

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL - 1945

183. Motor Vehicle Registration Law—Trucks of X Company Exempt Only When Used on Private Roads and Within the Confines of Boulder Dam Recreational Area.

CARSON CITY, January 4, 1945.

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

DEAR MR. McEACHIN: This will acknowledge receipt of your letter received in this office on December 21, 1944, in which you asked to the liability of the X company to registration under the Nevada motor vehicle registration laws of equipment operated upon a highway within the boundaries of the Boulder Dam National Recreational Area and upon the private roads of the X company.

Your inquiry is limited to the application of the Nevada motor vehicle registration laws under this particular set of facts and under no other. The X company is a silica sand quarry and mill, which hauls its silica sand from the quarry 1 miles over a private road to the Overton-Lake Mead road. It then uses the Overton-Lake Mead road for 2½ miles and thereafter turns off on its own private road and travels 1 miles thereon to the plant. It is understood from your inquiry that the trucks of the X company do not travel over any other roads whatever.

The Overton-Lake Mead road lies entirely within the Boulder Dam National Recreational Area, funds for the construction and maintenance of which were obtained by Congressional appropriation. The use of the Overton-Lake Mead road by commercial trucks is governed by section 2.37 of the General Rules and Regulations of the National Park Service. This section reads as follows:

2.37. *Commercial Trucks.* (a) The use of the Government roads of any park or monument by commercial trucks, when such trucking is in no way connected with the operation of the park or monument, is prohibited, except that in special cases trucking permits may be issued at the discretion of the Director, for which a special fee will be charged.

(b) The superintendent may, in his discretion, issue permits without charge for trucks used on Government roads in connection with private land situated within the boundaries of the park or monument.

(c) Trucking over roads which are officially posted indicated no trucking is allowed shall be deemed a violation of this section.

Chapter 202 of the Statutes of Nevada of 1931 being sections 4435-4435.39, 1929 Nevada Compiled Laws, 1941 Supp., governs the licensing and registration of motor vehicles. Section 1 of this Act defines a highway as follows:

Every highway or place of whatever nature open to the use of the public as a matter of right for purposes of vehicular travel. The term 'highway' shall not be deemed to include a roadside or driveway upon grounds owned by private

persons, colleges, universities, or other institutions.

It will thus be seen at the outset that insofar as the X company uses its own private roads it is not subject to the licensing and registration law. The only question remaining is whether or not the Overton-Lake Mead highway is a highway or place open to the use of the public as a matter of right for purposes of vehicular travel. It seems to us from a careful reading and study of the regulations and particularly section a careful reading and study of the regulations and particularly section a careful reading and study of the regulations and particularly section 2.37 noted above that the Overton-Lake Mead road is not open to the public as a matter of right, but whether or not one may use it depends upon securing the permission of the proper National Park authority.

A road which was not open to public use as a matter of right for vehicular travel was held to be a private road and not a public highway in the case of *Sills v. Forbes*, 91 Pacific (2d) 246.

In the case of *State ex rel. Oregon-Washington R. and Nav. Company v. Walla Walla County*, 104 Pacific (2d) 764, a highway was defined as being a way open to the public at large for travel or transportation, without distinction, discrimination, or restriction. The court in this case also said that "It is the right to travel by all the world, and in the exercise of the right, which constitutes a way public highway and the actual amount of travel upon it is not material. If it is open to all who desire to use it, it is a public highway. The distinguishing mark of a public highway is that it must be open generally to public use." To same effect see *Public Highway*, volume 35 of the Permanent Edition of Words and Phrases, beginning at page 112 and ending at page 130.

Opinion No.302. Attorney General's 1940-1942 Biennial Report, in construing the Motor Vehicle Carrier Registration and Licensing Act (chapter 165, Statutes of Nevada, 1933), and which Act contained a different definition of the word "highway," held that motor trucks operated on the *public highways* of the State in or about the Boulder Dam area or elsewhere in the Boulder Dam Reservation are subject to the Act. (Italics ours.) This opinion applies with equal force to the licensing and registration of motor vehicles within this same area when those vehicles are operated upon public highways.

The distinction in the instant case, it seems to us, is very clearly since the X company's trucks are operating by permit and not as a matter of right and are operated under roads not public highways, but under the control of the National Park Service.

It should be pointed out in writing this opinion that if the X company's truck are used upon the public highways within the Boulder Dam Reservation or upon the public highways of the State outside of the reservation, the minute that they do so they become subject to the licensing and registration laws of the State. In other words, the effect of our opinion is simply hold that an exemption claim by the X company applies only so long as they use their own private roads and the Overton-Lake Mead road within the confines the Boulder Dam Recreational Area.

I am returning herewith the information which you secured at our request and which was necessary for an intelligent analysis of the problem which you presented.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

184. State Board of Health—State Hygienic Laboratory—No Authority to Charge or Collect Fees for Clinical Work Directed To Be Furnished Under Section 5267, 1929 N.C.L., 1941 Supp.

CARSON CITY, January 20, 1945.

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

DEAR DR. HAMER: This will acknowledge receipt of your letter dated January 13, 1945, received in this office January 15, 1945, presenting the following question:

Does the State Hygienic Laboratory have the authority to collect fees for clinical work done for individuals and non-governmental agencies?

We are of the opinion that the State Hygienic Laboratory has no authority to charge or collect fees for clinical work directed to be furnished under section 5267 Nevada Compiled Laws 1931-1941 Supplement, and such service is limited as provided therein.

Section 5267 (b) provides, in part deemed relevant, as follows:

The purpose of the state hygienic laboratory shall be: to offer without charge to health officials and licensed physicians of the state proper laboratory facilities for the prompt diagnosis of communicable diseases; to make necessary examinations and analyses of water, natural ice, sewage, milk, food, and clinical material; * * * and to understate such other technical and laboratory duties as the state board of health may direct in the interests of the public health.

You state in your letter that the fees collected by the laboratory range from \$275 to \$400 per month and indicate that such fees are collected from individuals who cannot afford the fees of a private laboratory; that this money is deposited in the State Treasury and used to defray the expenses of the laboratory.

The service authorized in the statute is limited to health officials and licensed physicians and such other technical and laboratory duties the State Board of Health may direct.

The Legislature makes an appropriation for the State Hygienic Laboratory, and if the appropriation is insufficient to meet budget requirements this should be presented to the Legislature consideration.

You also ask if a fee sufficiently large to cover the cost of the test could be charged. This, of course, can be done, and since the Legislature for consideration.

You also ask if a fee sufficiently large to cover the cost of the test could be charged. This, of course, can be done, and since the Legislature is now in session you might desire to submit such a suggestion to it.

Very truly yours,

ALAN BIBLE, *Attorney-General.*

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

185. Public Service Commission—Truck Licenses and Trip Permit Fees—Authority Granted to Commission Limited to Contract and Common Carriers.

CARSON CITY, January 30, 1945.

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

DEAR MR. SCOTT: Under date of January 18, 1945, the Public Service Commission of Nevada, at a full meeting of the commission requested the opinion of this office in interpreting chapter 93, 1943 Statutes of Nevada, in respect to the reduction of truck licenses and trip permit

fees to certain motor carriers.

We are of the opinion that the authority granted the Public Service Commission under this statute is limited to contract and common carriers and only under the circumstances where the existing service is inadequate. This authority cannot be extended to reduce truck licenses and trip permits as a relief measure to private carriers to offset a decrease in the volume of commodities transported.

Chapter 93, 1943 Statutes of Nevada, page 118, section 1, reads as follows:

Notwithstanding the provisions of the motor vehicle carrier act, being Statutes of Nevada 1933, chapter 165, as amended, the public service commission of the State of Nevada is hereby authorized to grant emergency temporary certificates or permits for either contract or common carrier service, as the case may be, upon such terms and conditions as the commission may prescribe. Such certificates or permits shall be granted only where the existing service is found to be inadequate, and such temporary authority shall be valid only for such time as the commission shall specify and, in any event, shall automatically expire at the termination of the present war.

The title of the Act sets out that the authority is granted to facilitate the transportation of persons and property during the war emergency where existing service is inadequate. Section 3 of the Act declares it to be an emergency measure for the purpose of aiding the United States in a successful prosecution of the war.

The right extended by the statute contemplates first, an existing service which is inadequate, second, that such service is performed by contract or common carriers; and, third, that such service is in aid of the United States in its successful prosecution of the war.

As stated in the case of *Johns-Manville, Inc. v. Lander County*, 48 Nevada Reports, on page 259, * * * "this act is a right solely and exclusively of legislative creation, and any person who would avail himself of such summary remedy must bring himself within both the spirit and the letter of the law. * * * It is correctly said that, when a right is solely and exclusively a legislative creation, the courts will not extend the application of the statute, but will limit its application to the exact words of the act:

If an extension of the privilege authorizing the issuance of temporary certificates or permits is desirable, it is a matter that should be submitted to the Legislature, which is now in session, for action.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

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

186. Counties—Justice of the Peace—Term Begins from Time of Qualification—Mineral County.

CARSON CITY, January 30, 1945.

MR. L.E. BLAISDELL, *Acting District Attorney, Mineral County, Hawthorne, Nevada.*

DEAR MR. BLAISDELL: In answer to your inquiry of January 25, 1945, I advise as follows:

You state that John Andrews, the former incumbent of the office of Justice of the Peace, served in that capacity until January 12, 1945, when Tom Conelly, his successor in office, qualified by filing his official bond and entered upon the discharge of the duties of the office.

Mr. Andrews demands the salary of the office for the entire month of January. Mr. Conelly demands one-half the monthly salary of the office as payment for services for the first half of January 1945.

Pursuant to section 20 of article IV of our constitution, as amended in 1926, the Legislature enacted chapter 83, Stats. 1927, page 108, making it the duty of board of commissioners of the respective counties at their regular meetings in December 1927 and annually thereafter to fix the compensation of township officers by stated salary payable monthly or by fees provided by law, or by both. You state that the salary of the Justice of the Peace of the township in question has been fixed at \$150 per month.

By section 13, article XVII, of our constitution, "all township officers shall continue in office until the expiration of their terms of office and until their successors are elected and qualified."

By section 4782 Nevada Compiled Laws 1929 (Statutes 1866, page 231), Justices of the Peace held office until the first Monday in January 1869 and until their successors were elected and qualified.

By section 4786 Nevada Compiled Laws 1929 it was provided that the term of office of "all officers" shall begin from the time of their qualification unless some other express provision is made by law. Qualification by an officer means taking the oath of office and filing the bond required.

Mr. Andrews should be paid 12 days' salary in January 1945 and Mr. Conelly should be paid for 19 days in January at the rate of \$150 per month. They should amend their claims or file new ones. Mr. Andrews cannot be paid for a time longer than he served. Mr. Conelly cannot be paid for a time before he entered upon the duties of his office.

I would suggest that the board reject the two claims or allow payment in settlement in the manner set forth above, and that Mr. Conelly be advised to make a claim monthly hereafter for his monthly salary for February and following.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

By HOMER MOONEY, *Deputy Attorney-General*.

187. Fish and Game—Fish Rearing Ponds—Cooperative Agreement Among Counties.

CARSON CITY, January 31, 1945.

MR. S.S. WHEELER, *State Field Representative, Fish and game Commission of Nevada, P.O. Box 678, Reno, Nevada.*

DEAR MR. WHEELER: I have your letter of January 24, 1945, on behalf of the State Fish and Game Commission, propounding the following questions:

1. Is it possible for counties to enter into a financially cooperative agreement among themselves and to share a proportionate amount of the costs in order to construct and maintain trout rearing ponds at a central location in one of these counties?

2. Is it possible for counties to enter into a financially cooperative agreement and to share a proportionate amount of the costs between themselves and the State Fish and Game Commission

for the purpose of constructing rearing ponds on State land at the Verdi State Hatchery?

I am of the opinion that State legislation can be drafted and enacted to carry out either or both purposes set out above. In the second plan outlined State legislation may be regarded as imperative. In the first plan the question whether counties have already been given power to enter upon the contemplated cooperative agreements is so obscure that prudence calls for the passage of an Act to expressly confer the power. It may be that the two objects could be covered by one law.

Counties act for the government, service, and welfare of inhabitants within their geographical boundaries only to the extent specially granted by law or as may be necessarily incidental for the purpose of carrying express powers into effect.

See: *Waitz v. Ormsby County*, [1 Nev. 370](#); *State v. Boerlin*, [30 Nev. 473](#).

In the control of fish resources in the State the State government is supreme. *Ex P. Crosby*, [38 Nev. 389-392](#).

The grant of governmental power arising as it does from the State Legislature, can of course be enlarged by further legislation. Most powers of counties are generally enumerated in Nevada Compiled Laws 1929, section 1942.

The Legislature has recognized the power of counties to appoint fish and game wardens, establish and maintain county fish hatcheries, and to set aside county fish and game funds. (Nevada Compiled Laws 1929, sections 3047, 3049 and 3084; 1929 Nevada Compiled Laws, 1941 Supp., sections 3046, 3085 and 3086.) By section 3086, supra, revenue from fishing licenses is paid into the County Fish and Game Fund and in case the county maintains fish hatcheries all the hunting and fishing license revenue shall be credited to the County Fish and Game Fund except in the case of counties casting more than 9,000 votes. Counties retaining all fishing and hunting license money are not entitled to receive any fish from the State Commission.

A member of the Board of Commissioners of any county may not vote on any contract which extends beyond his term of office. (Nevada Compiled Laws, 1929, section 1973.) The power to contract is reserved to the county through the board of Commissioners. (Nevada Compiled Laws, 1929, section 1975.) Limitations are also made on letting contracts in excess of five hundred dollars. (Nevada Compiled Laws 1929, section 1963.)

Very truly yours,

ALAN BIBLE, *Attorney-General*.

By HOMER MOONEY, *Deputy Attorney-General*.

189. Old-Age Assistance—Omission of Comma Cannot be Construed to Contradict Policy of State and Purpose of Act—Section 15.

CARSON CITY, February 8, 1945.

MRS. HERMINE G. FRANKE, *Supervisor, Division of Old-Age Assistance, Nevada State Welfare Department, Box 1331, Reno, Nevada.*

DEAR MRS. FRANKE: This will acknowledge receipt of your letter dated January 25, 1945, and received in this office January 26, 1945, from which we quote as follows:

May we call your attention to Section 15 of the Nevada Old-Age Assistance Act, enacted November 7, 1944, which reads in part:

* * * sufficient to produce enough money to pay the state's one-fourth () of

the total amount of such old-age assistance and administration thereof * * *.

We would like an opinion as to whether the omission of a comma after the word "assistance" in the text of this section will actually result in a change of the State's method of financing the administration of the old-age assistance program.

We are of the opinion that the omission of the comma in question cannot be construed to contradict the policy of the State and the purpose of the Act as expressed in its title and throughout the Act itself. This policy is to secure the grant of financial aid from the Federal Government in providing pensions or assistance to needy aged persons in this State, and conformity with the Social Security Act of Congress, upon which such Federal aid depends is declared in plain and definite language in the Act.

The initiative law does not and it cannot change the State's method of financing the administration of the old-age assistance program.

The title of the Initiative Act, in part, contains the following language, "* * * designating the single state agency of this state to supervise the administration thereof, * * * providing for cooperation with the government of the United States in furnishing such pensions or assistance pursuant to the provisions of the so-called social security act of Congress, approved August 14, 1935; * * *."

Section 1 of the Act defines the State Board as created by chapter 138, Statutes of Nevada 1935. This Act in defining the powers of the State Board provides in part under subdivision (3) of section 3 as follows: "and to advise with the federal emergency relief administrator of Nevada, and with such other agencies as the federal government may designate, in making such rules and regulations as may be necessary for the judicious and equitable administration of any funds made available by the state or federal government, * * *."

The policy of the State of Nevada before the adoption of the initiative Act was to cooperate in all respects with the Federal Government by the adoption of a State plan which must conform with Federal requirements in order to receive money made available to the State by the Act of Congress.

The Social Security Act mentioned in the title defined as follows: "Social Security Act" means the Act of Congress approved August 14, 1935, and compiled as United States Code, title 42, section 301, and certain sections following that section as amended.

Section 16 of the Initiative Act provides in part as follows: "All moneys furnished by the federal government pursuant to said social security act shall be deposited in the state treasury of this state * * * and used only for the purposes provided for in said social security act and in pursuance of the provisions of this act."

