the Legislature and we are impressed with the holding in *Goetzman v. Whitacre* (Iowa), 46 N.W. 1058, which is a case in point with the instant question.

We think that the Nevada statute provides a means whereby a township officer will know in advance of his election what the salary for the ensuing term will be and that he has a reasonable assurance in any event that such salary will not be decreased during such term. On the other hand, he is held with the knowledge that the law contemplates that his salary will not be increased during such time and thus he takes office fully conversant of what his salary will be during the term for which elected.

We are not unmindful that in many instances perhaps the binding effect of the law works, and will work, hardships in individual cases. But this is the fault of the law, if it be a fault, which we think can only be corrected by the Legislature.

Now with reference to section 2202 N.C.L. 1929, which relate the fixing of compensation for an appointive township officer. Perhaps a casual reading of such section would lead to the view that where there is a vacancy in a township office and it is necessary to make an appointment to

fill such vacancy that thereupon the Board of County Commissioners could fix a different salary from that previously fixed for such office. However, we think such section is construed in pari materia with section 2201 N.C.L. 1929, particularly so as section 2202 contains the provision "as provided by law" which in our opinion, relates back to the fixing of the compensation under section 2201 and means the compensation fixed according to the provisions of section 2201.

As stated hereinbefore, there is a hopeless conflict in the authorities upon this question, and perhaps even in this State such questions should receive judicial determination. We suggest that the instant question in Elko County could be submitted to the District Court there under the Declaratory Judgment Act, the same being section 9440-9456 N.C.L., 1929, by means of petition to such court requesting the court to declare the rights and powers of the Board of County Commissioners under the law to change the salaries once fixed according to that law, and thus a judicial determination of an important question could be had.

Respectfully submitted,

ALAN BIBLE, *Attorney-General.*

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

23. Employment Security—Legislature Not Authorized to Grant Relief Contrary to Constitution.

CARSON CITY, April 13, 1943.

MR. ALBERT L. MCGINTY, *Executive Director Employment Security Department,*
Carson City, Nevada.

DEAR MR. MCGINTY: Replying to your inquiry dated March 30, 1943, received in this office March 31, 1943, in which you refer to an opinion of the Attorney-General in February 1939 concerning the appointment of a member of the 1937 Legislature as a member of the Board of Review established under the Unemployment Compensation Law enacted by the 1937 Legislature. The opinion was to the effect that a member of the State Legislature enacting the law containing the provision for a Board of Review and fixing the compensation of the members thereof could not legally be appointed until one year after the expiration of such legislator's term of office.

Your letter enclosed a copy of a letter from the Executive Director of the Federal Security Agency, Washington, D.C., requesting that immediate action be taken to replace the sum of \$123, which amount evidently represented the compensation paid the member of the Review Board and which amount was disallowed by the Social Security Board as an expenditure made for purposes other than, or in amounts in excess of, those determined by the board to be necessary for proper and efficient administration.

Your first question is: "In view of the opinion rendered by the Attorney-General's office, can this department constitutionally replace such moneys out of funds appropriated by the 1941 State Legislature, a balance of which is now on hand?"

Statutes of 1941, chapter 185, section 13, created a special fund to be known as the Unemployment Compensation Administration Fund:

All moneys which are deposited or paid into this fund are hereby appropriated and made available to the commissioner. All moneys in this fund shall be expended solely for the purpose of defraying the cost of the

administration of this act, and of the employment security administration law, and for no other purpose whatsoever, and all moneys received to section 302 of the social security act shall be expended solely for the purposes and in the amounts found necessary by the social security board for the proper administration of these acts.

The section further provides:

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.

Answering your first question, it is our opinion that your department cannot replace the money thus expended out of funds appropriated by the 1941 Legislature, a balance of which is now on hand, as the same would not be a legal claim against the State.

Your second question: "Also, can the State Legislature constitutionally appropriate funds for the purpose of replacing moneys granted this department by the Federal Government and which were expended in violation of the State Constitution?"

The letter from the Social Security Board suggests, if moneys are not available from any other source, that legislative action be taken to appropriate funds for this purpose. Subsection (b) of section 13, supra, provides in part that moneys granted under the Social Security Act which are found by the Social Security Board to have been lost or expended for purposes other than, or in amounts excess of, those found necessary by the Social Security Board for the proper administration of this Act, shall be replaced by moneys appropriated for such purpose from the Federal Fund of the State to the Unemployment Compensation Administration Fund for expenditure as provided in subsection (a) of this section. "Upon receipt of notice of such a finding by the social security board, the commissioner shall promptly report the amount required for such replacement to the governor and the governor shall at the earliest opportunity submit to the legislature a request for the appropriation of such amount."

Answering your second question, it is our opinion, since your department cannot legally replace such money out of the funds appropriated and made available to the commissioner, therefore, the Legislature cannot constitutionally appropriate funds for the purpose of replacing money expended for compensation to one appointed to office in violation of the constitutional provisions.

Respectfully submitted,

ALAN BIBLE, *Attorney-General*.

By GEORGE P. ANNAND, *Deputy Attorney-General*.

24. State Welfare Board—No Authority to Make Pay Raises Retroactive.

CARSON CITY, April 15, 1943.

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

DEAR MR. SCHMIDT: Replying to your letter received April 13, 1943, containing the inquiry "Has the Nevada State Welfare Department authority to make pay raises retroactive," it is our opinion that the State Welfare Department does not have the authority to make pay raises retroactive.

The personnel appointed by the State Board entered the service upon an agreement or contract to pay periodically a certain compensation for service rendered. The service rendered was the consideration for the salaries paid. There is no pre-existing debt.

Where a contract does not contemplate the making of a subsequent agreement, the original consideration will not support such subsequent agreement. Hence, a subsequent agreement not forming any part of an original contract and not supported by the original consideration thereof or by any new consideration is void." 12 Am. Jur., sec. 93.

The State Board is not authorized to disburse State funds without consideration, and since retroactive payments would be allowing compensation for services already paid for, it is our opinion that they cannot be allowed.

Respectfully submitted,

ALAN BIBLE, *Attorney-General*.

By GEORGE P. ANNAND, *Deputy Attorney-General*.

25. Public Service Commission—Renewal of Franchise to Ely Water Company—Rates, Rules, and Regulations Under Jurisdiction of Commission.

CARSON CITY, April 15, 1943.

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

DEAR MR. SEXTON: This will acknowledge receipt of your letter of April 2, 1943, received in this office on April 3, 1943, attaching thereto a copy of a letter from John S. Belford concerning the status of the Ely Water Company.

It is stated that a franchise was granted to the Ely Water Company by the Legislature of 1907 providing a right to furnish water to the city of Ely for a period of thirty-five years and you ask whether or not, upon the renewal of this franchise, will the Ely Water Company as a public utility come under the provisions of the Public Service Commission Act of the State of Nevada.

It is the opinion of this office that the renewal of the franchise by the city of Ely to the Ely Water Company requires the making of a new contract and is not an extension of the former contract. The term of the franchise may be fixed by the board provided for in the original Act, but the rates for the service, rules, regulations, and practices to be followed shall be under the jurisdiction of the Public Service Commission of the State of Nevada.

Statutes of 1907, chapter 25, provided for granting to the Ely Water Company, a corporation, the right to furnish water to the towns of Ely and East Ely, and additions of said towns, in White Pine County, Nevada. The town of Ely, acting through the Board of County Commissioners of White Pine County, executed a contract and grant, the consideration, terms and conditions of which were set out in full in the Act.

It appears that theretofore water pipes and mains had been laid under certain streets and alleys in the city and fire hydrants connected for the purpose of fire protection. The agreement provided for the purchase by the water company of the existing pipes and mains at a price of six thousand dollars. This amount was to be expended by the county in retiring the bonds issued by the county on the property of the town of Ely for protection against fire.

The franchise was granted for a period of thirty-five years after the date of the Act. Rates to be charged for the service of water were set out in detail in the contract. The rates so fixed were

to remain in effect for a period of ten years from the date of the Act. Thereafter the maximum rates to be charged were to be determined by a board of four persons, two to be appointed by the authorities of the town, two by the water company, and if the board should fail to agree on a rate, they were authorized to select a fifth member. Such maximum rates were to be fixed in the same manner every ten years from the date thereafter. Paragraph eleven of the Act provides:

That at the expiration of this grant, the said town shall have the right to buy and purchase said water system at a price agreed upon and fixed by a board of ten persons, five, to be appointed by the authorities of said town, and five to be appointed by the second party, and if the board fails to agree, they shall select three additional members; and the decision of said board shall be final. If said town shall refuse or relinquish its right to purchase said water system, as set forth in the last preceding paragraph, then the said grant shall be renewed and the said board mentioned in the last preceding paragraph shall have the right to fix terms, conditions, covenants, and agreements for the renewal thereof.

The Act provided "that the grant, rights, franchise, and privileges herein specified and the terms, conditions, and covenants herein contained shall inure to the benefit of and shall be binding upon the successors of the parties hereto and upon the assigns of the said party of the second part."

The franchise expired in 1942 and the city of Ely, a municipal corporation, at a bond election held in that year refused and relinquished its right to purchase the water system.

The city having refused or relinquished its right to purchase the system, the provision in the agreement as set forth in the Act becomes operative, "then the said grant shall be renewed." The last-mentioned board "shall have the right to fix terms, conditions, covenants, and agreements for the renewal thereof." The contract and agreement with the water company made mandatory the renewal of the grant, but did not specify the term in years nor the conditions under which the renewal should be granted. All terms, conditions, covenants, and agreements for the renewal were to be determined by the board composed of representatives of each party. The city had the option to purchase. The exercise of the right would terminate the right of renewal.

The question as to whether use of the word renewal in the lease giving tenant option to renew is to be taken to require execution of a new contract, or as meaning an extension of original term, depends on intention of parties to be gathered from language of lease, purposes to be accomplished by its execution and surrounding circumstances at the time of its making. Words and Phrases, vol. 36, citing Maryland Theatrical Corporation v. Manajunk Trust Co., 146 A. 805.

At the time of the making of the original contract with the water company Ely was a town under the control of the Board of County Commissioners of White Pine County. The Act creating the Public Service Commission was not enacted. Ely is now a municipal corporation.

Renewing the contract with the water company is the granting of a franchise by a municipality.

Franchises ought not to be exercised by private individuals at their mere will and pleasure, but should be reserved for public control and administration, either by the government directly, or by public agents acting under such conditions and regulations as the government may impose in the public interest and for the public security. 12 R.C.L. 5.

Chapter 255 of the Act of 1913 prescribing duties of water companies provides that all proceedings under the Act shall be in conformity with the provisions of the Public Service

Commission for the regulation and control of certain public utilities.

The Public Service Commission in 1931 issued the Ely Water Company a Certificate of Public Convenience and Necessity.

Section 5 of the above-mentioned Act, being section 6162 N.C.L. 1929, reads as follows:

This act shall be deemed to apply to and govern all public utilities now furnishing water for domestic use unless otherwise expressly provided in its charters, franchises, or permits under which such utilities are acting, and it is specifically provided that all persons, firms, associations or corporations hereafter engaging in the business of a public utility to supply any city, town, village or hamlet with water for domestic uses shall be subjected to the provisions of this act, regardless of any conditions to the contrary in any charter, franchise or permit of whatsoever character granted by any county, city, town, village or hamlet within this state, or of any charter * * * granted by any authority out of the State of Nevada.

In accordance with the foregoing, it is the opinion of this office that the rates, rules, regulations, and practices to be followed are clearly under the jurisdiction of the Public Service Commission.

Very truly yours,
ALAN BIBLE, *Attorney-General*.

26. Surveyor General—"Game Refuge" Land Patents—Mineral Reservations.

CARSON CITY, April 15, 1943.

HON. WAYNE McLEOD, *Surveyor General of Nevada, Carson City, Nevada*.

DEAR MR. McLEOD: This will acknowledge receipt of your letter of March 31, 1943, received in this office on April 1, 1943.

You state that your office sells land containing two separate and distinct mineral reservations, namely:

(1) The reservation made a part of our State land patents reads, * * * "provided, that all mines of gold, silver, copper, lead, cinnabar, and other valuable minerals which may exist in the said tract, except gas, coal, oil, and oil shales (chap. 172, Stats. 1921); * * * * are hereby expressly reserved."

(2) The reservation contained in the patents from the United States of America to the State of Nevada on the land embraced in the "game refuge" in Clark County containing 11,516.93 acres reads, * * * "excepting and reserving, however, to the United States all oil, coal or other mineral at any time found in said lands, together with the right to prospect for, mine, and remove said mineral under such conditions and under such rules and regulations as the Secretary of the Interior may prescribe."

You further state that there exists on some of the lands in Clark County available for sale from the so-called "game refuge" considerable sand and gravel of commercial grade, and it is your contention that although this sand and gravel is acquired under the United States Mining Laws, since it is difficult to find a tract of land in Nevada that does not contain sand and gravel, and since sand and gravel is not specifically defined as a mineral, that it therefore is appurtenant

to the surface and passes with the patent.

You also state that you have been issuing patents for “game refuge” land which do not contain the exact wording of the mineral reservation contained in the patent from the United States of America to the State of Nevada.

Upon this set of facts you ask the following questions:

1. Does a parcel of land acquired through this office containing a mineral reservation in the patent as in paragraph (1) create a severance between the surface and mineral rights, or does the mineral pass with the surface?
2. Does a parcel of land acquired through this office containing a mineral reservation in the patent as in paragraph (2) create a severance between the surface and mineral rights, or does the mineral pass with the surface?
3. What does the word minerals include?
4. Does sand and gravel contained in the so-called “game-refuge” patents pass with the surface rights?
5. How should patents to the so-called “game refuge” read?

Answering question 1, it is the opinion of this office that in a parcel of land acquired under paragraph (1) minerals do not pass with the surface. You are referred to the case of Stanley v. Hirsching, [26 Nev. 55](#). Reading from the syllabus to that case the court said:

The act of Congress of June 16, 1880 (21 Stats. 287), granting certain lands to the State of Nevada, authorized the state to dispose of them under such regulations as the legislature should prescribe. The act of March 5, 1887 (Comp. Laws, 325, 327), after providing for the sale of such lands, provided that nothing in the act should be construed to prevent any person entering on the land to prospect for minerals, or to prevent the economical working of any mine which might be discovered therein (Stats. 1887, 102; Comp. Laws, 281-282), provided, that any citizen might enter on any mineral lands in the state, notwithstanding the state’s selection of it under grants, and explore for minerals, and, on the discovery thereof, mine the same, except that improvements made by persons purchasing the land from the state should not be taken or injured without compensation, and that thereafter all patents made by the state should reserve all mines that might exist on the land: Held, that one taking a patent to such lands, with such reservation, acquired no interest in a mine located after his application was filed, and before the patent issued, notwithstanding that the selection by the state under the grant from the government determined that the lands were agricultural and nonmineral, within the meaning of the grant.

This case was cited with favor in Rhodes Mining Company v. Belleville Placer Mining Company, [32 Nev. 230](#), wherein the court in part says:

In Stanley v. Mineral Union no question relating to tailings was involved, the plaintiff admits that under that decision and an agricultural patent issued by the state such as the one held by the plaintiff, mines may be located and held by prospectors.

Likewise, see opinion of Attorney-General Cleveland Baker under date July 12, 1912 in which he stated that under sections 2456-2459 (4154-4157 N.C.L. 1929) and section 3226 (5544 N.C.L. 1929) of the Revised Laws of Nevada any of the public lands of the State are subject to entry as mineral. He further said:

The State has expressly disclaimed all interest in mineral lands; every patent for state lands expressly reserves all valuable minerals from the operation of such patent; any citizen of the United States may enter upon any unfenced and unimproved land in the State held in private ownership, excepting mining claims and property already located, and may prospect thereon for valuable minerals, and may locate mineral deposits found thereon.

Also, see the case of Southern Development Company v. Endersen, 200 Fed. 272, and particularly Judge Farrington's comments on the Stanley v. Mineral Union and Hirsching case.

Answering question 2, it is our opinion that minerals do not pass with the surface rights under the clear language of the reservation contained in the so-called "game refuge" patents. The reasoning noted under our answer to question 1 is equally applicable.

Answering question 3, 40 Corpus Juris, section 12, page 737, states as follows:

Unless there are word qualifying or limiting its meaning, the term "mineal" as used in instruments and statutes ordinarily includes asphaltum, bauxite, brine, calk, and calespar, chalk chomate of iron, clay, coal coprolites, diamonds, granite, gypsum, marble, ores, salt shale, slate, and stone, whether obtained from a mine, as the word would seem to imply, or by open working, and whether containing metallic substances or substances entirely nonmetallic.

This office has likewise previously held that sand and gravel were minerals and subject to location as such under the mining laws of the State and Federal Government. Attorney-General's Opinion No. A-25, 1938-1940 Biennium. Also, see Layman v. Ellis, 52 L.D. 714.

Answering question 4, it should be noted that you do not state any definite set of facts as the proper basis for an answer to this question. Should further opinion be desired on this question it is suggested that the actual facts arising under the issuance of a so-called "game refuge" patent be detailed. Offhand, in view of our answers above stated, it would seem that sand and gravel under the so-called "game refuge" patents does not pass with the surface rights. Since sand and gravel are classed as minerals and since minerals are reserved to the United States to be removed under such conditions, rules, regulations as the Secretary of the Interior may prescribe under the "game refuge" patents, apparently they can be removed and commercially used only by securing the consent of the Secretary of the Interior.

Answering question 5, the mineral reservation in patents on the so-called "game refuge" should conform to the mineral reservation contained in the patent from the United States of America to the State of Nevada, and it is accordingly suggested that patents hereafter issued on land embraced in the game refuge in Clark County, Nevada, should contain the language you have set forth in the mineral reservation numbered (2) in the statement of facts.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

27. State Board of Health—Salary Increase State Health Officer Not Effective Until July 1, 1943.

CARSON CITY, April 16, 1943.

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

DEAR MR. SCHMIDT: This will acknowledge receipt of your letter of April 9, 1943,

received in this office of April 10, 1943.

You make the following statement of facts:

Assembly Bill No. 49 approved by the Governor and enacted into a law on March 24, 1943, makes the following amended provision concerning the salary of the State Health Officer: "His annual compensation from State appropriated funds shall be fixed by the State Board of Health in an amount not to exceed the sum of \$4,250 a year."

Previously his salary was fixed at \$3,600 a year and an appropriation for that amount was made for the biannual year ending June 30, 1943. No additional appropriation was made by the Legislature to take care of any increase in salary to June 30, 1943, although they did make provisions and appropriated sufficient money to pay the new salary after June 30, 1943.

Question: Can the State Board of health increase the salary for the State Health Officer prior to July 1, 1943?

It is the opinion of this office that the increase in the salary of the State Health Officer cannot begin until July 1, 1943.

It is true, as we have previously held, that a statute may fix the salary of a public officer, which salary must be paid even though the Legislature were to appropriate a lower amount or make no appropriation at all. See Opinion No. 279, Report of Attorney-General 1938-1940.

However, under the facts of this case, it is clear that the 1943 Legislature did not intend to allow the increased salary until July 1, 1943. This is borne out of the fact that no deficiency appropriation being later in time than the Act providing for the setting of the compensation by the State Board of Health, we cannot do other than give effect to this very clear unmistakable expression of the legislative will. The very fact that the appropriation for the salary was not increased until July 1, 1943, when the legislators had knowledge of the bill providing for the means and method of increasing the salary of the State Health Officer, can be given but one construction, the salary increase should not be made effective until July 1, 1943.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

28. State Board of Health—Division of Vital Statistics Not Authorized to Furnish Free Certified Copies of Records of Births Except as Provided by Law.

CARSON CITY, April 20, 1943.

MR. JOHN J. SULLIVAN, *Director Division of Vital Statistics, Nevada State Department of Health, Carson City, Nevada.*

DEAR MR. SULLIVAN: Replying to your letter of April 15, 1943, in which you inquire if your office is permitted to issue, without charging the statutory fee of fifty cents per copy, certified copies of birth certificates which are to be used by enlisted personnel of the armed forces in securing the benefits allowed by the Servicemen's Dependents Allowance Act of 1942, it is the opinion of this office that there is no provision in the Nevada statutes nor the Federal Act to exempt those in the military service from the payment of such fees.

Section 5281 Nevada Compiled Laws 1929 provides for the payment of a fee of fifty cents

for the making and certification of the record of a birth certificate. The only exemptions noted are certificates limited to a statement as to the date of birth of any child when the same shall be necessary for admission to school, or for the purpose of securing employment, and that the United States Bureau of the Census may obtain, without expenses to the State, transcripts or certified copies of births and deaths without payment of the fees prescribed.

Section 6875 Nevada Compiled Laws 1929, relating to compensation for official services in cases of pensions, reads:

No fee or charge shall be made by any state, county or township officer of this state for administering oaths, or certifying or acknowledging any paper for United States pensioners in any matter pertaining to pensions.

The Servicemen's Dependents Allowance Act defines the allowance:

The monthly allowance payable under this chapter to the dependent or dependents of any such enlisted men shall consist of the Government's contribution to such allowance and the reduction in or charge to the pay of such enlisted men.

Such an allowance is an additional compensation and not a pension.

Military pensions are commonly granted on account of disabilities or injuries received in or resulting from service with the military forces. 40 Am. Jur., sec. 25, Pensions.

The Servicemen's Dependents Allowance Act does not expressly forbid the payment of such fees. Section 219 of the Act provides:

No part of any amount paid pursuant to the provisions of this chapter shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with any family allowance payment under this chapter, and the same shall be unlawful, any contract to the contrary notwithstanding.

The Act makes the violation thereof a misdemeanor.

The registrar of vital statistics cannot be considered an agent or attorney of the applicant.

The 1943 Legislature amended section 7 of the Act to provide for the registration of all births and deaths in the State of Nevada to read as follows:

SEC. 7 * * * All fees and moneys of any kind received under the provisions of this act shall be deposited with the state treasury and credited to the general fund of the state on the fifteenth (15th) and thirtieth (30th) days of each month.

This act shall be effective immediately upon its passage and approval.

Therefore, the Division of Vital Statistics of the Nevada State Department of Health is not authorized to furnish free certified copies of records of birth, except in cases expressly provided in section 5281 Nevada Compiled Laws 1929.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

By GEORGE P. ANNAND, *Deputy Attorney-General*.

29. Counties—Victory Tax Deductions.

CARSON CITY, April 21, 1943.

HON. A.L. SCOTT, *District Attorney, Lincoln County, Pioche, Nevada.*

Re: Victory Tax Deductions.

DEAR MR. SCOTT: This will acknowledge receipt of your letter of April 5, 1943, received in this office on April 7, 1943.

As you will recall from our previous communications, an attempt was made to have necessary legislation drawn making it abundantly clear that victory tax deductions were to be made by the proper county officials. Although the 1943 Legislature did pass a law authorizing victory tax deductions by the State controller where State employees were concerned, a companion bill concerning county and school employees was not enacted.

Although no legislation was enacted, it is, nevertheless, the opinion of this office that instructions which you gave to your County Auditor and County Treasurer under date of January 23, 1943, in connection with the withholding of the victory tax are correct instructions.

Section 467 (a) of the Act, U.S.C.A., Title 26, provides: "The tax required to be withheld by section 466 shall be collected by the person having control of the payment of such wages by deducting such amount from such wages as and when paid. As used in this subsection, the term 'person' includes officers and employees of the United States, or of a State, Territory, or any political subdivision thereof, or of the District of Columbia, or any agency or instrumentality of any one or more of the foregoing."

The officers having control of the payment of wages are the County Auditor and the County Treasurer.

Section 5796 Nevada Compiled Laws 1929 defines the duty of the County Treasurer as to disbursements of school moneys: "To pay over all public school moneys received by him only on warrants of the County Auditor, issued upon order of the Board of School Trustees for their respective school districts."

Section 1943 provides that every demand against the county, except the salaries of the Auditor and District Judges, shall be acted upon by the County Commissioners, and before it can be paid must be presented to the County Auditor, who must satisfy himself whether the money is legally due and unpaid. If allowed, draw his warrant on the County Treasurer, as amended 1935, except the salaries of the District Judge or Judges and the elective officers of the county whose salaries are fixed by law.

Paragraph (b) under section 467 of the Victory Tax Act provides for indemnification of the withholding agent. "Every person required to withhold and collect any tax under this part shall be liable for the payment of such tax, and shall not be liable to any person for the amount of any such payment."

We agree with your opinion that computation, deductions, and returns on the victory tax on all wages paid by warrants on the County Treasurer should be handled entirely by the offices of County Auditor and County Treasurer.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

30. United States Housing Authority—Payments in Lieu of Taxes.

CARSON CITY, April 22, 1943.

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

DEAR MR. SCHMIDT: This will acknowledge receipt of your inquiry of April 21, 1943, in

which you ask how payments made to you by the United States Housing Authority in lieu of taxes in connection with Defense Housing Projects should be apportioned. Such payments are made for the current tax year, and payments to the State are based upon the present State tax rate of .695¢

It is the opinion of this office that these payments should be apportioned among the various fund as set forth in section 2, chapter 192, 1941 Statutes of Nevada. These payments are made to the State to the end that such Federal "projects will bear the same cost of government and municipal improvement as though such projects were subject to assessment and taxation in the same manner as privately owned property." See section 1, chapter 20, 1943 Statutes of Nevada.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

31. Corporations—Fee for Filing Certificate of Change of Principal Place of Business.

CARSON CITY, April 24, 1943.

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

DEAR MR. McEACHIN: Reference is hereby made to your letter of April 22, 1943, requesting advice as to the fee to be charged for the filing of a certificate of change of principal place of business of corporations.

The change of principal place of business of a corporation, which includes the office of the resident agent, may be effected in one of three ways. First, by amendment of its Articles of Incorporation. Second, by adoption of a resolution by the board of directors deciding the change and location of principal office. Third, the changing of the address of principal office or place of business within the limits of city or town wherein the corporation had theretofore designated its principal office by the execution of a certificate duly acknowledged by the resident agent of such corporation in charge of such office, certifying the change to the Secretary of State. See Attorney-General's Opinion No. 140, June 14, 1934, Report of Attorney-General 1932-1934.