The Social Security Act, under section 303(a), "From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for old-age assistance, for each quarter, beginning with the quarter commencing January 1, 1940, (1) an amount, which shall be used *exclusively as old-age assistance*, * * *." (Italics ours.)

It has been the policy of the State to use this money as provided in this section and if the Initiative Act intended to disregard this provision of the Social Security Act, such an intent cannot be founded upon the omission of a comma in one sentence in the Act.

The Supreme Court of this State in the case of *Ex Parte Iratacable*, 55 Nev. Rep. on page 282, construing a statute, said, "(1) That the entire Act must be looked to; (2) that punctuation and grammatical construction are only aids when a doubt exists as to the legislative intent; and (3) that an Act must be construed so as to meet the plain, evident policy and purview of the Act, and

bring it within the intention which the Legislature had in view at the time it was enacted.”

In *State v. Brodigan*, 34 Nev. Rep. on page 490, the court said: “In construing statutes which are rendered in doubt or uncertain by punctuation marks, courts should and do properly regard punctuation marks only as an aid in arriving at the correct meaning of the words of the statute, and for this reason, punctuation marks cannot be given a controlling influence. Courts should not hesitate to repunctuate a statute where it is necessary to arrive at the true legislative intent, * * *.”

Section 15 of the Initiative Act, in this part of the section follows the exact wording of the same numbered section in the former Old-Age Assistance Act, as follows: “* * * sufficient to produce enough money to pay the state’s one-fourth () of the total amount of such old-age assistance and administration thereof, * * *.”

The former Act contained a comma after the word “assistance,” which comma is omitted in the new Act.

The only reasonable conclusion is that the omission of the comma was an error in drafting the initiative petition.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

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

190. Brands—Recording Rerecording of Sheep Brands.

CARSON CITY, February 10, 1945.

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

DEAR MR. SCOTT: Dr. Warren B. Earl, Director, Division of Animal Industry, has referred to this office your letter addressed to him calling attention to the statutes in relation to the recording and rerecording of sheep brands.

We note with interest your discovery that the compilers of Nevada Compiled Laws 1929 omitted the Acts of 1873 under Revised Laws 2233 and following sections, also the Acts of 1909 and 1915 respecting the recording of brands and marks for sheep.

The Act of March 25, 1915, relating to and requiring the recording of brands upon livestock, appears in volume 3, Revised Laws 1919, following section 2244. Section 1 of the Act refers to horses, cattle or other livestock which would be construed to include sheep

Section 3 of the Act provides that the County Recorder shall notify the owner of any recorded brand or mark at least sixty days prior to the expiration of the five-year period, mentioned in section 1, of the owner’s right to rerecord the same. Section 4, to which you call attention in your letter, requires the County Recorder to publish a notice of expiration of recording period, and you inquire if such publication is now mandatory.

We are of the opinion that this Act is in force and effect and as section 4 recites, “It shall be the duty of the county recorder to publish * * *,” the same becomes mandatory.

Relative to the practice of County Recorders to publish such notice, I took this matter up with Dr. Earl, who informed me that all brands and marks for sheep were now recorded with the various County Recorders and he was of the opinion that the Recorders did publish notice of the expiration period.

Very truly yours,

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

191. Taxation—Gasoline Tax Refund—Boulder Dam Recreational Area.

CARSON CITY, February 23, 1945.

MR. R.E. CAHILL, *Chief Clerk, Nevada Tax Commission, Carson City, Nevada*.

DEAR MR. CAHILL: This will acknowledge receipt of your letter in this office February 1, 1945, in which you request an opinion upon an application for gas tax refund tot he Nunn Company operating at the Boulder Dam Recreational Area and upon private roads, under the same circumstances and conditions as outlined and covered by an opinion from this office dated January 4, 1945, to the Motor Vehicle Department as to the liability of this company to registration of equipment under the Motor Vehicle Registration Laws.

We are of the opinion that this company operating under the same circumstances and conditions as outlined in our opinion referred to is exempt from the payment of the excise tax prescribed by the Motor Vehicle Fuel Tax Act of 1935, so long as they use exclusively their own private roads and roads within the confines of the Boulder Dam Recreational Area not open to the use of the public for purposes of surface traffic.

In construing the language of the statute it appears clearly that the fuel used in a motor vehicle operated on a surface highway open to the public is subject to the tax, while if not actually so used, the fuel is not subject to the tax and reimbursement should be made under the provisions of section 5 of the Act.

Section 5 provides certain exceptions to which the payment of the excise tax shall not apply and also provides for a refund of tax to certain operators. In this part of the section is found the following language: "*Any person who shall export any motor vehicle fuel from this state, or who shall sell any such fuel to the government of the United States for official use of such government, or who shall buy and use any such fuel for purposes other than in and for the propulsion of motor vehicles, and who shall have paid any tax on such fuel levied or directed to be paid as provided by this Act, either directly by the collection of such tax by the vendor from such consumer or indirectly by the adding of the amount of such tax to the price of such fuel, shall be reimbursed and repaid the amount of such tax so paid by him or it, upon presenting to the Tax Commission an affidavit, accompanied by the original invoices showing such purchase, which affidavit shall be verified by the oath of such affiant and shall state the total amount of such fuel so purchased and used by such consumer otherwise than for the propulsion of motor vehicles, as defined in this act, that the claimant has paid the price therefor, and the manner and the equipment in which claimant has used the same; * * *.*" (Italics ours.)

The interpretation of the language "used by such consumer otherwise than for the propulsion of motor vehicle, as defined in this act," must be governed by the definition of words and phrases found in section 1 of the Act.

Section 1, subdivision (a), "Motor vehicle" shall mean and include every self-propelled motor vehicle, including tractors, operated on a surface highway.

(h) "Highway" shall mean every way or place of whatever nature open to the use of the public, for purposes of surface traffic, including highways under-construction.

Therefore, fuel used in a motor vehicle operated wholly on private roads and not operated

upon any highway open to the use of the public, is not subject to the tax, and reimbursement should be made for any taxes paid thereon.

See Attorney-General's Opinion No. 186, Biennial Report 1925-1926, and Opinion No. 208, Biennial Report 1934-1936.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

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

192. Fish and Game—County Commissioners Cannot Close Season on Doe Deer Previously Established by Commission.

CARSON CITY, February 26, 1945.

STATE FISH AND GAME COMMISSION, *P.O. Box 678, Reno, Nevada*.

GENTLEMEN: Reference is hereby made to your communication, over the signature of Mr. Buck Wheeler, of February 23, 1945, inquiring whether Boards of County Commissioners can close the open season on doe deer in areas where open season on doe deer has been fixed by the State Fish and Game Commission, and also whether such commissioners may do so without closing the open season on deer in that county.

Prior to the amendment of section 66 of the Fish and Game Law in 1943 it is quite probable that Boards of County Commissioners would have had such power. However, in 1943 the Legislature so amended section 66 as to create the power therein for the State Fish and Game Commission to declare further open season on deer without specifying the sex.

A similar question was propounded to this office in 1933 with respect to all game birds and game animals as to whether the Boards of County Commissioners had the power to designate the sex of game birds and game animals that might be killed during an open season thereon. This office held that no such power had been granted to the County Commissioners. See opinion of Attorney General No. 120, dated December 11, 1933, in Report of Attorney General, July 1, 1932, to June 30, 1934, a copy of which opinion must be in your files, as the opinion was directed to your Commission.

In view of the present state of the law, it is our opinion that in order to empower Boards of County Commissioners to close the season on doe deer theretofore established by the Fish and Game Commission under section 66 of the Fish and Game Law, it will be necessary to have further legislation on the subject.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

193. State Board of Health—Regulation of Hotels.

CARSON CITY, March 8, 1945.

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

DEAR DR. HAMER: In response to the oral request today of Mr. S. J. Nielsen, Acting Director, Division of Public Health Engineering, I have the following general comments to make concerning the Act for the regulation of hotels approved March 15, 1915 (Statutes of Nevada 1915, page 156; 1929 Nevada Compiled Laws, sections 3337-3348, inclusive.)

As to the establishments governed by the Act, the word "hotel" is expressly defined in section 1 of the Act to include only those establishments where accommodations are furnished or offered to the transient public. This definition will control for the purposes of this Act and it is necessary to determine the meaning of "public" and "transient."

If sleeping or rooming accommodations are offered or furnished as a rule to less than all of the public (properly conducting themselves) either by sign or announcement or by fixed custom, the establishment would not come under the Act. An occasional exception from or departure from the rule would not take it out of the exempted class.

If sleeping or rooming accommodations are offered or furnished as a rule only to the public for a fixed period, or without limitation as to time, as for a week, or a month, or as a permanent habitation, the establishment would not come under the act because it does not involve "transient trade."

The definition of "hotel" in this Act corresponds to the definition of "inn" in the statutes of other States and at common law. An "inn" is an establishment held out to the public generally as willing to furnish sleeping or rooming accommodations (either alone or in conjunction with meals, etc.) to travelers or transients, but not for any fixed period of time or permanently.

The power to administer the Act involves the power to inspect establishments coming under the definition of "hotels" as above explained, to determine whether the law is obeyed, and especially in respect of the express requirements of the Act. Where the requirements are specific (as for bed sheets 98 inches long) that is the standard. But where the statute speaks in more general terms, such as the word "insanitary," "free from dirt," "sufficient ventilation," "sufficient supply of towels," call on the inspector or officer to exercise his best judgment in the light of the benefits expected from the Act. Inspection is permitted by section 12 of the Act and penalties are provided by section 10. It is generally good practice to warn a hotel keeper under the Act to correct abuses pointed out, and give him opportunity to do so, before filing a complaint for his arrest.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

By HOMER MOONEY, *Deputy Attorney-General*.

193. Fish and Game—Procedure for Elimination of Beaver and Muskrats Causing Damage to Property.

CARSON CITY, March 9, 1945.

HON. SIM SCOTT, *Assemblyman, Elko County, State Capitol, Carson city, Nevada*.

DEAR MR. SCOTT: You inquire of this office as to the procedure to be followed in eliminating beaver from streams where such beaver are causing damage to property. You also inquire as to the procedure to be followed with respect to the elimination of muskrats.

Beaver are denominated fur-bearing animals under the fish and game laws of this State and beaver are protected at the present time until the first day of January 1947. They may, however, be trapped during trapping season and for causing damage may be eradicated to a certain extent.

Section 79 of the fish and game law, as amended at 1937 Statutes, page 251, provides as follows:

It shall be unlawful for any person to hunt any beaver in the state on or before the first day of January, 1947: *provided*, that when beaver are doing actual

damage to farms or other property in any county, the board of fish and game commissioners may, upon filing of a verified application, authorize the trapping of such beaver; but the furs of such animals shall be taken in as good condition as possible and must be delivered forthwith to said board, to be sold by said commissioners, and the proceeds of said sale must be deposited in the state fish and game preservation fund, for the trapping of said beaver, not more than fifty percent of the proceeds from the sale of said beaver furs. It shall be unlawful for any person to have in his possession any hide or fur from said animals unless the same has been lawfully taken and is lawfully in the possession of the holder thereof.

It is clear, under the law, that by making application to the State Board of Fish and Game Commissioners that beaver may be taken outside of the limits of the trapping season in accordance with the foregoing statute. The statute provides the procedure necessary for such purpose.

Now, with respect to muskrats, we beg to advise that muskrats are also denominated as fur bearing animals. Section 3035 N.C.L. 1929, as amended at 1941 Statutes, page 240.

The open season on fur-bearing animals is from the 15th day of November to the 15th day of March next following, both dates included. Section 77 of the fish and game law, being section 3111, N.C.L. 1929. This section, however, provides that any fur bearing in any manner. This would seem to provide that where muskrats may be taken or killed at any time.

However, in 1941 the Legislature amended section 55 of the fish and game act, requiring every person over the age of 14 years who hunts any of the wild birds or animals, or traps any of the fur-bearing animals, without having first procured a license therefor as provided in the law, shall be guilty of a misdemeanor. At the same session of the Legislature trappers' licenses were provided for in section 54 of the fish and game law, which provision requires the securing of a license for trapping and a fee of one dollar, unless such person would be ten dollars. See 1941 Statutes, page 244.

We suggest, in view of the present state of the law, that while muskrats may be taken at any time of the year when injuring property, yet, as a precaution, the person so taking them should secure a trapper's license.

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

195. Fish and Game—Designation of Game Refuge.

CARSON CITY, March 27, 1945.

MR. S.S. WHEELER, *State Field Representative Nevada Fish and Game Commission, P.o. Box 678, Reno, Nevada.*

DEAR MR. WHEELER: This will acknowledge receipt of your letter of March 14, 1945, in which you inquire if the Governor may designate, as a state recreation ground and game refuge or public shooting ground, the Stillwater area north of the Canvasback Duck Club near Fallon which is under the supervision of the Federal Reclamation Service and directly controlled by the Truckee-Carson Irrigation District.

We are advised that an action is now pending in the First Judicial District Court in Churchill

County involving the right of an individual to trap muskrats on the public domain within this district, without first securing a license from the irrigation district. The legal principles embraced in this action are similar to those to be considered in answer to your question, and until this matter is determined by the court no opinion should be given by this office.

Opinion of the Attorney General No. 123, Biennial Report 1919-1923.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

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

**196. Salaries—Increases—Assembly Substitute for A.B. 27 in Full Force and Effect
March 22, 1945.**

CARSON CITY, March 27, 1945.

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

DEAR MR. SCHMIDT: Answering your inquiry of March 26, 1945, it is my opinion that Assembly Substitute for A.B. 27 (approved March 22, 1945, chapter 160, Statutes of Nevada 1945) went into full force and effect March 22, 1945.

It is true that the history of the bill shows that the Legislature struck out section 3 of the bill, reading "This act shall be effective immediately upon its passage and approval," and it may have been the understanding of the Legislature that by striking out this section the Act would not become effective until July 1, 1945, but neither this office nor the courts are authorized to go behind the enrolled bill deposited with the Secretary of State bearing the Governor's approval.

The enrolled bill provides for the increase above the salaries fixed (existing) March 21, 1943 "from and after the passage and approval of this act." (Section 1 of bill and as enrolled.)

The Act of January 10, 1865 (R.L. 1912, section 4127), as amended by the Act of January 29, 1925 (N.C.L. 1929, section 7301) provides that "Every law and joint resolution hereafter passed by the Legislature of the State of Nevada shall take effect and be in force on July first following its passage, unless such law or joint resolution shall specifically provide a different effective date."

The Act in question does not specifically provide a "different effective date," to wit, "from and after the passage and approval of this Act."

The Act is an amendment of the Act of March 22, 1943 (chapter 135, Statutes of 1943).

The Act in question does specifically provide a "different effective date," to wit, "from and after the passage and approval of this Act."

The Act is amendment of the Act of the March 22, 1943 (chapter 135, Statutes of 1943). The original Act went into effect March 22, 1943, and was limited so as to expire June 30, 1945. The amendatory Act extended the original Act of 1943, as amended, to June 30, 1947.

The General Appropriation Act of 1943 for the fiscal years 1944 and 1945 provided funds to pay the salaries to July 1, 1945.

The amendatory Act makes a new appropriation of \$24,000 to pay the salary increases for the biennium beginning July 1, 1945, and ending June 30, 1947.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

197. Taxation—Veteran Tax Exemption—Proof Required by Assessor.

CARSON CITY, April 4, 1945.

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

DEAR MR. JEPSON: This will acknowledge receipt of your letter dated March 27, 1945, received in this office March 28, 1945, with which you enclosed a copy of a letter from the Washoe County Assessor.

You ask what proof must the Assessor require in order to allow a veteran tax exemption as provided in subsection seventh of section 6418 Nevada Compiled Laws 1929, as amended, and if the Assessor may establish a rule under the law which will apply to all.

We are of the opinion that no definite rule can be established to govern the County Assessor in granting exemptions under subsection seventh of section 6418 Nevada Compiled Laws 1929, as amended. Each case must be decided upon the facts presented.

For the purpose of enabling the County Assessor to assess the property to persons owning it, proof is established by the sworn statement of the person claiming the property. The proof required to establish the right to exemption under this subsection is based upon affidavit which verifies the truth of the facts stated.

Section 6421 Nevada Compiled Laws 1929, providing the method of assessing property for taxation, reads, in part deemed relevant, as follows:

*** the county assessor, *** shall ascertain by diligent inquiry and examination, all property in his county, real and personal, subject to taxation, and also the names of all persons, *** owning the same; ***. For the purpose of enabling the assessor to make such assessments, he shall demand from each person *** a statement, under oath or affirmation, of all the real estate and personal property within the county, owned or claimed by such persons, ***.

This section also provides that the giving of a false name shall be a misdemeanor and that the person offending shall be arrested upon complaint by the Assessor or his deputy.

If the required statement, under oath, is not filed and the owner is absent, the section further provides as follows:

If the name of such absent owner is known to the assessor the property shall be assessed in his or her name; if unknown to the assessor the property shall be assessed to unknown owners.

The County Assessor should exercise the authority vested in him by statute and require a sworn statement from the person owning or claiming property to be placed upon the assessment roll of the county.

The word "owner" is difficult to define, its interpretation depends upon the context of the statute and the end to be accomplished.

In *State v. Wheeler*, 23 Nevada 143, the court held as follows:

But the word "owner" is not so easily defined. Generally, as stated in 1 Hare. Const. Law, 335, it is nomen generalissimum, and may be applied to any defined interest in real estate. (*Titchel v. Kreidler*, 84 Mo. 476.) As used in statutes providing that property shall be assessed to the owner, it has been held to mean the owner in fee, and not to include a lessee (*Davis v. Cincinnati*, 36 Ohio St. 24; 25 Am. and Eng. Ency. 120) while in other cases what seems to be exactly the

opposite has been decided (25 Am. and Eng. Ency. 122). In the homestead statutes it includes equitable as well as legal owners (*Lozo v. Sutherland*, 38 Mich. 170; *Wilder v. Haughey*, 21 Minn. 101), while in condemnation proceedings it embraces all having estates in the land either in possession, reversion or remainder (*Watson v. N.Y. Cen. R.R. Co.*, 47 N.Y. 162) and in statutes providing for redemption from forced sale, all who have a substantial interest in the premises (*Cooley*, Tax. 558). * * *

In *Town of Wolf River v. Wisconsin Michigan Power Co.*, 259 N.W. 710, the court held that “owner” as used in tax statutes, has been held to mean the owner of an estate in possession at the time of the assessment, and not a prior owner, or owner of an estate in expectation or contingent interest.

In *American Woolen Co. v. Town Council of North Smithfield*, 69 A. 293, the court held that:

The word “owner” while not a technical term, but one of wide application in various connections, primarily means, with respect to land, a person who is seized of a freehold estate therein, one who owes no service to another which limits his dominion.

The seventh subdivision of section 6418, Nevada Compiled Laws 1929, as amended by the Legislature 1945, reads as follows:

Seventh—The real property owned and use by any post of the national organization of ex-service men or women. The separate and/or community property, not to exceed the amount of one thousand (\$1,000) dollars, of any person who has served, or is serving, in the army, navy, marine corps, revenue marine, or in any other branch for the armed forces of the United States in time of war, and in the event of the severance of such service has received an honorable discharge therefrom. Such exemption shall be allowed only to claimants who shall make an affidavit annually before the county assessor to the effect that they are actual bona fide residents of the State of Nevada, that such exemption is claimed in no property of affiant within this state is less than four thousand dollars; *provided*, however, that persons in actual military service shall be exempt during the period of such service from filing annual affidavits of exemption and the county assessors are directed to continue to grant exemption to such persons on the basis of the original affidavit filed; *provided, further*, that in case of any person who has entered the military service without having previously made and filed an affidavit of exemption, such affidavit may be made in his or her behalf during the period of such service by any person having knowledge of the facts.

The sentence applying the exemption to veterans and persons serving in the armed forces use the word “property,” which is like the word “owner,” a most general name, and there is nothing to suggest that the word is used in any restricted sense.

In *Lucas v. Schneider*, 47 F (2d) 1006, the court held that:

The term “property,” standing alone, includes everything that is the subject of ownership. It is a nomen generalissimum, extending to every species of valuable right and interest.

See Words and Phrases, Vol. 34.

The County Assessor may therefore rely upon the sworn statement furnished by the person

claiming ownership of property for the purpose of assessment, and no exemption under the seventh subdivision of section 6418 Nevada Compiled Laws 1929, as amended, should be allowed unless the affidavit required is on file with the County Assessor.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

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

198. State Welfare Board—Adoption Proceedings Where Parents of the Child are Divorced.

CARSON CITY, May 2, 1945.

MISS GRACE SEMENZA, *Administrative Assistant, Division of Child Welfare Services, 440 Gazette Building, Reno, Nevada.*

DEAR MISS SEMENZA: This will acknowledge receipt of your letter dated April 25, 1945, in which you requested an opinion upon the following question in the matter of adoption proceedings where parents of the child are divorced:

If one of the parents has been given care, custody and control but the other is required to contribute to the support of said minor child with right of visitation, are both parents then required to consent to the adoption or has only the parent having "care, custody, and control" this right?

We are of the opinion that the district courts have exclusive original jurisdiction over the persons of minors, and this is a matter for the court.

The court in the case of Jackson et ux. v. Spellmand, 55 Nevada on page 182, held as follows:

We are of the opinion that, to enable one parent having custody and control of a child to effectually consent to its adoption by another, such custody and control must be of such an absolute and unconditional nature that the other parent's right in the child is extinguished, or the other parent's conduct is such as to estop him or her from asserting such right.

The consent of the natural parents lies at the foundation of statutes of adoption.

We trust that the foregoing will supply you with the required information.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

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

199. Motor Vehicle Registration Law—Persons from Other States Gainfully Employed Within this State Must Register Their Automobiles and Trailers and Pay Fees and Property Tax.

CARSON CITY, May 5, 1945.

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

DEAR GOVERNOR CARVILLE: I have read the letter dated April 27, 1945, addressed to

you by Hon. William Royle, State Manpower Director, which you handed to me yesterday, concerning the hardships resulting from the enforcement of the law of Nevada relating to the licensing and registration of motor vehicles (Act of March 31, 1931, amended in section 17, Statutes 1933, 249; 1937, 332; 1941, 279; 1943, 266). This is 1929 Nevada Compiled Laws, 1941 Supp., section 4435.16, as amended by Statutes 1943, 266. The letter points out that skilled craftsmen coming into this State and engaging in work in defense plant industries and other activities contributing to the war effort are resigning and leaving the State rather than pay the registration fees and personal property taxes on their vehicles, including passenger cars and trailers on demand of State traffic officers. The question is propounded whether the enforcement of the law on this subject can be relaxed and whether temporary workers may not be issued a visitor's certificate good for 90 days.

While I am fully aware of the gravity of the situation, this office has no choice other than to construe the law as we find it and as we have found it in previous opinions. See Opinions of the Attorney General No. 56 and No. 51, Report of the Attorney General 1943-1944.

The pertinent provision of law is the proviso in section 17(a) of the Motor Vehicle Registration Law as amended by chapter 186, Statutes of Nevada 1943, page 266, which 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 this state for the purpose of being gainfully employed therein shall, for the purpose 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; * * *.

“Vehicles” and “trailers” are defined in section 1 of the law (1929 Nevada Compiled Laws, 1941 Supp., section 4435). Section 6 of the law requires “every owner of a motor vehicle, trailer or semitrailer intended to be operated upon any highway in this state shall before the same can be operated, apply to the department for and obtain the registration thereof.”

Section 25 of the law establishes the fees for registration of motor vehicles, trailers, etc. The fee for a stock passenger care is five dollars. The fee for a truck or trailer having an unladen weight of 3,000 pounds or less, is five dollars, and if 1,000 pounds or less, two dollars. The fee “for every trailer designed for the installation of or equipped with household appliances used therein for living purposes” is five dollars.

It is apparent, therefore, that the proviso in section 17 applies to motor vehicles, stock passenger cars, trucks and trailers. They are “vehicles of a type subject to registration in this state.”

Section 11 of the law as amended March 21, 1945 (Statutes, 1945, page 151) provides that in registering a vehicle the annual license fee and the personal property tax thereon shall be paid, the personal property tax being based on the schedule of values for assessment purposes fixed by the Nevada Tax Commission for that year. The language of the section, while not free from grammatical omissions, sufficiently indicates, when construed with sections 6, 17, and 25, that the registration fees and the personal property tax must be paid before registration.

In conclusion my opinion is that persons from other States gainfully employed within this State or who come into the State for that purpose must register their automobiles and trailers, paying at the time of registration the registration fees and also the personal property tax on such automobiles and trailers, irrespective of the fact that they may contemplate only a temporary

employment here. It is unfortunate that in the face of apparent hardship no effort was made at the recent session to moderate the law. We, of course, have no power by construction to relax or change the law.

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

**200. Fish and Game—Explanation and Interpretation of Various Sections of Law—
Table of Amendments 1945.**

CARSON CITY, May 10, 1945.

MR. H. SHIRL COLEMAN, *State Game Warden, Box 678, Reno, Nevada*.

DEAR MR. COLEMAN: I have your two recent letters concerning the Nevada Fish and Game Laws, answer to which was delayed until we had received the advance sheets from the 1945 Legislature. Since fourteen sections of the Fish and Game Law were amended in 1945 it was imperative that we have these changes before us in considering your questions.

(1) The provisions of section 2 of the Act of 1929, as amended (last two paragraphs defining “game fish”) should be followed rather than section 3 of the Act as amended. The amendment of section 2 is later in point of time and expands rather than diminishes the definition of “game fish.” Section 2 is 1929 N.C.L., 1941 Supp., section 3036. Section 3 is 1929 N.C.L., 1941 Supp., sec. 3037.

(2) District 2 (comprising all the waters and lands of Churchill County, N.C.L. 1929, sec. 3055) was left out after 1929 except for Lahontan Lake in District 2 (1929 N.C.L. 1929, sec. 3063) closed between October 1 and March 1 of the following year. By section dates for fishing within the limits of the Act and the County Commissioners may close a season entirely. It would seem that the only closed season for District 2 (Lahontan Lake) would govern the commission’s action in the case of Carson River or other streams in Churchill County. The closed season could not be shortened.

(3) The word should be “place” and not “time” as printed in 1929 N.C.L., 1941 Supp., sec. 3085. The word is “place” in the Statutes of Nevada 1933, page 283, and the statute book and not the compilation will prevail.

(4) Statutes of 1941, page 244, amending section 54 of the 1929 Act, fixes the fee for an alien at \$25 for a hunting license or \$25 for a trapper’s license. This must govern. The compilation 1929 N.C.L., 1941 Supp., sec. 3088, subdivision fifth, omits the “\$25 for a hunting license.” It is simply an error.

Compilers of laws have no legislative power to amend, add to or take from a statute. They make reprints and sometimes they make mistakes. Revisers of laws have more power, but the Nevada Compiled Laws are a compilation not a revision.

Letter of April 11, 1945.

(1) The Act of 1929 (N.C.L. 1929, secs. 3048-50 and 3122) provides for a license to operate private fish hatcheries and breeding grounds in order to obtain the “benefits of the Act.” We cannot say that no “benefits” accrue from the Act except through sale of the products. The Act is a police measure designed to conserve the fish and wild life resources of the State and, with the power to conserve, the State has power to regulate or prohibit acts, which might otherwise be lawful, if necessary to enforce the original purposes of the Act. It is reasonable to police private hatcheries and breeding grounds even if they do not purport to endanger the resources of the

State because the opportunity to make secret sales would disrupt the enforcement of the Act as a whole. Licenses in all cases should be required. Whether a lower license fee should be required when there is no sale of the product is a matter of legislative policy.

(2) Section 91 of the Act (N.C.L. 1929, sec. 3125, as amended by chapter 119, 1945 Stats.) provides in subdivision (d) which is not changed by the 1945 amendment that a person holding a hunting license shall be entitled to a duplicate deer tag. Subdivision (a) of said section 91 provides for an application and a fee of one dollar.

The Act of March 31, 1923 (N.C.L. 1929, sec. 3149) exempts all resident Indians from the payment of fishing and hunting licenses and requires them to be issued and delivered to such Indians free of charge.

Taking these provisions together, the conclusion results that while resident Indians must apply for and receive licenses and duplicate license tags they shall be issued free of charge.

Duplicate license tags are described in section 91(a) as “granting the privilege to hunt deer.” They are hunting licenses covering the hunting of deer, previously covered by a license to hunt “game birds and animals.”

(3) The fish and game law proceeds on the theory that the fish and game resources are public in nature and subject to protection by the State by reason of statutory enactments. Under the common law they were the property of the crown. It is the American and Anglo-Saxon position in criminal and public matters that all things are lawful and permitted unless denounced as unlawful and prohibited, expressly or by implication. Thus the rule must be that a season is always open unless it is closed by law. The closing may be by fixing definite periods of each year, or “at any time” or at any time until a certain year, etc. Even if the statute is silent the closing may be by reason of a treaty which supersedes all laws (Migratory Bird Treaty).

The closing may be by prohibiting, taking, or killing of animals or birds mentioned or described, at any time, or at definite times, and it may also be accomplished by prohibiting “hunting” or “killing” generally at any time or at definite times, or “hunting” for specified birds or animals, at any time, or at definite times.

Section 1 of the Act (1929 N.C.L., 1941 Supp., sec. 3036) “wild birds” as “upland-game,” “predatory” and “nongame” birds. Swan are “migratory game birds.”

Section 4 of the Act (N.C.L. 1929, sec. 3038) defines the words “to hunt,” “hunting,” etc., to include shooting, killing, and capturing wild animals and wild birds and the pursuing and tracking of wild animals, birds, and fowl.

Section 8 of the act defines “open season” as the time during which it shall be lawful to hunt for “game animals,” “fur-bearing animals,” “game birds,” etc. Although not stated, the converse would be that “closed season” would be the time such activities respecting such game animals, fur-bearing animals, game birds, etc., would be unlawful. Thus a closed season without qualification would not apply to wild birds that were not game birds, *i.e.*, “predatory” and “nongame” birds (certain hawks, falcon, magpie, crow, raven, horned owl, English sparrow, blue jay, and starlings). It would not apply to wild animals that were not “game” or “fur-bearing” animals, *i.e.*, “predatory” animals (bobcat, lynx, wolf, mountain lion, coyote, weasel, and skunk).

When the definition of the words “to hunt” is compared with the definition of “closed season” it is seen they refer to all “wild animals, fowl, or birds” whereas a closed season refers only to some such and excludes predatory animals and birds. The necessary conclusion is that a licensed hunter can hunt wild animals or wild birds all year long except those protected by the establishment of a closed season during such closed season.

It remains to inquire how a closed season is established, or in what manner hunting is prohibited. Section 10 of the Act says that game animals, game birds, and nongame birds shall not be hunted so as to impair the supply thereof. That would not affect the hunting of predatory animals or predatory birds. There is no means of ascertaining from the law when the other kind of hunting would "impair the supply."

The Legislature has established closed seasons not by classification usually, such as "game animals," "game birds," but by name and species. See sections 64, 65, 66, 68, 71, 79. Section 77 mentions "fur-bearing animals" as a class. Muskrats are provided for in the separate Act of March 26, 1929 (N.C.L. 1929, sec. 3142, etc.) Section 66 is materially altered by Statutes of 1943, page 52. Section 79, relating to beaver, as amended appears as chapter 119, 1945 Statutes of Nevada.

It must be concluded that the Legislature in adopting the method of specific mention rather than by the classifications defined by the Act (in all cases except section 77) intended that there should be no closed season on any bird or animal not specifically mentioned. The season in such case would always be open.

The commission may "fix the dates for hunting and fishing in each of said districts" within the limits provided in this Act. The County Commissioners may shorten or close the season entirely (section 67, N.C.L. 1929, sec. 3101). These powers could not be construed to authorize a closed season on a bird or animal not included in a closed season mentioned in the Act. The selection of a particular bird or animal or class thereof for protection by a closed season is a matter for the Legislature not delegated to any administrative agency.

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ing his privilege a question of fact might arise as to what bird or animal he was hunting, but after that question was solved no doubt could arise as to whether there was a closed season on the bird or animal. If there was, one could point out the place in the law where it was established.

(4) Under section 30 of the Act (N.C.L. 1929, sec. 3064) the duty of the commission to fix a fee for the privilege of taking carp is mandatory regardless of the beneficial or noncommercial feature of the business. One who desires to take carp must obtain a permit and pay a fee fixed by the commission. It is probable that this is a police measure to make sure game fish are not taken under pretense of fishing for carp only.