The reference to the uniform fee bill for the office of Secretary of State at page 58, 1933 Statutes, discloses that specific reference is therein made to chapter 17, Statutes of Nevada 1931, which said chapter provides for the change of location of the office of any resident agent of corporations within any city or town of this State as above pointed out. Under this particular chapter no fees are to be charged. With respect to the fee to be charged as provided in the 1933 Statutes, it is our opinion that the fee of five dollars therein mentioned relates to the second method above pointed out for the change in location of the principal office where the change is made from one city or town to another within the State. The fee, of course, for change of location of such office by amendment of the Articles of Incorporation would be governed by the fees for the filing of such amendments.

Respectfully submitted,

ALAN BIBLE, *Attorney-General*.

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

32. War Bonds—Investment State Highway Funds.

CARSON CITY, April 24, 1943.

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

MY DEAR GOVERNOR: This will confirm our telephone conversation of yesterday concerning the investment of State Highway funds in United States Defense Bonds.

It has been the opinion of this office on the investment of State, county, and city funds that legislative sanction must be secured for such investment. In the absence of legislative authority, it is our opinion that such investments cannot be made.

My personal regards.

Very truly yours,

ALAN BIBLE, *Attorney-General.*

33. Public Service Commission—Switching Operations, Together With Facilities Used, Do Not Constitute Common Carrier by Railroad.

CARSON CITY, April 26, 1943.

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

Attention: C.B. Sexton, chairman.

GENTLEMEN: Your inquiry of recent date as to whether the railroad operations conducted by Basic Magnesium, Inc., at its plant at Royson, Nevada, constituted such corporation a public utility by a railroad as meant by the statutes of this State.

We are advised that the Union Pacific Railroad handles cars and trains of cars from and to Royson Station over its line of railroad. That the Basic Magnesium switching locomotive then picks up such cars and trains of cars in and around the plant. That in reverse order cars are picked up in the plant and transported to Royson Station by the Basic Magnesium switching engine and there turned over to the Union Pacific Railroad. We also understand that the tracks from Royson Station into and through the plant are owned by the Defense Plant Corporation and operated by the Basic Magnesium people.

It is also pointed out that the switching service performed by the Basic Magnesium people is a part of their operating expense and absorbed in the general expense of the operation of the plant, and that the Union Pacific pays no part of the charges for the hauls from Royson Station into the plant yard or for any of the switching services performed in the yard. It is also noted that the Basic Magnesium people handle all types of freight, both State and interstate, but that no such service or switching service is performed for the public, or for hire or compensation. It also appears that the engine employees of the Basic Magnesium are not affiliated with railroad brotherhoods and are not subject to the benefits of the Railway Retirement Plan.

From the foregoing facts it is clear that the switching operations of the Basic Magnesium, Inc., do not constitute such corporation, or for that matter the Defense Plant Corporation, a common carrier by railroad. Neither do such operations create the utility a public utility within the jurisdiction of the Public Service Commission of this State.

The switching operations carried on, as above mentioned, constitute nothing more than the operation of plant facilities. The operations in question fall squarely within *General Electric Company v. New York Central & Hudson River Railroad Company No. 1099*, reported in vol. 14, *Interstate Commerce Commission Reports*, 237; and also *Solvay Process Company v. Delaware, Lackawanna and Western Railroad Company No. 973*, reported in vol. 14, *Interstate*

Commerce Commission Reports, 246. In fact, such operations fall squarely within the Tap Lines Cases, 234 U.S. 1, and Crane Iron Works v. U.S., 209 Fed. 238.

It is, therefore, our opinion that the above-mentioned switching operations, together with the facilities used therein, constitute plant facilities only and not a common carrier by railroad or a public utility.

We think it advisable to mention, however, that in the event the Basic Magnesium, Inc., and/or its affiliated enterprises insure that employees thereof with the Nevada Industrial Commission that then, pursuant to section 2806, Nevada Compiled Laws 1929, the Nevada Industrial Commission would be empowered to provide reasonable rules and regulations concerning the safety operations with respect to the plant facility in question.

Respectfully submitted,

ALAN BIBLE, *Attorney-General*.

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

34. Employment Security—Contract Between Hotel and Orchestra Constitutes Hotel Employer Within Meaning of Section 2 of Unemployment Compensation Act.

CARSON CITY, April 27, 1943.

MR. ALBERT McGINTY, *Executive Director Employment Security Department, Carson City, Nevada*.

Attention: Roy M. Whitacre.

DEAR SIR: Reference is hereby made to your request for an opinion as to whether the contract of employment by and between the Commercial Hotel of Elko, Nevada, and Curt Sykes, as leader of an orchestra, and the musician members of such orchestra constitutes the Commercial Hotel the employer of such orchestra and its members within the meaning of section 2 of the Unemployment Compensation Act.

We think there is no question but what the Commercial Hotel was in fact the employer or such orchestra and that the members thereof were employees of the Commercial Hotel under and by reason of the terms of the contract.

The contract in question, which we are returning herewith, shows conclusively that the intent of both parties was and is that the Commercial Hotel, by and through its agent, Frank Walters, is the employer and the ten musicians included in the contract constituted and constitute employees of such employer. Such is the unequivocal language of the contract.

Without quoting the provisions of section 2 of the Unemployment Compensation Act, it is clear that the term "employer" in the instant situation means the Commercial Hotel and that the musicians were engaged in the employment of the employer. It would be difficult to show, under the terms of the written contract, that the individual members of the orchestra were free from control or direction of the Commercial Hotel within the meaning of subdivision 5 of the said section 2. It would be necessary for such musician members to satisfy the commission that they, as individuals, had been free from control or direction of the Commercial Hotel during the performance of their services as musicians.

We conclude that Commercial Hotel in the instant situation was an employer.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

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

35. Budgets—Governmental Agencies Shall Comply With Segregation of Funds Determined by Nevada Tax Commission.

CARSON CITY, April 28, 1943.

NEVADA TAX COMMISSION, *Carson city, Nevada*.

Attention: J.C. Allard, Chief Clerk.

GENTLEMEN: The statement in your letter to this office, dated April 21, 1943, relative to the administration of the so-called Budget Law of Nevada, is concurred in by this office, and such has been the uniform holding of the Attorney-General since 1923.

Section 3012, 1929 N.C.L., 1941 Supp. provides that the County commissioners of each county in this State, between the first Monday of January and the first Monday of April of each year, prepare a budget of the amount of money estimated to be necessary to pay the expenses of conducting the public business of the county for the then current year and for the next following year:

Said budget shall be prepared in such detail as to the aggregate sums and the items thereof as shall be prescribed by the Nevada tax commission * * * .

The budget shall be supported by distributions in such detail as shall be prescribed by the Nevada tax commission.

The Nevada Tax commission has prescribed a standard form for county and city budgets. The schedule designates the principal funds as the General Fund, Road Fund, General School Fund, High School Fund, Indigent Fund, and Bond and Interest Fund. Under these broad titles distribution is made into the several departments. For example, under the heading "General Fund" the various departments are set out in twenty-three subdivisions. Actual expenditures and estimated expenditures are required in each department. The same method is followed in each of the other general classifications. This form is not severe nor unreasonable. It is based upon good business practice and is within the statutory authority given the Tax Commission. The statute gives the Tax Commission the authority to require such detail and such items as it may prescribe. The form is not a "line by line" budget calling for a detailed itemization of all expenditures, but merely a fund for each department.

Under the method prescribed by statute the governmental agencies shall transact business upon a cash basis.

The fact determined by the actual expenditures for the year is the basis upon which the estimated amount in each department for the ensuing year is determined. Once this determination is made and the budget executed by the proper officers, "the several sums set forth shall be thereby appropriated for the several purposes therein named for the said then current year." Each item or department under the general classification of fund then becomes the specific fund for that department and the designated amount appropriated therein.

Section 3013 N.C.L. 1929 provides: "It shall be unlawful for any commissioner, or any Board of County Commissioners or any officer of the county to authorize, allow, or contract for any expenditure unless the money for the payment thereof is in the treasury and specially set aside for such payment." Section 3019 is the corresponding section relative to cities, school districts, etc.

There is no authority, under the Act regulating the fiscal management of counties, cities, towns, and school districts, given any of the governmental agencies to transfer from one department fund to another. In the case of Gridley Rural High School District v. Board of Commissioners, 125 P. (2) 383, the court said:

Clearly it is contrary to the letter and spirit of the law for the board to borrow from one item fund to pay the obligations chargeable to another item fund, or to pay an obligation not budgeted at all.

See Reports of Attorney-General 1923-1924, Opinion 2; 1927-1928, Opinion 260; and 1934-1936, Opinion 204.

An Act authorizing the County Commissioners of the several counties of this State to loan or transfer surplus money from one fund to the other, adopted February 9, 1881, section 1876 N.C.L. 1929 is, in our opinion, repealed by the Fiscal Management Act of 1917, and its amendments. Such was the opinion of the Attorney-General in 1923 (Opinion 2).

The Supreme Court in the case of Carson City v. County Commissioners, [47 Nev. 423](#), construing the budget law, said:

Any other statute or section which provides for the doing of the county business in any other manner than provided by this act is repugnant to the budget law, and is made so by the terms of that law itself; hence, and such act or statute is repealed by implication.

Recognizing that unforeseen necessities or emergencies might arise requiring the expenditures of additional money not provided for in the budget, the Legislature in section 5 of the Act, section 3014 N.C.L. 1929, takes care of this situation under the provisions for an emergency loan.

The fiscal management of cities and school districts, as well as counties, comes within the provisions of the budget law. Section 3011 N.C.L. 1929:

For the purpose of this act every county, city, town, municipality, school district, county high school, or high school district or educational district, and governing boards thereof are deemed to be governmental agencies of the State of Nevada.

It is our opinion that all such governmental agencies shall, in preparing the budget, comply with the required segregation of funds as determined by the Nevada Tax Commission. That no such governmental agency has authority to transfer from one item fund to pay the obligations chargeable to another item fund, notwithstanding the fact that such transfer and payment would not exceed the aggregate amount of the estimated expenditure as shown in the budget.

Respectfully submitted,

ALAN BIBLE, *Attorney-General*.

By GEORGE P. ANNAND, *Deputy Attorney-General*.

36. Budgets—Law Provides Complete Financial Plan—Authority of County Commissioners to Transfer Funds.

CARSON CITY, April 28, 1943.

NEVADA TAX COMMISSION, *Carson City, Nevada*.
Attention: J.G. Allard, Chief Clerk.

GENTLEMEN: Replying to your letter dated April 31, 1943, your attention is called to the opinion given your Commission under date of April 28, 1943.

Section 1976 N.C.L. 1929, in the opinion of this office, is repealed for the reason that this Act is irreconcilably conflicting with the Budget Act and the Budget Act must control.

The budget law provides a complete financial plan for a definite, period and, though containing no repealing clause, necessarily impliedly repeals all former repugnant revenue Acts. This was so held by the court in the case of Carson City v. Board of County Commissioners, [47 Nev. 415](#).

The only authority given County Commissioners to transfer funds is found in section 3019.01, 1929 N.C.L., 1941 Supp.:

At the end of each fiscal year the county commissioners of the various counties are hereby authorized and directed to repay all said emergency loans and transfer all surplus money in any other fund, except bond interest and redemption funds and other fixed funds, to the general fund of the county for reapportionment. Statutes 1943, page 76.

Any law of the State of Nevada to the contrary notwithstanding, the board of county commissioners of any county in the state is hereby authorized, upon written resolution of the school board concerned, to transfer the surplus remaining in the emergency loan fund of that school district after the emergency loan, together with interest thereon, has been paid in full to the school fund of the school district which incurred the loan.

And by special Act of the Legislature.

We call your attention to the opinion of Attorney-General Diskin, January 13, 1923.

Section 1540 Revised Laws (1976 N.C.L. 1929) was amended by sections 3826-3836 Revised Laws (Stats. 1903, p. 107), and both were repealed by Statutes 1917, p. 249, as amended Stats. 1919, p. 406, as amended Stats. 1921, p.78.

Yours very truly,

ALAN BIBLE, *Attorney-General*.

By GEORGE P. ANNAND, *Deputy Attorney-General*.

37. County Commissioners—No Authority to Enter Into Lease-Rental Agreements Without Special Election.

CARSON CITY, April 28, 1943.

HON. MARTIN G. EVANSEN, *District Attorney Mineral County, Hawthorne, Nevada.*

DEAR SIR: On April 22d you requested the opinion of t his office upon the following question:

Can the Board of County Commissioners of Mineral County, acting as the Board of Managers of the Mineral County Power System, acquire the electric power transmission line erected by the United States Navy Department without a special election called for the purpose of submitting such question to the electors of Mineral County?

We understand that it is proposed to acquire the power transmission line in question, which parallels the presently county owned power transmission line and conveys electrical energy from

Mill Creek, California, to the Naval Ammunition Depot, near Hawthorne, by leasing the line from the Federal Government at a yearly rental of \$2,000, plus upkeep of the line, and in turn furnish power to the Government at a stipulated price.

The answer to your inquiry requires the examination of the law of this State relating to the powers of the Board of County Commissioners of Mineral County. Such Board may be designated the Board of Managers of the power system of the county, but, even so, such board must find power to act in the instant matter in the statutes relating to its powers and duties, both as a Board of County Commissioners and as a Board of Managers.

The Mineral County Power System had its inception in chapter 45, page 80, Statutes of 1921. The Board of County Commissioners there received its initial power to provide a power system for Mineral County. This statute has been amended from time to time since another statute later mentioned herein, contains the power of the board to provide, acquire, operate, maintain, and dispose of the power plant system. If the power to acquire by a lease-rental contract a power transmission line cannot be found within these statutes, then such power does not exist.

It is settled law in this State that boards of County Commissioners can only exercise such powers as are specially granted by the Legislature, or as necessarily incidental for the purpose of carrying such specific powers into effect, and when the law prescribes the mode which they must pursue in the exercise of these powers, it excludes all other modes of procedure. *Sadler v. Eureka County*, [15 Nev. 39](#); *Godehaux v. Carpenter*, [19 Nev. 415](#); *State v. Washoe County*, [22 Nev. 15](#); *Lyon County v. Ross*, [24 Nev. 102](#); *Specialty Co. v. Washoe County*, [24 Nev. 359](#); *State v. Boerlin*, [30 Nev. 473](#); *State ex rel. King v. Lothrop*, [55 Nev. 405](#).

Sections 1, 2, and 3 of the said 1921 Act contained the grant of power and jurisdiction to the Board of Commissioners to purchase, construct, and operate power lines, distributing lines, substations, transformers, and other electrical appliances under the conditions provided in the Act. No power was therein granted to enter into lease-rental agreements for the acquisition of power lines. Such lines were either to be purchased or constructed by the county. Sections 1, 2, and 3 of such Act were amended at 1923 Statutes, pages 366, 367. In none of these amendments was the power granted to enter into lease-rental agreements. The intent of the Legislature was there clearly expressed that the acquisition of power lines was to be by purchase or by construction by the county. And particularly was it provided in section 3 that if it should appear that an extension of high-tension lines would be a profitable investment, that the Board of County Commissioners might authorize the construction thereof and enter into contracts therefor upon the express conditions that such extensions be built by or under the complete supervision of the board, that the cost thereof, including transformers, etc., be advanced to the county by the consumers proposed to be served by such extension, and that such cost might be rebated back to such consumers at a rate not to exceed at 15¢ annually, computed upon their monthly bills within a period of four years, and that the title to such line, including transformers, etc., shall at all times be in and remain in the county, irrespective if the entire cost of such line had been rebated to the consumers. Likewise a very similar provision was written into said section 3 with respect to secondary and branch power lines, with provision for partial rebate of the cost of transformers, arresters, and substations with the title thereto remaining in the county.

In 1925, sections 2 and 3 of said Act, as amended in 1923, were again amended. Sec. 1925 Statutes, pages 56, 57. The amendment to section 2 did not change such section in any manner material here. It did, however, designate the Board of County Commissioners to “Board of Managers” of the power system. The amendment to section 3, however, made clear that the title

to primary or *secondary* lines constructed under the terms of the Act by the county was to be and remain in the county. No power was granted in such amendments for the Board of Commissioners or Board of Managers to enter into any lease-rental agreements. The context of the Act, as originally enacted or as amended, was and is that any property acquired by the county for power purposes was to be owned by it. The only exception being that the Board of Managers might and may sell power to and serve to the same consumers over extension lines built and operating equipment installed at the expense of the consumer, but, in such a case, while the title remains in such consumers the county shall pay no part of the cost of construction, installation, or maintenance, nor rebate any part thereof directly or indirectly and such lines become no part of the power system.

We find no later amendments to section 2 and 3 of the Act. Neither are there any other sections in the law pertaining to the method of the acquiring of operating property for power purposes by the county. It would seem that the Legislature had and has limited the power of the Board of County Commissioners either acting as a Board of Managers, or otherwise, to the acquiring of power lines and equipment either by purchase or construction, with the title thereto vesting in the county.

In 1929 the Legislature enacted a statute granting the power to the Board of County Commissioners of Mineral County to sell the Mineral County Power System. Chap. 139, page 178, Statutes 1929. This Act was amended in 1941, among other things, provides a prohibition against the commissioners from using the proceeds from the power system for any other use than the purchase of power, payment of interest on and retirement of bonds, actual operating and maintenance expense of the power system, and authorizing the placing of the surplus in the General Fund of the county. Thus the use of the proceeds of the Mineral County Power System are limited to certain purposes, which do not include rentals, unless rental of a power line could be deemed operating expenses. But, as appears here, the Mineral County Power Act fails to authorize lease-rental agreements for power lines. Also, if an extension line is built by consumers and maintained by them, no part of the maintenance cost can be borne by the county, nor is such property deemed to be a part of the county power system, consequently none of the proceeds of the power system could be expended on such a line. By analogy no proceed of the power system could be expended on a line owned by the Federal Government, but leased to the county, in view of the clearly intended will of the Legislature that all the property of the power system upon which its proceeds can be expended must be county owned.

Whether the electors of the Mineral County could by their vote, at an election called for that purpose, authorize the Board of Managers of the power system to enter into a lease-rental agreement for the lease of the power line in question is most doubtful. We assume, it may be thought subparagraph "e" of section 17 of the Power Act, added by the Legislature in 1943 (1943 Stats., page 48, Advance Sheets) grants such power. The language of such subparagraph is not clear as to being applicable to the leasing and renting of property of others by the County Commissioners or Board of Managers. It is our opinion that such subparagraph is a prohibition on the board with respect to the selling or otherwise disposing of any property of the power system *owned* by the county without the election therein provided being held.

From the foregoing analysis and construction of the law with respect to the power of the Board of County Commissioners or the Board of Managers to enter into the lease-rental agreement mentioned in the inquiry, we are of the opinion that such question is governed by the holdings of the Supreme Court in the cases hereinbefore cited, and that such boards, or either of

them, have not been granted such power.

We are not unmindful of the fact that such lease-rental agreement may be advantageous to the power system and the county, but we find the law to be as stated hereinbefore. As said by the Supreme Court in *State ex rel. King v. Lothrop*, supra, "We are in sympathy with this appeal, but we cannot depart from what we believe to be the law of the case, however, pressing the emergency may be."

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

38. State Board of Relief, Work Planning and Pension Control—Affairs of State Orphans’ Home Added Duty.

CARSON CITY, May 7, 1943.

MR. HOYT R. MARTIN, *Chairman, State Board of Relief, Work Planning, and Pension Control, Gazette Building, Reno, Nevada*.

DEAR MR. MARTIN: Mr. George H. Meyers and Chester Cochran, members of your board, met with me yesterday afternoon and asked three questions upon which they requested a written opinion of this office.

1. In handling affairs of the Orphans’ Home should the State Board of relief, Work Planning and Pension Control meet separately as directors of said Home, or can they handle such matters during their regular meetings and as a part of the duties of the Board of Relief, Work Planning, and Pension Control?
2. How should moneys received by orphans from estates, gifts, et cetera, be handled?
3. What are the duties of the State Board of Relief, Work Planning, and Pension Control in regards to the \$10,000 left by Mrs. Luella Rhodes Garvey?

In answer to your first inquiry, it is the opinion of this office that the duties imposed upon the State Board of Relief, Work Planning, and Pension Control by chapter 87, page 112 of the 1943 Statutes of Nevada, clearly indicate that this is an added duty and does not require separate handling of the affairs of the Orphans’ Home.

It is true that chapter 79, page 104 of the 1943 Statutes of Nevada, states that the Board of Relief, Work Planning, and Pension Control, for the purposes of administering the Orphans’ Home, shall be known by the name and style of the Directors of the State Orphans’ Home. This chapter is earlier in point of legislative enactment than chapter 87. Therefore, chapter 87 would seem to control, but even in reading the Acts together and in *pari materia* we conclude that the State Board of Relief, Work Planning, and Pension Control may conduct its meeting concerning the administration of the Orphans’ Home simply as an added duty.

Answering question No. 2, it is the opinion of this office that moneys coming to orphans from estates, gifts, et cetera, should be handled by the Superintendent of the Orphans’ Home. Under the provisions of the Nevada law the Superintendent of the Orphans’ Home is made a legal guardian of the orphan and his property, and as such would be responsible to the orphan as well as to the court for the correct handling of such funds. In the past, moneys coming to orphans as wards of the superintendent have been deposited in the local bank in the form of a trustee account. This would seem to be a correct practice.

Answering question No. 3, the \$10,000 left by Mrs. Luella Rhodes Garvey for the benefit of the orphans at the State Orphans' Home will not be received until after the death of Mrs. Rhodes, the mother of Mrs. Luella Garvey, since the trust from which the bequest to the orphans will be received is first made subject to care and support of Mrs. Garvey's mother during her life. As a matter of fact, your Board of Relief has no real worry concerning the administration of the \$10,000, since the will, which is self-explanatory on your third inquiry, set up the following trustees to administer the \$10,000:

The sum of Ten Thousand (\$10,000) Dollars to Trustees consisting of incumbents in the offices to Chief Justice of the Supreme Court of the State of Nevada, the Governor, our Chief Executive of the State of Nevada, the Superintendent of the State Orphans' Home at Carson City, Nevada, and their successors in office. * * *

Mr. Meyers and Mr. Cochran both asked me a fourth question concerning the matter of handling the bequests received from the Woods estate. I am certain that satisfactory arrangements can be made with Hon. Dan Franks, State Treasurer, to handle this bequest in the same manner as heretofore.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

ccs to GEORGE H. MEYERS and CHESTER COCHRAN.

39. Public Service Commission—Tax Exemptions Must Be Strictly Construed—Formula Adopted by Commission Legal.

CARSON CITY, May 11, 1943.

HON. C.B. SEXTON, *Chairman Public Service Commission of Nevada and Ex* *Officio*
Member Nevada Tax Commission, Carson City, Nevada.

DEAR MR. SEXTON: This will acknowledge receipt of your letter of May 6, 1943, in which you ask what effect, if any, the constitutional amendment to section 1 of article X of the Constitution will have upon section 5 of the Nevada Tax Commission law in so far as that section is used by your Commission arriving at and fixing the valuation of the property mentioned therein.

Section 1 of article X of the constitution as amended, reads as follows:

SECTION 1. The legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal, and possessory, except mines and mining claims, when not patented, the proceeds alone of which shall be assessed and taxed, and when patented, each patented mine shall be assessed at not less than five hundred dollars (\$500), except when one hundred dollars (\$100) in labor has been actually performed on such patented mine during the year, in addition to the tax upon the net proceeds; shares of stock (except shares of stock in banking corporations), bonds, mortgages, notes, bank deposits, book accounts and credits, and securities and choses in action of like character are deemed to represent interest in property already assessed and taxed, either in Nevada or elsewhere, and shall be exempt. No inheritance or estate tax shall ever be levied,

and there shall also be excepted such property as may be exempted by law for municipal, educational, literary, scientific or other charitable purposes.

It is the opinion of this office that no change whatever is necessary in the formula which you are using at the present time, since the exemptions named in the constitutional amendment are very clear and specific and should not be broadened beyond their plain scope. In accordance with the well-defined doctrine of statutory construction, tax exemptions must be strictly construed. We believe the formula adopted by your commission in accordance with section 5 of the Nevada Tax Commission law is absolutely legal.

Very truly yours,
ALAN BIBLE, *Attorney-General*.

40. Intoxicating Liquors—Alcohol for Medicinal Purposes Imported Without License.

CARSON CITY, May 12, 1943.

NEVADA TAX COMMISSION, LIQUOR TAX DEPARTMENT, *Carson City, Nevada.*

Attention: Mr. F.M. Young, Supervisor.

GENTLEMEN: Reference is hereby made to your letter of May 11, 1943, inquiring whether it is permissible for out-of-State dealers in pure alcohol to import the same into Nevada to druggists and hospitals who are not licensed importers, the alcohol to be used for medicinal purposes and not for beverage purposes.

An examination of the Nevada Liquor Stamp Law discloses that such law is applicable to liquors containing one-half of one percent or more of alcohol by volume and which is used for beverage purposes. Section 1 (c), chapter 160, Statutes of Nevada 1935.

If the alcohol in question is to be used for purely medicinal purposes, and in no event to be used for beverage purposes, it is our opinion that the same may be imported by druggists and hospitals in this State without the necessity of securing an importer's license, provided, of course, that any and all Federal regulations relative to Federal taxes and licenses, if any, are complied with by the out-of-State dealers, and also by the Nevada druggists and hospitals, if any such Federal regulations apply.

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

41. Water Law—State Engineer May Act as Arbiter.

CARSON CITY, May 14, 1943.

MR. ALFRED MERRIT SMITH, *State Engineer, Carson City, Nevada.*

DEAR MR. SMITH: Reference is hereby made to the letter of May 12, 1943, written you by Lowell Daniels, District Attorney of Nye County.

We have examined the facts stated in such letter and note that the proposed contract therein mentioned selects the office of State Engineer as an arbiter in the event that the parties cannot agree upon the amount of water to be delivered by party "B" to party "A" in the event that "B's"

well diminish the flow of water from “A’s” wells.

We apprehend that your inquiry is directed to the point of whether your office could act as arbiter the in the matter.

We have examined the law with respect to this matter and fail to find any prohibition therein which would prevent the State Engineer from so acting, provided he had no personal objections thereto.

It seems to us that under the present artesian well law that it would be wise for your office to accept such appointment, particularly if hereafter some other wells were drilled in the same area, as, no doubt, later wells might well serve to diminish the supply of water in the wells of “A” and “B” alike, and thus raise the question of adjudication of such wells.

We think you can legally accept the appointment.

Respectfully submitted,

ALAN BIBLE, *Attorney-General*.

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

42. County Commissioners—Unaudited Claims Must Be Presented Within Six Months From Time Claims Became Due.

CARSON CITY, May 18, 1943.