Section 47 (N.C.L. 1929, sec. 3081) gives the commission power to take or permit the taking of "minor or unprotected fish" and to fix a price which must be obtained and paid into the treasury. In such case the agent or permittee acts for the commission and pays no fee. The State does not tax itself.

(5) Section 92 of the Act (1929 N.C.L., 1941 Supp., sec. 3126) attempts the difficult task of defining offenses and prescribing rules of evidence in one and the same paragraph. In the matter of offenses it is unlawful to have any part of a game animal in possession in a season closed respecting that animal. An attempt to create an exception is made by giving a person 60 days after the beginning of the closed season to consume such part, but it is limited to cases where "the possession is lawful" and thus becomes meaningless. Exception is made if a deer lawfully taken in another state is brought into this state during the closed season by the person killing it.

In the matter of evidence it is provided that possession shall be prima facie evidence that the animal was unlawfully killed in the closed season when it was the property of the State. It is further provided by proviso that any evidence of lawful taking required by law shall be attached

to such animal or part of animal.

This section of the law has nothing to do with having in possession, not killing. Killing comes under "hunting" (sec. 4) and hunting is limited by the various sections establishing closed seasons for respective birds and animals. Penalties are provided in section 94 (N.C.L. 1929, sec. 3128).

The section sets up no rule, prima facie or otherwise, of evidence to the fact that an accused individual illegally killed game. That fact must be proved as in other criminal cases.

The section sets up a prima facie rule of evidence indicating unlawful possession of unlawfully killed game. Prima facie evidence is admissible but not conclusive. It may be overturned by other evidence, or it may be supported by other evidence. Only when standing alone and uncontradicted or satisfactorily explained.

(6) Sections 31 and 34 of the Act (N.C.L. 1929, secs. 3065 and 3068), relating to polluting and impeding of the flow of streams, have in mind specific acts and neglects and one act or neglect followed by a continuing damage would be one offense. If it were terminated and then followed by another the repetition of the original act or neglect would constitute a second offense. The commission would be well advised in issuing a reasonable notice before causing an arrest but there is no provision in the Act that each day of damage from one act or neglect shall constitute a separate offense. The commission has the right to ask injunction in the courts, in connection with or independently of, a criminal prosecution and in such cases a judge might hold each day's defiance of his injunction to be an increase of contempt and punish accordingly.

(7) The only penalties in the Act are provided in section 94 and do not include any forfeitures of equipment. The Act forfeits licenses under certain conditions of violating privileges or refusal to exhibit the license certificate. An arresting officer may take into possession certain equipment as an incident of arrest, but only for use at trial. This must be restored to the owner when no longer required as evidence. Fish and game in excess of the limit may be confiscated (because it belongs to the State), but fish and game within the limit, lawfully taken, must be restored to the hunter or fisherman. (Opinion of Attorney General, August 17, 1942, Attorney General's Report 1943-1944, pages 28-30, last two paragraphs.)

I trust this will answer your inquires satisfactorily.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

By HOMER MOONEY, *Deputy Attorney-General*.

P.S. The session laws of the 1945 Legislature have just been distributed and although no amendment of the fish and game laws would change the foregoing opinions, it would be well to incorporate the sections amended in 1945 in your forthcoming compilation.

A list of the sections amended, by chapter number, is as follows:

Sec. 23, Chap. 148—Truckee River.

Sec. 24, Chap. 148—Truckee River.

Sec. 25, Chap. 148—Truckee River District No. 1.

Sec. 28, Chap. 70—Humboldt River.

Sec. 29, Chap. 148—Lake Districts, March 22, 1945.*

Sec. 29, Chap. 185—Lake Districts, March 22, 1945.*

Sec. 33, Chap. 137—Screens and gratings.

Sec. 39½, Chap. 202—Catfish and black bass limit.

Sec. 50, Chap. 147—County fish and game fund.
Sec. 64, Chap. 146—Migratory game birds.
Sec. 65, Chap. 148—Mountain sheep and deer protected.
Sec. 69, Chap. 119—Fish and game limits.
Sec. 79, Chap. 119—Beaver.
Sec. 91, Chap. 119—Deer tags.

*The amendment of section 29 in chapter 148 is inoperative, having been superseded by the amendment of the same section in chapter 185.

201. Fish and Game—Chapter 148, Statutes of 1945, Amending Section 29 of Fish and Game Law, Regulating Fishing in Lake Tahoe, Becomes Inoperative by Reason of Chapter 185, Statutes of 1945.

CARSON CITY, May 11, 1945.

MR. SHIRL COLEMAN, *State Game Warden, Box 678, Reno, Nevada.*

DEAR MR. COLEMAN: I have your inquires of May 1 respecting Assembly Bill No. 12 and Senate Bill No. 34 (80 is correct) passed by the 1945 Legislature and both approved March 22, 1945. These bills are, respectively, chapter 148, page 233, and chapter 185, page 297, Statutes of Nevada 1945, now printed in the advance sheets.

Both acts purport to further amend section 29 of the fish and game law (1929 N.C.L. 3063, as amended 1929 N.C.L., 1941 Supp., sec. 3063, Statutes 1943, page 205).

In such a case the later amendment to the section would govern, and as the Secretary of state records the time receives the approved bills from the Governor and currently assigns them a consecutive chapter number, chapter 185 (S.B. 80) will govern. Of course chapter 185 rewrites section 29 only. Sections 23, 24, 25 and 65 as amended by chapter 148 are not affected.

The only variance between section 29 in chapter 148 and section 29 in chapter 185 is that the former adds a provision making it unlawful “for any person to fish in or from the waters of Lake Tahoe, district No. 9, which lie in Ormsby County, Nevada, and district No. 10 which lie in Douglas County, Nevada, between the dates of the first day of November each year and the thirtieth day of April of the following year.” This provision is now inoperative. For the same reason the apparent error in referring to parts of Lake Tahoe as being in districts 9 and 10 becomes immaterial.

Very truly yours,

ALAN BIBLE, *Attorney-General.*

By HOMER MOONEY, *Deputy Attorney-General.*

202. Taxation—Law for Assessment and Taxation of Motor Vehicles Does Not Provide Authority to Fix Valuation of Trailers.

CARSON CITY, May 11, 1945.

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

MY DEAR GOVERNOR: You recently made inquiry concerning the registration of trailers

under the law for the licensing and registration of motor vehicles and other applicable laws for the assessment and taxation of personal property. In particular the question is propounded whether there is any difference in the procedure for imposing the personal property tax on a trailer as distinguished from a motor vehicle.

The Act as amended as to section 17 in 1943 (Statutes of Nevada, 1943, page 266) so far as pertinent here reads:

* * * *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; * * *

Section 1 of the Act gives the following definitions:

(a) "Vehicle." Every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by human power or used exclusively on stationary rails or tracks.

(b) "Motor vehicle." Every vehicle as herein defined which is self-propelled.

(g) "Trailer." Every vehicle without motive power designed to carry property or passengers wholly on its own structure and to be drawn by a motor vehicle.

Section 6 of the Act, so far as pertinent, reads:

Every owner of a motor vehicle, trailer, or semitrailer intended to be operated on any highway in this state shall, before the same can be operated, apply to the department for and obtain the registration thereof.

It is apparent from sections 1 and 6 that a trailer is "a vehicle of a type subject to registration in this state" referred to in section 17.

Section 25 of the Act provides for fees for the registration of "motor vehicles, trailers, and semitrailers." The fee for trailers varies from two to five dollars according to weight, but it is provided that "for every trailer designed for the installation of or equipped with household appliances used therein for living purposes the registration fee shall be a flat fee of five dollars."

Under section 2 of the Act County Assessors are ex-officio officers of the Motor Vehicle Department.

Until the recent Legislature, section 11 of the Act provided for registering vehicles upon payment of the license fee "together with the payment of the personal property tax thereon * * * basing the assessed value of the vehicle upon the schedule of values contained in the 'National Used Car Market Report.'"

It may be observed that while the "National Used Car Market Report" currently gives a schedule of values of motor vehicles it does not do so in the case of trailers.

Section 11 of the Act was amended in 1945 (Statutes of 1945, page 151) effective July 1, 1945. The change consisted in making the basis for the assessed valuation "the assessed value of the vehicle upon the schedule of values for assessment purposes fixed by the Nevada Tax Commission for that year."

The Legislature of 1945, also amended the Tax Commission Law in section 7 (Statutes of 1945, page 79) effective July 1, 1945. The amendment gave the commission the power to "fix and establish the valuation for assessment purposes of all * * * in the state and motor vehicles." This is done before the first Monday of December in each year and is "for the next succeeding

calendar year and shall be subject to equalization by the State Board of Equalization at the September meeting thereof for such calendar year.”

It may be observed that the duty of the Tax Commission is limited to “motor vehicles” and trailers are not named. The meeting in December of this year is for the next calendar year 1946 and the valuation is subject to equalization in September 1946.

For the immediate present, therefore, the assessment for personal property taxation will follow the law existing prior to July 1, 1945, and it will be some time after that before the Tax Commission assumes its new powers. In any event, we do not find authority to fix the valuation for “trailers.”

Reverting to the standard now existing, based on the National Used Car Market, we find that this report does not cover trailers.

However ambiguous the law may be as to the standard for valuation for trailers, there is no uncertainty on the point that the taxes must be paid when the vehicle is registered.

The revenue law, Nevada Compiled Laws 1929, sections 6421, 6472, and 6636, provides a complete plan for assessing and collecting taxes on personal property by the County Assessor and especially property not secured by real estate. When the collection is made between January and July the tax rate for the preceding year is used.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

203. Motor Vehicles—Revocation Driver’s License—Formal Record of Conviction Must Be Furnished.

CARSON CITY, May 14, 1945.

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

DEAR MR. ALLEN: In accordance with our conversation last Thursday you have furnished me with further information concerning the revocation of the driver’s license of Elmer James Huckaby of Fallon, Nevada, and I find the situation to be as follows:

Immediately after April 12, 1945, Hon. G.W. Likes, Judge of the Police court of Fallon forwarded to you, as Administrator, Drivers’ License Division, Department of Highways, a pink slip “report of Conviction for Violation of motor Vehicle Laws.” This recited that Elmer James Huckaby was tried April 12, 1945 and “Convicted of driving while drinking,” the date of the offense being April 11, 1945. The judge recommended “Suspension of license for 60 days.”

On April 23, 1945, as administrator, you signed an “Order of Revocation” reciting that it appeared from the records of your department that Huckaby “was convicted on April 12, 1945, in the Police Court, Fallon, Nevada, of ‘Driving While Drinking.’” His license was therefore revoked effective April 12, 1945 “under the authority of section 33-2 of the Uniform Motor Vehicle Operators’ and Chauffeurs’ License Act of Nevada.”

Under date of May 11, 1945, Judge Likes forwarded to you a transcript of the municipal court record in the case of Huckaby. He advised that he was unable to furnish you a copy of the criminal complaint as “it seems to have disappeared from my office.”

The transcript, duly certified, is as follows, after the title of court and cause:

Charge: Drinking and driving car and running through stop signs. April 11, 1945. 1:30 A.M.

Released on \$50.00 bail. April 11, 1945. 5:30 A.M.
Fined \$25. Paid.

Section 33 of the Act referred to (Ch. 190, Statutes of Nevada, 1941) requires the department to forthwith revoke the license of any operator or chauffeur upon receiving a "record of such operator's or chauffeur's conviction" of any of six enumerated offenses, among which is:

2. Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug.

Under the opinion of Attorney General Mashburn, dated July 16, 1942 (page 6, Attorney General's Report, 1943-1944) your action in revoking a driver's license must be based on the record of conviction embraced in the transcript set out above. For this reason the revocation of April 23, 1945, was premature.

It now develops from the letter and transcript furnished you by Judge Likes, dated May 11, 1945, that no date is given for the trial of Huckaby nor whether he pleaded to the charge. The charge given in the record is "Drinking and Driving car and running thru stop signs" (not "Driving while drinking," as stated on the pink slip report).

The police court of Fallon is not a court of record having a seal and must appear affirmatively from the record, and nothing can be presumed or supplied that is not found on the record.

The record before you now does not show a conviction for any offense, much less the offense enumerated in the statute, viz: "Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug."

I suggest that you inform Judge Likes that unless, within five days, Mr. Huckaby is charged with "driving a motor vehicle while under the influence of intoxicating liquor" on a street in Fallon, April 11, 1945, and is tried and convicted of that offense, and a formal record of that conviction is furnished to you by the judge, you will reinstate Mr. Huckaby's license and restore his license papers. I think it would be well to send a copy of such letter to the City Attorney of Fallon inasmuch as he is familiar with the history of the case and has written to you concerning it and is in position to advise you relative to such further proceedings as are warranted by the facts.

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

204. Motor Vehicles—Duty of County Recorder to File Mortgages.

CARSON CITY, May 19, 1945.

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

DEAR MR. JEPSON: On May 17, 1945, you requested me to advise the County Recorder of Washoe county respecting an inquiry as to the Recorder's duty to file chattel mortgages on motor vehicles in the light of chapter 240, Statutes of 1945, respecting the licensing and registration of motor vehicles.

On May 18, 1945, I had a telephone conversation with the Deputy County Recorder of Washoe County, in the absence of the County Recorder. This will confirm that conversation in which I advised that under a given state of facts mortgages of motor vehicles should be received for filing.

The situation contemplated was one in which the vehicles were not operated on the public highways and were not, therefore, within the purview of the Licensing and Registration Act as

amended in 1945 (chapter 240, Statutes 1945).

Realizing that it is a difficult matter for a ministerial officer to determine the fact of use or nonuse of the highways as a guide for conduct, I have made further study of the amendments and now advise that mortgages of motor vehicles generally are entitled to filing with the County Recorders and it is the duty of County Recorders to file all mortgages on the same whether they are used on the public highways or not.

It should be remembered that while all personal property mortgages offered should be filed, such filing in the case of motor vehicles used on the public highways will not give constructive notice to subsequent purchasers or incumbrancers. The law in this respect is changed by chapter 240, Statutes of 1945, making filing with the Motor Vehicle Commissioner the exclusive method of giving such constructive notice. Persons offering mortgages on motor vehicles for filing might well be informed of this new rule.

Your duty to file personal property mortgage is created by sec. 2112, 1929 Nevada Compiled Laws, 1941 Supp., that such mortgages are entitled to be filed under that Act.

The amendment to the Licensing and Registration Act adding section 15(e) to the Act (Statutes of 1945, p. 470) provides: "the method provided in this act for giving constructive notice of a chattel mortgage on a vehicle registered hereunder, is exclusive, and any such chattel mortgage is expected from the provisions of sections 987, 988 and 989 N.C.L."

It is significant that section 986, stating that chattel mortgages are "entitled to filing" is not impaired by the amendments of 1945. Neither was there any attempt to amend section 2112, 1929 Nevada Compiled Laws, 1941 Supp.

There may conceivably be cases in which the filing of a chattel mortgage on a vehicle with the County Recorder will give constructive notice, but Recorders are not in position to give any assurance on this point because it depends on the question whether the vehicle in question is or is not subject to the Licensing and Registration Act.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

205. Motor Vehicles—Proper County in Which to Apply for License Plates, Licenses and Registration—Personal Property Tax.

CARSON CITY, May 25, 1945.

HON. L.E. BLAISDELL, *Acting District Attorney, Mineral County, Hawthorne, Nevada.*

DEAR MR. BLAISDELL: I have your letter of May 17, 1945, and in reply beg to advise as follows:

You inquire as to the practice of County Assessors in collecting license fees and personal property taxes on motor vehicles and trailers when the owners reside in some other county in Nevada.

You state that in your county "nonresidents" are coming to Hawthorne and Babbitt for temporary work and are paying their license fees and personal property taxes in Churchill County and returning to their work in Mineral County. Your county Assessor has been taxing trailers and the State Police have cited the owners to purchase their license plates in your county. You ask for an opinion or other action to insure certainty and uniformity in the administration of the

applicable law.

Answering your specific inquiry and assuming that by “nonresidents” you refer to owners who would be considered nonresidents except for the provisions of the licensing and registration law, the proper county in which to apply for and pay for license plates, licenses and registration for motor vehicles and trailers and to pay personal property taxes on motor vehicles and trailers is the county in which the owner actually resides or dwells. This test should be applied hereafter in order that past mistakes, if any, may not be repeated.