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

DEAR MELVIN: Reference is made to your letter received May 6, 1943, wherein you request our advice concerning the claim of the Sheriff of Washoe County presented to the Board of County Commissioners on May 5, 1943, for compensation due him for the collection of business licenses for the years 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942, and for the months and January and February 1943. This claim was not presented pursuant to section 6697 N.C.L. 1929, which authorizes the Sheriff to retain, as ex officio Collector of Licenses, six percent of the business licenses sold by him.

Second, is the Board of County Commissioners authorized by law to allow the claim of the Sheriff, filed May 5, 1943, for fees which the Sheriff failed to retain during the past eight years. In our opinion this claim of the Sheriff is an unaudited claim, and under the statutes such a claim against the county must be presented to the Board of County Commissioners within six months from the time such claim or account became due or payable. Any claim by the Sheriff of Washoe county for fees due him as ex officio Collector of Licenses which does not come within a period of six months from the time such fees were due or payable cannot be allowed by the Board of County Commissioners of Washoe County under the law.

Washoe County, through the Legislature, passed a special Act, Statutes of Nevada 1907, page 104, setting the salaries of the Sheriff and Deputy Sheriffs of Washoe County:

From and after the passage of this act the sheriff of Washoe County shall receive three hundred dollars (\$300) per month.

This is the last Act on the Washoe County Sheriff’s salary. Then follows the designation of the salary of under sheriff, bailiff, and jailer. There is no clause providing that such salary shall be in lieu of all other compensation. *State v. Beard* [21 Nev. 218](#); *Bradley v. Esmeralda Co.*; [32 Nev. 159](#).

A new revenue Act, or license Act, was enacted by the Legislature in 1915 (chap. 178,

Statutes of Nevada 1915), which Act repealed Acts supplemental to the Revenue Act of 1891 and amendments. Section 115 of the old Act was reenacted in section 1 of the 1915 Act:

The sheriffs of each of the several counties shall be ex officio collector of licenses as provided in this act.

Section 133 of the Act was reenacted in section 33 of the new Act:

The sheriff, as ex-officio license collector, shall receive, and he is hereby authorized to retain (except when he is required to turn same into the county treasury for county purposes) as compensation for the collection of licenses, excepting sheep-grazing licenses, six percent of the gross amount on each business license sold.

The office of Collector of Licenses is a separate and distinct office and has been so regarded in all the revenue Acts ever passed by the Legislature of this State. *Bradley v. Esmeralda Co.*, [32 Nev. 166](#).

See Opinion of Attorney-General 1921, No. 1 (1921-1922 Biennial Report).

The Attorney-General construed section 33 of the Revenue Act, which has been unchanged since its enactment in 1915. It was held that since the office of Collector of Licenses was separate and distinct from that of Sheriff, the Sheriff was entitled to the commissions set forth in said section 33.

Answering the second part of the inquiry, the statutes fix the rate upon which the compensation as ex officio Collector of Licenses is based, but not the amount of compensation which must be determined by an audit.

Section 6694 N.C.L. 1929, reads as follows:

On the first Monday in each month (except as herein otherwise provided) the sheriff shall pay over to the treasurer all moneys received by him for licenses and take from the treasurer duplicate receipts therefor, and he shall immediately on the same day return to the county auditor all licenses not issued or disposed of by him, and the county auditor shall credit him with the amount so returned; also, the receipts shall be filed with the county auditor. The county receipts shall be filed with the county auditor. The county auditor shall charge the treasurer therefor, and open a new account with the sheriff for the next month; and it is hereby made the duty of each sheriff in his county to demand that all persons required to procure licenses in accordance with this act, take out, and pay for the same, and he shall be held liable on his official bond for all moneys due on such license remaining uncollected by reason of his negligence.

The amount of the fees due the Sheriff must be determined by the Auditor. The total number of licenses issued, the money deposited with the Treasurer and the license returned unsold must check and balance at the end of the month before the Auditor may open a new account with the Sheriff. If the Sheriff failed to retain his fees or the Auditor neglected to credit him with such, his right to such fees become a claim against the county and should be presented to the Board of County Commissioners within the time presented to the Board of County Commissioners within the time prescribed by law.

Section 1957 N.C.L. 1929 reads as follows:

All unaudited claims or accounts against any county in this state shall be presented to the board of county commissioners of said county, duly authenticated, within six months from the time such claims or accounts became

due or payable; * * *.

Section 1958 N.C.L. 1929 reads:

No claim or account against any county in this state shall be audited, allowed, or paid by the board of county commissioners, or any other officer of said county, unless the provisions of the last preceding section are strictly complied with.

In the case of *Cawley v. Pershing County*, [50 Nev. 237](#), the court, in determining what construction should be put upon the word “unaudited,” said that all claims should be held unaudited except those specifically excepted in section 9 of the Act to create a Board of County Commissioners (section 1943, N.C.L. 1929, as amended 1935). At the time the decision was rendered, section 9 excepted only two, that of Auditor and Judge. The amendment to section 9, section 1943, 1929 N.C.L., 1941 Supp., includes: “* * * and the elective officers of the county, whose salaries are fixed by law, * * *.”

The Sheriff is an elective officer and his salary as sheriff is fixed by law. His salary as Sheriff is an audited claim. His fees as ex officio License Collector are unaudited claims under sections 6693 and 6694 N.C.L. 1929.

In the above-mentioned case, as further test to determine an “unaudited” claim, the court said:

If the statute upon which reliance is had to support the contention that plaintiff’s salary is fixed by law contained a provision that before any month’s salary should be paid, the claimant should present his claim to the board of county commissioners for its examination, settlement and allowance, there would be no question but that such course would have to be pursued notwithstanding the fact that the salary is fixed by law. * * * What is the difference between a situation in which such provision is incorporated in an act fixing a salary where it is in a general statute which is in pari materia with the salary act. There can be none. It is the law in both cases.

Section 6693 N.C.L. 1929, section 59, Act of 1915, reads:

No board of county commissioners shall audit or allow any claim in favor of a sheriff until there shall be filed with said board the certified statement of auditor that all settlements required by this act have been made by said sheriff. The amount of licenses issued to the sheriff and not accounted for shall be deducted before any claim shall be allowed to a sheriff.

The only claim the Sheriff would have against the county as ex officio Collector of Licenses would be his fee for such collection. The amount of licenses issued and not accounted for would be deducted from this claim.

In *Lander County v. Nye County*, [59 Nev. 116](#), the question before the court was whether or not the claim against the defendant county had been filed with the Board of County Commissioners for auditing within six months from the time it became due or payable. The court said:

The only question involved in this appeal is whether or not the suit to the 1st and 2d causes of action can be maintained, that is, did Nye County present its claim to Lander County for auditing pursuant to sections 1957-1958 N.C.L. within six months from the time it became due or payable.

The claim was filed within six months after the date on which taxes would have become delinquent if not paid and the court held that the claim was presented in time.

Respectfully submitted,
ALAN BIBLE, *Attorney-General*.
By GEORGE P. ANNAND, *Deputy Attorney-General*.

43. Fish and Game—Commissioners May Not Declare Open Season on Does Without Compliance With Proviso in Section 66.

CARSON CITY, May 19, 1943.

FISH AND GAME COMMISSION, *Box 678, Reno, Nevada*.

Attention: E.H. Herman, Assistant Secretary.

GENTLEMEN: Your inquiry relating to the interpretation to be given the amendment to section 66 of the Fish and Game Law, *i.e.*, section 3100 N.C.L. 1929, as amended by the 1943 Legislature, and being found at chapter 34, Statutes of Nevada of 1943, is as follows:

Do the words "provided that during such open season of each year it shall be unlawful to kill, catch, trap, wound, or pursue with the intent to catch, trap, injure, or destroy more than one deer except under rules and regulations prescribed by the fish and game commissioners as hereinafter provided," meant that the commissioners could state there would be an open season on buck only or doe only, unless otherwise recommended by the committee provided in section 66 of the Fish and Game Law?

Section 66 of the law in question was amended in 1941 permit the hunting and killing of doe deer. Chap. 112, Statutes 1941. Prior to that amendment it had been unlawful to hunt and kill any deer excepting buck deer with branched horns. Opinions of the Attorney-General No. 257 of May 26, 1938, and No. 334 of January 14, 1942. Both opinions to the fish and Game Commission. In Opinion No. 257 we dealt with the question of the power of the State Fish and Game Commission to declare an open season on doe deer. It was there pointed out that section 65 of the Fish and Game Law did not contain the constitutional grant of power to the commission to declare such open season, and that there was no other section in the law containing such power. The 1941 amendment to section 66 of the law did provide such power and did provide such power and did provide for the hunting and killing of doe deer in the manner as provided in such amendment. See Opinion No. 334.

Section 65 of the law, *i.e.*, section 3099 N.C.L. 1929, was not amended in 1941 nor in 1943; it is still in the same condition as originally enacted. It reads as follows:

It shall be unlawful at any time to hunt mountain sheep, goats, elk, antelope, or doe or fawn deer except at the time and places and in the manner as may hereafter be provided by the state fish and game commissioners.

This section of the law clearly contemplates and provides that before any of the game animals therein mentioned can be hunted that the time, place and manner thereof must first be fixed by the fish and game commissioners. Section 66 of the law, as amended in 1943, provides how and when the commissioners may provide an open season on deer, antelope, elk, and bighorn sheep, game animals mentioned in section 65. But, the machinery by which the fish and game commissioners may authorize the hunting and killing of any such game animals cannot be set in motion and neither can an open season be fixed for any such game animals until the committee provided in the 1943 amendment to section 66 has been appointed by the Board or Boards of

County Commissioners, and the provisions of the statute relating to the action to be taken thereafter by the committee and the Fish and Game Commission complied with. It is also to be noted that the prohibition against the hunting and killing of more than one deer during the statutory open season, contained in the first part of section 66, as amended, is strengthened by the language immediately following such prohibition, reading: “except under rules and regulations prescribed by the fish and game commissioners *as hereinafter provided* * * *. (Italics ours.) This language makes clear beyond any question that only one deer may be taken by an individual during the open season provided in the statute, except where the fish and game commissioners have acted pursuant to the last proviso in said section.

The question of whether the commissioners can now state whether there will be an open season on does without a compliance with the provisions of the last proviso in section 66, we think, must be answered in the negative.

While the Legislature in the enactment of the 1943 amendment took out of section 66 the language reading, “there shall not be any open season on deer without horns, ‘or spiked buck,’ or male deer with unbranched horns or antlers,” still no change or amendment of any kind was made in or to section 65. Such section still contains the express prohibition against the hunting of doe or fawn deer “except at the time and places and in the manner *as may hereafter be provided by the State fish and game commissioners.*” (Italics ours.) As we have seen, such time, place, and manner cannot be provided by the fish and game commissioners until the last proviso in section 66, as amended, is complied with.

Section 66, as amended, does not expressly repeal section 65. There is no implied repeal apparent. Repeals by implication are not favored and only occur when there is an irreconcilable conflict between the earlier and later statute or section, in which even the later would control. *State v. Eggers*, [36 Nev. 372](#); *Carson City v. Board of County Commissioners*, [47 Nev. 415](#); *Kondas v. Washoe County Bank*, [59 Nev. 181](#).

It is elementary that effect must be given, if possible, to every word, clause, and sentence of a statute by construing it so as to make all parts harmonize with each other, and render them consistent with its general scope and object. *Maynard v. Johnson*, [2 Nev. 25](#); *State v. Ruhe*, [24 Nev. 251](#); *Ex parte Prosole*, [32 Nev. 378](#).

The general scope and object of the Fish and Game Law is set forth in section 10, *i.e.*, section 3044 N.C.L. 1929, reading:

The game animals, fur-bearing animals, game birds and nongame birds in the State of Nevada and the game fish in the waters of the State of Nevada shall be preserved, protected and perpetuated, and to that end such game animals, fur-bearing animals, game birds, nongame birds and game fish shall not be hunted, trapped or fished for at such times or places or by such means or in such manner as will impair the supply thereof.

The Legislature is presumed to know the state of the law on the subject upon which it legislates and no doubt knew that the scope and object of such subject was the preservation of the game and fish of this State. That section 65 was written into the law as a further protection of the game animals therein mentioned is not to be doubted. The Legislature, not repealing or amending such section in 1943, clearly intended such section to remain effective, save and except as modified by the amendment to section 66, and as to such modification it intended that no deviation from section 65 be had except in the manner provided in the last proviso in the amended section 66.

While the first part of section 66, as amended, now relates to deer, without the former qualification relating to deer without horns, etc. still section 65 retains, in effect, such qualification when it prohibits the killing of doe and fawn deer, excepting when permitted under the provisions now contained in section 65 to buck deer.

It is a cardinal rule of statutory construction that a statute should be construed so as to give good effect, if possible, to all its parts. And to effect this it is often necessary to restrict the ordinary and usual meaning of words. In re McGregor, [56 Nev. 407](#).

We therefore answer that part of your inquiry relating to buck deer in the affirmative; and that part relating to doe deer in the negative.

Respectfully submitted,

ALAN BIBLE, *Attorney-General*.

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

44. Public Service Commission—Private Motor Carrier of Property Operating Within Limited Area Exempt From License.

CARSON CITY, May 27, 1943.

MR. LEE S. SCOTT, *Secretary Public Service Commission of Nevada, Carson City, Nevada*.

DEAR MR. SCOTT: Reference is made to your letter of May 25, 1943, received in this office May 26, 1943, containing the following inquiry:

The Isbell Construction Company of Reno, Nevada has a contract with United Air Lines Airport, northeast of Reno, Nevada.

The grading of said runways has been completed, and the construction company is now engaged in surfacing runways with macadam, sometimes known as "hot stuff." The macadam is processed and mixed at the construction company's plant located at the junction of South Virginia Street road, or U.S. Highway 395, and the United Air Lines Airport road, and is then transported by motor vehicle to the United Air Lines Airport via United Air Lines Airport road. Both points of origin and destination of these macadam products are located within a five-mile radius of the city limits of the city of Reno.

The United Air Lines Airport road is considered a public highway under the definitions of such, as defined in chap. 165, Stats. 1933, as amended.

Will your office please render an official opinion if Isbell Construction Company is exempt from the payment of licenses under the provisions of sec. 3, chap. 165, Stats. 1933, as amended, in operating a private carrier of property transporting said macadam products.

It is our opinion under the statement of fact, "both points of origin and destination of these macadam products are located within a five-mile radius of the city of Reno"; that the Isbell Construction Company is exempt from the payment of licenses under the provisions of section 3, chapter 165, Statutes of Nevada 1933, as amended, being section 4437.02, 1929 Nevada Compiled Laws, 1941 Supplement.

Section 4437.01, 1929 Nevada Compiled Laws, 1941 Supplement, under subdivision (d) provides, "The term 'private motor carrier of property' when used in this act shall be construed to

mean any person engaged in the transportation by motor vehicle of property * * * or used by him in furtherance of any private commercial enterprise, but such term shall not be construed as permitting the carriage of any property whatsoever for hire.”

The property transported by motor vehicles of Isbell Construction Company of Reno, Nevada, is used by the company in furtherance of a private commercial enterprise, and comes within the definition of “private motor carrier of property,” and is subject to the payment of a license, unless the operation is clearly within the exemption designated in section 3 (section 4437.02, 1929 Nevada Compiled Laws, 1941 Supplement.)

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

The exemption section being in derogation of the general rule, the company must clearly be within the five-mile limitation to exempt it from the payment of the license.

In Attorney-General’s Opinion No. 218, dated July 1, 1936, construing section 3 of the Act, as amended, it was held “The Motor Vehicle Carriers Act if it were operated as a private motor carrier of property, since according to the statement of facts, it operates exclusively within a radius of five miles of the city of Reno.”

Therefore, limiting this opinion to the statement of fact presented, the Isbell Construction Company is exempt from the payment of license under the Motor Vehicle Carrier Act, while operating within the limited area prescribed by statute.

Very truly yours,

ALAN BIBLE, *Attorney-General.*

By GEORGE P. ANNAND, *Deputy Attorney-General.*

45. Taxation—Exemption Members Armed Services—Affidavit Need Not Be Made Personally.

CARSON CITY, May 27, 1943.

HON. FRANK B. GREGORY, *District Attorney, Ormsby County, Carson City, Nevada.*

DEAR MR. GREGORY: Reference is hereby made to your letter of May 26, 1943, requesting the opinion of this office on the following question:

Does the amendment of subparagraph seventh of section 6418 Nevada Compiled Laws 1929, as enacted by the 1943 Legislature in chapter 6, Stats. 1943, extending the tax exemption of property not exceeding the amount of \$1000 to persons now serving in the armed forces of the United States in time of war, require that such person must make the annual statutory affidavit, in such subparagraph provided for, personally before the County Assessor before becoming entitled to the exemption?

The provision of the section of the law in question requiring the making of an affidavit before the County Assessor in order to secure the claimed exemption reads:

* * * provided, that such exemption shall be allowed only to claimants who shall make an affidavit annual 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.

This provision has been in the law for many years and of course as to veterans of other wars who have been honorably discharged it was and is easy of application and is to be strictly construed and complied with. But, as to persons now in the armed forces of the United States and who are not and will not be corporeally present in the State at the time or times when it is incumbent upon them to make the proper affidavit a different situation arises. We do not believe the members of the Legislature intended to provide a tax exemption for any of its citizens who are now in, or who may hereafter be called into, the armed forces of this country in time of war and at the same time make it impossible for many of them to secure the benefits of such exemption by requiring them to personally make the required affidavit before the Assessor of the proper county in this State. To so hold would be to impute an absurdity to the Legislature.

We think a common-sense view of the statute dictates an interpretation permitting persons now in the armed forces of the United States, or who may hereafter be inducted into such forces in time of war, and who by reason thereof cannot be personally present in this State so as to make the statutory affidavit before the proper County Assessor at the time necessary in order to secure the tax exemption, to make such affidavit out of State of Nevada and forward the same to the Assessor, and that such Assessor, if satisfied as to the truthfulness of such affidavit, may grant the claimed exemption.

We are impelled to this view, not only for the reason above mentioned, but also by reason of chapter 145, Statutes of 1943, which is an Act providing for the taking of acknowledgements and the administering of oaths or affirmations by commissioned officers in active service of the armed forces of the United States. By this Act the Legislature has provided a means whereby Nevada residents and citizens in the armed forces of the United States may conveniently acknowledge and verify papers and documents, required to be acknowledged and verified by the laws of this State, before any of the commissioned officers therein mentioned. The Act provides a statutory form of acknowledgment to be signed by such officers which insures its authenticity. Section 2 of this Act provides that the oath or affirmation administered by any such officers to any person serving in the armed forces of the United States, wherever located, shall have the same force and effect as if "administered by any other officer now authorized by the laws of the State of Nevada to administer oaths or affirmations."

We think the foregoing statute contains the evident intent of the Legislature to provide means whereby all forms of papers, including affidavits, required by the laws of this State to be verified before an officer authorized to administer oaths could be speedily and conveniently verified by any citizen of the United States in times of war.

We conclude that as to any such persons not personally present in this State at the time necessary for the making of the statutory affidavit for claimed exemption from taxation before the proper County Assessor, may make such affidavit out of the State, showing therein that he is actually in the armed forces of the United States and cannot appear before such Assessor, have such affidavit acknowledged in the form and manner provided in chapter 145, Statutes of 1943, and forward the same to the County Assessor who may thereupon accept such affidavit as though made in full compliance with the provisions of section 6418 Nevada Compiled Laws 1929.

Respectfully submitted,

ALAN BIBLE, *Attorney-General*.

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

46. Nevada Hospital for Mental Diseases—Sterilization of Inmates.

CARSON CITY, May 31, 1943.

R.E. WYMAN, M.D., *Superintendent, Nevada Hospital for Mental Diseases, P.O. Box 2460, Reno, Nevada.*

DEAR DR. WYMAN: This will acknowledge receipt of your letter of May 24, 1943, received in this office May 26, 1943.

I recall very definitely our conversation in the Governor's office concerning the sterilization of a female patient in your institution. As I stated at the time, I was extremely doubtful of the legality of this form of operation, and upon further checking as to your inquiry, I was convinced that it could not be done. I, no doubt, should have advised you of my finding, but in view of the opinion which I gave in the Governor's office I assumed that unless I advised you affirmatively nothing would be done.

We have searched the Nevada Statutes very thoroughly and there is nothing therein at any place permitting any type of sterilization of patients in public institutions.

The only exception is legislative permission given to the Warden to perform vasectomies upon certain types of criminals, and this particular Nevada statute has been declared unconstitutional. *Mickle v. Henricks*, 262 Fed. 687.

Since there is no statute whatever providing for sterilization for feeble-minded persons, epileptics, etc., it is, of course, not necessary to determine the validity or constitutionality of such statute, since our opinion must, as noted above, rely purely upon the fact that in the absence of any statute authorizing sterilization, you are not permitted to perform such an operation.

Very truly yours,

ALAN BIBLE, *Attorney-General.*

47. Bonds—Application City Clerk—Approval.

CARSON CITY, June 4, 1943.

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

DEAR MR. McEACHIN: Reference is hereby made to your letter of June 3, 1943, and attached correspondence with respect to the application and bond of the City Clerk of Sparks, Nevada. It is noted that you request an opinion of this office on the matter therein contained.

An examination of the State Bond Act discloses a most pertinent amendment made to section 3 of such Act by the 1943 Legislature. Section 3 of the Bond Act stands amended by chapter 128, Statutes of 1943, in that the application for a bond of an official of a county, township, incorporated city, or irrigation district, or the deputy of any such official, shall be approved by the District Judge of the Judicial District within which the office is held. It is further provided in such amendment that in the event such District Judge approves the application and the granting of such bond he shall endorse thereon such fact, "whereupon it shall be the duty of the State Board of Examiners to issue such bond."

We are of the opinion that by reason of such amendment the burden of approving applications for bonds of such officials is placed upon the District Judge, and that his approval of such application becomes binding upon the State Board of Examiners, and such board has no option but to furnish such bond.

Very truly yours,
ALAN BIBLE, *Attorney-General*.

48. Counties—Housing Authority—Assemblyman May Serve as Executive Secretary.

CARSON CITY, June 7, 1943.

HON. V. GRAY GUBLER, *District Attorney Clark County, Las Vegas, Nevada*.

DEAR MR. GUBLER: This will acknowledge receipt of your letter of June 1, 1943, in which you request the opinion of this office on the following question is taken from a statement of facts furnished by John L. Fitzgerald, Regional Counsel of the National Housing Agency.

A Clark County Assemblyman was a member of the Nevada State Legislature during the session at which the War Housing Authority Law was passed. (Chapter 20, 1943 Statutes of Nevada.) The County Commissioners of Clark County have appointed commissioners for the Clark County Housing Authority. This Housing Authority in turn desires to appoint a Clark County Assemblyman as its executive secretary. May it do so?

In our opinion the Clark County Assemblyman is not prohibited by section 8, article IV of the Constitution of the State of Nevada, from being appointed as executive secretary of the local Housing Authority.

We base our opinion upon the case of *State v. Cole*, [38 Nev. 216](#), Section 8 of article IV provides as follows:

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

In the *State v. Cole* case the Supreme Court in construing this section of the Constitution, held that the position of superintendent of exhibits of the State of Nevada at the Panama Pacific International Exposition at San Francisco, was not an “office” within the meaning of said constitutional section. The statutory Act under construction authorized the Governor to appoint an exposition commissioner and created a board of directors for the State, whose duty was to employ superintendents, clerks, and other persons upon terms such as may be just and equitable to carry out the provisions of the Act and cooperate and advise with the exposition commissioner.

The court said: “After a careful consideration of the authorities, we are satisfied that not one element of an office enters into the position held by relator. None of the sovereign power of the state is intrusted to him. His compensation, period of employment and the details of his duties, are all matters of contract with the board of directors. For, while the act says the board may ‘employ superintendents, directors, clerks, and other persons’ for the purpose of carrying out the provisions of the act, ‘and for the further purpose of cooperating and advising with the exposition commissioner,’ it is apparent that the board had the authority to contract as to what

the specific duty of each employee should be, * * * .”

Section 3, chapter 20, 1943 Statutes of Nevada, gives the local Housing Authority all powers necessary or convenient to aid and cooperate with the Federal Government, and to act as agent of the Federal Government and to have advanced to it by the Federal Government such sums of money as may be necessary in acting as such agent. The Authority is empowered “ * * * to employ such personnel and make such expenditures as may be necessary to be paid for out of rents or moneys advanced by the federal government.” * * * “*provided*, that an authority may not obligate the state or any, city, town, county, or other political subdivision thereby.”

The by laws of the Housing Authority of the county of Clark, Nevada, submitted with the inquiry, provide in section 6, “The chairman and vice chairman shall be elected at the annual meeting of the Authority from among the commissioners of the authority and shall hold office for one year or until their successors are elected and qualified.”

“The secretary shall be appointed by the Authority. Any person appointed to fill the office of secretary, or any vacancy therein, shall serve at the pleasure of the Authority, but no commissioners of the Authority shall be eligible to this office except as a temporary appointee.”

Section 8 provides, “The selection and compensation of such personnel (including the secretary) shall be determined by the Authority.”

The office of secretary was not created by Act of the Legislature, or through authority conferred by the Legislature other than would be included in “to employ such personnel * * * as may be necessary * * * .”

There is no delegation of a portion of the sovereign power, and the duties are not defined directly or impliedly beyond a statement of such personnel as may be necessary.

There is no permanency or continuity.

The chairman and vice chairman shall hold office for one year. The secretary shall serve at the pleasure of the Authority.

Therefore, we are of the opinion that the executive secretary of the Housing Authority of Clark County is not a civil office of profit under this state.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

49. Fish and Game—Deer Hides May Be Sold and Shipped Out of State.

CARSON CITY, June 8, 1943.

FISH AND GAME COMMISSION, *Box 678, Reno, Nevada*.

Attention: E.H. Herman.

GENTLEMEN: Reference is hereby made to your letter of June 7, requesting an opinion upon the following question:

Is it legal for individuals to buy or sell deer hides in Nevada, or to ship deer hides out of the State to be sold?

We have examined the statutes of this State relative to the above inquiry and fail to find therein any prohibition against the sale of deer hides in the State of Nevada. Neither do we find any prohibitory law against the shipping of deer hides out of the State to be sold.

Deer are not fur-bearing animals as defined in the laws of this State. Section 3035 Nevada Compiled Laws 1929, as amended at 1941 Statutes, page 240. not being fur-bearing animals the

hides thereof do not fall within the class of hides or skins mentioned in the Act relating to the licensing of fur dealers and their agents within the State of Nevada as found at 1941 Statutes, page 277.

It is a general rule of law that while wild animals in their wild state running at large belong to the State, yet when killed such animals are reduced to the possession of the person killing them subject to whatever game laws the State may have enacted for their preservation and disposal after capture. 24 Am. Jur. 375, section 4. The State may prohibit the disposal of any part of a wild animal reduced to possession by an individual and it may prohibit the selling of the carcass of such animal, or the hide thereof, or both. Nevada has made it unlawful for any person to sell, expose for sale, to barter or trade, or purchase, any deer meat. Section 3108 Nevada Compiled Laws 1929, as amended at 1933 Statutes, page 286. This statute only relates to the selling and disposal of deer meat and does not relate to deer hides. We fail to find any other prohibition in the law that could be interpreted as prohibiting the sale and disposal of deer hides.

We are, therefore, of the opinion that under the laws of this State hides of deer that have been legally killed in this State may be sold and disposed of and may be shipped out of the State for purposes of sale.

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

50. Grazing Board—Range Improvement Fund—No Authority to Purchase War Bonds.

CARSON CITY, June 10, 1943.

MR. GORDON GRISWOLD, *Secretary Nevada Grazing Board of District No. 1,* Elko,
Nevada.

DEAR MR. GRISWOLD: This will acknowledge receipt of your letter of May 27, 1943, received in this office May 29, 1943, which letter read as follows:

Since the development of range improvements would require men and materials vitally needed in agriculture and defense work, the Nevada Grazing Board of District No. 1, which comprises all of Elko County and portions of Eureka and Lander, would like at this time to invest some of its available funds in Defense Bonds. Such bonds would be cashed after the war is over and the money used to hire men and purchase supplies for needed range improvement work, thus helping to alleviate the unemployment which is bound to occur.

Will you please advise the board as to the legality of purchasing War Bonds from the Range Improvement Fund which was established under the provisions of section 5, chapter 67 of the Statutes of the State of Nevada 1939?

This would be a commendatory action, but we are of the opinion that the board does not have authority under the law for the investment. Such authority must come, as we view it, from a legislative enactment.

Section 5581.16 provides for the creation of State boards for the purpose of directing and guiding the disposition of the range improvement fund of each grazing district concerned in those manners most beneficial to the stock-raising payers of the grazing fees from which such funds are derived.

Section 5581.16, section 4 as amended in 1943, in part, reads: "Each state grazing board hereby created is hereby authorized out of the funds at its disposal to direct and guide the

disposition of the range improvement fund of its grazing district for the construction and maintenance of range improvement or any other purpose beneficial to the stock raising and ranching industries, and in turn, the counties situated within the grazing district concerned; *provided*, that none of the said funds shall be so disposed of unless some legally constituted and authorized federal or state governmental department, division, bureau, service, board or commission is available for and authorized and willing to undertake direct management and supervision of the project concerned. Each state grazing board hereby created is also authorized out of the funds at its disposal to hereby created is also authorized out of the funds at its disposal to direct and guide the disposition of the range improvement funds of its grazing district for the payment of proper administrative costs of the board, including travel and subsistence costs of its members and for payment of the services of its secretary and his necessary office expenses, as provided for herein; * * *.”

The section further provides that during periods of range depletion, or general epidemic of disease affecting stock raising and ranching, refunds may be made under certain conditions.

It appears that the Act does not contemplate the accumulation of inactive balances in the fund was available for investment, even if authority to invest such balance could be implied.

We are, therefore, constrained to hold that your board has no authority to invest the fund as desired.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

By GEORGE P. ANNAND, *Deputy Attorney-General*.

51. Osteopathic Physician Not Prohibited From Acting on Sanity Commission.

CARSON CITY, June 11, 1943.

HON. E.E. WINTERS: *District Attorney Churchill County, Fallon, Nevada.*

DEAR JUDGE WINTERS: This will acknowledge receipt of your letter of May 27, 1943, received in this office on May 28, 1943, in which you submit the following statement of facts and question for our determination:

“Dr. X has a certificate as osteopathic physician and surgeon issued by the Board of Osteopathic Examiners of Nevada and the same is recorded in the office of the County Clerk. He does not hold an M.D. certificate. Is an osteopathic physician and surgeon qualified to sit as an examining physician in an examination on a complaint of insanity in the district court?”

Section 3511 Nevada Compiled Laws 1929, as amended, reads in part as follows: “The said judge shall also cause to appear at the same time and place two or more licensed practicing physicians, except as hereinafter modified and provided.”

It seems to us that the county Clerk should follow exactly the same practice as that followed by the District Judge, or at least that suggested him, and because the committing of an insane person to an institution is a very, very serious matter, the greatest caution and care should be used in conducting these hearings. I am not advised as to what practice the District Judge has followed in appointing physicians, but I do believe that his opinion should likewise be secured.

In our opinion the statutes of the State of Nevada do not prohibit a person licensed as an osteopathic physician from acting on a sanity commission.

Section 5001 Nevada Compiled Laws 19239, reads as follows:

Osteopathic physicians shall observe and be subject to all state and municipal regulations relative to reporting all births and deaths in all matters pertaining to

the public health, with equal right and obligations as physicians of other schools of medicine, and such reports shall be accepted by the officers of the department to which the same are made. 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.

This section has previously been construed by this office to the effect that under it an osteopathic physician and surgeon could practice optometry. See Attorney General Diskin's Opinion No. 179, 1925-1925, Biennial Report. The section above quoted confers upon the osteopathic physician and surgeon "the same rights as physicians and surgeons of other schools of medicine."

We can give no other meaning to this plain legislative expression.

We are not unmindful of the present controversial situation which exists between those practicing medicine under regular M.D. licenses and those practicing under the osteopathic licenses. We have stated to both the M.D.s and the osteopaths that legislative enactments should be secured defining the rights and privileges of each class of practitioner to determine its respective rights once and for all before the courts of last resort of the State of Nevada.

As heretofore noted, in view of the plain expressions of the legislative intent in section 5001 Nevada Compiled Laws 1929, it is our opinion that the Nevada laws do not prohibit a regularly licensed osteopath from being selected as an examining physician in a district court examination on a complaint in a sanity hearing.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

52. Public Schools—Trustees Have No Authority to Control Remunerative Work of Teachers After School.

CARSON CITY, June 16, 1943.

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

DEAR MISS BRAY: This will acknowledge receipt of your letter of June 12, 1943, received June 13, 1943, stating the following facts and requesting the opinion of this office:

The Board of Trustees of one of our Nevada school districts has written asking whether a Nevada school board has the authority to add a provision to the contract prepared by the State Department of Education for execution by teachers and boards of trustees covering the teacher's services for the coming school year. The provision his board wishes to add is:

provided further, that the said party of the second part shall not engage in any other business nor render services, for compensation, during the regular school term.

The reason for such provision is that the board disapproves of the practice of having teachers perform clerical or other work outside of their school hours or on Saturdays for compensation from private employers, believing all of the teachers' time should belong to the school district.

We are of the opinion that such a proviso added to the contract with the teacher would be against public policy.

The agreement between the teacher and the Board of School Trustees of the school district expressly provides that the contract to teach shall be in accordance with the school laws of Nevada and the rules and regulations prescribed in pursuance therewith by the State Board of Education and the State Superintendent of Public Instruction. The powers and duties of teachers are defined in the school laws. Each and every teacher shall take and subscribe to the oath of office before entering upon the discharge of the duties of such teacher. The school laws undoubtedly require that the teacher shall make such employment his or her profession to the exclusion of the conduct of another profession, but do not require a full-time of twenty-four hours each day during the school term.

“It would appear that any agreement the effect of which would be to deprive a person completely of his liberty would be void as against public policy.” 13 C.J., sec. 433.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

By GEORGE P. ANNAND, *Deputy Attorney-General*.

53. Nurses—Examining Board—All Members Must Be Present.

CARSON CITY, June 17, 1943.

CLAIRE SOUCHEREAU, R.N., *Secretary Nevada State Nurses' Examining Board*,
1134 West First Street, Reno, Nevada.

DEAR MISS SOUCHEREAU: Reference is hereby made to your letter of June 14, making inquiry as to whether the Nevada State Nurses' Examining Board, which is composed of three members, would have the legal right to conduct examinations in the absence of one of the members, provided that she has been notified that on a certain date such examination will be held.

The Act providing for the board contains no authorization for any number of the board less than the whole to conduct the examination. The language of the Act speaks of the board with reference to the giving of examinations and not the members thereof. In most statutes creating commissions or boards it is provided that a majority of such commission or board shall constitute a quorum for the transaction of business, and under such statutes the Acts of the majority, even though all of the members are not present, would be legal. An examination of the general law, however, discloses that where the statute creating a board fails to provide that a quorum or majority of such board shall have the authority to act, that then it is necessary that all members of the board be present at the time of the transaction of business then before it, and that if all are present, then a majority of the members may decide on the question. This rule is denominated the common law rule. *First National Bank of North Bennington v. Town of Mt. Tabor*, 36 Am. Rep. 734.

Section 9021 Nevada Compiled Laws 1929, provides that the common law of England, so far as it is not repugnant to and in conflict with the Constitution or laws of the United States, or of this State, shall be the rule of decision in all the courts of this State. Such being the state of the law in Nevada, it is our opinion that at the time of the conducting of examination by the Nevada State Nurses' Examining Board it will be necessary for the three members to be present and that

a majority of the three may decide any question arising during the examination or in the passing upon the qualifications of candidates.

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

54. Public Schools—Teacher’s Life Diploma—No Credit for Private School Teaching.

CARSON CITY, June 17, 1943.

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

DEAR MISS BRAY: Replying to your inquiry in the letter received June 8, 1943, has the State Board of Education the authority to grant a life diploma of high school grade to an applicant under the following statement of facts: A graduate of the University of Nevada taught thirty-eight months in Nevada high schools before she resigned her position to become manager of a private school in Nevada where she taught commercial classes for approximately thirty-six months?

We are of the opinion that authority to grant a life diploma to this applicant cannot be found in or implied from the provisions contained in the statute applicable to this subject.

Section 5877 Nevada Compiled Laws 1929, section 28 of the Act of 1911, as amended, provides for the granting of life diplomas to teachers who do not come within the provisions of section 29 of the Act which provides for the granting of life diplomas of high school grade to graduates of the Nevada State Normal School who have completed at least forty-five months of successful teaching in public schools.

Some discretion is allowed the State Board of Education in granting life diplomas under section 28, but the period of teaching required is definitely fixed by the Legislature. The State Board was given authority to waive the exact continuity of teaching experience and discretion was allowed the State Board to grant life diplomas in certain cases where part of the teaching experience was had in private schools. The teaching period required was reduced and provision was made for certain circumstances not considered in the former amendments. However, no discretion was allowed the board in determining the minimum period of teaching required in the different classifications.

An applicant whose teaching experience was divided between public and private schools was required to present evidence of having taught for a total period of not less than eighty months, which is thirty-five months greater than required for graduates of the Nevada State Normal School, teaching in the public schools of this State, and twenty months longer than required of those teaching part time out of this State in public schools.

The State Board of Education in order to grant a life diploma to the teacher in question would be required to read into the statute or provision not therein contained. No credit is given in section 29 for teaching in private schools.

“Where the language of the statute is plain and the meaning unmistakable, there is no room for construction * * *.” *State ex rel. Brockliss v. Jepsen*, [46 Nev. 193](#).

“The enumeration of certain cases in a statute is an exclusion of all cases not mentioned under the rule of construction.” *Ex Parte Arascada*, [44 Nev. 30](#).

Under the circumstances involved in the inquiry, we believe that your problem should be

brought to the attention of the Legislature, and a provision made to take care of like cases.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

By GEORGE P. ANNAND, *Deputy Attorney-General*.

55. Employment Security—Officer Liable Under Official Bond for Illegal Expenditure of Funds.

CARSON CITY, June 23, 1943.

MR. ALBERT L. MCGINTY, *Executive Director Employment Security Department,*
Carson City, Nevada.

DEAR MR. MCGINTY: This will acknowledge receipt of your letter of June 11, 1943.

In our opinion there is a substantial compliance in the statutes of Nevada with the requirements of the Social Security Act, and there is a legal method of replacing moneys found to have been lost or have been expended for purposes other than or in excess of those necessary for proper administration of the State law.

The facts upon which our opinion of April 13, 1943, were based are substantially as follows:

During the year 1938, the sum of \$123 was paid by your department to a member of the Board of Review as compensation for active service with actual and necessary travel expenses, as provided by section 2825.25 of 1929 Nevada Compiled Laws, 1941 Supplement.

On February 28, 1939, pursuant to your inquiry, this office supplied the opinion that members of the Board of Review of the Unemployment Compensation Division are civil officers within the meaning of the constitutional provision contained in section 8, article IV of the Nevada Constitution, and that a member of the Legislature of 1937 could not legally be appointed as a member of the Board of Review until one year after the expiration of such legislator's term of office.

It appears that the member in question was a member of the 1937 Legislature and was therefore disqualified to hold the office on the Board of Review.

You, as State Director, received information through the Regional Representative that the sum of \$123, which amount evidently represented the compensation and expenses allowed to this member of the Review Board, was an unnecessary expense.

You were requested to take immediate action to replace the sum of \$123 in the administration fund. The letter suggested if moneys were not available from any other source, that legislative action be taken to appropriate fund for this purpose.

The matter was submitted to this office for an opinion. On April 13, 1943, we advised that the money as expended was not a legal claim against the State, and that the Legislature could not constitutionally appropriate funds for the purpose of replacing money expended for compensation to one appointed to office in violation of a constitutional provision.

Following this opinion you were notified by the Social Security Board through its Regional Representative that because of the above-mentioned opinion there is some doubt as to our State law meeting the requirements of the Social Security Act, which might prevent the Social Security Board from certifying the Nevada Department for further grants for administrative purposes.

You now inquire if there is a legal method of replacing moneys granted to the State by the Social Security Board, which, in the future, may be found to have been unconstitutionally

expended.

First: In support of our former opinion we submit the following:

Section 8, article IV, of the Constitution provides: "No senator or member of the assembly shall, during the term for which he shall have been elected, nor for one year thereafter, be appointed to any civil office of profit under this state which shall have been created, or the emoluments of which shall have been increased, during such term, except such office as may be filled by election by the people."

There is nothing dissimilar in the constitutional prohibition of this State from that of other States. The Constitution of the United States contains a like provision in section 2, article 1. This provision in substance has been copied into the Constitutions of most of the States.

The payment of compensation to an officer appointed in violation of this provision is not expressly inhibited in our State Constitution, but the policy established is apparent.

As the court in *State of Nevada v. Hallock*, [14 Nev. 202](#) said: "It is true that the constitution does not expressly inhibit the power which the legislature has assumed to express, but an express inhibition is not necessary. The affirmation of a distinct policy upon any specific point in a state constitution implies the negation of any power in the legislature to establish a different policy. Every positive direction contains an implication against anything contrary to it which would frustrate or disappoint the purpose of that provision. * * * It would be a strange doctrine that the legislature, by neglecting to do what the constitution positively enjoins, could thereby gain the right to do what it impliedly forbids."

In the instant case the payment to the member of the Board of Review was for value of service actually rendered to the State of Nevada. It was an absolutely necessary expense. The mere fact that it was later found to be in violation of the Constitution of the State and therefore an illegal claim does not, it seems to us, detract from its necessity.

The fact that the Social Security Board has designated the illegal expenditure made in the administration of the State's Unemployment Compensation Administration Law "an unnecessary expense," does not convert the claim into a legal demand which the Legislature could order paid.

Notwithstanding the finding of the Social Security Board on the above set of facts, do the Statutes of Nevada provide a method of replacing moneys granted to the State under the Social Security Act?

Subchapter 111 of the Social Security Act. "Grants to the states for unemployment compensation administration," provides in subsection (a), section 503. "The board shall make no certificate for any payment to any state unless it finds that the law of such state, approved by the board * * * includes provision for * * * (9) * * * the replacement, within a reasonable time, of any moneys received pursuant to section 502 of this title, which, because of any action or contingency, have been lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by the board for the proper administration of such law."

Chapter 185, Statutes of Nevada 1941, provides in subsection (b), section 13, for the reimbursement of funds, and incorporates in this subsection the exact provision (a) quoted above. In addition the section provides, "Upon receipt of notice of such finding by the social security board, the commissioner shall promptly report the amount required for such replacement to the governor and the governor shall at earliest opportunity submit to the legislature a request for the appropriation of such amount."

If the money expended does not come within the provisions of this section, do the laws of Nevada provide a method whereby such an expenditure may be replaced in the fund?

Subsection (a), section 13 of the Nevada Act of 1941, in part provides, “all sums recovered on any official bond for losses sustained by the unemployment compensation administration fund shall be deposited in said fund.”

Subsection (a) under section 4 of the Act provides that the director “may bond any person handling moneys or signing checks thereunder.”

The Director, State Treasurer, Junior Accountant, four Field Auditors and the Fiscal Officer of the department are under bond. These bonds are secured under the Nevada Bond Trust Fund Act of 1937. Statutes 1937, chapter 193.

The bond provides that the principal named therein shall faithfully perform and discharge the duties of this office and render a true account of all moneys, * * * that shall come into his and as such officer. If the officer fails to account for money received, and fails to pay the same out according to law, the loss up to the amount, limited in the bond shall be made out of the State Bond Trust Fund.

As stated in the case of State v. Nevin, [19 Nev. 165](#), “It is apparent that a bond requiring a faithful performance of official duty is as binding upon the principal and his sureties as if all the statutory duties of the office were inserted in the bond.”

It is our opinion that if the Director paid out moneys in violation of the Constitution, he would be held responsible under his bond. This constitutes an additional method for replacing moneys granted to the State under the Social Security Act. With this additional method in mind, the laws of Nevada, in our opinion, substantially comply with all requirements of the Social Security Act.

The Attorney-General of the United States, defining a substantial compliance with statute, Opinions Attorney-General, Vol. 39, page 23, Syllabus. “The weight of decision is that it will suffice if an act is so done that it accomplishes the substantial purpose of a statute though not done in precise accord therewith.”

In our opinion a refusal of the Social Security Board to make a certificate for payment to the State of Nevada would bring them squarely within the objection voiced by Mr. Justice Sutherland and Mr. Justice Van Devanter in their dissenting opinion in the case of Steward Machine Co. v. Davis, 57 Ct. 883; 109 A.L.R., page 316.

Discussing this provision, the opinion reads: “The act provides that the board shall certify in each taxable year to the Secretary of the Treasury each state whose law has been approved. But the board is forbidden to certify any State which Board finds has so changed its law that it no longer contains the provisions specified in subsection (a) or has with respect to such taxable year failed to comply substantially with any such provision. The Federal Government, therefore, in the person of its agent, the board, sits not only as a perpetual overseer, interpreter, and censor of the State legislation on the subject, but as lord paramount to determine whether the State is faithfully executing its own law as though the State were a dependency under pupillage and not to be trusted.”

Very truly yours,

ALAN BIBLE, *Attorney-General*.

By GEORGE P. ANNAND, *Deputy Attorney-General*.

56. Motor Vehicle Registration Law—Civilian Employee of the United States Subject to Provisions.

CARSON CITY, June 29, 1943.

HON. MALCOLM McEACHIN, *Motor Vehicle Commissioner, Carson City, Nevada.*

DEAR MR. McEACHIN: Under date of June 28, 1943, you requested an opinion from this office upon the following question:

Are the civilian employees of the United States who are employed at the gunnery school near Las Vegas, Clark County, Nevada, required to register their motor vehicles under the Motor Vehicle Registration Law of this State, and particularly section 17 thereof, as amended at 1943 Statutes, page 266?

The 1943 Legislature amended section 17 of the Motor Vehicle Registration Act and incorporated in such amendment the following proviso:

provided, further, a nonresident owner of a vehicle of a type subject to registration in this state who, while residing in this state, accepts gainful employment within this state or whom comes into the state for the purpose of being gainfully employed therein shall, for the purposes of and subject to the provisions of this act, be considered a resident of this state and pay such registration fees as provided for in this act; * * *.

This proviso was incorporated in section 17 to clarify the amendment of such section relating to nonresidents coming into the State for the purpose of being gainfully employed, as enacted in 1941. It is clear from the 1943 enactment that any nonresident owner of a motor vehicle subject to registration under the laws of this State who, while residing in this State, accepts gainful employment within this State or *who comes into the state for the purpose of being gainfully employed therein shall* be deemed a resident of the State and required to register his motor vehicle and pay the fees therefor as required by the law.

Civilian employees of the United States at the gunnery school who have obtained employment there while residing in this State, or who came into the State for the purpose of being employed there, are certainly within the terms of the Act, and we know of now law or rule of law that will exempt them from the provisions of the Motor Vehicle Registration Act.

It is a fundamental principle of the law relating to taxation and licensing that those who claim exemption from the provisions thereof must point to a clear and express exemption written into the law upon which to base their claim for exemption from its operation. The Motor Vehicle Registration Act contains no such exemption as would apply to the civilian employees, even though they be employed by the United States. We make this statement for the reason that the Supreme Court of the United States in the case of *Superior Bath Company v. McCarol*, 312 U.S. 176, had under consideration the power of the State of Arkansas to levy and collect income tax from a corporation operating exclusively on a Federal reservation over which the exclusive jurisdiction of the United States had been ceded by the State. In passing upon the question the court said:

Whatever constitutional power the Federal Government may have to prohibit the state taxation of income derived from property located on the reservation, regarded as a federal instrumentality, it is plain that it has not assumed to exercise the power. *Graves v. O'Keeffe*, supra, 480 (306 U.S. 466). Since the state has not surrendered its constitutional power to tax the income and since Congress has not assumed in the act establishing the reservation, or otherwise, to prohibit the tax, the power of the state is unimpaired, unless restricted by its own constitution

and laws (at page 182).

We are not advised as to the ground upon which the civilian employees in question claim the right of exemption from the registration law as to their motor vehicles. We assume that it is on the claimed immunity of the Federal Government from interference by local taxation with its instrumentalities. But, this particular claim of immunity has been set aside by the Supreme Court of the United States in cases dealing with the right of the Federal Government to levy and collect income taxes from State officials and employees with a like right granted to the State to levy and assess income taxes upon Federal officers and employees. This claimed immunity as applied to the taxation of property and such like of the United States by a State is clearly set forth in the case of *General Construction Company v. Fisher*, 39 P. (2d) 358.

The Supreme Court of the United States in *Graves v. The State of New York*, 306 U.S. 595, held that the imposition by a State of a nondiscriminatory income tax in respect to the salary of an employee of a corporate instrumentality of the Federal Government does not place an unconstitutional burden on the Federal Government where Congress has not conferred on the salary of the employees of such instrumentality an immunity from State taxation. And, the court further held that the intention on the part of Congress to confer upon the employees of an instrumentality of the Federal Government where Congress has not conferred on the salary of the employees of such instrumentality an immunity from State taxation. And, the court further held that the intention on the part of Congress to confer upon the employees of an instrumentality of the Federal Government immunity from State taxation of their salaries is not to be gathered by implication from the silence of the statute creating the instrumentality.

It seems to be clear that if an employee of an instrumentality of the Federal Government is not immune from State taxation of his income paid to him by the United States Government that then civilian employees of the United States Government are in more better position to claim immunity from State licensing of their motor vehicles.

However, we think the exact case has been settled adversely to the contentions of any such employees in the case of *Storaasli v. Minnesota*, 283 U.S. 57. In that case we find a Federal military reservation over which the United States had been ceded exclusive jurisdiction by the State of Minnesota. The only jurisdiction reserved by the State was the right to serve its civil and criminal process on the jurisdiction and that a public highway across the reservation should be kept open for public traffic. A soldier in the armed forces of the United States stationed at Fort Snelling on such Federal reservation claim immunity with respect to the licensing of his motor vehicle under the laws of the State of Minnesota by reason of the fact that he was a member of the armed forces of the further ground that he was a nonresident of Minnesota and was nonresident operation of motor vehicles. The Supreme Court of the United States held to the contrary of such contention, and required the appellant in that case to license his motor vehicle pursuant to the laws of the State of Minnesota.

It is clear that in the instant matter the civilian employees cannot claim immunity by reason of their being connected with the armed forces of the United States. Neither are they engaged in employment on a federal reservation over which the exclusive jurisdiction has been ceded by the State of Nevada. Even if such were the facts, still under the *Storaasli* case they would be bound to register their motor vehicle in this state.

It is, therefore, the opinion of this office that the civilian employees of the United States

employed at the gunnery school in question are subject to the registration provisions of the Motor Vehicle Registration Act of this State.

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

57. Water Law—Construction of Dams by Beaver.

CARSON CITY, June 30, 1943.

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

DEAR MR. SMITH: Reference is hereby made to your letter of June 17, 1943, enclosing a copy of a letter received from one "R" relative to a problem resulting from the construction of dams by beaver in the channel of a certain creek whereby "R," according to the letter, was deprived of water for irrigation and stock watering purposes. It seems the beaver were imported and planted upon the stream and on property belonging to other persons, designated herein as "W.," and that such beaver built numerous dams holding back and diverting endeavor to have your office determine how or in what manner "R" could obtain his water in view of the fact that he had complained, as he states, to the Game and Wild Life office requesting removal of the beaver in question, and that upon such office sending a man to remove the beaver "W" refused to let the beaver he removed.

The stream in question has not been adjudicated under the water law of this State. Assuming for the purposes of this letter, we assume that "R" has acquired a water right in the stream and that the water therefore must flow in the stream through the lands of "W," and that as between "R" and "W," "R" has a right to the use of a certain amount of water both for irrigation and stock watering which "W" has no right to obstruct.

The obstruction of a stream by beaver presents a novel question, and a question, so far as we are able to ascertain, which has not been passed upon by the courts, particularly as applied to the appropriation of water for irrigation in western States and particularly in Nevada. It appears from "R's" letter that the beaver, while they may be denominated animals *feræ naturæ*, still under the facts under consideration here they have been reduced to possession "W" and for this reason we are inclined to the view that the so-called Game and Wild Life office, which we think was meant to be the State Fish and Game Commission, has no authority to go upon the land of "W" and remove the beaver where "W" objects thereto. The question then arises as to whether "W" can maintain the beaver on his lands in such a manner as to prevent the use of water by "R." Our examination of the law convinces us that such is not the fact, and that the use of water for irrigation and stock watering is such a right as would enable "R" to a remedy in the courts, or otherwise, as would enable him to secure the water to which he is legally entitled.