For the guidance of District Attorneys in their advise to County Assessors I am writing to them as follows:

The law of Nevada governing the licensing and registration of motor vehicles (1929 Nevada Compiled Laws, 1941 Supp., sections 4435-4435.39, as further amended, chap. 186, Statutes of 1943, and chap. 96, Statutes of 1945) involves the exercise of certain licensing and registration functions by County Assessors as officers, ex officio, of the Motor Vehicle Department, coupled with the exercise of certain taxing functions by the same Assessors under the revenue law and taxing functions by the same Assessors under the revenue law and under the supervision of the Nevada Tax Commission. In the discharge of these official and ex officio functions County Assessors should be guided by the opinions of the respective District Attorneys.

Under the licensing and registration law a nonresident is considered to be a resident of Nevada for the purpose of licensing and registration of his motor vehicles or other vehicles, including trailers, operated or drawn on the public highways, if he comes into this State for the purpose of being gainfully employed or if, while residing in this State, he accepts gainful employment. (Section 17 of Act amended, chap. 186, Statutes of 1943).

Application for registration must be made to the county Assessor of the county in which the applicant resides. (Section 6 of Act.)

The applicant must pay the registration fee and the personal property tax on the vehicle registered before receiving a license and certificate of registration. If the applicant is the owner of real estate and improvement in the county in which the application is made, payment of the personal property tax may be deferred if the vehicle is forthwith placed on the real property roll. (Section 11 of Act, as amended, chap. 96, Statutes of 1945.)

From these sections it is clear that the application for registration, the payment of registration fees, and the payment or securing of payment of personal property taxes must be in the same county in which the owner of the vehicle actually resides and dwells. Assessors should not receive any application from any owner who does not actually reside and dwell in their county.

Some confusion has arisen in cases where applicants have already applied for license plates and registration and paid taxes in counties where they do not actually reside. Such practices should not be followed hereafter.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

By HOMER MOONEY, *Deputy Attorney-General*.

206. Intoxicating Liquors—Excise Tax Cannot be Collected on Liquor Not in State.

CARSON CITY, May 31, 1945.

HON. JOHN E. ROBBINS, *McNamara & Robbins, Attorneys at Law, Elko*,

Nevada.

MY DEAR SENATOR: I have your inquiry of May 26, 1945, received in this office on May 28, 1945, respecting the excise tax provision of the State liquor law as amended by chapter 216, Statutes of 1945.

The question is whether, under this law as amended, a licensed "importer" of "liquors" who sells and delivers intoxicating liquor outside this State which never has been in this State is required to pay an excise tax on the same.

The answer is in the negative.

I have discussed your letter with Mr. Henry Coleman, Supervisor, Liquor Tax Department, Nevada Tax Commission, and he agrees the foregoing question embraces known facts.

The excise tax in question is levied "respecting all liquor and upon the privilege of importing, possessing, storing, or selling liquor." (Section 19(c) of law.) This means "in Nevada." "All licensed importers and manufacturers of liquor *in this State* shall for the privilege of importing, possessing, storing, or selling liquors, pay the excise tax herein imposed and established." (Section 19(a) of law.) Naturally the excise is not imposed except if and when the privilege is exercised. Authority to exercise the privilege is granted by license. (Section 15 of law.) The excise is on the actual exercise of the privilege. The excise is levied respecting "liquor" and measured by quantity and quality. (Section 19(c) of the law.)

It follows that to collect the excise an "importer" must be found and imported "liquor" must be found in Nevada. "Importer" means any person who, in the case of liquors which are brewed, fermented or produced outside of the state, is first in possession thereof *within the State* after completion of the act of importation." (Section 1(i) of law.) "Liquor" is defined in section 1(e) of the law.

Other sections of the law might be cited in support of the foregoing. It is sufficient to say that an excise tax cannot be collected on any liquor that is not and never was in this state.

Very truly yours,

ALAN BIBLE, *Attorney-General.*

cc to Mr. Henry Coleman.

207. Counties—No Power to Sell for Delinquent Taxes Personal Property While Bankruptcy Proceedings are Pending.

CARSON CITY, June 2, 1945.

HON. PETER BREEN, *District Attorney, Esmeralda County, Goldfield, Nevada.*

DEAR MR. BREEN: We acknowledge receipt of your letter dated May 28, 1945, which arrived in this office May 31, 1945, submitting your opinion relative to the power of the county to sell for delinquent taxes personal property which has been taken over by the trustee in bankruptcy proceedings.

We are of the opinion that your advice that such property cannot be sold while bankruptcy proceedings are pending is a correct statement of the law.

Section 6472 Nevada Compiled Laws 1929, provides for the immediate collection of taxes on personal property when the owner of such property does not own real estate in the county of sufficient value to pay such taxes.

Section 6473 Nevada Compiled Laws 1929, authorizes the Assessor to seize sufficient of the personal property when the taxes are not paid and proceed to sell the same at public auction to pay the taxes. Upon payment of the purchase money, he shall deliver to the purchaser the property sold.

Property of the bankrupt estate passes to the trustee in bankruptcy. The rule stated in 6 Am. Jur. p. 593, par. 144, is as follows:

By virtue of a provision in the Bankruptcy Act, every kind of property, save such as is exempt, which before the filing of the petition is in bankruptcy, was capable of being transferred by the bankrupt by any means, or of being levied on by creditors or otherwise seized by judicial process and sold thereunder, passes to the trustee in bankruptcy, as of the date of adjudication, for the benefit of the bankrupt's creditors.

Bankrupt Act, par. 70, 11 U.S.C.A. 110.

The County Assessor would be liable to charge of contempt of court if he seized for the purpose of sale the property under control of the trustee in bankruptcy.

As held in the case of *Ex parte M.V. Tyler*, cited in your letter, "where a sheriff of a county levied upon property in the possession of a receiver appointed by the U.S. Circuit Court, to collect State taxes and continued to detain the property contrary to the order of the court, he is guilty of contempt of court and liable to punishment therefor."

"State official's power to determine and levy taxes must yield to federal government's constitutional power to establish just rules for liquidation in bankruptcy," is the rule stated in *City of Springfield v. Hotel Charles Co.*, 84 F.(2) 589.

It appears therefore that the procedure is to await adjudication of the claims for taxes filed in the bankruptcy proceedings, which claims are payable in the order of priority as set forth in paragraph (b), sec. 104, title 11, Bankruptcy, U.S.A.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

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

208. Intoxicating Liquors—Retailers Holding Importers' Licenses May Continue Under Licenses Until End of 1945 Under Section 17 of Nevada Liquor Law, as Amended in 1945.

CARSON CITY, June 13, 1945.

MR. H.C. COLEMAN, *Supervisor, Liquor Tax Department, Nevada Tax Commission, Carson City, Nevada.*

DEAR MR. COLEMAN: I have your letter of May 28, 1945, requesting an interpretation of the Nevada Liquor Law as amended by chapter 216, Statutes of 1945.

The particular inquiry is whether retailers of liquors who hold importers' licenses can continue to import liquors after July 1, 1945, in view of the provision inserted in section 17 of the law as amended in 1945, as follows: "No retailer or retail liquor dealer shall purchase any liquor from other than a state licensed wholesaler."

It is my opinion that an importer licensed January 1, 1945, or at any time before July 1, 1945, can continue to import liquor until December 31, 1945, independently of the provision quoted above. There is added to section 17 by the amendment, the following: "(a) Nothing in this act

shall terminate any license heretofore issued, before midnight December 31, 1945.”

If the first-quoted provision limiting the purchases by retailers would have the effect of rendering an importer’s license of no value, it would assuredly terminate the license “before midnight December 31, 1945,” as effectually as if the licenses were cancelled, and would be in direct conflict with the act as amended in 1945, continuing all licenses in effect until December 31, 1945.

Section 17 of the law retains the following from the original text, with minor verbal changes:

Nothing in this act shall be deemed to prohibit any county, city or town in Nevada from requiring an importer or seller of liquor to obtain a local license before engaging in such business.

The State law has never licensed or concerned itself with retailers as such. They are licensed by the county, city or town. If it should so happen that upon the issuance of a new retailer’s license on or after July 1, 1945, the local authorities required licensees to purchase liquors from state licensed wholesalers only, importers previously holding state licenses might desire to surrender their importers’ licenses and obtain a refund, under the provision of section 17 of the law as amended.

Under the law as it has existed from the beginning and as administered, an importer’s license does not authorize the sale of any type of liquors (sec. 2). In order to make such sales the licensee must first secure an appropriate license or licenses applicable to the class or classes of business in which he is engaged.

As you note, it has been long understood that there is nothing in the law to prevent a retailer from obtaining an importer’s license or an importer from obtaining a retailer’s license.

It is to be regretted that the amendment will not serve the desired object of requiring retailers to buy from state licensed wholesalers only. The provision for a voluntary request for the termination of a license June 30, 1945, and for a refund for the unexpired term will serve a useful purpose however in all cases where a licensee holding a wholesaler’s or importer’s license desires to go out of business, or if an importer, to change the location of his place of business. Under a prior law no refunds were allowed. (Attorney General’s Report, 1943-1944, p. 191; 1936-1938, p. 66.)

Very truly yours,

ALAN BIBLE, *Attorney-General*.

By HOMER MOONEY, *Deputy Attorney-General*.

209. Public Schools—“Athletic Teams of Schools” Defined—Insurance.

CARSON CITY, June 15, 1945.

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

DEAR MISS BRAY: I have your inquiry of June 13, as to the meaning of the words “athletic teams of schools” used in chapter 222, Statutes of Nevada 1945.

You suggest that practically all students enrolled in physical education classes engage in intersquad athletic competition periodically during the school year.

From the standpoint of interpretation little light can be gained from the definition of the word “team.” Webster defines “team” as a “number of persons selected to contend on one side in a match.”

Recourse must be had to construct in order to find the meaning, involving consideration of its context, and the general purpose of the law.

The title of the Act refers to “loss arising out of injuries received by them” (students) “in the course of athletic practice or competition as members of school athletic teams.”

Section 1 of the Act speaks of “protection to student members of athletic teams of schools” from “loss arising out of injuries received by them in the course of athletic competition or practice.”

Section 4 of the act requires the school authorities to cooperate “in reporting the total number of students to be included in the group insured and in certifying as to the membership of individual students on their athletic teams should he or she be injured.”

It seems significant that the phrases “school athletic teams,” “athletic teams of schools” and “their athletic teams” (referring to schools) found in the title, in section 1 and in section 4 of the Act, indicate a view of each school athletic team as a whole and embrace those selected to contend in matches with similar teams of other schools. They would include regular members and substitutes on the baseball, football, basketball, and other teams.

In cooperating with the administration of the law the head of each school might estimate the *number* eligible for group insurance by taking the total number of regular and substitute members of each team customarily chosen for matches with other schools. In national sports for example a baseball team includes 9 regulars and perhaps an equal number of substitutes. Often the size of the school governs the supply of substitutes. In a moderate sized school the “school athletic team” might be in number about 50 students.

When a student is injured in practice or in competition or in travel for those purposes (while under the immediate charge of school coaches or authorities) the head of his school is directed to certify whether he or she is one of the *number* estimated as belonging to the athletic team of that school. Thus he or she will be identified as covered by the blanket insurance provided by the Act.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

By HOMER MOONEY, *Deputy Attorney-General*.

210. Motor Vehicle Fuel—Bond of Licensee Under Act Expires with License Unless Contains Continuing Provision.

CARSON CITY, June 25, 1945.

NEVADA TAX COMMISSION, *Carson City, Nevada*.

Attention: R.E. Cahill, Chief Clerk.

GENTLEMEN: This will acknowledge receipt of your letter dated June 8, 1945, inclosing a form of surety bond furnished under chapter 74, Statutes of Nevada 1935, and requesting an opinion on the following questions:

1. Is the form of the bond, as written and executed, to be considered continuous without any expiration until notice of cancellation has been filed by the company or release be given from all liability by the Nevada Tax Commission?
2. Should any notice be given by the bonding company when the applicant's

license is renewed each year, to the effect that the bond is considered in force for the ensuing year or that premium has been received, or can we assume once the bond is filed that no further evidence is needed from year to year indicating that the bond is still in force and that in this instance we can still consider the bond issued on July 10, 1935, as still in full force and effect in accordance with provisions of the law?

We are of the opinion that the bond should show upon its face that it is continuing in character. The proof sheet submitted, showing your proposed change in the form of the bond, supplies the continuing provision.

The rule stated in 33 Am. Jur. Licenses, paragraph 56, page 375, relating to the period and expiration of bonds, is as follows: "Although there is some authority to a different effect, the majority of cases in which the point is considered hold that a bond given to secure the proper performance of his obligations by one to whom a license is to be issued expires with the license."

As stated in *United States v. Smith*, 19 L. Ed. 506: "Where one secured a license as a distiller of coal oil, and gave a bond with surety which contained no provision extending its effect beyond the period for which the license ran, it was held that neither the principal nor the surety was liable for any breach of the conditions of the bond after the expiration of the license."

Section 4, chapter 74, Statutes of Nevada 1935, makes it unlawful for a person to operate as a dealer without holding a license, and provide an annual fee for such license. It further provides: "Before granting any such license said tax commission shall require the applicant to file with said tax commission a bond duly executed by such applicant as principal and by a corporation qualified under the laws of this state, as surety, payable to the State of Nevada, conditioned upon faithful performance of all the requirements of this act and upon the punctual payment of all excise taxes, penalties and other obligations of such applicant as a dealer."

A person to operate as a dealer under the statute must hold a license and pay the annual license fee.

The form of bond submitted will continue in effect during the authority of the dealer to operate.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

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

211. Constitutional Law—Number of Judges in Judicial District Can Be Increased Only in Event of Vacancy—Chapter 228, Statutes of 1945.

CARSON CITY, June 26, 1945.

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

DEAR GOVERNOR CARVILLE: Yesterday, June 25, 1945, you advised me that you had appointed the Honorable Charles Lee Horsey as Judge of the Eighth Judicial District Court of Nevada, in and for the counties of Clark and Lincoln, effective for the term from and after July 1, 1945, to and including December 31, 1946.

You inquire whether this appointment is constitutional, or, if not, how may a valid appointment be made under the constitution and the provisions of chapter 288, Statutes of Nevada 1945.

At the outset I may say that for a great many years this office has refrained from giving an opinion on constitutional questions such as this which cannot be satisfactorily solved without recourse to the Supreme Court. I follow that wise custom in this instance, disclaiming power of final determination, but I am pleased to state the problem and my views on it for your convenience.

It is my opinion, as hereafter indicated, that only by the coming on of a vacancy in the office of Judge of the Eighth Judicial District Court, in and for the counties of Clark and Lincoln, by death, removal disability or resignation of the incumbent, can the evident desire of the Legislature be accommodated. By such a resignation the office now filled by one officer will be entirely vacant, empty and unoccupied. It can then be filled by naming two appointees to fill the office formerly filled by one man. The salaries shall remain until the end of the existing term "as heretofore provided by law." See Stats. 1937, page 3; sec. 8449, 1929 Nevada Compiled Laws, 1941 Supp.

Section 5 of Article VI of the constitution prescribed nine judicial districts in the State and provided for the election of judges therein for four-year terms. It also provided as follows:

The Legislature may, however, provide by law for an alternation in the boundaries or divisions of the districts herein prescribed, and also for increasing or diminishing the number of the judicial districts and judges therein. But no such changes shall take effect, except in the case of vacancy, or the expiration of the term of an incumbent of the office.

Chapter 228, Statutes of Nevada 1945, is entitled "an Act to amend 'An act to create judicial districts in the State of Nevada, provide for the election of district judges therein, fix their salaries and compensation for expenses, and repeal all acts and parts of acts in conflict herewith,' approved March 27, 1929." It was approved March 26, 1945. It will "be in full force and effect" on July 1, 1945, unless or to the extent it may "specifically prescribe a different effective date." Sec. 7301 Nevada Compiled Laws 1929.