Now, with respect to the power of the State Engineer to remove the obstruction caused by the erection of the beaver dams from the stream in question, we are of the opinion that the stream not having been adjudicated under the water law of this State, and consequently not brought under the jurisdiction of the State Engineer's office, that the State Engineer, as such, possesses, nor jurisdiction in the instant matter to cause the removal of such dams. However, examination of the law discloses that "R" is not without a remedy in that he has the right to have the water to which he is entitled flow in the stream past the beaver dam, and if such dams actually prevent his

receiving the water to which he is legally entitled he would have the right to go upon “W’s” land and remove the beaver dam or dams to the extent necessary to release the water to which he is entitled. The law on this question is well stated in 3 Kinney on Irrigation and Water Rights, 3048, section 1658, as follows:

The owner of the right to use of water, whether he claims the same as an appropriator or as a riparian owner, has the obstructions from the natural stream, which materially interfere with his rights, as far as he can do so peaceably, doing no unnecessary injury to the lands of the other, and that, too, without rendering himself a trespasser on such lands. So, too, the right of an easement over the lands of another for a ditch and canal, gives an incident thereto, the right to go upon the lands and remove obstructions from the ditch, or to make necessary repairs, without rendering the owner of the ditch a trespasser.

The text above quoted is well supported by *Ware v. Walker* (Cal.), 12 Pac. 475; *Keller v. Fink*, 37 Pac. 411; and *Ennor v. Raine*, [27 Nev. 178](#), and several other cases not necessary to cite herein.

In *Keller v. Fink*, supra, the Supreme Court of California denied that the defendant was liable for injuries to a dam and ditch of plaintiff’s on defendant’s land occasioned by the trampling thereof by defendant’s cattle, thus depriving the plaintiff of water because the plaintiff had a right to go upon the defendant’s land and repair the damage and thus secure his water.

In *Ennor v. Raine*, supra, the Supreme Court of Nevada sustained the right of Raine to go upon Ennor’s land and remove and tear out dams constructed by Ennor in the stream which prevent Raine from securing the water to which he was legally entitled out of the stream.

So, in the instant matter, it seems clear that if “W” planted beaver on his land and such beaver thereafter constructed dams in the stream, thereby preventing “R” from obtaining the water to which he was entitled, “W” is in the same position as Ennor in the above case, and that under the authority of the *Ennor v. Raine* case, “R” would be within his rights in opening the beaver dams in question when necessary to obtain his water. The proclivities of beaver to construct dams in streams is well known to everyone and must have been known to “W,” and we think that he would be held bound by such knowledge and would be liable to respond to “R” in damages resulting from the deprivation of water by reason of the beaver dams.

However, it is not the province of this office to designate what remedy a water user may invoke in any kind of a water case. We apprehend that if “R” goes on “W’s” land for the purpose of destroying a beaver dam, serious consequences might follow thereafter. Without attempting to advise as to what remedy could legally be pursued in this matter, we do suggest, however, that “R” could in all probability bring suit to enjoin “W” from permitting the beaver to any longer deprive “R” of his water. There is much weighty authority to the effect that equity or a suit to enjoin interferences with a water right is the proper procedure and will constitute a valid remedy. Long on Irrigation, 448, section 262, and many cases there cited.

The thought occurs to us, that while beaver may dam up a stream, such obstruction only operates to stop the flow of water for a period of time and not continuously as we think the beaver construct the dam for the purpose of providing a home and only allow the water to occupy a certain depth, and that, naturally, when this depth is reached, the water will flow over the dam and continue down the stream. Whether this is true in the instant matter we cannot say.

We respectfully suggest in the interest of peace and harmony that perhaps an investigation by your office could be made with a view toward ironing out the difficulties of the parties in

question.

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

58. State Board of Health—Local Health Officers Not Authorized to Issue Certified Copies of Birth and Death Certificates.

CARSON CITY, July 6, 1943.

EDWARD E. HAMER, M.D., *State Health Officer, Nevada State Department of Health, Carson City, Nevada.*

DEAR DR. HAMER: Answering your letter received July 3, 1943, submitting the following inquiry:

Do the local health officers, local registrars of vital statistics, and city health officers of this State have the authority to prepare and issue certified copies of the records of births and deaths, which have been filed by them? For your information, the records filed by these offices are merely copies of the original records, which are forwarded to the Division of Vital Statistics after being recorded by the above-named officials.

We are of the opinion that a certified copy of a birth certificate or a death certificate can be issued only by the legal keeper or custodian of such records. The State Registrar of Vital Statistics is such officer, and no authority is vested in local health officers or local registrars of vital statistics to issue such certified copies.

Section 5280 Nevada Compiled Laws 1929 provides that each birth certificate and each death certificate be properly and completely made out and registered with the local registrars and correctly recorded and promptly returned by him to the State Registrar as required by this Act.

Section 5283 Nevada Compiled Laws 1929, as amended Statutes 1943, in so far as applicable here, provides that the State Registrar of Vital Statistics shall, upon request, supply to any applicant a certified copy of the record of any birth or death registered under the provisions of this Act.

Subsection (3) of section 5268.14, 1929 Nevada Compiled Laws, 1941 Supplement reads: "The state registrar shall not issue a certified copy of a certificate, or parts thereof, unless he is satisfied that the applicant therefor has a direct and tangible interest in the matter recorded, subject, however, to review by the board or a court of competent jurisdiction under the limitations of this section.

Section 8956 Nevada Compiled Laws 1929 reads in part: "a public record or document in custody of a public officer of this state, in a public office, may be proved and admitted in evidence in any court by the certificate of the legal keeper or custodian thereof that it is genuine and authentic, and by his seal, if there be one annexed."

Respectfully submitted,
ALAN BIBLE, *Attorney-General*.
By GEORGE P. ANNAND, *Deputy Attorney-General*.

59. Corporations—Foreign Corporations Cannot Escape Payment Filing Fees by Reason

Certain Supreme Court Decisions.

CARSON CITY, July 13, 1943.

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

DEAR MR. McEACHIN: Reference is hereby made to your letter of July 12, inquiring whether a foreign corporation filing amendments to its Articles of Incorporation in your office can escape payment of the filing fees required by the laws of this State upon the ground that such fees are unconstitutional by reason of certain decisions of the Supreme Court of the United States, to wit, *Looney v. Crane Co.*, 245 U.S. 178; *Cudahy Packing Co. v. Hinkle*, 278 U.S. 460; *Air-way Electric Appliance Corp. v. Day*, 266 U.S. 71; *Atlantic Refining Co. v. Virginia*, 302 U.S. 22.

The corporation in question assumes to question the power of this State to exact filing fees for filing amendments to its Articles of Incorporation now on file in your office, which said articles were undoubtedly filed in the first instance in order to qualify such corporation to do business in Nevada. It may be stated at the very outset that the fees in question are the same for domestic corporations as for foreign corporations and thus no ground for alleging discrimination can be found. See Section 77, Corporation Law 1925, as amended at 1931 Statutes 424; chapter 52 Statutes of 1933. Thus, foreign corporations are placed on the same footing with domestic corporations and therefore do not assume any burdens not placed upon domestic corporations. In view of this situation, we are inclined to the view that the cases cited above are not in point and that they are not sufficient authority, in any event, for holding that the Nevada law, as it now stands, places unconstitutional burden on the foreign corporation in question.

The fee required for filing Amendments to Articles of Incorporation is unquestionably a fee and is not imposed as an additional tax of any kind on the foreign corporation. This being true and financial burden thus imposed being also imposed upon domestic corporations in like situation does not by any means create any inequality as between foreign corporations and domestic corporation, and in that regard does not come within the inhibition of the Fourteenth Amendment of the Federal Constitution. *Hanover Fire Insurance Co. v. Harding*, 272 U.S. 499. This doctrine was recognized in the *Atlantic Refining Co. v. Virginia* case cited above.

In an opinion rendered by a former Attorney General of this State upon the identical question with respect to the Standard Oil Company of California, the then Attorney-General ruled that such company was liable to the fees prescribed by the Nevada statute for the filing of its Amended Articles of Incorporation and cited in support of his opinion the case of *General Railway Signal Co. v. Virginia*, 246 U.S. 511. See Opinion 171 Report of the Attorney-General 1919-1920. We concur in such opinion and advise that the foreign corporation in question is liable for the filing fees required by the laws of this State for filing its Amended Articles of Incorporation.

Respectfully submitted,

ALAN BIBLE, *Attorney-General.*

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

60. Employment Security—Funds Do Not Revert.

CARSON CITY, July 15, 1943.

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

DEAR MR. SCHMIDT: This will acknowledge receipt of your letter of July 14, 1943, in which you make the following statement of facts and propound the following question:

The legislative session of 1941 appropriated, under section 22 of the General Appropriation Act, \$20,000 to the Employment Security Department. Subsequently, the Federal Government took over the entire department and we are left with a balance of \$15,000 unexpended. Incidentally, I might mention that the Federal Auditors who audited various agencies in which the State participates, have told us at all times that any unexpended balance of State money at all times that any unexpended balance of State money appropriated for matching purposes should revert at the end of the biennium. The 1943 Session of the Legislature had been asked to appropriate \$5,000 to bring this up to \$20,000 as originally appropriated, but they refused to comply. Following the usual practice pertaining to balances of money appropriated under the General Appropriation Act, unexpected balances at the end of the biennium are reverted. The question in this instance arises whether or not that emended section 13, 1943 Session, places a different construction on this in view of the fact, of course, that the State has nothing whatever to do with this at the present time. In the light of the foregoing statement, should the \$15,000 referred to be reverted?

It is our opinion that section 13, chapter 185, 1941 Statutes of Nevada, which has with slight amendment been reenacted by the 1943 Legislature (see chapter 175, page 249) makes it clear to us that the money appropriated by the General Appropriation Act of 1941 does not revert.

It is significant to note that the 1941 Legislature broadened the purposes for which the money in section 13 could be expended so as to include "the Employment Security Administration Law." Thereafter, by the General Appropriation Act of that year, \$20,000 was appropriated for the use of the Employment Security Department. Section 13 provides, in part, that "the fund shall consist of all moneys appropriated by this state * * * for such purpose. Any balances in this fund shall not lapse at any time but shall be continuously available to the commissioner for expenditure consistent with this act."

Since the 1941 Legislature authorized the expenditure for the purpose of defraying the costs of administration of the Employment Security Law, provided that the fund should consist of all moneys appropriated by the state, provided an appropriation of \$20,000 for this very purpose in section 22 of the General Appropriation Act and provided that the balances in the fund should not lapse³ at any time, it appears to be the clear legislative purpose to keep this fund intact and not to revert the same at the end of the usual biennial period.

Very truly yours,

ALAN BIBLE, *Attorney-General.*

61. Motor Vehicle Registration Law—Nonresident Gainfully Employed Subject to Provisions.

CARSON CITY, July 24, 1943.

HON. JOHN BONNER, *District Attorney White Pine County, Ely, Nevada.*

DEAR MR. BONNER: Answering your letter received in this office July 21, 1943, containing the following statement of fact, and requesting an opinion:

On July 15, 1942, Mr. "X," a married man, was residing at * * * Susanville, California. On that date he enlisted in the Reserve Corps of the United States Army. After his enlistment he went through three training programs in the Air Corps. Approximately one month ago he was released by the Army and ordered to come to Ely, Nevada, and work for the Nevada Aviation Incorporated as an instructor at the local airfield. The Nevada Incorporated has a contract with the United States Navy to train pilots here at Ely. Mr. "X" is being paid by the Nevada Aviation Incorporated and at the present time is receiving no pay from the Army. A few days ago he was given a tag and told to procure Nevada license plates from the Assessor.

We are of the opinion that the party in question comes within the provision of section 4435.16, 1929 Nevada Compiled Laws, 1941 Supp., as amended by chapter 186, Statutes of Nevada 1943.

The provision in said section bearing upon the facts stated, reads as follows:

provided further, a nonresident owner of a vehicle of a type subject to registration in this state who, while residing in this state, accepts gainful employment within this state or who comes into the state for the purpose of being gainfully employed therein shall for the purposes of and subject to the provisions of this act, be considered a resident of this state and pay such registration fees as provided for in this act; * * * .

Very truly yours,

ALAN BIBLE, *Attorney-General*.

By GEORGE P. ANNAND, *Deputy Attorney-General*.

62. County Commissioner—Person Guilty of Felony—Federal Court—Admitted to Probation Prior to Sentence—Eligible to Hold Public Office.

CARSON CITY, July 29, 1943.

HON. MARTIN G. EVANSEN, *District Attorney Mineral County, Hawthorne, Nevada*.

DEAR MR. EVANSEN: You have submitted to this office the hereinafter stated inquiry upon the following statement of facts;

One "T," a resident of Nevada, was indicted in the United States District Court for the District of Nevada on or about April 12, 1938, upon a charge of disposing of intoxicating liquor to an Indian, then and there being a ward of the Government under the charge of an Indian Superintendent or Agent. To this charge "T" entered a plea of guilty. Thereupon on June 4, 1938, by an order entered in such court, imposition of sentence was suspended until the first Monday of May 1939, and defendant "T" released on probation during said time in accordance with the Federal Probation Act of March 4, 1925, *i.e.*, Title 18, section 724, U.S.C.A. On May 1, 1939, "T" appeared in said court pursuant to the order on probation. No sentence was imposed; to the contrary the court entered the following order: "Good cause appearing therefor, it is ordered that the proceedings herein be, and the same hereby are, terminated." Subsequently, in 1942, "T" became a candidate for the office of County Commissioner in "M" County, Nevada, and was elected to such office.

Was “T” convicted of a felony in the United States District Court within the meaning of the Constitution and laws of Nevada denying the right of suffrage and of public office holding in this State to persons so convicted?

The prime requisite to the right to hold public office in this State is that of being a qualified elector of this State. The Constitution provides that “no person shall be eligible to any office who is not a qualified elector under this Constitution.” Sec. 3, art. XIV, Constitution of Nevada.

Section 1 of article II of the Constitution defines who are and who may become qualified electors of this State. Such section, inter alia, denies to persons convicted of felonies the right to vote in the following language: “*provided*, that no person who has been or may be convicted of treason or felony in any state territory of the United States, unless restored to civil rights * * * shall be entitled to the privilege of an elector.”

It appears that, if “T” lost his civil rights, *i.e.*, the right of being a “qualified elector” by reason of the proceeding in the Federal Court, such right has not been restored by executive action.

Assuming, but not deciding, as such decision is not necessary here, that the conviction of a person of a felony in a Federal Court deprives such person of his right and privileges as a qualified elector under the Constitution of Nevada, it remains to be determined if the foregoing facts constitute a conviction of “T” of a felony.

The depriving of a person of his rights and privileges as an elector is not to be lightly accomplished and, we think, it must affirmatively appear beyond question that a conviction of a felony is in fact shown by the record of the court in which such conviction is alleged to have been had.

We think the fact that no sentence was imposed on “T” is clearly indicative of the fact that no judgment of the court convicting him of a felony has been entered, and that the record further shows that he has in fact been discharged from any further proceedings in such court, and prior to the time he exercised his right and privilege of running for and being elected to public office.

It may be “T” was indicted upon a felony charge and that upon conviction thereof could have been sentenced as and for a felony. It is also true that the federal statute upon which he was indicted, *i.e.*, section 241, title 25 U.S.C.A., also provides a sentence for a lesser offense of which he could have been so convicted, and such sentence would have reduced the offense to that of a misdemeanor. That the court could have imposed such a lesser penalty upon “T” in the instant matter cannot well be doubted. See *Edwards v. U.S.*, 5 Fed. (2d) 17; *Buchanan v. U.S.* 15 Fed. (2d) 496. In such event “T” could only have been convicted of a misdemeanor. In this State the rule that the crime of which a defendant is actually convicted and not the crime charged, provided of course the lesser offense is contained in the greater offense charged, is determinative of its degree for the purposes of appeal to the Supreme Court obtains. *State v. McCormick*, [14 Nev. 347](#); *State v. Quinn*, [16 Nev. 89](#). See also *Ex Parte Booth*, [39 Nev. 183](#); 29 C.J.S. 59, sec. 33b.

This principle of law was and is based upon *People v. Cornell*, 16 Cal. 187, and *People v. Apgar*, 35 Cal. 389, and in brief is,

if punished as a felony, that is the “offense charged,” from which an appeal may be taken. If punished as a misdemeanor, that is the “offense charged” and an appeal will not lie. *State v. McCormick*, page 349, *supra*.

In *Gaudy v. State* (Nebr.) 4 N.W. 1019, Gaudy was convicted in the Federal Court of conspiracy to commit an offense against the United States. It was held that a person convicted of

a felony under the laws of Nebraska unless restored to civil rights. It was also held, however, that while the maximum penalty that could have been imposed upon Gaudy would have constituted the offense was reduced to that of misdemeanor, and in so holding applied the principle of law announced in *People v. Cornell*, supra, by saying:

This, we think, would be giving too much importance to mere possibilities, and cannot be indulged in, especially when it is sought thereby to deprive a person of civil rights, which, next to life and personal liberty, are the most sacred. Besides, if it were intended by section 5441 to enable the court in affixing the punishment for a given offense, in its discretion, to consider it either as a felony or as a mere misdemeanor, then we think the rule adopted by the supreme court of California in the case of *People v. Cornell*, 16 Cal. 187, should be applied, viz.: that the punishment actually inflicted must determine the grade of that offense.

This rule certainly has the merit of being both just and humane.

It is true that here the court did not sentence "T" as and for a misdemeanor, but, it is also true that no penalty, save that of a period of time served on probation if such time so served could or can be deemed a penalty, was by the judgment of the court assessed to him. It logically follows, we think, that the principle of law announced in the cases above cited and as applied in the Gaudy case is most applicable here. "T" may have been charged with a felony, he might have been penalized by sentence of the court for a felony, he could have been sentenced for a misdemeanor, but in fact he was not punished at all by any judgment. It is well said in 29 C.J.S. 59, sec. 33b, with respect to the denial of the right of suffrage by reason of being charged with a felony:

At any rate, the right of an elector who has been indicted for a felony is not forfeited by a verdict or confession, as the case may be, but only after a judgment against him has been entered thereon.

In *Prewitt v. Wilson* (Ky.), 46 S.W. (2d) 90, in a case dealing with the forfeiture of the right of suffrage upon a verdict of guilty returned by the jury in a felony case, the court said:

The order concludes: "It is, therefore, ordered by the court that the defendant (naming him), be taken by the sheriff of Whitley County to the jail of Whitley County and there safely keep [sic] until further orders of this court." Neither of these orders adjudges the defendant guilty of the crime charged. It simply records the verdict and remands the defendant to jail to wait the further orders of the court. There is no proof that the court ever rendered judgment on the verdict. For aught that the record shows, it may have been set aside and the defendant finally acquitted. The verdict of a jury under such circumstances cannot be regarded as a conviction, within the meaning of the statutes' disqualification. A verdict is but the basis of a judgment which carries it into effect. * * * As to one of the men, the contestant testified that he had been sent to the penitentiary, although the facts upon which he made the statement were not given; and, as to the other one, his mother stated that he had served a term in prison. The record of a final judgment of conviction is the best evidence and is controlling. In the absence of its production it must be held that neither of these voters was properly proven to have been disqualified on this ground.

In *People v. Fabian* (N.Y.), 85 N.E. 672, the court held that the term "persons convicted" as used in the New York Constitution providing that the Legislature shall enact laws excluding

persons convicted of any infamous crime from right of suffrage, and the law enacted thereunder declaring that no person who has been convicted of a felony shall register or vote unless he shall have been pardoned and restored to the rights of citizenship, means a person against whom a judgment of conviction has been rendered for an infamous crime, and is not satisfied by the rendition of verdict of *guilty* and *suspended sentence without the judgment of the court*. *Inter alia*, the court said:

So it had previously held in *Commonwealth v. Gorham*, 99 Mass. 420, that a judgment was necessary to constitute a conviction sought to be proven to affect the credibility of a witness, under a statute providing that a conviction of crime might be shown for that purpose. “All persons convicted of any felony” are prohibited from voting in Texas, both by statute and the Constitution of that state. The word “convicted,” as thus used, means “that a judgment of final condemnation has been pronounced against the accused.” *Gallagher v. State*, 10 Tex. App. 469.

As to the numerous cases cited in the briefs of both parties to the present appeal, in which the words “conviction” and “convicted” are differently defined, it may be said generally that where the context of the statute refers to the successive steps in a criminal case, or any particular stage of such a prosecution, as distinguished from the others, these words apply simply and solely to the verdict of guilty; but where the reference is to the ascertainment of built in another proceeding, in its bearing upon the status or rights of the individual in a subsequent case, then a broader meaning attaches to the expressions, and a “conviction” is not established or a person deemed to have been “convicted” unless it is shown that a judgment has been pronounced upon the verdict, * * *.

For the reasons which I have been given I think that the duty to disfranchise a person convicted of bribery or any infamous crime imposed by the Constitution upon the Legislature authorizes such disfranchisement only upon a conviction in the more comprehensive sense of that term—that is to say, upon a judgment based on a verdict of guilty—and that a person is not convicted, within the meaning of the Constitution or the statutes enacted in pursuance thereof, against whom sentence has been suspended after verdict.

In *State v. Houston* (N.C.), 9 S.E. 699, the Court said:

To authorize the loss of personal privileges as a witness or voter, there must be administered the appropriate punishment due to crime imputed and ascertained by a jury finding, or confessed, and the cause must come to an end by final judgment disposing of it. Such must be understood to be the meaning of the term “conviction” upon which is dependent the incurring of such disabilities. Until this is done, and the cause fully disposed of, there has been no condemnation of the law, nor follow those further penal consequences to the personal status of the criminal, and this from that benignant rule adopted in the construction of penal statutes of doubtful import, which interprets them favorable towards the accused.

There has been no judgment of the court adjudging “T” guilty of any offense. There has in fact been no conviction of “T” of a felony within the meaning of that term as contained in section 1 of article II of the Nevada Constitution. The inquiry is answered in the negative.

Respectfully submitted,

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

63. Insurance—Unlicensed Insurance Company, Permitted to Write Insurance, Subject to Tax—Legal Action Could Be Taken.

CARSON CITY, August 7, 1943.

HON. HENRY C. SCHMIDT, *Insurance Commissioner, Carson City, Nevada*.

DEAR MR. SCHMIDT: Reference is hereby made to your letter of July 31, 1943, wherein you inquire whether an unlicensed insurance company, permitted by the Insurance Commissioner to write insurance in this State under section 146 of the 1941 Insurance Act, is subject to the payment of the premium tax on business written in this State, and, if so, would it be possible for the Insurance Commissioner to take legal action against such company for collection of the tax.

The insurance law of 1941 requires that all insurance companies doing business in this State shall be licensed to so transact such business. However, there is provision in the law, in section 146, that insurance may be written with a solvent unauthorized company approved by the Insurance Commissioner, upon a showing by agent that he is unable to readily procure such insurance with an authorized company in excess of amounts that can be procured in an authorized company.

We think that insurance so written constitutes doing an insurance business in this State within the meaning of section 11 of the Insurance Act. Section 59 of the Act provides that every insurance company or association of whatever description, except fraternal or labor insurance companies or societies operating through the means of a lodge system, doing an insurance business in this State shall annually pay to the State Controller, as Insurance Commissioner, the tax is assessable to the above-mentioned company or companies.

Section 139 of the Insurance Act authorized suits against delinquent insurance companies for moneys due the State. It follows that legal action could be taken against the company or companies mentioned in your inquiry.

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

64. University of Nevada—Agricultural Extension Service—Method of Disbursing Funds Appropriated by Congress Proper.

CARSON CITY, August 7, 1943.

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

DEAR MR. GORMAN: You recently furnished this office with a copy of a proposed agreement to be signed by the Agricultural Extension Service of the University of Nevada under which such service would make a blanket advance to the War Manpower Commission of the sum of \$4,581.05, such expenditure to be made upon a monthly basis in accordance with certain designated estimates.

You state that the effect of this agreement is to require the University Regents to turn over

this sum of money, for which they are responsible, to an outside agency for expenditure. You contend that there is no authorization in the Federal law for such a blanket advance and that money can only be used for the payment of services rendered or "reimbursement" for services or facilities furnished. You likewise state that under the law you are required to have vouchers likewise state that under the law you are required to have vouchers on file for the inspection of the Federal auditors, which vouchers show the actual expenditures from funds under the control of the Board of Regents.

In order to expedite the very important war program and obviate any delay in getting it under way, it is our understanding that you have agreed "to pay for personal services and expense for travel as outlined in the agreement, promptly upon receipt of certificate from the employment agency, when approved by the Director of Extension. Under these conditions no money would have to be advanced by the down-town agency and payment would be made usually the day the bill is received in my office."

It is our opinion that your method of disbursing the funds appropriated by Congress under Public Law 45, 78th Congress, to the State of Nevada, for expenditure by the Agricultural Extension Service of the University of Nevada is the method provided by law. It is our understanding that the money appropriated by this Act was given to the State of Nevada under the control of the Board of Regents. It is a grant in aid to the State. As such it has assumed the character of State money and must be spent in conformity with the State fiscal laws.

The Act of the Nevada Legislature authorizing the Regents of the University of Nevada to receive grants from the United States was passed in 1915. We are informed that such grants to the agricultural Extension Service of the University have been expended in conformity without our State fiscal laws since that time, or for a period of twenty-nine years. This policy, to the best of our knowledge, has never been questioned.

Economy and efficiency, as well as protection to State officials handling such funds, can be maintained by following your method of promptly paying, upon receipt from the United States Employment Service the certificate showing the expenditure for services rendered or facilities furnished, and approved by the Director of Extension.

We cannot find any authority in the Federal Act which has changed the character of this grant to permit the Regents of the University to advance blanket sums to any public or private agency or individual upon a statement of estimated expenditures.

The Extension Service under section 2 (a) is given authority to enter into agreements with public or private agencies or individuals and utilize the facilities of such agencies or individuals in carrying out the purpose of this section. This provision does not authorize the Extension Service to advance or transfer the entire allotment, nor any part of it, to another agency or individual for expenditure or administration.