The following extracts from the amendatory Act of 1945 cover the matters pertinent to this discussion:

SECTION 1. The State of Nevada is hereby divided into eight judicial districts * * * the counties of White Pine and Lincoln shall constitute the Seventh judicial district; and the county of Clark shall constitute the Eighth judicial district. * * * for the Eighth judicial district there shall be two judges elected. Whenever a vacancy shall occur in the office of any such judge, it shall be filled as provided by law; *provided*, that the second judge herein provided for the Eighth judicial district shall be appointed to take office on the first day of July 1945 and his term of office shall expire on the thirty-first day of December 1946.

SEC. 4. Until the end of the existing term for which the respective judges of the district courts of the State of Nevada have been elected, the salaries of said judges shall remain as heretofore provided by law; thereafter the salaries of the judges for the districts herein provided for shall be seven thousand two hundred (\$7,200) dollars per year. * * *.

Sections 2 and 3 of the original Act remained unchanged. Section 2 is probably obsolete but significant. Secs. 8447-8448 Nevada Compiled Laws 1929.

The changes wrought by these amendments are as follows:

1. Alteration of the boundaries of the Seventh and Eighth judicial districts.

2. Increase in the number of judges in the Eighth judicial district.
3. Increase of the salary of the judge of the Seventh judicial district from \$6000 (Statutes 1937, page 3) to \$7,200. The salary of the judge of the Eighth judicial district was fixed at \$7,200 by Stats. 1937, page 3, (See 1929 Nevada Compiled Laws, 1941 Supp., sec, 8449) and remains the same.

The change drawn directly in issue in this inquiry is the one increasing the number of judge sin the Eighth judicial district. The provision for the appointment of the second judge for the Eighth judicial district is specifically designed to take effect July 1, 1945 (as it would, if otherwise uninhibited, under sec. 7301 Nevada Compiled Laws 1929). On July 1, 1945, the four-year term of office of the incumbent of the office of the judge of the Eighth Judicial District Court of the State of Nevada, in and for the counties of Clark and Lincoln, to which he was elected in 1942, will not have expired. So long as there is no vacancy in that office occasioned by the death, disability, removal, or resignation of that incumbent, the contemplated change cannot go into effect.

It is true that in section 1 of the Act as now amended it is provided that the Eighth district shall comprise the county of Clark and that two judges shall be elected for the Eighth district, but that is prospective legislation to guide the election in November 1946. The present Eighth district comprises Clark and Lincoln counties. The section also provides (as it did in 1929) “whenever a vacancy shall occur in the office of any such judge, it shall be filled as provided by law.” That provision has no particular significance here, except as emphasizing the need of a vacancy as a prerequisite to an appointment. To say that a new office is created which requires filling is answered by the fact that there is no new office is created which requires filling is answered by the fact that there is no new office and the existing office is already filled. (*Walcott v. Wells*, [21 Nev. 47.](#)) If an incumbent in office were discharging its functions, there could not be another and de facto occupant of the same office. (*State v. Blossom*, [19 Nev. 312.](#))

Very truly yours,

ALAN BIBLE, *Attorney-General*.

212. Legislative Counsel Bureau—No Authority to Appoint Assistant Legislative Counsel.

CARSON CITY, July 10, 1945.

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

DEAR MR. SCHMIDT: This wlll acknowledge receipt of your letter of July 6, 1945, in which you asked for the opinion of this office as to the authority of the Legislative Counsel Bureau, established pursuant to chapter 91, page 136, 1945 Statutes of Nevada, to appoint an assistant legislative counsel.

Reference to the minutes of the meeting of the Legislative Counsel Bureau, held May 12, 1945, reveals that at this meeting Mr. A.N. Suverkrup, of Carson City, Nevada, was appointed as legislative counsel to serve as such during the pleasure of the board, but not beyond the term of office of the members of the committee, at a salary of \$400 per month commencing July 1, 1945.

The minutes likewise show that upon motion of Senator Cox, seconded by Assemblyman Miller, and unanimously voted, Mr. Frank Helmick was appointed in an advisory capacity to assist the said A.N. Suverkrup in carrying out the duties of the office, at a salary of \$200 per

month commencing July 1, 1945.

Your inquiry as to whether or not the appointment of Mr. Frank Helmick by the Legislative Counsel Bureau is authorized by law is answered by section 2, chapter 91, 1945 Statutes of Nevada, page 137, which reads as follows:

So soon as possible after their appointment the members of the legislative counsel bureau shall appoint a person of skill and training in the art of government and in governmental finance as legislative counsel to serve as such during the pleasure of the board, but not beyond the term of office of the members of each respective bureau. Such legislative counsel shall receive a salary of four hundred dollars (\$400) per month. He shall be provided with an office as in the case of state officers and he shall have authority to employ necessary clerical help and assistance.

In our opinion, this section is plain and unambiguous. The authority of the Legislative Counsel Bureau is clearly limited to the one appointment and that is of "a person of skill and training in the art of government and in governmental finance."

The Act likewise provides that the legislative counsel (not the Legislative Counsel Bureau) shall have authority to employ necessary clerical help and assistance. Accordingly, it is our opinion that the appointment of Mr. A.N. Suverkrup by the Legislative Counsel Bureau was within the provisions and in full accord with section 2 of the law. It is our further opinion that the Legislative Counsel Bureau has no authority to appoint an assistant or any other necessary help or assistance. This latter authority is specifically given by the law to the legislative counsel himself.

In this case, therefore, Mr. Suverkrup holds a valid appointment from the Legislative Counsel Bureau and he is the one authorized to employ help and assistance.

It is my conclusion that under the present state of the record there is no valid appointment of Mr. Frank Helmick and I would, therefore, suggest that his payment be withheld until such time as a valid appointment is certified to you.

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

213. Motor Vehicle Registration Law—Traveling Carnivals Must Register Motor Vehicles While in Nevada Unless They Satisfy Assessor they are Merely Traveling Through State.

CARSON CITY, July 11, 1945.

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

DEAR MR. McEACHIN: I have your letter of July 2, 1945, inquiring if the management of a traveling carnival or their employees are subject to the proviso in section 17 of the Motor Vehicle License and Registration Law (1929 N.C.L., 1941 Supp., sec. 4435.16, as amended. See chap. 186, Statutes of 1943), if their vehicles are registered outside this state.

Under the provisions of section 17 which precede this proviso "nonresident" owners of such vehicles so registered are exempt from the licensing and registration provision of the Nevada law.

The proviso, however, classifies nonresidents in fact as "residents" for the purposes of the

proviso so as to require them to obey the licensing and registration provisions under two conditions. These conditions apply to any person who (1) “while residing in this state, accepts gainful employment within this state” and (2) who “comes into this stat for the purpose of being gainfully employed therein.” This proviso 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; *provided further*, nothing in this subparagraph shall be construed to require registration of vehicles of a type subject to registration under this act operated by nonresident common motor carriers of persons and/or property, contract motor carriers of persons and/or property, or private motor carriers of property as stated in subparagraph (b) of this section.”

In the first category are those who accept gainful employment “while residing in this state.” At all events the condition as to accepting gainfully employment operates when and while the employee is “residing in this state.” “Residing” means “dwelling,” but it can hardly be applied to a case where the person is passing through or filling a show or theatrical engagement as a mere transient. (Compare *Robinson v. Longley*, [18 Nev. 71.](#))

It follows that the application of the law depends on the particular facts in each case. Certainly those who come into the State “for the purpose of being gainfully employed therein” must register and be licensed whether actual residents or not. As to the others who work here, they must convince the County Assessor, who acts as agent for the department, that they are practically “on the wing” as the *Robinson* case says. If they remain in the county and live there for any length of time, the Assessor may properly collect the license and tax prescribed by law.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

By HOMER MOONEY, *Deputy Attorney-General*.

214. Optometry—Practice in Boulder City Has No Connection With Federal Government—Person Not Exempt from Provisions of Act.

CARSON CITY, July 12, 1945.

DR. CHRISTIE G. BROWN, *Secretary, Nevada State Board of Optometry, 320 First National Bank Building, Reno, Nevada.*

DEAR DR. BROWN: This will acknowledge receipt of your letter dated July 9, 1945, in which you request an opinion relative to the immunity from the statutes of Nevada regulating the practice of optometry of a person practicing in Boulder City who claims he is not under the jurisdiction of the State.

We are of the opinion that such practice by an individual has no connection with the Federal Government. A person practicing optometry in Boulder City is not exempt from the provisions of the Act to regulate the practice of optometry approved March 17, 1913, as amended.

Opinion of the Attorney General, No. 3, dated July 21, 1931, held as follows, “The Nevada labor laws, tax and revenue laws, Industrial Insurance Act, State Mine Inspector’s Act, Public

Contractors' Act, and all other civil laws of the State of Nevada still apply and should be enforced within the so-called Boulder Canyon Project Federal Reservation." The opinion recited, "That all State laws relating to civil rights and intercourse of individuals in force and effect Federal reservations at the time of the establishment thereon remain in full force and effect and are enforceable thereon until superseded by some legislation on the part of the Federal Congress, is well established and the law well settled, is shown by Chicago, Rock Island and Pacific R.R. Co. v. McGlenn (U.S.) 29 Law Ed. 270; Barrett v. Palmer, 31 N.E. 1017; Crook-Horner & Co., v. Old Point Comfort Hotel Company, 54 Fed. 604; Gill v. State, 210 S.W. 637; Steele v. Halligan, 229 Fed. 1011."

The court in Nixis v. Commonwealth, 131 S.E. 236, held that neither property nor business of other than Federal Government, located or conducted for their private gain on Federal land, is exempt and the State may impose merchant's license tax on one conducting business in a railroad station on such land.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

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

215. Motor Vehicles—Certified Copy of Order Setting Estate Aside to Surviving Wife Only Basis Necessary to Issue New Certificate.

CARSON CITY, July 20, 1945.

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

DEAR MR. GREGORY: This will acknowledge receipt of your letter of July 12, 1945, received in this office on July 13, 1945, in which you call my attention to a problem with the Motor Vehicle Department of the State.

You state your facts as follows:

On July 5, 1945, the District Court of this district and county in the Estate of Ralph E. Leland made its order setting over unto the surviving wife, Grace M. Leland, all of the property of the estate, consisting of two motor vehicles. This procedure was had under the statutory provisions of section 9882.117, 1941 Supplement to Nevada Compiled Laws. I have in my possession the certificates of ownership issued by the Motor Vehicle Department covering these two automobiles, and upon receipt of the order setting aside the estate presented these ownership certificates, together with a certified copy of the order, to the Motor Vehicle Department requesting transfer of ownership certificates on the basis of the record.

The department informed me that, in pursuance of an opinion from your office by Mr. Mathews who was then Deputy Attorney General, they could not transfer these certificates to Mrs. Leland unless she endorsed the same as distributee of the estate. I believe the department may have misconstrued some advice given to them by your office and feel that such a requirement in contravention of a court order is not contemplated in the law.

I have taken this matter up with Mr. Mathews and he tells me that he has never given an

opinion to the effect that after an order of court is submitted, following a conveyance of title, that it is also necessary that the distributee sign the certificate.

It is entirely possible that the department has Mr. Mathews' opinion of January 29, 1941, in mind, and I am attaching a copy of that opinion to this letter for the further information of the department and yourself. It should be noted that in that case court proceedings were not commenced and, naturally, the surviving widow was required to furnish certain documentary proof and evidence of title. It should likewise be noted that Mr. Mathews' opinion specifically said, among other things, that automobiles which were not clearly shown to be community property should be backed up by some order of court issued pursuant to section 9704 Nevada Compiled Laws 1929. The section under which you have proceeded in section 9882.117, 1929 Nevada Compiled Laws 1929, which was contained in the earlier probate code of Nevada.

It is my opinion, in accordance with the former holding of this office, that the department needs nothing other than a certified copy of the order setting the estate aside to the surviving wife as the basis for issuing to the surviving wife a new certificate. There is no need of having this certificate endorsed or signed by the distributee, and this office has never so held.

I am sending a copy of this opinion to the Motor Vehicle Department for its further information and guidance.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

cc to Hon. Malcolm McEachin, Motor Vehicle Commissioner, Carson City, Nevada.

216. Corporations—Two Distinct Methods of Dissolving.

CARSON CITY, July 24, 1945.

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

DEAR MR. McEACHIN: I have your letter of July 20, 1945, referring to a copy you received from W. Howard Gray, attorney for Boulder Dam Syndicate, Inc., of a letter sent me under date of July 14, 1945.

Mr. Gray's letter contains a complete history of his correspondence with your office, involving a difference in viewpoint respecting the provisions of sec. 64 of the General Corporation Law of 1925 (Nevada Compiled Laws 1929, section 1663) and you ask my opinion determining the question.

The section in question is as follows:

If it should be deemed desirable, in the judgment of the board of the directors, and most for the benefit of any corporation organized under this chapter, that it should be dissolved, the board may adopt a resolution to that effect and call a meeting of the stockholders having noting power to take action upon the resolution so adopted. Such meeting of the stockholders shall be held upon due notice and if at such meeting or any adjournment thereof the holders of stock entitled to exercise two-thirds of all the voting power shall by resolution consent that the dissolution shall take place, a copy of such resolution, together with a list of the names and residences of the directors and officers, certified by the president, or a vice president, and the secretary, or an assistant secretary, and the treasurer, or an assistant treasurer, shall be filed in the office of the secretary of

state, who, upon being satisfied that the requirements aforesaid have been complied with, shall issue a certificate that such corporation is dissolved. Whenever the stockholders having nine-tenths of the voting power shall consent in writing to a dissolution, no meeting of stockholders shall be necessary, but on filing such consent in the office of the secretary of state, he shall, as above provided, issue a certificate of dissolution.

It is my opinion that the last sentence in this section provides a second and independent means of dissolving a corporation. It is plain, clear, and unambiguous and there is no room in it for construction contrary to the plain meaning of the words employed therein.

Accordingly, as it does not appear that you deny that the document offered to you for filing is the consent in writing of the stockholders having nine-tenths of the voting power to a dissolution, it is your duty to accept the fee tendered, file the same, and issue your certificate of dissolution.

I do not fail to note that the sentence says, "he shall, *as above provided*, issue a certificate of dissolution." It is "above provided" in the case of the first method of dissolving a corporation (through a resolution of desirability by the directors; a meeting, resolution and vote of stockholders holding two-thirds of the voting power; and the filing of the proper certificate) that the Secretary of State "upon being satisfied that the requirements aforesaid have been complied with, shall issue a certificate that said corporation is dissolved."

I do not find it necessary to construe the provisions concerning the first method of dissolution in order to determine what will "satisfy" the Secretary of State that "the requirements aforesaid have been complied with." But there is no requirement as to such satisfaction in the second plan contained in the last sentence of section 64. The words "as above provided" in the last sentence, with no mention about "being satisfied," mean merely he shall "issue a certificate of dissolution."

Any construction of section 64 that would require the board of directors to initiate a proceeding for the dissolution of a corporation in any event, would give boards of directors powers they do not possess. (Petition of Evans, 52 Fed. 2d 961, District Court of Nevada, Norcross, J.) It is mere guesswork to conclude that the only purpose of the last sentence was to dispense with a physical assemblage and meeting of stockholders.

I am sending a copy of this letter to Mr. Gray.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

P.S. You also sent me a copy of the mimeographed bulletin of your office concerning the mechanics of dissolving a Nevada corporation, and requested my comments on the same.

In view of my opinion as to the scope and effect of section 64, foregoing, I think you should recast this bulletin so as to show that there are two distinct methods of dissolving a corporation. (1) By resolution of directors, call for meeting, meeting of stockholders, resolution by stockholders, and certification. (2) By consent of stockholders in writing filed.

It will be necessary to rewrite the entire bulletin except the last part "Miscellaneous Notes," pp. 5 and 6. If you desire to recast the bulletin we will be glad to go over the new draft with you.

A.B.

cc to W. Howard Gray, Attorney at Law, Ely, Nevada.

217. Bonds—Bond Elections—Union School Districts—Lyon County.

CARSON CITY, July 30, 1945.

HON. WAYNE O. JEPSON, *District Attorney, Lyon County, Yerington, Nevada.*

DEAR MR. JEPSON: This will acknowledge receipt of your letter dated July 21, 1945, received in this office July 23, 1945, in which you ask for information concerning a proposed bond issue by the Yerington Union School District.

Attorney General Bible has told me concerning your conference with him in the office a short time ago, and in addition this will confirm what was said there. Mr. Bible has asked me to transmit my thoughts and suggestions in the premises to you. I am pleased to do this.