The money received by the Agricultural Extension Service of the University of Nevada was deposited in the State Treasury by the Regents and the Comptroller of the University, according to our state law, under section 7042. Nevada Compiled Laws 1929, and disbursement of this fund must be made in conformity with the fiscal laws of this State. See section 7349 Nevada Compiled Laws 1929.

Very truly yours,

ALAN BIBLE, *Attorney-General.*

By GEORGE P. ANNAND, *Deputy Attorney-General.*

65. Counties—Taxation—Segregation Service Men from Other Tax Delinquents—Effect Soldiers and Sailors' Civil Relief Act.

CARSON CITY, August 11, 1943.

HON. V. GRAY GUBLER, *District Attorney Clark County, Las Vegas, Nevada.*

DEAR MR. GUBLER: This will reply to your letter received July 31, 1943, containing the following inquiry:

(1) Whether or not section 6442 and 6447 N.C.L., 1931-1941 Supplement, are operative or whether their effect, with reference to service men, is suspended by the Soldiers' and Sailors' Civil Relief Act.

(2) In the event you are of the opinion there is a suspension of the State law, what can you suggest as a reasonable and effective way to segregate service men from other tax delinquents to prevent useless tax sales?

It is our opinion that sections 6442 and 6442, 1929 N.C.L., 1941 Supp., wherein a conflict appears with the Soldiers' and Sailors' Civil Relief Act of October 6, 1942, are to that extent suspended and inoperative during the period expressed in the Federal Act.

It appears that the responsibility for claiming exemption under the Act has been shifted from the person in service, or his dependents, to the collector of taxes, since the elimination, by amendment, of the necessity for the filing of an affidavit.

No method has been outlined to determine whether or not the taxpayer comes within the provisions of the Act.

We have given it a great deal of thought, but have not been able to outline a procedure which would apply generally to the counties. In the smaller counties the tax collector would likely know if the property on the delinquent tax list was owned by a person in the service and occupied by his dependents. In the larger counties, in order to segregate service men from other tax delinquents and prevent useless tax sales, the tax collector might compare his delinquent tax list with the names of people in the service as shown by the records of the Selective Service office.

Section 500 (1), Article V, of Soldiers' and Sailors' Civil Relief Act of 1940, title 50, sec. 560 U.S.C.A., was amended by the Act of October 6, 1942, 56 Stat. 776, to read:

(1) The provisions of this section shall apply when any taxes or assessments whether general or special (other than taxes on income), whether falling due prior to or during the period of military service, in respect of personal property, money, or credits, or real property owned and occupied for dwelling, professional, business, or agricultural purposes by a person in military service or his dependents at the commencement of his period of military service and still so occupied by his dependents or employees are not paid.

The provision in section (2) of the Act, which required the person in the service or someone in his behalf to file with the tax collector an affidavit showing that his property came within the exemption, was stricken out in the amendment. The section as amended provides that no sale of such property shall be made to enforce collection of taxes without leave of court, granted upon application of the tax collector. Section (4) of the Act remains the same, forbidding the tax imposition of any interest or penalty greater than 6% per annum on such tax from the due date until paid.

The provision in section 6442 N.C.L. 1929, as amended by statutes of 1943, page 264,

defining the interest and penalty upon delinquent tax is therefore suspended as to property owned by persons in military service and occupied by their dependents. Also, section 6447, 1929 N.C.L., 1941 Supp., directing the sale of property for delinquent taxes is inoperative in respect to property of persons in military service.

In case of *Twitchell v. Home Owners' Loan Corporation*, 122 P. (2d) 210, it was held:

The Soldiers' and Sailors' Civil Relief Act of 1940 was intended to protect the interest of those called into the military service and who, for that reason are unable to keep up payments on obligations incurred prior to the effective date of the Act and previous to being called into service, and is a proper exercise of the war powers of the Federal Government.

Respectfully submitted,

ALAN BIBLE, *Attorney-General*.

By GEORGE P. ANNAND, *Deputy Attorney-General*.

66. Old-Age Assistance—Actual Residence in State for Five Years or More.

CARSON CITY, August 12, 1943.

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

DEAR MR. CLARK: Replying to your letter received August 4, 1943, relative to the interpretation of residence as set forth under the Old-Age Assistance Act, and contained informer opinions from this office.

It is our conclusion that the opinion dated November 4, 1937, should control.

We believe that an applicant who fulfills all the requirements of the Act, one of which, subdivision (b), section 5154.02, 1929 N.C.L., 1941 Supp., requires an actual residence in the State for five years or more during the nine years immediately preceding the application, the last year of which shall have been continuous, warrants the interpretation of this subdivision in *par materia* with section 6405, N.C.L. 1929, and particularly the proviso thereof.

Section 6405 N.C.L. 1929, provides in part as follows: "The legal residence of a person with reference to * * * or any other right dependent on residence, is that place where he or she shall have been actually, physically and corporeally present within the state or county, as the case may be, during all the period for which residence is claimed by him or her; *provided, however*, should any person absent himself from the jurisdiction of his residence with the intention in good faith to return without delay and continue his residence, the time of such absence shall not be considered in determining the fact of such residence."

Very truly yours,

ALAN BIBLE, *Attorney-General*.

67. Osteopath Can Legally Perform and Give Obstetrical Care.

CARSON CITY, August 17, 1943.

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

DEAR DR. HAMER: This will acknowledge receipt of your recent inquiry with supporting

letters received in this office on July 31, 1943. Your inquiry, which involves a late congressional amendment contained in H.R. 2935, presents the question as to whether or not a duly licensed osteopathic physician can render obstetrical services under the Nevada law.

Section 4996 Nevada Compiled Laws 1929 fixes the standards of education, requires the applicant to be a graduate of a school or college covering the standard curriculum as defined in the next section which includes the subject of obstetrics.

Section 5001 Nevada Compiled Laws 1929, provides: "Osteopathic physicians shall observe and be subject to all state and municipal regulations relative to reporting all births and deaths in all matters pertaining to the public health, with equal right and obligations as physicians and surgeons of other schools of medicine with respect to the treatment of cases or the holding of office in public institutions."

This section has previously been construed by this office to the effect that under it an osteopathic physician and surgeon could practice optometry. See Attorney-General Diskin's Opinion No. 179, 1925-1926 Biennial Report.

The section above quoted requires osteopathic physicians to observe and be subject to all state municipal regulations relative to reporting all births and deaths. The section likewise confers upon the osteopathic physician and surgeon the same rights as physicians and surgeons of other schools of medicine. We can give no other meaning to this plain legislative expression. Unless an osteopathic physician could lawfully attend a woman in childbirth there would be no other reason to report the birth of a child. We conclude that under the Nevada statutes osteopathic physicians can lawfully perform and give obstetrical care.

In this connection see the case of *Stoike v. Wiseman*, 208 N.W. 993. The court there interpreted statutes regulating the practice of osteopathy very much like the Nevada statutes. Osteopathic physicians were required to perform the same duties as other physicians with reference to matter pertaining to public health and reports of births and deaths. Speaking of the license required, the court said: "To obtain it the applicant was required to exhibit a diploma wherein the curriculum included instruction in certain subjects, one of which was obstetrics, and to pass an examination in that subject, as well as in many others," * * * "unless an osteopathic physician could lawfully attend a woman in childbirth, there would be no reason for requiring him to report the birth of a child." Also see *State v. Wagner*, 297 N.W. 906.

We are not unmindful of the present controversial situation which exists between those practicing medicine under regular M.D. licenses and those practicing under the osteopathic licenses. We have stated to both the M.D.'s and the osteopaths that definite legislative enactment should be secured defining the rights and privileges of each class of practitioner. Failing this, we believe that it would be for the benefit of each class of practitioner to determine its respective rights once and for all before the courts of last resort of the State of Nevada.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

68. Motor Vehicle Registration Law—Nonresident Operating Fleet of Motor Trucks Subject to Provisions.

CARSON CITY, August 17, 1943.

HON. MALCOLM McEACHIN, *Motor Vehicle Commissioner, Carson City, Nevada.*

DEAR MR. McEACHIN: Reference is hereby made to your letter of August 13, wherein you inquire whether a nonresident of Nevada, operating a fleet of motor trucks in intrastate service under a contract with the Navy Department of the United States in Nevada, is required to have such motor trucks registered and pay the fees therefor pursuant to the Motor Vehicle Registration Act of this State. It appears that such trucks were registered under the laws of the State of California, being the State of residence of the operator of such trucks under such contract in Nevada.

It appears from the correspondence annexed to your inquiry that the contractor in question is a resident of California and, apparently, that such contractor is engaged in electrical contracting and engineering work and presumably following such line of endeavor in Nevada and using his trucks for such purpose.

After examining the correspondence annexed to your inquiry, this office is of the opinion that such nonresident contractor comes squarely within the provisions of section 17 (a) of the Motor Vehicle Registration Act, as amended at 1943 Statutes, page 266. It appears that such nonresident contractor has undoubtedly come into the State for the purpose of being gainfully employed herein and, therefore, subject to the provisions of the Motor Vehicle Registration Act as is provided by the amendment above stated.

However, we call attention to one truck mentioned in the contractor's letter of August 11, 1943, which truck is engaged in transporting out of a California warehouse the contractor's material used on the contract in Nevada. We think this particular truck comes within the definition of a private motor carrier of property as contained in section 4437.01, 1929 N.C.L., Supp. 1931-1941, and if the laws of California permit the operation of a truck in similar carriage that is registered in the State of Nevada, that such truck would be exempt from registration in Nevada pursuant to section 17 (b) of the amendment of 1943 aforesaid.

Respectfully submitted,

ALAN BIBLE, *Attorney-General*.

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

69. Taxation—Differential Payment Made for Copper Produced Over and Above Quota Established Constitutes Part of Gross Yield and Taxable.

CARSON CITY, August 23, 1943.

NEVADA TAX COMMISSION, *Carson City, Nevada*.

GENTLEMEN: You inquire whether the premium paid by the Metals Reserve Company for copper mined in excess of quotas established by the War Production Board and the Office of Price Administration and approved by the Metals Reserve Company is taxable under the proceeds of Mines Taxing Act of this State.

The statute of this State relating to the taxation of the net proceeds of mines provides that each owner or operator of a mine "must semiannually during July and January of each year, make and file with the Nevada Tax Commission a statement showing the gross yield and claimed net proceeds from each mine owned, worked or operated * * * during the preceding six-months' period. Section 6579 Nevada Compiled Laws 1929. It is further provided that "The Nevada tax commission shall from said statement and from all obtainable data, evidence and reports, compute in dollars and cents the gross yield and net proceeds of each mine for each semiannual

period.” Section 6580 Nevada Compiled Laws 1929, amended at 1939 Statutes, page 256.

We think the Legislature, by the use of the term “gross yield,” intended that such term was and is to be interpreted in its common accepted meaning, *i.e.*, the entire product of proceeds of a mine reflected in the dollars and cents received from the ore extracted during the semiannual period. “Gross” unquestionably means “whole,” “entire,” “without deduction.” Webster’s Dictionary. “Yield” is synonymous with “proceeds.” Webster’s Dictionary, Furst & Thomas v. Elliot, 56 Pac. (2d) 1064. That the Legislature intended such interpretation of the term “gross yield” is evidenced by the language of the statute itself, *i.e.*, “The Nevada tax commission shall from said statement and from *all obtainable data, evidence and reports*, compute in dollars and cents the *gross yield * * **” (Italics ours.)

Certainly, the foregoing language contemplates the computation of the proceeds of the extracted ore in dollars and cents and is not limited to market value of such ore, but contemplates a computation of the proceeds derived by the mine owner or operator of all moneys received upon and from the actual amount of ore mined and disposed of.

The plan of so-called premium payments made by the Metals Reserve Company for the production of copper, we think, approaches, if it does not in fact provide, a contract whereby it agrees with the copper miner to pay additional sums and amounts of money over and above a fixed ceiling price for the production of copper over and above certain specified quotas. Such is the language of the memorandum of the plan. We quote from the “Program for Premium Payments by Metals Reserve Company on Production of Copper, Lead and Zinc in Excess of Monthly Production Quotas” of March 7, 1942;

“In effecting the program announced by the Honorable Jesse H. Jones as Federal Loan Administrator on January 12, 1942, Metals Reserve Company will pay a premium on all domestic production of copper, lead and zinc in excess of monthly quotas established by the War Production Board and the office of Price Administration and approved by Metals Reserve Company, which will reflect the difference between the respective ceiling prices for the materials involved and the equivalent of 17¢ per pound Connecticut Valley for copper,” * * *. “The premium program will be operative for a period of not to exceed two and one-half (2 ½) years from February 1, 1942, but may be terminated earlier should the National Emergency come to an end prior to July 31, 1944, in which event settlement with eligible producers will be made on the basis hereinafter mentioned. The premium program will apply to all excess production after February 1, 1942, regardless of the time when the quotas are announced and the actual payments begin.”

“With regard to excess production from the usual ‘customs ores,’ various smelting companies throughout the United States have been designated as agents for Metals Reserve Company to obtain and transmit to it the necessary data required for the making of the premium payments. Each producer representing himself as eligible for any premium payment in any month must (1) cause the smelting company to which he ships to be furnished, as agent for Metals Reserve Company, with a sworn producer’s affidavit (forms thereof can be obtained by the producer from the smelting company) showing among other things, the amount of material in excess of quota delivered during the month covered by such affidavit for which he has been paid or will be paid and on which he is eligible for a premium, and (2) cause the smelting company to be furnished with all necessary information as to enable it to supply Metals Reserve Company with a statement setting out all data required for the making of the premium payments.”

“Following receipt in each month of its agents’ and representative’s statements, together with

the sworn producers' affidavits, Metal Reserve Company will arrange for the premium payments to be made promptly to the producers."

"A principal requirement of the program is that any deficiency in monthly deliveries below the monthly production quota of any producer must be made up in the next succeeding month or months before such producer can receive any premium payment on excess quota production, and the producer's affidavit will be required to show that such deficiency has been made up."

Then follows certain statements with respect to the termination of such payments in the event the war emergency comes to an end prior to July 31, 1944, which are not material here.

The Metals Reserve Company issued an additional memorandum of the plan on March 5, 1943, but made no change in the basic plan or payment of copper.

The plan, in brief, is that if a copper miner shall produce copper over and above his monthly quota he will receive in addition to the ceiling price a payment of money which will reflect the difference between such ceiling price and 17 cents per pound for such copper. This copper must be produced and extracted from his mine. The quantity of copper so produced must be measured by and with the total amount produced each month from such mine, and when so produced the Metals Reserve Company stands ready to pay promptly therefor. Such payment of such additional sum and amount of money so based upon the output of copper is based upon copper then and there actually mined, produced and disposed of. The Metals Reserve Company is paying for something that has been actually produced and not for some will-o'-the-wisp of the future, and the copper miner is receiving compensation for copper actually produced and which must be so produced before he can receive such compensation. Certainly it is most far-fetched to say such excess copper and the additional compensation therefor is not proceeds and yield of the mine.

The plan in question is most analogous to the Federal sugar premium payment statute and plan of 1890, whereby sugar producers in the United States for the production of sugar from beets, sorghum, or sugarcane were paid by the Federal government a premium of two cents per pound for sugar actually produced. This plan was held to be a contract in *Calder v. Henderson*, 54 Fed. 802. The court said:

It is to be noticed that the bounty offered by the statute is for sugar thereafter to be produced, and to those producers only who shall accept the provisions of the act, giving bond in penalty, etc. In our opinion, the "bounty" so called in the statute, is not a pure gratuity or donation by the government, but was intended to be, and is in fact, a standing offer or reward and compensation to sugar producers, to encourage and stimulate them in the otherwise losing business of producing sugar in the United States. It was intended to be, and is in fact, a guaranty of reimbursement to sugar producers accepting the terms of the statute, of part, at least, of the cost of production. When a producer of sugar accepts the offer, and complies with the statute, it would seem to be as much a contract as it is possible for any citizen to make with the government.

The copper premium plan here occupies the same status as the sugar plan. So long as such copper premium plan is in effect, Metals Reserve Company is bound to pay the copper producers the price differential so promised, and any copper miner who complies with the requirements of the plan will, no doubt, receive payment of such price differential on the amount of the copper actually produced from his mine. He is not receiving a gratuity from the Government. He is, in fact, receiving a consideration for additional production of copper and the increased yield of his

mine.

The State, pursuant to its net proceeds of mines taxing statute, is in a stronger position to class the so-called premium payment as a part of the gross yield of the copper mine than the Federal Government was and is in classing the "bonus payments" on oil and gas-well leases as gross income from the property. Such bonus paid upon the execution of the lease and is not dependent upon the discovery and production of oil or gas, but is a payment given and received irrespective of the finding of any such oil and gas. Nevertheless such bonus was and is taxable by the Federal Government as part of the gross income from the property and so dominated by the Supreme court of the United States. *Herring v. Commissioner of Internal Revenue*, 293 U.S. 322.

We are advised that the Federal Government does not tax the so-called premium payment as excess profits. That is the province of Congress. If Congress saw fit to relieve the copper miner of such tax that is its prerogative. But, such exemption can have no bearing on State taxation. The State statute still provides for the computation of the net proceeds from the gross yield of the mine.

The State of Montana has a net proceeds of mines statute practically identical with the Nevada statute. Inter alia such statute provides for the reporting of the character and tonnage of ore produced together with the "gross yield or value in dollars and cents." Sec. 2089, Rev. Code, Montana, 1935. Such statute provides deductions from the gross yield in practically the same language as the Nevada statute and provides how the net proceeds are computed, as follows:

The state board of equalization shall calculate and compute from said returns the gross product yielded from such mine, and its gross value in dollars and cents for the year preceding the first day of January, and also shall calculate and compute the net proceeds in dollars and cents of said mine yielded to such person, corporation or association so engaged in mining, which said net proceeds shall be ascertained and determined by subtracting from the value in dollars and cents of the gross product thereof the following, to wit: * * *. Sec. 2090, Montana Code, supra.

The State Board of Equalization of Montana has ruled that under the foregoing statute the so-called premium payment in question here is to be computed as part of the gross proceeds of the mine for the purpose of taxation of the net proceeds. The above-named board has so advised this office in its letter dated August 16, 1943, received in this office August 20, 1943. We quote:

Our Legislature has provided by law for the taxation of net proceeds by requiring all operators to make return of the gross proceeds of their operations, from which expenses enumerated in the law are deductible, thus giving the "net proceeds" from metals and mineral products, on which the tax is computed (chapter 189, Political Code of Montana, 1935).

As this tax is computed on the actual amount received as "net proceeds" of the operation, this Board has ruled that the bonus received for merit in production must be returned as a part of the "gross" proceeds of the operations, and thus, after statutory deductions, the bonus is figured in the "net" on which the tax is imposed.

We conclude that the differential payment made by the Metals Reserve Company for the copper produced over and above the quotas established for copper production constitutes a part of the gross yield and is to be so construed by your commission.

Respectfully submitted,

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

70. State Board of Health—Jurisdiction of District Court to Establish Facts Relative to Vital Statistics Not Repealed.

CARSON CITY, September 7, 1943.

JOHN J. SULLIVAN, *Director Division of Vital Statistics, Nevada State Department of Health, Carson City, Nevada*.

DEAR MR. SULLIVAN: Chapter 1743, Statutes of Nevada 1943, amending section 42 of chapter 166 of the 1941 Statutes of Nevada, was a new enactment of section 42, which is thereby repealed.

Chapter 167, Statutes of Nevada 1941, is an Act giving district courts jurisdiction to determine and establish facts relative to vital statistics.

There does not appear to be such a conflict in this Act with the amendment to section 42 of the 1943 Act to warrant an implied repeal of chapter 167, Statutes of 1941.

Amended section 42 authorizes the filing of a certificate of birth by the State Registrar more than four years after the time prescribed for such filing and makes the same subject to regulation as to proofs prescribed in detail by the State Board of Health.

In the event the deals required by the board cannot be supplied by the applicant, a petition may be filed in the district court, under chapter 167, 1941 Statutes, to secure a decree establishing the date of birth, place of birth, or parentage. The decree, when entered by the court may be filed with the Registrar of Vital Statistics. This gives the applicant a right to a hearing in court to establish a fact that could not be determined under the regulation prescribed by the State Board without a hearing, for which no provision is made in the amended section 42 of the 1943 Act.

“Unless there is such a manifest repugnance as to leave no room for reasonable construction otherwise, they will be construed so as to carry out the provisions of the general law.”

“Statutes relating to the same subject matter will, if possible, be so construed as to give effect to both.” *State ex rel. Abel v. Eggers*, 36 Nevada 372.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

By GEORGE P. ANNAND, *Deputy Attorney-General*.

71. Motor Vehicles—Order of Revocation or Suspension May Show Conviction of Violation—Drivers’ License Division Authorized to Enact Additional Rules and Regulations Taxi Driver’s License.

CARSON CITY, September 14, 1943.

MR. RABY J. NEWTON, *Director Motor Vehicle Drivers’ License Division, State Highway Department, Carson City, Nevada*.

DEAR MR. NEWTON: This will acknowledge receipt of your request of September 8, 1943.

Under the provisions of section 32, subdivision (c) of the Uniform Motor Vehicle Operators' and Chauffeurs' Licensing Act, it is our opinion that on either an order of revocation or order of suspension your department can properly show that the person named was convicted of a violation of the laws of the State of Nevada, even though such conviction consisted of a forfeiture of bail or collateral.

In answer to your second inquiry as to the validity of a city ordinance imposing certain additional requirements upon the licensing of taxi drivers, it is our opinion that in view of subdivision (c) of section 8, the promulgation and enactment of additional rules and regulations for the issuance of a chauffeur's license should be made by your department. In our opinion, section 11 (a) of the Act is broad enough to authorize your department to enact additional rules and regulations for the granting and exercise of a taxi driver's license.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

72. Fish and Game—Number Buck Deer, Doe Deer, Antelope Determined by Commission—Fishing and Hunting Licenses Free to Citizens Over 60 Years of Age.

CARSON CITY, September 16, 1943.

MRS. E.H. HERMAN, *Assistant Secretary Fish and Game Commission, P.O. Box 678, Reno, Nevada.*

DEAR MRS. HERMAN: This will acknowledge receipt of your letter of September 13, 1943, received in this office September 15, 1943.

You asked the following question: "Is it legal for a hunter to purchase more than one buck deer, doe deer, or antelope tag?"

Chapter 34, page 52, 1943 Statutes of Nevada, authorizes the State Fish and Game Commission to open the season on more than one deer or antelope when certain conditions set forth therein are complied with. Thereafter the State Fish and Game commissioner may prescribe rules and regulations for killing more than one deer or antelope and it may further specify the sex and number of deer and antelope which may be killed by each licensed hunter would be compelled to meet the requirements of the commission as to special license fees and additional tags.

Chapter 34 provides that it shall be unlawful to kill "more than one deer *except under rules and regulations prescribed by the fish and game commissioners as hereinafter provided.*" (Italics ours.) The proviso thereafter states that the Fish and Game Commission, upon certain conditions, "may determine the number of sex of deer, antelope, elk or bighorn sheep that may be killed by each license holder, the special license fee to be paid to the county clerk, the hunting season, which may be separate from or concurrent with the regular open season, and prescribe such other rules and regulations necessary to properly conduct the hunt."

It is abundantly clear from this 1943 legislative amendment that the Legislature intended to vest the Fish and Game Commission with the powers of permitting the killing of more than one buck deer, doe deer, or antelope upon the satisfaction of certain conditions therein prescribed. The responsibility for permitting the killing of more than one deer and antelope is vested in the final analysis with the Fish and Game Commission. Unless rules and regulations are

promulgated by it permitting the killing of more than one deer and antelope it would be unlawful to do so.

You also ask for our opinion on the following question: "Does a hunter over sixty, who is entitled to an exempt hunting license and deer tag, have to purchase his antelope tag?"

It is our opinion that a citizen over the age of sixty years does not have to purchase an antelope tag, but that if he brings himself within the provisions of and complies with chapter 159, page 339, 1935 Statutes of Nevada, he is entitled to a free antelope permit or Statutes provides in part: "That fishing and hunting licenses and deer tags as required by the fish and game laws of the State of Nevada, shall be furnished free of charge to all citizens of the state desiring them who have attained the age of sixty years or upwards, and the fish and game laws of the state shall hereafter be construed accordingly."

This section shows the clear legislative intent to grant fishing and hunting privileges free of charge to citizens sixty years of age and upwards and it is our opinion that special licenses granted under chapter 34 of the 1943 Statutes of Nevada to citizens sixty years of age or upwards should be granted free of charge.

Very truly yours,
ALAN BIBLE, *Attorney-General*.

73. Taxation—Collection of Income Tax at Source.

CARSON CITY, September 20, 1943.

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

DEAR MR. BONNER: Replying to the request for an answer to your opinion submitted to this office September 14, 1943, on the collection of income tax at the source on wages, under the Current Tax Payment act of 1943, it appears that the Commissioner of Internal Revenue has decided this question.

The State Superintendent of Public Instruction, in order to remove the doubt as to whether the deduction under the Act should be made by the Clerk of the Board of School Trustees at the time the school order is written, or whether it should be made by the Clerk of the Board of School Trustees at the time the school order is written, or whether it should be made by the County Auditor when he writes the warrant, wired the Internal Revenue Department at Washington, D.C., and received the following reply:

Reference telegram second Form W-4 should be filed with County Auditor who should withhold tax.

TIMOTHY C. MOONEY,
Deputy Commissioner.

This communication was received in this office September 18, 1943.

Under chapter 51, Statutes of Nevada 1943, the State Controller is the person designated to withhold and transmit to the Government the deductions under the Act for State employees. The Legislature did not designate the county officer to perform this duty.

Section 1632 of the Current Tax Payment Act provides:

In case a fiduciary, agent, or other person has the control, receipt, custody, or disposal of, or pays the wages of an employee or group of employees, employed by one or more employers, the Commissioner, under regulations prescribed by

him with the approval of the Secretary, is authorized to designate such fiduciary, agent or other person to perform such acts as are required of employers under this chapter and as the Commissioner may specify. Except as may be otherwise prescribed by the Commissioner with the approval of the Secretary, all provisions of law (including penalties) applicable in respect of an employer shall be applicable to a fiduciary, agent or other person so designated but, except as so provided, the employer from whom such fiduciary, agent or other person shall remain subject to the provisions of law (including penalties) applicable in respect of employers.

Internal Revenue Bulletin of July 11, 1943, setting out advance regulations relating to collection of income at source recites that every person required to withhold and pay any tax under section 1622 (i) (4), (“through an agent, fiduciary, or other person who has the control, receipt, custody, or disposal of, or pays, the wages payable by another employer to such employee”); “shall keep such records as will indicate the persons employed during the year, payments to whom are subject to withholding, the periods of employment, and the amounts and dates of payment to such person. Such records shall be kept at all times available for inspection by Internal Revenue officers.”

Section 5766 Nevada Compiled Laws 1929, provides in part that the County Auditors of the several counties shall keep separate accounts of the school funds. Such accounts shall show “at all times” the county school fund, the State school fund, the library fund, and all amounts drawn thereon, as well as all amounts drawn in payment of teachers’ salaries.

It appears, therefore, from the Federal Act that the County Auditor of the various counties are the appropriately designated officers to withhold the current tax payment from the salaries and wages of the employees in the public schools. There is nothing in the Constitution or the statutes of Nevada to prohibit the execution of such a duty.

Such is the construction placed upon the Federal Act by the Internal Revenue Department and we believe that their decision in this matter should be followed.

Respectfully submitted,

ALAN BIBLE, *Attorney-General*.

By GEORGE P. ANNAND, *Deputy Attorney-General*.

74. Counties—Coroners’ Jurors’ Fees.

CARSON CITY, October 5, 1943.

HON. FRANK B. GREGORY, *District Attorney Ormsby County, Carson City, Nevada*.

DEAR MR. GREGORY: Reference is hereby made to your inquiry of September 30 as to whether section 11443, Nevada Compiled Laws 1929, providing a fee for coroners’ jurors at \$2.50 per day governs the payment of such fee, or whether section 8491 as last amended at 1937 Statutes, page 210, fixing such fee at \$2 per day is the statute governing the payment of coroners’ jurors’ fees at the present time.

Section 11443 Nevada Compiled Laws 1929, was enacted in 1909. Section 8491, supra, was enacted in 1919. This section of the law fixed the fees of all jurors, including coroners’ jurors, and any conflict between this section and section 11443 would result in section 8491 being the

law, it being the latest statute on the subject. Said section 8491 was first amended at 1933 Statutes, page 69, but such amendment did not change the fee for coroners' jurors. However, section 8491 was again amended the coroners' jurors. However, section 8491 was again amended in 1933 at page 153 of the 1933 Statutes and in such amendment was carried over into the 1937 amendment of the same statute leaving the fee at \$2 per day. See 1937 Statutes, page 210.

A similar inquiry with respect to the law governing witnesses' and jurors' fees was submitted to this office in 1934, and we there held that the later law with respect to such fees governs. See Opinion No. 122, Report of the Attorney-General, 1932-1934.

We conclude that chapter 113, page 210, 1937 Statutes, is the present law with respect to fees of coroners' jurors.

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

75. County Commissioners—No Authority to Pay Claim for Contract Made in Violation of Statute.

CARSON CITY, October 8, 1943.

HON. MARTIN G. EVANSEN, *District Attorney Mineral County, Hawthorne, Nevada*.

DEAR MR. EVANSEN: Replying to your letter received October 4, 1943, submitting the following inquiry:

"X" is a contractor in Mineral County and accepted a contract which was not brought up in regular County Commissioners meeting, for the building of the Mina pipe line water system, a utility, in the sum of approximately \$12,000.

After completion of the work within eleven days, all of which was unknown to the District Attorney, this pipe line was put in commission.

Can "X" company be paid under Nevada Compiled Laws 1929, especially section 1963?

It appears from your statement of fact that the Board of County Commissioners failed to act in conformity with some provision of law giving them power, therefore their action is void, and a claim against the county, based thereon, would be without authority of law.

Section 1949 Nevada Compiled Laws 1929 provides in part:

The board of county commissioners shall not for any purpose contract debts or liabilities, except those expressly authorized by law * * *.

Section 1963 Nevada Compiled Laws 1929 reads:

In letting all contracts of any and every kind, character, and description whatever, where the contract in the aggregate exceeds the sum of five hundred dollars, the county commissioners shall advertise such contract or contracts to be let, stating the nature and character thereof—and when plans and specifications are to constitute part of such contract, it shall be stated in the notice where the same may be seen—in some newspaper published in their county, for the period of thirty days; in case the contract be for constructing any public building, then the

advertisement shall be in that paper published in the county which is nearest the selected location for such building; and in case there shall be no newspaper published in their county, then by posting notices of the same in five of the most conspicuous and public places in their county for the same period of time. All such contracts shall be let to the lowest responsible bidder, subject to the provisions of the twenty-third section (section 1955, ante) of the act to which this supplementary; provided, that the provisions of this act shall not apply to contracts for the construction or repair of bridges, highways, streets or alleys where the same conflicts with other acts in relation to bridges, highways, streets or alleys.

Section 1327 Nevada Compiled Laws 1929 authorizes county commissioners, with regard to the management of unincorporated towns or cities, to acquire water systems, call elections, and issue bonds.

Section 3455 Nevada Compiled Laws 1929 provides for the organization of improvement districts, the acquisition of water supply, and the procedure to be followed.

County commissioners have only such powers as are expressly granted, or as may be necessarily incidental for the purpose of carrying such powers into effect.

State ex rel. King v. Lathrop, [55 Nev. 405](#).

In the case of Office Specialty Co. v. Washoe County, [24 Nev. 359](#), construing section 1972 General Statutes (now section 1963 Nevada Compiled Laws 1929) requiring the advertisement for bids in the letting of contracts where the aggregate exceeds five hundred dollars, and denying the right of the plaintiff company to recover on a contract made in violation of that section, the court said:

It should ever be remembered that boards of county commissioners are created by law, derive their authority solely from the statutes, and in the exercise of their powers are restricted to the method prescribed by law. Whoever deals with them does so with full notice of the extent of their power, and the manner in which it can alone be executed. * * * Whoever deals with the agent of a county does so with ample means of ascertaining what they may do * * * if they depart therefrom he contracts at his peril.

The same principle of law is stated in Leslie County v. Keith, 13 S.W. (2) 1012; Jackson Equipment & Service Co. v. Dunlop, 160 So. 734; Lewis v. Petroleum County, 17 P.(2) 60; Franzke v. Fergus County, 245 P. 962; Western Paint & Chemical Co. v. Board of county Commissioners Kingfisher County, 46 P.(2) 543; Western Paint & Chemical Co. v. Board of Com'rs. Garfield County, 18 P. (2) 888.

It, therefore, appears that if the contract was made in violation of the statute the county has no authority to pay the claim.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

By GEORGE P. ANNAND, *Deputy Attorney-General*.

76. Museum—Board Authorized to Call for Bids and Let Contract for Heating Plant.

CARSON CITY, October 14, 1943.

HON. CLARK J. GUILD, *Chairman of Nevada State Museum Board, Carson City*,

Nevada.

MY DEAR JUDGE GUILD: On Monday, October 11, 1943, you asked this office for an official opinion as to the letting of bids for a furnace and heating plant installation at the State Museum.

As you know, chapter 68, page 92 of the 1943 Statutes, appropriated \$7,500 for the purpose of installing a furnace and heating plant equipment in the State Museum in Carson City.

Subdivision (b) of section 3 of the 1939 Act creating the State Museum (the same being section 4690.02, 1929 N.C.L., 1941 Supp.) empowers your board "to furnish, heat * * *, remodel, repair, etc. the United States Mint * * *. To that end they may make and obtain plans and specifications and let and supervise contracts for work or have said work done on force account or day labor, supplying material and/or labor, or otherwise as they may see fit, subject, however, to all existing laws."

It is our opinion that this particular section is a clear grant of authority to your board to call for bids and let the contract for installation of the furnace and heating plant equipment. In view of this direct authorization, plus the 1943 legislative appropriation, it is my opinion that you do not need the prior concurrence of the State Board of Control.

Very truly yours,

ALAN BIBLE, *Attorney-General.*

77. Intoxicating Liquors—Wholesale Dealers' Branch Offices Must Have Importers' Licenses—Stamp Tax Not Required on Liquors Exported from State—Refunds of License Fees.

CARSON CITY, October 15, 1943.

NEVADA TAX COMMISSION, LIQUOR TAX DEPARTMENT, *Carson City,*

Nevada.

Attention: H.S. Coleman, Supervisor.

GENTLEMEN: Reference is hereby made to your letters of October 13 requesting opinions on the following inquiries:

1. If a wholesale company has more than one place of business within this State and wishes to import wines, liquors, or beers to other than the central office or place of business of such wholesale other than the central office or place of business of such wholesale company and which is covered by an importer's license, will it be necessary for such wholesale company to take out an importer's license in the name of and for the address of such branch office or license in the name of and for the address of such branch office or place of business to which it is desired to make direct importation of wines, liquors, or beers?

Assuming that such wholesale company has secured an importer's license and is actually engaged in importing wines, liquors, or beers into this State, or, if such company desires to import into the State and has not secured such importer's license, it will be necessary for such company to secure an importer's license for each place of business within the State to which it actually import wines, liquors or beers, or all of them, as an importer's license under the liquor stamp law of this State covers only one place of business within the State. This inquiry was answered by our Opinion No. 230, dated April 14, 1937, and found in the Report of the Attorney-General for the years 1936-1938.

2. Section 23 of the Nevada liquor stamp law provides “No stamp tax shall be required upon any wines, beers, or liquors exported from the State of Nevada.” Does this language mean wines, beers, or liquors brewed, fermented, or manufactured in this State?

It is our opinion that such language is not limited to liquors, wines, or beers manufactured in the State of Nevada, but that it is broad enough to cover the exportation thereof from the State without the payment of the stamp tax thereon in this State, provided, that the exportation thereof from the State is for bona fide sale to persons without the State and that any such wines, beers, or liquors have been imported into this State by an importer licensed under the laws of this State.

3. Is there any legal way the Tax commission can refund a license fee paid by a wholesaler in this State upon one of its branch stores which said fee was not required under the liquor stamp law as construed by the Attorney-General in his Opinion No. 230 of April 14, 1937?

There is no provision in the Liquor Stamp Law providing for refunds of license fees paid. While such fee may have been paid under an erroneous conception of the law, still, in the absence of statutory authority empowering the Tax Commission to make refunds, we are of the opinion that no refund can legally be made. The recourse of the wholesaler is to petition the Legislature for a refund of such license fees as may have been paid.

Respectfully submitted,

ALAN BIBLE, *Attorney-General.*

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

78. Intoxicating Liquors—No Legislative Authority Vested in tax Commission to Seize and Hold Shipments of Liquor.

CARSON CITY, October 19, 1943.

NEVADA TAX COMMISSION, LIQUOR TAX DEPARTMENT, *Carson City,*
Nevada.

Attention: H.S. Coleman, Supervisor.

GENTLEMEN: Reference is hereby made to your inquiry of October 13:

Has the State Tax Commission, and the Liquor Tax Department thereof, or the sheriffs or police officers of the State the right under the law to seize and hold importations of wines, liquors, or beers being carried by common carriers by rail, but trucks, by autos, or by private trucks, or autos, or any other conveyances, where such carriage is of wines, liquors, and beers consigned to some person within this State who has not obtained an importer's license under the liquor stamp law of this State?

A careful examination of the Nevada liquor stamp law fails to disclose any legislative authority lodged in the Tax Commission, the Liquor Tax Department, or any sheriff or police officer of the State to seize and hold shipments of wines, liquors, or beers mentioned in the above inquiry.

Under all the authorities the law must contain such authorization to its enforcement officers before the right to seize and hold any such shipments can legally be had.

Under the Nevada liquor stamp law we fail to find any requirement that the carrier of shipments of liquor is required to know that the person to whom consigned is a licensed importer under the laws of this State. The penalty for such importation is to be paid by the person who

imports wines, liquors, or beers without a license and, of course, such importer, if he imported shipments of any of the liquors without first obtaining a license, would be subject to the penalty imposed by section 24 of the Act.

It would seem from the context of our Nevada liquor stamp law that the carriage of shipments of wines, liquors, and beers to a consignee who was or is not an importer duly licensed leaves a loophole in our law which would require legislative action to close. We, therefore, recommend that this matter be brought to the attention of the next Legislature.

Respectfully submitted,

ALAN BIBLE, *Attorney-General*.

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

79. Bonds—City of New York Bonds—Validity.

CARSON CITY, October 19, 1943.

HON. DAN SULLIVAN, *Chairman Nevada Industrial Commission, Carson City, Nevada.*

Re: City of New York Bonds issued October 21, 1930, bearing date October 1, 1930, maturing October 1, 1980, consisting of \$1,000 certificates lettered and numbered within the following issue: 1 W-25 to 16,000.

DEAR MR. SULLIVAN: Pursuant to chapter 191, 1943 Statutes of Nevada, your Commission has requested this office for a legal opinion, in writing, as to the validity of bonds issued within the above-named authorization.

In support of the legality of this issue we have been furnished with the official opinion of J.W. Hilly, Corporation Counsel of the City of New York, dated January 30, 1931, in which he holds that the bonds within the above-named issue were "issued pursuant to the provisions of the Greater New York Charter and the Rapid Transit Act, and other statutes of the State of New York, applicable thereto; that all requirements of law in respect to the issue and sale of such stock have been complied with; that such corporate stock is a legal and binding obligation upon the city of New York, and it does not exceed any limit prescribed by the Constitution of the State of New York, the Greater New York Charter, or any other statute of the State."

On October 15, 1943, we likewise received a communication from Ignatius M. Wilkinson, present Corporation Counsel of the City of New York, in which he stated: "There has been no change in the status of these obligations since the issuance of that opinion and that they continue to be in full force and effect as legal and binding obligations of the city which has never defaulted in the payment of the principal of and interest on its obligations."

Based upon the foregoing opinions, we believe that the bonds within the issue above stated are valid and legal obligations of the city of New York.

It is noted that you likewise desire to purchase City of New York Water Bonds lettered and numbered 16,323-W 25 to 16,325-W 25, inclusive. Although these three bonds are undoubtedly valid and legal obligations of the city of New York, the opinions which have been furnished to us are specifically limited to bonds numbered 1 W-25 to 16,000, inclusive. Since we have not been furnished with any findings or opinions covering the issuance of these three bonds, we are not in

a position to pass upon their legality.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

80. Intoxicating Liquors—Each Bottle or Package of Liquor Must Have State Stamp Affixed Thereto.

CARSON CITY, October 22, 1943.

NEVADA TAX COMMISSION, LIQUOR TAX DEPARTMENT, *Carson City, Nevada.*

Attention: H.S. Coleman, Supervisor.

GENTLEMEN: Reference is hereby made to your inquiries of October 20, 1943, entitled "Question No. 1" and "Question No. 2."

Question No. 1 reads as follows:

If a licensed wholesaler sells a quantity of liquor legitimately stamped with the proper Nevada liquor revenue stamp, to a licensed retailer of this State, and then through some deal the liquor is sold and exported from this State consigned to a party who is not a licensed importer of this State, has the law been broken, despite the fact that the Nevada liquor revenue stamps are still attached to the bottles, and should we proceed if possible to collect an importer's license from the consignee of this shipment that came back into the State?

The Nevada liquor stamp law is a revenue producing measure and was not enacted for the purpose of regulating or prohibiting the use of intoxicating liquors, save and except as such prohibition or regulation related to, or relates to, the revenue producing features of the law. It is to be noted that the major revenue derived under the Act is from the stamp tax itself.

Your inquiry undoubtedly presupposes that the liquor in question was received in the first instance by a licensed importer and that the liquor was then legally in a condition to be sold under the Nevada Act. It further appears that such liquor was properly stamped under the law and sold to a licensed retailer of this State. The fact that the liquor was thereafter sold and exported from this State into another State in itself constituted no violation of the Nevada law. The tax on the liquor had been paid and thereafter could not be subjected to any further stamp tax even though the liquor came back into the State of Nevada. Such, in our opinion, is the effect of section 17 of the Act. Did the consignee in Nevada violate the law by, in effect, reimporting the liquor into this State by reason of the fact that such consignee was not a licensed importer? We are inclined to the view that there has been no violation of the law by this latter act. The liquor has been brewed or distilled out of the State. It was then imported in the first person in the State of Nevada in possession of the liquor after the act of importation. Thus the condition of subparagraph (i) of section 1 and section 2 of the Act had been met and the law strictly complied with. We think that the mere transportation out of the State thereafter with a consequent return of the *same* liquor into the State without being commingled with any other liquor and with such other liquor transported back into the State does not in itself constitute a consignee an importer within the meaning of our statute.

It is to be noted, however, that if such consignee thereafter attempted, or attempts, to sell any of such liquor in quantities of more than 4.9 gallons at one time, he would then become a

wholesaler and of necessity would be required to have a wholesaler's license.

Question No. 2 reads as follows:

If a retailer, wholesaler, importer, or anyone else takes a bottle of wine or liquor of any kind, upon which all State and Federal taxes have been paid, and transfers the contents into another or several bottles, and then sells these other bottles to customers, which bottles do not have a Nevada liquor tax stamp on them, nor have they the Federal revenue stamp on them, can we claim a violation of the Nevada liquor tax law? Could we proceed to prosecute or penalize?

We think there has been a technical violation of section 16 of the liquor stamp law. It is clear from such section that each package or bottle containing the amounts of liquor therein mentioned must have thereon the Nevada liquor tax stamp at the time of the sale. Whether such package or bottle must have the Federal revenue stamp at the time of the sale is a question of Federal law. Our statute only requires that the United States Government tax on the liquor must be paid before the Nevada stamp can be affixed. It may be that the State and Federal taxes were paid on the liquor in question in the first instance, but the law further requires that upon the sale of any package or bottle thereof that the stamp shall be affixed thereto. It would seem that this requirement is of a precautionary nature in order to prevent the sale of illicit liquor.

Respectfully submitted,

ALAN BIBLE, *Attorney-General*.

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

81. Wild Horses—Who May Capture.

CARSON CITY, October 26, 1943.

HON. GEORGE F. WRIGHT, *District Attorney Elko County, Elko, Nevada*.

DEAR MR. WRIGHT: Reference is hereby made to your letter of October 18, propounding certain questions relative to the taking of wild horses under the laws of this State.

Before replying specifically to your inquiries we refer back to your letter of October 7 and our reply thereto of October 15, wherein we stated that we thought there was nothing in the law to prohibit nonusers of the range from catching wild horses, provided, of course, the law was complied with in respect to securing a permit from the Board of County Commissioners and furnishing the necessary bond.

Your letter of October 7 dealt with the capturing of wild horses in Elko County under a permit granted by the County Commissioners of White Pine County. Your letter does not state, but we assume that the Justice of the Peace held the permit from White Pine County was not sufficient to warrant the killing of wild horses in Elko County. Your letter did not state the purpose for which the wild horses were taken, but we assume they were taken for the purpose of destruction by some other person perhaps for chicken feed or even human consumption out of the State. In such a situation we think our opinion to District Attorney Tapscott of March 29, 1939, would have been applicable. There the parties captured the horses for the purpose of shipping them later for chicken feed. The horses were captured without the necessary permit granted in Elko County. This office held that the taking was illegal and that the horses should be restored to their liberty upon the ground and for the reason that the taking of the horses for the purpose of selling them for chicken feed was doing indirectly what the statute would not permit to have been

done directly. Just what disposition was made thereafter we were not advised. A copy of this opinion should be in your files.

Now with respect to the injury occasioned one of the wild horses by reason of being burned with a rope, which, as we understand it, was tied around the flank of the animal and then to the front foot in order to prevent the animal escaping. We think that such treatment of a horse constitutes such a cruelty to the animal as would be a violation of the law. For all intents and purposes, after the capture of such animal, such animal was reduced to possession of the parties capturing it and, for all intents and purposes then constituted a privately owned animal in that any unnecessarily cruel treatment would be a violation of section 19574 N.C.L. 1929.

Your inquiry of October 18 dealing with the capturing of wild horses in the light that there was no intent to kill such horses raises a peculiar question of law in this State. It is such a question that may require legislative action in order to properly signify the legislative will as to the disposition of wild horses in view of section 3958, N.C.L. 1929.

It is apparent by reason of the enactment of said sections 3958 to 3961 N.C.L. 1929, that the Legislature has denominated the horses and burros mentioned in such Act as animals *feræ naturæ*. Having so classed such animals, without additional legislation, we are inclined to the view that as animals *feræ naturæ* that the status of the ownership thereof and the acquiring of dominion thereover follows the common law rule with respect thereto which in turn was based upon laws of great antiquity. In brief, the wild horses under consideration are held by the State in trust for its people, in fact the ownership thereof being in the people of the State as a whole, and, following the common law rule, a qualified possession thereof could be acquired by an individual except as might be prohibited by statute or otherwise provided by statute. Such is the law of this country as we have found it to be determined by the authorities. The leading case on this question is *Graves v. Dunlap*, 152 Pac. 532; Ann. Case, 1917B, 944 with an extensive note beginning on page 949. Another case discussing the law of animals *feræ naturæ* is *Geer v. Connecticut*, 161 U.S. 519. See also 3 C.J. 18, section 5 and following sections dealing with the subject and 2 Am. Jur. 694, section 8 and following sections.

By the term qualified possession or qualified property, as appears in the common law, is meant the possession of property which is subject to being defeated by the escape of the animals *feræ naturæ*. On the other hand, however, if the individual acquiring the possession or property in such animals maintains this possession thereof, then we think under the law the property in such animals is in such person.

In this State the common law of England, so far as not repugnant to or in conflict with the Constitution and laws of the United States and of this State, is the rule of decision. Section 9021 N.C.L. 1929.

Wild horses being animals *feræ naturæ* it appears under the statute law of this State that the restrictions on the killing thereof, as provided in section 3958, N.C.L. 1929, and sections following. No other restriction appears in the statute law. Such being the state of the law, we are inclined to the view that if a person shall desire to capture a wild horse with intent to domesticate such horse and put it to valuable use and without the intent to kill such horse, or dispose of such horse for killing, then such person may legally capture such wild horse without obtaining the permit required in the law and so required for the killing thereof. We wish to reiterate, however, that if the intent to dispose of the wild horse after the capture thereof is to dispose of it in such manner as to result in the killing thereof by such party or any other person, then we think that sections 3958 et seq. apply.

We admit that the foregoing construction of the law may so operate in some instances as to result in an evasion of the law and for this reason we respectfully suggest that this matter receive the attention of the Legislature if it desired to surround wild horses with further protection of the law.

With respect to the use of the range by persons who capture wild horses where such range lies within a Taylor Grazing area, we are of the opinion that in such a situation the rules relative to the obtaining of permits to graze livestock thereon would apply and that a person capturing and possessing wild horses, who desires to range such horses on such area, would be in the same position as any other individual desiring to range his livestock thereon and of necessity would be required to obtain a permit, if such were obtainable.

Your statement with regard to a person who claims to be the owner of all the unbranded wild horses in the Spruce Mountain area by reason of the fact that he takes out a license with the Taylor Grazing Board for fifty head of horses and the statement with respect to the custom alleged to have been in existence for many years that such person, by reason of the exclusive use of the range for many years, is the reputed owner of all wild and unbranded horses running in such area, we are of the opinion such custom would have to be so open and notorious as to be within the knowledge of the persons taking horses from such range. Further, we think that custom and usage may be contravened and defeated by statute and such appears to be the case here where the Legislature has authorized the killing of wild horses upon the obtaining of the necessary permit. Whether the custom and usage claimed would result in defeating the right of possession of other persons with respect to wild horses, we submit, is a question for the court in a proper case. In any event, the claimant by custom and usage would necessarily have to prove a very strong case of ownership before he could defeat the possession of other parties to animals *feræ naturæ*.

With respect to the question of whether a person, who does not run livestock of any kind in a given area and lives in an entirely different county, upon finding an unbranded yearling calf on the open range which is not following any cow and such person shoots or catches such calf and claims it as his own, has violated any law. We doubt whether in Nevada, at the present time, the calf may be deemed an animal *feræ naturæ*. Beyond question some person was the owner of the dam of such calf and under the general rule of law the ownership of the calf follows the ownership of the dam. 3 C.J. 22, section 19. Further, we think the statute law of this State recognizes such rule and in addition thereto the estray law of this State would in itself prevent the person in question from killing or taking such calf. See sections 3978, 3979, 398 N.C.L. 1929. And further, such calf, under another statute, in the event the owner could not be determined, would become the property of the State Board of Stock Commissioners. Section 3993 N.C.L. 929. And last, but not least, the person in question would, in our opinion, be guilty of violation of section 10325 N.C.L. 1929, which prohibits any person with the intent to appropriate to his own use to willfully kill any animal running at large, not his own, whether branded, marked, or not.

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

82. Motor Vehicle Registration Law—Private Carrier Exempt.

CARSON CITY, October 29, 1943.

HON. MALCOLM McEACHIN, *Motor Vehicle Commissioner, Carson City, Nevada.*

DEAR MR. McEACHIN: Reference is hereby made to your letter of October 27, 1943, making inquiry as to whether Roscoe Moss company, Well Contractors of California, will be required to obtain registration of its motor vehicle equipment used in connection with the drilling of a well for the Navy Department near Fallon, Nevada.

It is our understanding from the copy of the letter of such company forwarded with your inquiry that the motor vehicle equipment is to be used for transporting their drilling equipment and well casing which such company manufactures itself, and which well casing is to be left in the well.

We think from the statement as made by this particular company that it will be operating in this State as a private carrier as such term is defined in section 2 of the Motor Vehicle Carrier Licensing Act, the same being section 4437.01 N.C.L., Supp. 1931-1941. Being such a private carrier, we think, it comes within the exemption from registration, under the Motor Vehicle Registration Act as found in section 17 of such Act, as amended at 1943 Statutes, pages 266-267, and that it would be entitled to operate such vehicles under such conditions without the necessity of registering such vehicles in Nevada.

Respectfully submitted,

ALAN BIBLE, *Attorney-General.*

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

83. Public Schools—Trustees Cannot Legally Pay Teacher's Salary in Advance of Services Rendered.

CARSON CITY, November 4, 1943.

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

DEAR MISS BRAY: Reference is hereby made to your letter of October 28, requesting an opinion as to whether a board of school trustees can legally pay the first month's salary of a school teacher in advance of services rendered.

After careful consideration of the matter and the examination of the statutory law with respect to the payment of teachers, we are of the opinion that a board of school trustees cannot legally pay a teacher's salary in advance of services rendered. We think the law contemplates, and the policy of the State or county treasury for services rendered to the State, county, and school districts in particular, the services for which compensation is to be paid must, in fact, be rendered.