As you will note, I have some doubts about the correct application of the union school laws. If the union high school district embraces exactly the same boundaries as the union grammar school district, I assume that there will be no real controversy, but thought it wise to call these Union School Laws to your particular attention.

We are in accord with your conclusion that the election should be held in conformity with sections 5837 and 5838 Nevada Compiled Laws 1929, and that the ballots should be prepared and such election held and determined under the provisions of sections 6093-6093.04, 1941 Supp., 1929 Nevada Compiled Laws, the same being chapter 95, Statutes of 1933; chapter 70, Statutes of 1937; and chapter 98, Statutes of 1941, as amended.

You have undoubtedly considered the provisions of sections 5971 and 5973 Nevada Compiled Laws 1929.

The first section mentioned gives the board of education of the union district the power to issue bonds, for the purposes allowed by law, on behalf of any school district included in the union, which bonds may be authorized at a general election or at a special school bond election to be called and conducted, in such district, on behalf of which the bonds are sought to be issued; and providing that the taxes for the payment of such bonds shall be levied only on and against the taxable property within the boundaries of the school district on behalf of which the bonds are issued.

Section 5973 also provides the separate identity of each of the particular districts which were united to form the union school district shall retain for the purpose of school bond election therein, the issuance of bonds on behalf of such particular school district, and the levy and collection of taxes therein for the payment of the bonds.

I understand Lyon County is the only county that does not have a county high school, and is divided into four high school districts. It appears that separate taxes are levied in each district and the budgets give separate valuations for elementary and high school districts.

In 53 Nevada 1010, the question of the validity of a bond election by the board of trustees of Fernley high school district No. 4 of Lyon County was considered. This was decided before the adoption of the bond election law of 1933, as amended. It does not consider the question involving union school districts, but I suggest it for what information it contains.

The Act providing for the union of school districts authorizes on ore more elementary school districts lying wholly within the boundaries of a high school district to unit in forming a union district, but it is not clear as to a bond issue for such union district when it also provides that the separate identity of the particular districts shall be retained for the purpose of bond elections and the levy of taxes for the payment of the same.

Very truly yours,

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

218. Osteopath—Entitled to Practice in County Hospitals—Board of Hospital Trustees Cannot Make Rules and Regulations Otherwise—Humboldt County.

CARSON CITY, July 31, 1945.

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

DEAR MR. BROWN: This will acknowledge receipt of your letter dated July 23, 1945, and receipt of the same in this office July 25, 1945.

You request an opinion from this office on the following questions:

1. Does the Board of Hospital Trustees of Humboldt County, Nevada, have the legal right to prohibit osteopathic physicians and surgeons from treating patients in the Humboldt County General Hospital?
2. If the Board of Hospital Trustees of Humboldt County, Nevada, does not have the legal right to prohibit osteopathic physicians and surgeons from treating patients in the Humboldt County General Hospital, does that board have the legal right to make and adopt bylaws, rules, and regulations, the effect of which will prevent osteopathic physicians and surgeons from treating patients in the Humboldt County General Hospital?

The question with respect to the rights of osteopathic physicians and surgeons under the statutes of this State has been presented to this office a number of times.

The identical question was presented to this office in 1939 with respect to the right of an osteopath to practice in the Lincoln County Hospital and again in January 1943 relative to such practice in the Mineral County Hospital.

In each opinion this office held that in view of the clear provisions of section 5001 Nevada Compiled Laws 1929, an osteopath who is properly certified under the osteopathic laws of Nevada is entitled to practice in county hospitals.

As stated in the letter opinion of January 13, 1943, an examination of the State law on the question discloses that there has been no change in the law which would change the opinion given by Alan Bible, then Deputy Attorney General, in 1939. On the other hand, the Legislature has made it more definite and certain that an osteopath shall be admitted to a county hospital. Chapter 124, Statutes of 1941, section 3, reads as follows:

Every person admitted to a county hospital and required to pay charges and fees thereto shall have the right to the services of a physician or surgeon of his or her own choosing, and to employ such surgical nurse or nurses as may be necessary; *provided*, the cost of said physician, surgeon, or nurses shall never become a claim against the county.

The answer to your first question is, therefore, in the negative.

Your second question is also answered in the negative.

Section 2228 Nevada Compiled Laws 1929, as amended by chapter 19, Statutes of 1943, section 4, quoting that part deemed relevant, reads as follows:

The board of hospital trustees shall make and adopt such bylaws, rules, and

regulations for their own guidance and for government of the hospital as may be deemed expedient for the economic and equitable conduct thereof, not inconsistent with this act or the ordinance of any city or town wherein such hospital is located.

Regulations as suggested would not only be inconsistent with section 4, above, but in violation of the statutes of the State.

See also opinions of Attorney General, No. 61 and No. 67, 1943-1944, Biennial Report, and Attorney General Diskin's opinion No. 179, 1925-1926 Biennial Report.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

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

219. Nevada Hospital for Mental Diseases—Salary of Superintendent.

CARSON CITY, August 18, 1945.

DR. RODNEY E. WYMAN, *Nevada Hospital for Mental Diseases, Sparks, Nevada*.

DEAR DR. WYMAN: On August 7, 1945, I received a copy of Dryden Kuser's August 6 letter addressed to you. On August 10, 1945, Hon. Vail Pittman and Hon. Henry C. Schmidt asked me to advise them as to what compensation the Nevada Hospital for Mental Diseases should pay its superintendent.

The apparent confusion in reference to the compensation to be paid the superintendent is due to the fact that chapter 154, page 242, of the 1945 Statutes of Nevada, states that the superintendent "shall receive as annual compensation therefor the sum of five thousand (\$5,000) dollars per year. * * *," whereas, the General Appropriation Act, chapter 246, section 28, appropriates as salary of the superintendent the sum of \$7,200 for the fiscal years ending June 30, 1946-1947.

This office has on several previous occasions been asked for rulings upon similar questions.

In 1923 the then Attorney General, M.A. Diskin, held that where the Legislature has fixed the salary of an officer, the failure on the part of the Legislature in the appropriation bill to allow a sum sufficient to pay the salary so fixed would not thereby prevent the officer from collecting his salary. Attorney General's Opinion No. 38, 1923-1924 Biennial Report.

To same effect see Attorney General's Opinion No. 176, 1925-1926 Biennial Report. Also see Attorney General's Opinion No. 279, 1938-1940 Biennial Report.

Likewise see the Nevada Supreme Court cases of *State v. Westerfield*, [23 Nev. 468](#); *State v. Eggers*, [29 Nev. 469](#); *State v. Eggers*, [35 Nev. 250](#).

In conclusion and in accordance with the foregoing Supreme Court decisions of this State and the opinions of this office, it is our opinion that the Board of Commissioners of the Nevada Hospital for Mental Diseases is authorized to pay its superintendent a salary of \$5,000 per year.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

220. Insurance—Mortuary Fund, Arizona Law, a Reserve—No Requirements for Surplus and Protection for Creditors—Requirements Not Equal to Nevada Act.

CARSON CITY, August 20, 1945.

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

Carson

Attention: G.C. Osburn, Deputy.

DEAR SIR: This will acknowledge receipt of your letter received in this office July 26, 1945, inclosing a copy of The Benefit Insurance Corporation Law of Arizona 1943 and requesting an opinion upon the following questions:

1. Assuming that a company organized under this law could be admitted into Nevada under the provision for a mutual company, would the mortuary fund created under section 9 of the Arizona law, which is apparently a reserve for the payment of claims, be construed as a surplus as required under article 2, section 3656.12, paragraph 3, of the Nevada Insurance Code?

2. Would the deposit for the protection of members as provided under section 7 of the Arizona Act comply with the requirements of section 3656.13 of the Nevada Code, which requires a deposit for the protection of policyholders or policyholders and creditors of the company, and not just the policyholders?

We are of the opinion that the answer to each question must be answered in the negative.

Section 3556.22, 1929 N.C.L. 1941 Supp., being section 23, article 3 of the insurance law relating to foreign or alien companies provides in part deemed relevant as follows: "Upon complying with the provisions of this article, a foreign or alien company domiciled in any other state shall be permitted to enter this state; * * * *and provided further*, that the capital and/or surplus requirements of such company desiring to enter this state shall be at least equal to the capital and/or surplus requirements, if any, for similar organized domestic companies under this act; * * *."

Section 3656.12, 1929 N.C.L. 1941 Supp. (subdivision 3, section 13), reads as follows: "No mutual company organized under this article shall receive a license from the commissioner to issue policies or contracts of insurance until it has complied with the following requirements in respect of original surplus and applications for insurance applicable to the class and clause or clauses of section 5 describing the kind or kinds of insurance it is organized to write, as set forth in the following table:"

The table for life, accident and health reads as follows; "Class 1(a) and/or (b), bona fide applications, upon which there shall have been paid in cash by each applicant at least one-half ($\frac{1}{2}$) of the annual premium on the policy applied for, of at least two hundred fifty (250) members who are residents of this state for a death benefit for each member of not less than one thousand (\$1,000) dollars if life insurance, or for an accident and health benefit of not less than ten (\$10) dollars per week if accident and health insurance and a surplus of ten thousand (\$10,000) dollars."

Section 3656.13, 1929 N.C.L. 1941 Supp., being section 14, article 2, which provides for a deposit to be maintained with the commissioner, specified that such deposit shall be for the protection of all policyholders and creditors of the company. In the case of a mutual company authorized to write either or both kinds of insurance described in clauses (a) or (b) of Class 1, section 5, \$10,000. The same deposit is required for companies authorized to write insurance described in classes 2 or 3, section 5.

Nevada statutes require a minimum amount of capital and in addition a surplus of \$10,000.

The Arizona Act relating to benefit insurance corporations adopted in 1943 provides for the organization of health and accident companies operating an insurance business in which funds are provided by premiums and assessments.

Under section 3 of the Arizona Act, five hundred or more citizens of the United States and residents of the State may form a benefit insurance corporation by filing articles of incorporation.

Section 9 provides that each benefit insurance corporation shall have on file with the State Treasurer not less than five thousand dollars to be held in trust by him for the benefit and protection of the corporation's members.

Section 9 provides that each corporation shall create and maintain a mortuary fund by setting aside out of each life insurance certificate after the third month from the date of issue, fifteen percent of all premiums collected on each certificate during its first policy year, and not less than sixty percent of all premiums collected during the second and each succeeding policy year. On health and accident it is twenty-five percent and sixty percent.

The mortuary fund shall be used exclusively for the fulfillment of the policy contract and for no other purpose, but any part thereof may be deposited with the State Treasurer and be invested as provided in the Act.

It appears from the foregoing that a company may start business with five hundred members and five thousand dollars. The mortuary fund is a reserve for the protection of the policyholders only; this is a liability and there is no requirement for a surplus and no protection for creditors of the company.

The capital and original surplus requirements and protection for creditors of the company are, therefore, not equal to the requirements for similar organized domestic companies under the Nevada Act.

Section 3656.25, 1929 N.C.L. 1941 Supp., section 26 of the Nevada Act, defines the conditions precedent before a license to transact business in this State may be issued. The insurance commissioner may cause an examination to be made of the condition and affairs of such company and he must be satisfied that such company is qualified to transact insurance business in this State before a license is issued to such company.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

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

221. Motor Vehicle Registration Law—Persons from Other State Gainfully Employed Within This State Must Register Their Automobiles. See also Opinion No. 199.

CARSON CITY, August 21, 1945.

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

DEAR MR. McEACHIN: I have your inquiry of August 16, 1945, and inclosures as stated therein.

It appears that a Mr. Gannon of the engineering consultant firm of Nash, Keller & Gannon of San Francisco was stopped in Mineral County, Nevada, some time prior to June 5, 1945, and was

told to procure a registration certificate for the automobile which he was driving. Members of this firm are doing technical work at the Naval Ammunition Depot, Hawthorne, Nevada, and make frequent trips to Nevada for that purpose, sometimes staying two or three weeks. Mr. Gannon claims he was employed in California and sent to do work in Nevada. The facts do not indicate that any exemption is claimed as affected by any instrumentality of the United States.

It is our opinion that the provisions of section 17 of the Act of March 27, 1931, for the licensing and registration of motor vehicles, 1929 N.C.L. 9141 Sup., sec. 4435.16, as amended by section 1 of chapter 186, Statutes of Nevada 1943, applies to this case and requires registration. See former opinions of this office: Opinion No. 56, June 29, 1943, and Opinion No. 61, July 24, 1943.

The pertinent provisions of this section, as amended by chapter 123, Statutes of 1941, were as follows:

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, 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 section was further amended by chapter 186, Statutes of 1943, by inserting before the word “shall” the words:

or who comes into the state for the purpose of being gainfully employed therein
* * *.”

The amendment shows the deliberate intention of the Legislature to require all persons who work in Nevada to pay a fee for the registration of their motor vehicles and comply otherwise with the Act in the same manner as ordinary residents. This includes a compliance with section 11 of the Act (1929 N.C.L. 1941 Supp., sec. 4435.10), as amended, chapter 96, Statutes of 1945, requiring payment of personal property taxes on the vehicle at the appropriate time.

As this office has said before, our sole province is to interpret the law as it stands. Matters of convenience, comity, or policy are for the Legislature.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

By HOMER MOONEY, *Deputy Attorney-General*.

222. Trade-Marks—Registration of—”Reno Sporting Goods.”

CARSON CITY, August 27, 1945.

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

DEAR MR. McEACHIN: Reference is hereby made to your letter of August 23, 1945, wherein you inquire whether the name “Reno Sporting Goods” can be registered under the provisions of sections 7695-7697, inclusive, N.C.L. 1929, as a trade name, label and/or form of advertisement. You inclose with your letter of inquiry a proposed certificate to protect the association using label, trade-mark and form of advertisement known as “Reno Sporting Goods.”

We have examined the proposed certificate and find that the gist thereof is that the interested parties desire to register in your office the designation “Reno Sporting Goods” as a firm name and title under which to transact the business of dealing in sporting goods.

We have carefully examined the law, both statutory and the general law, with respect to the registering of trade-marks, labels, and forms of advertisement. After due consideration of our statute, to wit, section 7695 N.C.L. 1929, we are of the opinion that such statute does not provide for the registering of trade names used in the sense of firm names, but that the broadest interpretation of such statute is that it provides for the registering of forms of advertisement. An examination of the authorities, which are most numerous, discloses that words and names which are purely geographical and descriptive in their meaning are not subject to registration under such a statute. It is clear that the designation proposed by the interested parties can be described as nothing more or less than geographical and descriptive in that it simply designates Reno, which is purely geographical in its meaning, plus the words Sporting Goods, which are purely descriptive in nature.

It is true that under the trade-mark law words may be so used over a long period of time as to acquire what is known as a secondary meaning, that is to say, such words by long continued use designate some particular goods and place of business which by long continued use would become the subject of a trade-mark or label and thus be subject to registration. But, the term suggested, to our minds, is not of this character. Such words do not constitute a trade-mark and neither do they constitute a label in the common acceptance of that term within the meaning of the trade-mark law, and while they might constitute a form of advertisement, still, the proposed certificate designates such words as the firm name and title under which the parties propose to transact business. This in itself takes such designation out of the Nevada statute and in our opinion is not subject to registration thereunder.

However, we suggest that if the parties desire, they may register with the Secretary of State a form of advertisement which would include therein the words "Reno Sporting Goods" with some particular diagram or fanciful decoration surrounding them which would constitute it the form of advertisement within the statute.

Irrespective of whether the interested parties register "Reno Sporting Goods" as a trade name or firm name under the law of unfair competition we are of the opinion that they would have the right, irrespective of statute, to enjoin other persons or firms from using the same firm name or designation, provided, of course, they had acquired a secondary meaning of the term.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

By W.T. MATHEWS, *Special Assistant Attorney-General*.

223. Counties—Officers Not Allowed Any Amount for Traveling Unless Expense Necessarily Incurred—Coroner—Section 11441, 1929 N.C.L. 1941 Supp. Supersedes Section 2941 N.C.L. 1929.

CARSON CITY, August 31, 1945.

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

DEAR MR. SCOTT: This will acknowledge receipt of your letter dated August 20, 1945, received in this office August 24, 1945, containing the following questions, with a request for an opinion from this office.

"Is it your opinion that any county officer should be allowed any amount for traveling on official business unless he necessarily incurs the expense of such travel?"