Section 104 of the School code, the same being section 5753 N.C.L. 1929, provides for the method of payment of teachers' salaries. It is true that such section permits the payment of compensation to a teacher in twelve monthly installments for ten months' teaching, and at first blush it might be thought that such section permitted payment of salary in advance. We think the proper construction of such section is that when a teacher is hired such teacher may be paid in twelve monthly installments which would carry over from the end of the actual teaching period to the beginning of the next teaching period, in brief, the summer vacation, and that the statute

does not contemplate that salaries shall be paid in advance of services rendered.

We, therefore, conclude that your inquiry must be answered in the negative.

Respectfully submitted,

ALAN BIBLE, *Attorney-General*.

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

84. Public Schools—Trustees May Sell School Bus.

CARSON CITY, November 4, 1943.

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

DEAR MISS BRAY: This will acknowledge receipt of your letter received in this office on October 28, 1943, in which you ask whether or not the board of trustees of a school district has the right to sell a school bus, the property of such district.

It is the opinion of this office that the board of school trustees may sell such school bus. Although section 5715 Nevada Compiled Laws 1929 defining the powers and duties of trustees does not in so many words authorize the sale of school buses, subdivision 5 and subdivision 9 thereof constitute, in our opinion, ample authority for such sale.

Subdivision 5 of section 5715 reads as follows: "To manage and control the school property within their districts, and pay all moneys collected by them, from any source whatever, for school purposes, into the county treasury, to be placed to the credit of the county fund of their district."

Subdivision 9 of section 5715 reads as follows: "To have the custody and safe keeping of the district schoolhouses, their sites and appurtenances."

Likewise see Attorney-General's Opinion 121, 1923-1924 Biennium, wherein it was held that boards of school trustees could sell certain mining equipment no longer in use at the school. This opinion likewise cited subdivision 5 noted above in support of the authority to make such sale and the Attorney-General then went on to say: "It certainly is reasonable for the school trustees to have the power to dispose of such equipment as may no longer be of any use in the schools, so that the money secured from the sale thereof may be used in the support and maintenance of such schools, and not be a total loss. There are no provisions of the Constitution or laws of the State prohibiting such action, and it is, therefore, not in conflict with the laws or Constitution."

Although no method of procedure on the question of how a sale should be made is found in the statutes, it is our opinion that the school trustees should sell the school buses to the highest bidder after full opportunity has been given to the public bid. Reservation should be made in the notice of sale for the rejection of any and all bids by the trustees. We likewise suggest that the notice of sale should be published for two full weeks (3 publications) and also by posting for the same length of time in three conspicuous places in the district.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

85. Fish and Game—Control Over Beaver on the Colorado River.

CARSON CITY, November 10, 1943.

STATE FISH AND GAME COMMISSION, *Box 678, Reno, Nevada*.

Attention: E.H. Herman.

GENTLEMEN: Reference is hereby made to your letter of November 8, 1943, making inquiry of this office as to whether chapter 148, Statutes of 1943, pertaining to the powers and duties of the Colorado River commission of Nevada, provides control over the beaver on the Colorado River in such commission.

Please be advised that there is nothing in said chapter 148, nor any other provisions in the Colorado River Commission Act, which vests any control over beaver on the Colorado River.

It is noted from your letter that the State Fish and Game Commission is contemplating entering into an agreement with the State of Arizona whereby a business like harvesting of the beaver on the Colorado River will be attempted.

This statement prompts us to make inquiry as to whether the Commission feels that it has the power to enter into any agreement with the State of Arizona with respect to the harvesting of beaver on the Colorado River. Further, we think that the commission, in any event, will be found by the provisions of section 79 of the Fish and Game Law, as amended at 1937 Statutes, page 251, with respect to the capturing of beaver.

Respectfully submitted,

ALAN BIBLE, *Attorney-General*.

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

86. Counties—Expenditure of \$500 or More Without Advertising for Bid—Washoe County Library—Bound Volumes New York Times are Books.

CARSON CITY, November 16, 1943.

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

DEAR MR. JEPSON: Replying to your letter received in this office November 15, 1943, in which you inquire "Can the Board of Trustees of the Washoe County Library make an expenditure of \$500 or more without advertising for bids?" and, "Are bound volumes of the New York Times books?"

We are of the opinion that the board of trustees of the public library are officers of the county under the County Commissioners, and in relation to the expenditure of county money are governed by the statutes relating to contracts of \$500 or more, with this exception, where advertising for bids would be but a useless and farcical form.

Bound volumes of the New York Times are books and not magazines or periodicals, as they are complete in themselves and are not issued periodically, but printed for preservation.

Section 5595 N.C.L. 1929, as amended statutes 1943, chapter 35, page 53, provides that the County Commissioners of the several counties may set apart a certain sum to be used in the establishment and maintenance of a free public library in the county seat in each county; and each year thereafter the County Commissioners are authorized to set apart an amount sufficient to adequately maintain the same, but not exceeding the sum of \$3,000.

Section 5597 N.C.L. 1929 provides that all claims for indebtedness incurred or created by the library trustees shall be audited by the trustees, and presented to and acted upon by the Board of County Commissioners, and paid out of the library fund in the same manner as claims against the county are presented, acted upon and paid.

Section 1942 N.C.L. 1929 defines the powers granted the County Commissioners. The

boards are authorized to examine and audit the accounts of all officers having the care, management, collection, or disbursement of any money belonging to the county or appropriated by law.

Section 1963 N.C.L. 1929 declares that the County Commissioners, in letting all contracts of any and every kind, character, and description whatever, where the contract in the aggregate exceeds the sum of \$500, shall advertise for bids and such contracts shall be let to the lowest responsible bidder.

It appears from the foregoing statutes that the Washoe County Library, in so far as the disbursement of the library fund is concerned, is under the supervision of the Board of County Commissioners, and they must be acted upon in the same manner as other claims against the county and come within the restrictions relating to the letting of contracts. However, we are of the opinion, where to the letting of contracts. However, we are of the opinion, where to the letting of contracts. However, we are of the opinion, where to the letting of contracts. However, we are of the opinion, where competition is impossible in certain circumstances, it cannot be supposed that the legislative purpose was to compel a public body to go through the useless and farcical form of letting to the lowest bidder.

In the case of *Sadler v. Eureka County*, [15 Nev. 42](#), in construing this section, the court said:

The restrictive provisions of the statute were evidently inserted for the protection and benefit of the public, and were intended to guard against favoritism, extravagance, or corruption in the letting of contracts for any public work.

Also, in the case of *State v. Commrs. Washoe Co.*, 22 Nev. on page 406, the court set forth a rule in its opinion not involved in the case, which has a bearing on the construction of this statute, when the court said:

It was the duty of such commissioners, and certainly was within their power, where the possibility of competition existed, to let such contract to the lowest bidder.

Where in the very nature of things competitive bids are impossible from the fact that a monopoly of the particular supply exists either because one person controls the supply, or has been granted an extensive franchise to sell it, or it results from a patent and the patented article can only be had from one person, these statutes relating to competitive bidding do not apply. This rule was applied in *Hartford v. Hartford Elec. Co.*, 32 A. 925. *Coryell County v. Burke & Corbett*, 4 S.W. (2) 283:

Statute relative to bids for contract is limited to work that is naturally competitive.

71 A.L.R. 168:

A requirement of advertisement for bids before letting a public contract is subject to an implied exception in cases where such advertisement would not result in competitive bidding for the work * * *. It has been held that where competitive proposals work an incongruity and are unavailing as affecting the final result, or where they do not produce any advantage, * * * or it is practically impossible to obtain what is required and observe such forms, a statute requiring competitive bidding does not apply.

This rule of law will govern the expenditures of the Board of Library Trustees.

The library operates under the budget law and it is unlawful, as set forth in section 3013

N.C.L. 1929, for “any officer of the county to authorize, allow or contract for any expenditure unless the money for the payment thereof is in the treasury and is specially set aside for such payment.”

Bound volumes of the New York times are books and not periodicals or magazines. These volumes would undoubtedly be classed as books and not be mailed as second-class matter under the postal laws.

The postal regulations provide that mailable matter shall be divided into four sections.

Section 10 provides that mailable matter of the second class shall embrace all newspapers and other periodical publications which are issued at stated intervals, and as frequently as four times a year.

Section 14 provides that it must be regularly issued at stated intervals, bear a date of issue, and be numbered consecutively. The third paragraph under this section read as follows:

It must be formed of printed paper sheets, without board, cloth, leather, or other substantial binding, such as distinguish printed books for preservation from periodical publications.

In the case of *Houghton v. Payne*, 194 U.S. 88, defining second-class mailable matter, the court said:

Books are not often issued periodically, and, if so, their periodicity is not an element of their character.

In the case of *Smith v. Hitchcock*, 226 U.S. 59, the court said:

Without attempting a definition we may say that generally a printed publication is a book when its contents are complete in themselves, deal with a single subject, have an appreciable size.

In *re New York Daily Times*, 61 Fed. 647, citing paragraph 657 of the tariff laws, defining newspapers and periodicals, it was held:

* * * the term periodicals as herein used shall be understood to embrace only unbound or paper covered publications, containing current literatures of the day and issued regularly at stated periods, as weekly, monthly, or quarterly.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

By GEORGE P. ANNAND, *Deputy Attorney-General*.

87. Grazing Boards—State Board Stock Commissioners Not Authorized to Handle Money for Purposes of Opposing Establishment of Fluctuating Values of Livestock for Computing Inventory Values for Federal Income Tax.

CARSON CITY, November 24, 1943.

NEVADA GRAZING BOARD, DISTRICT NO. 1, *Elko, Nevada*.

Attention: Gordon Griswold, Secretary.

DEAR SIR: This will acknowledge receipt of your recent inquiry received in this office on November 18, 1943, in which you state that your grazing board has passed a resolution appropriating \$1,000 to be used, through the National Livestock Tax committee, for the purpose of opposing the establishment of fluctuating values of livestock for computing inventory values for Federal income tax purposes. It is proposed to use this money through some Federal State

controlled agency and you ask whether or not the State Board of Stock Commissioners could legally handle this matter.

You are corrected in your statement that grazing boards themselves cannot, according to law, make a direct contribution except through some Federal or State controlled agency. Such agency must be a “legally constituted and authorized Federal or State governmental department, division, bureau, service, board, or commission available for and authorized and willing to undertake direct management and supervision of the project concerned.” (Sec. 4, chap. 183, 1941 Stats. of Nevada. Also see sec. 6 of same chapter. Likewise see Opinions B-39, B-38, B-65, B-86, Attorney-General’s Biennial Report 1940-1942.)

We have examined the statutes creating the State Board of Stock Commissioners, and, although such board is legally constituted State Governmental department, it does not appear to us that they are authorized to handle moneys for the purpose proposed by your grazing board. We have likewise examined the statutes creating the State Department of Agriculture and the State Board of Sheep Commissioners and there does not appear to be, in either statute, powers granted or authority given to effectuate your present proposed resolution.

The American Livestock Association and the National Wool Growers Association quite possibly have jurisdiction over the project of opposing the action of the establishment of fluctuating values in the livestock industry, but, from information available to us, neither association can qualify as a Federal or State governmental department, bureau, service, or board.

I do not know of any State agency which is legally authorized to enter into an agreement for the purpose set forth in your letter. It would seem probably that under the present alphabetical system of bureaus in the Federal Government some bureau exists which is legally authorized to expend money for the purpose outlined in your letter. However, I am not acquainted with such bureau and suggest that this is a matter which might well be taken up with our congressional representatives for their advice and instruction in the premises.

In the meantime, if I can be of any further assistance to you, please do not hesitate to let me know.

Very truly yours,
ALAN BIBLE, *Attorney-General.*

88. Public Service Commission—Private Carrier Licenses Due and Collectible—Parties Operating Trucks Engaged in Hauling Gravel From Own Pits and Used in the Furtherance of Their Contracts.

CARSON CITY, November 24, 1943.

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

GENTLEMEN: Reference is hereby made to your recent request for an opinion upon the operation by the Dodge Construction Company, the Silver State Construction Company, and Mr. Carson Frazzini of trucks engaged in the hauling of gravel from their own gravel pits trucks engaged in the hauling of gravel from their own gravel pits to an airfield in the case of the Dodge people, to a landing strip in the case of the Silver State Construction Company, and to an air base in the case of Mr. Frazzini. The trucks being used in the performance of contracts entered into by the respective concerns in the hauling of gravel belonging to the respective parties in furtherance of their contracts. The question being presented by reason of the reports returned to the Public

Service commission by your Mr. Springmeyer and concerning the matter of the collection of private carrier licenses from the respective parties.

Without going into detail and rehearsing the matters contained in the respective reports, which were furnished this office, we are of the opinion that in each instance private carrier licenses are due and collectible from the respective parties.

None of the reasons advanced in the reports on the part of each of the parties as to why they should be exempted from the provisions of the Motor Carrier Licensing Act are sufficient in any way to point to an exemption from the operation of the law as to either or any of the parties.

The situation disclosed in the reports is analogous to and on all-fours with the case of Radich & Brown, Contractors, at the Naval Ammunition Depot near Hawthorne in 1942. There the contractor used some four miles of the State highway in the transporting of gravel from gravel pit to the Ammunition Depot and affiliated projects. As you know, the controversy resulted in the collection of the license fees from Radich & Brown even though they were contracting with the Navy Department of the United States Government. The only difference between the Radich & Brown case and the cases presented in your reports is that in the Radich & Brown case such contractors were transporting gravel not their own, and consequently came under a higher bracket with respect to license fees.

We note from the report on the Silver State Construction Company that it is thought that by reason of the fact that the contract there mentioned was with the State Highway Department and certain signs had been erected along the highway designating the certain portion of the highway as a construction zone, that an exemption should be granted by reason of the fact that public highway does not include the portion of the public highway under construction, thus providing the exemption with respect to the operation of trucks by highway contractors. It is clear from the report and from the facts that no construction, or reconstruction, of a highway is in existence at this particular spot. The provision in the Motor Carrier Licensing Act with respect to public highways actually under construction or reconstruction of such highway itself.

We conclude that from the facts submitted to this office in the above-mentioned reports that the respective parties are liable for the private carrier license fees.

Respectfully submitted,

ALAN BIBLE, *Attorney-General*.

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

89. Nurses—Examining Board May Accept Registration Card Out-of-State Nurses as Evidence Professional Training—No Authority to Issue Temporary Licenses.

CARSON CITY, December 3, 1943.

MISS MARGUERITE PRADERE, *President, The Nevada State Nurses' Association,*
505 Lander Street, Reno, Nevada.

DEAR MISS PRADERE: This will acknowledge receipt of your letter received November 30, 1943. You ask our opinion on the following questions:

1. May the State Board of Examiners for Graduate Nurses accept the registration card of out-of-the-State nurses as evidence of their professional training?
2. Has the State board authority to issue temporary certificates?

Our answer to your first question is in the affirmative.

We are constrained to answer your second question in the negative.

Section 7 of chapter 169, Statutes of Nevada 1933, an Act to regulate professional nursing in the State of Nevada, provides:

This board upon written application and upon receipt of ten dollars as registration fee, shall issue a certificate of registration without examination to any applicant who has been duly registered as a registered nurse under the laws of another state or of a foreign country having requirements equivalent to those provided for in this state.

Section 4 of the Act, in part, provides that the applicant shall furnish satisfactory evidence of having graduated from an accredited school of training for nurses.

There is nothing contained in the Act that would prohibit the board from accepting the registration card as satisfactory evidence of the nurse's professional training.

There is, however, no provision in the statute which would authorize the board to limit the time for which a certificate might be issued.

Section 8 of the Act defines the power of the board to revoke a certificate for cause, but it does not appear to be broad enough to authorize the issuance of a temporary certificate.

Your problem is one of profound importance and we have carefully examined the statute. We are of the opinion that the authority to issue a temporary certificate would require an Act of the Legislature. Such an Act was passed by the last Legislature which authorized the State Board of Medical Examiners to issue a temporary license to physicians and surgeons. However, no such Act was passed authorizing the granting of temporary certificates to nurses.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

By GEORGE P. ANNAND, *Deputy Attorney-General*.

90. Counties—Coroner's Inquest Not Required When Death Does Not Occur Immediately—Proviso.

CARSON CITY, December 8, 1943.

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

DEAR MR. BONNER: This will answer the inquiry in your letter received December 6, 1943, as to whether or not a coroner should hold an inquest under the following circumstances: A man was injured in the X mine. He was immediately taken to the company hospital and treated for ten days, and on the tenth day died from the injuries.

We are of the opinion that a coroner's inquest was not required by state, unless the coroner had reasonable grounds to suspect that the death resulted from criminal misconduct.

Section 11427 Nevada Compiled Laws 1929 provides: "When a justice of the peace, acting as a coroner, or his deputy has been informed that a person has been killed, or committed suicide, or has suddenly died under such circumstances as to afford reasonable ground to suspect that the death has been occasioned by unnatural means, he shall go to the place where the body is and summon three persons qualified by law to serve as jurors, to appear before him forthwith at the place where the body is, to inquire into the cause of death." This section contemplates a sudden death.

Section 4217 Nevada Compiled Laws 1929 provides for an investigation of any serious or

fatal accident in any mine by the Inspector of Mines. It also provides for his attendance at any inquest held over the remains of a person killed in such an accident. This section does not speak of an inquest held over the remains of a person killed in such accident, the coroner would issue the certificate of death.

Section 5241, 1929 N.C.L., 1941 Supp., which defines the regulations regarding a certificate of death, provides in part: "The medical certificate of the death shall be signed by the physician, if any, last in attendance on the deceased, who shall specify the time in attendance, the time he last saw the deceased alive and the hour of the day at which death occurred. And he shall further state the cause of death, so as to show the cause of disease or sequence of causes resulting in the death * * *. Causes of death, which may be the result of either disease or violence, shall be carefully defined; and if from violence, the means of injury shall be stated and whether (probably) accidental, suicidal, or homicidal. * * *"

Section 5242, 1929 N.C.L., 1941 Supp., provides further that if the death was caused by unlawful or suspicious means, the local health officer shall then refer the case to the coroner for investigation and certification.

The statutes afford ample protection against the chance that death has been caused by a criminal agency.

In the cause of *Patterson v. Jackson*, 211 Ill. App. 646, the court said, "It is not within the province of the coroner's jury to fix the civil liability of anyone growing out of an accident resulting in the death of an injured person."

In *Miller v. Cambrin Co.*, reported in 45 Am. Rep. 402, the court said: "The authority of a coroner is not to be exercised arbitrarily, but with reason and upon sufficient cause. An inquest is held to secure information and develop evidence in case of death resulting from felony or criminal negligence. Where there is reasonable ground to suspect it was so caused, it becomes the duty of the coroner to act. If he has no ground to suspect that the death resulted from criminal misconduct, it is not his duty to act."

Very truly yours,

ALAN BIBLE, *Attorney-General*.

By GEORGE P. ANNAND, *Deputy Attorney-General*.

91. Surveyor General—No Authority to Issue Patent to Other Than Original Applicant When No Transfer of Interest Has Been Presented.

CARSON CITY, December 10, 1943.

HON. WAYNE McLEOD, *Surveyor General and Ex Officio State Land Register*, Carson City, Nevada.

DEAR MR. McLEOD: This will acknowledge receipt of your letter received December 8, 1943, and answer your inquiry relative to your authority to issue a patent to other than the original applicant, upon the statement of fact submitted.

We are of the opinion that, under the conditions mentioned, you do not have the authority.

The contract is in good standing and the patent to the land may be issued in the name of Tom Williamson, or to his successor in interest, upon the furnishing to the State Land Register a good and sufficient deed of conveyance of the original applicant's right, title, and interest to him or her and to the contract and the land mentioned therein, as provided in section 5527, 1929 Nevada

Compiled Laws, 1941 Supp.

The Sheriff's deed conveys to Nell C. Short and Florence D. Short the premises described therein. This deed is based upon a judgment entered against Earl Simpson, Billie Simpson, Naoma Warden, formerly Naoma W. Simpson, formerly Naoma W. Bullock, Mabel Alice Warden, Charles C. Bullock, John Doe and Rachel Doe. Although the Sheriff's deed is a grant, bargain, and sale conveyance, section 8854 Nevada Compiled Laws 1929 relating to sales or real property under execution, provides * * * "the purchaser shall be substituted to and acquire all the right, title, interest, and claim of the judgment debtor thereto"; * * *.

The Sheriff's deed is therefore only a quitclaim deed conveying only such right, title, interest, and claim that the judgment debtor, Simpson et al., had in the property. No covenants are implied under the above-mentioned section.

Subsequent to the conveyance by the Sheriff to Nell C. and Florence D. Short, the property was conveyed by them to Frank A. Wait, the present applicant for the patent.

Under section 5527, 1929 Nevada Compiled Laws, 1941 Supp., the State Land Register cannot recognize Frank A. Wait as the present owner of the original applicant's right, title, and interest in the original contract and land. The Sheriff's deed could not be accepted as a conveyance vesting in Nell C. and Florence D. Short in the interest of Tom Williamson, the original applicant. There is nothing in your statement of facts or evidence submitted with your letter to show what has happened to Tom Williamson's interest.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

By GEORGE P. ANNAND, *Deputy Attorney-General*.

92. Taxation—University of Nevada—Property Exempt.

CARSON CITY, December 14, 1943.

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

DEAR MR. JEPSON: This will acknowledge receipt of your letter of December 7, 1943, received in this office December 8, 1943.

You ask whether or not the Layman property and the Espanol Hotel, both located in Reno, Washoe County, Nevada, and owned by the University of Nevada, are exempt from taxation. You state that both properties are income properties and that the University receives rental from the Layman property and the Espanol Hotel.

It is our opinion that the properties above-mentioned are exempt from taxation.

Section 4, article XI of the State Constitution, declares "The legislature shall provide for the establishment of a state university * * * to be controlled by a board of regents, whose duties shall be prescribed by law." Also see sections 3 and 6, article XI of the State Constitution.

Section 6418, 1929 N.C.L., 1941 Supp., as amended, by 1943 Statutes of Nevada, page 5, provides in part, in so far as it bears upon your inquiry, as follows: "All property of every kind and nature whatsoever within this state shall be subject to taxation except: First—All lands and other property owned by the state * * *." The University was created by our State Constitution as a State institution. It is not independent of, but is a part of, the State, supported by a public fund.

As stated in 26 Ruling Case Law at page 290: "The exemption of State property extends to

the property of all public departments of the State even though the title is in a board of trustees, or in a separate corporation, as is often the case with a State university or other State institution.”

Also see the case of Auditor-General v. Regents of the University of Michigan, reported in 10 L.R.A. 376, wherein the court construed a statute providing that all public property belonging to the State shall be exempt from taxation, as exempting land, title to which was vested in the Regents of the University of Michigan by a grant from one Walter Crane. The court said that it was of the opinion that the university land in question was exempt from taxation under the terms of the above statute.

It should be noted that the exemption of all property belonging to the State does not except revenue-producing property. Significantly enough, prior to 1925, section 6418, supra, after exempting all lands and other property owned by the State, included the following proviso: “*Provided*, that when any of the property mentioned in this subdivision is used for any other than public purposes and a rent for valuable consideration is received for its use, the same shall be taxed.” This proviso was stricken by legislative amendment in 1925. See Statutes of Nevada 1925, page 249. In accordance with this clear legislative intent and in accordance with the general rule stated above, it is our opinion that the property involved in your question is exempt from taxation.

Very truly yours,
ALAN BIBLE, *Attorney-General*.

93. Nevada School of Industry—Delinquent Girls and Women Under 21 Years of Age—Not Required to Accept.

CARSON CITY, December 22, 1943.

MR. FRED W. SNYDER, *Superintendent Nevada School of Industry, Elko, Nevada*.

DEAR MR. SNYDER: This will acknowledge receipt of your letter of December 16, 1943, received in this office December 20, 1943, in which you submit the following question:

Is the Nevada School of Industry obligated, under the laws of the State, to accept unmarried illegally pregnant girls and women under the age of twenty-one years, though such individuals are adjudged sex delinquents?

We are of the opinion that there is no provision in the statutes that requires the Board of Government of the Nevada School of Industry to accept such a person.

The Nevada School of Industry is maintained as a suitable school for the training of delinquent boys. Whether or not it is suitable as a detention home for delinquent girls and women under the age of twenty-one years when a medical examination discloses pregnancy, and whether or not the board will undertake such care elsewhere, are questions which the Legislature has vested in the sound discretion of the board.

The School was established under the Act of 1913, the title of which reads, “An Act to establish a state institution for delinquent boys, providing for the purchase of a site, erection of buildings, organizing the government of said school, and providing for the maintenance thereof, and creating a tax levy to raise funds for such purposes.”

Section 2 of the Act provides that the school shall be designated and calculated to provide a suitable home for boys committed thereto under the laws of Nevada relating to the care of children who have been adjudged delinquent, and for the moral, industrial, and general education

of such boys; *provided*, that the permanent board of Government hereinafter created shall be authorized to provide for the care of delinquent children of either sex properly committed thereto, either at this school, or by sending female delinquents to other institutions of a like kind for females. This proviso is not mandatory, it merely authorizes the board to send female delinquents to other institutions which maintain the same kind of school for females.

Since the establishment of the school no action has been taken by the Legislature to establish an addition to the school which would be suitable for delinquent females. Section 14 of the Act, as amended, provides, in part, for a proclamation to be made by the Governor when the premises are ready for occupancy and "Thereafter it shall be lawful for the courts to commit to said institution those boys whom they have found to be delinquent as provided by law, * * *."

The Juvenile Court Law, section 1016 and 1018 Nevada Compiled Laws 1929, quoting parts relevant to the question considered, provides: "or the court may enter an order committing such child to some *suitable* state institution of their state or any other state, organized for the care of dependent or neglected children, or to the Nevada school of industry, * * *" and in section 1018 * * * "or the court may commit such child to any institution incorporated under the laws of this or any other state to care for delinquent children, or to any institution that has been or may be provided by the state, county, city, town, or village *suitable* for the care of delinquent children, including a detention home or school, or to some association that will receive it * * *." Section 1020 Nevada Compiled Laws 1929 provides that the court may, when the health or condition of any child found to be dependent, neglected, or delinquent requires it, order the guardian to cause such child to be placed in a public hospital or institution for treatment or special care.

It is quite possible that the State Board of Health may have some funds available for this particular type of care, and it is suggested that the matter be submitted to Dr. Hamer for his advice thereon.

Very truly yours,
ALAN BIBLE, *Attorney-General*.