Is it your opinion that N.C.L. 1929, section 2941, insofar as it conflicts with N.C.L., section 11441 as amended, is repealed by the later Act?"

Your first and second questions, in our opinion are answered in the negative.

We are of the opinion that section 11441, 1929 Nevada Compiled Laws, 1941 Supp., supersedes section 2941, Nevada Compiled Laws 1929, and the latter section is repealed insofar as it conflicts with the former section.

Section 2207 Nevada Compiled Laws, 1931-1941 Supp., provides as follows:

When any county or township officer or any employee of the county shall be entitled to receive his necessary traveling expenses for the transaction of public business, such expenses shall include his actual living expenses, not to exceed five dollars per day, but the amount allowed for traveling by private conveyance shall not exceed the amount charged by public conveyance; *provided, however*, that where it appears to the satisfaction of the board of county commissioners that travel by private conveyance is more economical, or where it appears that, owing to train or stage schedule or for other reasons, travel by public conveyance is impractical, or in case a part of the route traveled is not covered by public conveyance, the board of county commissioners, in its discretion, is authorized to allow for traveling by private conveyance an amount not to exceed seven and one-half cents per mile so traveled.

Necessary expenses must be interpreted to mean money expended to pay one's way as an incident in the performance of official duty. The section does not provide for additional compensation for such work, but provides that a claim shall be filed for expenditures allowed by law and that the same shall not exceed certain amounts. If there were no money expended by the official there could be no claim for reimbursement.

The word "expenses" has been defined by the courts in a number of cases.

Heublun v. City of New Haven, 54 A. 298, held: "The word 'expenses,' as used in a city charter providing that the selectmen shall receive a certain sum per hour for the time spent in their duties and their necessary expenses, means something due to the selectmen for money paid by him or debt incurred by him necessarily in the performance of his duty."

Harlan County v. Blair, 49 S.W. (2) 1028, held "'Fees' of officers are recompense for services, while 'expenses' indemnify them for funds expended."

State v. LaGrave, 23 Nev. p. 91. The court said: "There are to be no constructive expenses paid, but only such as are actual; that is, such as are real, bona fide, genuine expenses of travel."

Justices of the Peace are made ex officio coroners by section 11426 Nevada Compiled Laws 1929.

The Act creating coroner districts and making Justices of the Peace ex officio coroners was amended by chapter 180, Statutes of 1933, the same being section 11441, 1929 Nevada Compiled Laws, 1941 Supp. The allowance of twenty-five cents for mileage was amended to read: * * * "for each mile necessarily traveled in going to and returning from the presence of the dead body, seven and one-half cents" * * *.

This amended section therefore supersedes section 2941 Nevada Compiled Laws 1929.

Chapter 34, Statutes of 1939, which amended the Act providing for expense money for traveling and subsistence, the same being section 2207, 1929 Nevada Compiled Laws, 1941 Supp., includes township officers in its provisions, and provides that travel allowance shall not exceed seven and one-half cents per mile traveled.

Very truly yours,
ALAN BIBLE, *Attorney-General*.
By GEORGE P. ANNAND, *Deputy Attorney-General*.

224. Counties—County Clerk May Not Issue Marriage License for White Person To Marry Filipino.

CARSON CITY, September 4, 1945.

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

DEAR JUDGE WINTERS: I have your letter of August 30, 1945, requesting my official opinion on the two questions following:

1. Is it lawful for the County Clerk to issue a marriage license for a white person to marry a Filipino?
2. To what extent may the County Clerk go in reference to the qualification of applicants for marriage license?

As to the first question the provisions of section 249 of the Crimes and Punishments Act (Nevada Compiled 1929, sec. 10197) govern. That section prohibits a "person of the Caucasian or white race to intermarry with any person of the Ethiopian or black race, Malay or brown race, or Mongolian or yellow race, within the State of Nevada."

The section appears as amended in 1919 (Stats. 1919, p. 124).

The original Act of 1861 (Stats. 1861, p. 93) prohibited the intermarriage of whites with black persons, mulattoes, Indians or Chinese.

In the revision of 1912 the interdict was against the "Ethiopian or black race, Malay or brown race, Mongolian or yellow race, or the American Indian or red race." (R.L. 1912, sec. 6514.)

The amendment of 1919 dropped the American Indian from the interdict.

It is to be noticed that historically the legislation has proceeded from the particular to the general. "Black persons and mulattoes" have been replaced by "members of the Ethiopian or black race." "Chinese" have been replaced by "members of the Mongolian or yellow race." Members of the "Malay or brown race" have been added by the revision of 191, and Indians have been dropped by the amendment of 1919.

The application of the law therefore turns on the question whether a Filipino is a member of any of the interdicted races.

The case of *Roldan v. Los Angeles County*, 18 Pac. (2) 706, cited by you is authority that Filipino is not a member of the Mongolian or yellow race. It is also authority that a Filipino is a member of the Malay or brown race. In that case the California statute did not interdict the Malay or brown race. (Civil Code, Calif., sec. 60 as amended 1905.) The California law was later amended in 1933 (Statutes of California, 1933, chapters 104 and 105) to interdict members of the "Malay race." If this amendment had been in force when *Roldan v. Los Angeles County* was decided it is clear that the court would not have ordered the marriage license to be issued.

The *Roldan* case is useful however for its discussion of the races of mankind as commonly classified beginning with the common classification by Blumenbach in 1775 of the races into white, yellow, red, black, and brown. The opinion of Judge Sawyer in *In re Ah Yup* (5 Sawyer, 155-157; 104 Fed. Cas.) is referred to, citing the Blumenbach's classification.

Webster's New International Dictionary defines "Malay" as "a member of the dominant

brown race of the region including the Malay peninsula and the islands extending thence to Timor and from Timor north to Luzon, including Sumatra, Java, Celebes, the Philippines, and adjacent islands.”

The Encyclopedia Britannica, vol. 17, p. 727, “Philippine Island” states that “the Filipino people are descendants of the Malays Christianized by the Spaniards.”

It is my opinion that a Filipino is a member of the Malay or brown race.

As to your second inquiry, section 4053 Nevada Compiled Laws 1929, that “if the clerk be satisfied that there is no legal impediment thereto, he shall grant such marriage license.”

The form of license is given with the question required to be answered under oath (under penalty). There is no question in the form as to the race of either party. However, the clerk must be satisfied there is no legal impediment. It is also a misdemeanor to solemnize a marriage knowing the existence of any legal impediment (Nevada Compiled Laws 1929, sec. 4160). While a clerk might have some doubt whether an applicant was a Filipino, he would not be justified in concluding that a Filipino is not of the Malay or brown race and issuing a marriage license permitting him to wed one of the white race. Whether the question is found on the form or not, the clerk must be satisfied that no impediment exists and he may take any steps in reason to arrive at such a state of mind.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

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With Federal Government.

CARSON CITY, September 5, 1945.

HON. VAIL M. PITTMAN, *Lieutenant and Acting Governor State of Nevada*, Carson City, Nevada.

DEAR GOVERNOR PITTMAN: Reference is made to the Government telegram sent to you by Walter F. George, Chairman of the Senate Finance Committee, on September 3, 1945, and referred to this office yesterday, September 4, 1945.

I have just concluded a conference with Frank B. Gregory, who has been employed by the Unemployment Compensation Department of the State of Nevada for a number of years in a legal capacity, and with Mr. Mathews of this office.

It is our opinion that if the State of Nevada entered into an agreement with the Federal Government under the present State law it would result in the State payment being partially or totally reduced by the amount of the supplementary Federal payment in view of the Nevada statutes hereinafter referred to.

In answer to question number two it is our opinion that if the State of Nevada does not enter into such an agreement of the Federal supplementary payments would result in a reduction of the State amount in view of the Nevada statutes hereinafter referred to:

Section 9 of the Employment Security Administration Law of the State of Nevada, as amended by the 1945 Statutes, page 124, reads in part as follows:

The executive director is hereby authorized to enter into reciprocal arrangements with the appropriate and duly authorized agencies of other states, or the federal government, or both, whereby:

* * * * *

(3) Wages or services, upon the basis of which an individual may become entitled to benefits under an unemployment compensation law of another state or of the federal government, shall be deemed to be wages for the purpose of determining his rights to benefits under the Nevada unemployment compensation law, and wages on the basis of which an individual may become entitled to benefits under said law shall be deemed to be wages for services on the basis of which unemployment compensation is payable under such law of another state or of the federal government, but no such arrangement shall be entered into unless it contains provisions for reimbursements to the unemployment compensation fund for such of the benefits paid under this act and the Nevada unemployment compensation fund for such of the compensation paid under such other law upon the basis of wages, as the executive director finds will be fair and reasonable as to all affected interests; and * * *.”

Section 2.13 of the Nevada Unemployment Compensation Law, as amended by the 1945 Statutes, page 299, defines “unemployment.”

Section 2.14 of this same law defines “wages” as “all remuneration payable for personal services, including commissions and bonuses and the cash value of all remunerations payable in any medium other than cash; provided * * *.”

Section 3 of the Unemployment Compensation Law of Nevada, as amended by the 1945 Statutes, page 307, places the limit on weekly benefits at \$18 per week, with certain additional dependency allowances.

In view of these facts cited above, it appears very clear that the present State law would require to the State to credit any payments made by the Federal Government against the Unemployment Compensation Benefits paid under the State law.

In addition to the foregoing, section 5(e) of the Unemployment Compensation Law, as amended by the 1943 Statutes, page 246, provides that an individual shall be disqualified for benefits “for any week with respect to which or to a part of which he has received or is seeking unemployment benefits under an unemployment compensation law of another State or of the United States; *provided*, that if the appropriate agency of such other State or of the United States finally determines that he is not entitled to such unemployment benefits, this disqualification shall not apply.”

It may be that this section would result in a total disqualification under the State law.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

226. Intoxicating Liquors—Stocks Held by Importer in Nevada Not Immune from Ad Valorem Personal Property Tax.

CARSON CITY, September 12, 1945.

MR. R.E. CAHILL, *Chief Clerk, Nevada Tax Commission, Carson City, Nevada*.

DEAR MR. CAHILL: With reference to your letter of September 5, 1945, and the added facts supplied in your memorandum of September 11, 1945, I am of the opinion that the stocks of liquor of McKesson Liquor, Inc., located in Washoe County, Nevada, are not immune from the

ad valorem personal property tax assessed by the County Assessor.

This opinion is based on the facts exhibited, which are as follows:

1. Most of these liquors are imported by McKesson and Robbins, a separate corporation or partnership and they are consigned from abroad to some port in New York, Florida, or California. They are then shipped to McKesson Liquor, Inc., where they pass from the dominion and control of the importer.

2. The original consignment as loaded on shipboard consists of either a number of individual cases of liquor or a number of crates each containing a number of cases. In the latter case the crate would be the "original package" and would lose immunity from taxation the moment the crate should be opened. In the former case the case would be the "original package" and the bottles therein would lose immunity when the case was opened or the bottles removed therefrom.

3. Some of these liquors are imported by other firms and shipped to Nevada where they pass from the dominion and control of the original importer and lose their immunity from taxation.

I note that Mr. Doyle "did not consider the goods losing their non-taxable status by passing from the stock of one importer to another."

Mr. Doyle is in error in that respect. In the first place there is only one "importer" and that is the one first receiving the shipment from abroad. If he is also a wholesaler he may sell the goods in the original package to another, but the purchaser is subject to taxation in the State, whether the merchandise remains in the original package or not. Authority for this is found in the cases of *Pervear v. Massachusetts*, 5 Wall. 475-479; 18 L. Ed. 608. *Waring v. Mayor of Mobile*, 8 Wall. (75 U.S.) 110; 19 L. Ed. 342; and *Low v. Austin*, 80 U.S. 29, 20 L. Ed. 517; *Washington Chocolate Co. v. King County*, 152 P.(2) 981-989.

In the first case the court said: "Merchandise in original package, once sold by the importer, is taxable as other property."

In the second case the court said that "the good imported do not lose their character as imports and become incorporated into the mass of property of the State, until they have passed from the control of the importer, *or* have been broken up by him from the original cases."

The last case summarizes the authorities while deciding that the particular merchandise remaining with the importer in unbroken packages (of 140 pound bags of cocoa beans) was immune from ad valorem personal property tax in the State of Washington.

From the foregoing it is to be noted that it is immaterial whether McKesson Liquor, Inc., holds the liquors in original packages or not so long as the original importer who brought them to this country has sold them and parted with all control over them.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

227. Nevada Hospital for Mental Diseases—Board Has Authority to Expend State Funds for Repair of English Mill Drainage Ditch.

CARSON CITY, September 15, 1945.

HON. VAIL M. PITTMAN, *Lieutenant and Acting Governor, Carson City, Nevada*.

DEAR GOVERNOR PITTMAN: Reference is made to your recent inquiry concerning the authority of the Board of Commissioners of the Nevada Hospital for Mental Diseases to

reimburse the city of Sparks for expense incurred in the repair of the English Mill drainage ditch on State property.

Section 5 of the Insane Asylum Act, being section 3509 Nevada Compiled Laws 1929, reads in part as follows:

The board of commissioners as named in this act shall have full power and exclusive control of and over all the grounds, buildings, property and inmates of the hospital, and shall furnish or cause to be furnished all needful supplies, provisions, and medicine for the care of the insane, and have charge of all other matters connected with the institution. * * *.

It is our opinion that this section of the Nevada law gives your board ample authority to expend State funds for the repair of the English Mill drainage ditch under the set of facts presented. Money for the general support of the Insane Asylum was appropriated in chapter 246, Statutes of Nevada 1945, in section 28 thereof. One of the items of this section earmarks \$175,000 for general support, and it is our opinion that the funds needed herein are a proper charge against this item.

The State of Nevada has no adjudicated water rights from the English Mill drainage ditch, but its adjudicated rights are from the Kelly-Sullivan ditch, all of which appears in greater detail from the final Talbot decree on file in the District Court of the United States in and for the District of Nevada. The English Mill drainage ditch which runs through the property of the State of Nevada provides the State property with drainage and with a limited amount of water for irrigation. Our research shows that drainage service and irrigation are furnished to the State of Nevada in exchange for the State of Nevada repairing and maintaining this ditch through State property. This has been the arrangement for the last ten years, and although we are unable to find a written agreement to this effect, it is clear that the governing board has maintained and repaired this ditch and its State property under the provisions of section 5 noted above. This was likewise the practice last year, and we are advised by R.E. Wyman, Superintendent of the Nevada Hospital for Mental Diseases, that during the past year about 200 feet of the ditch were cemented where it ran through the State property and through the barnyard of the Asylum.

As noted above, we believe that the governing board has authority to spend State money for the repair of the English Mill ditch pursuant to the agreement of its superintendent to cooperate with the city of Sparks in repairing damage done to State property. Although the superintendent in his official capacity had no direct statutory authority to bind the State of Nevada, the governing board did have this authority and upon submission of the superintendent's report to the governing board, his commitments and agreement could not be ratified.

Our research has been somewhat hampered due to the fact that we are unable to find any written agreements between the governing board of the Hospital for Mental Diseases and the directors of the English Mill Ditch Company. It is respectfully suggested that representatives of these two boards meet at the earliest opportunity and reduce their understanding concerning the drainage and irrigation privileges, repair and maintenance of the English Mill ditch to writing.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

cc to R.E. Wyman, Reno, Nevada.

228. Surveyor General—Has Authority to Accept Applications to Enter for Purpose of Purchase From the State Certain Areas of Land Pursuant to Federal

Statute—Carey Act.

CARSON CITY, September 19, 1945.

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

DEAR MR. McLEOD: Reference is hereby made to your communication of September 17, 1945, inquiring whether, in view of the facts set forth in your letter and in the documents accompanying such letter, you have the legal authority to accept the application of one Max F. Uhlig to enter for the purpose of purchase from the state certain areas of land pursuant to the laws of this State providing for the entry of such land under and pursuant to the Federal statute known as the Carey Act.

We have examined the papers forwarded with your letter of inquiry and after due consideration of all the documents so forwarded, we beg to advise that find as follows:

1. That Max F. Uhlig is a citizen of the United States over the age of twenty-one years.
2. That he has made application under oath to enter 120 acres of land as described in his sworn application.
3. That Max F. Uhlig is the owner of 250 shares of the capital stock of the Pacific Reclamation Water Company and by reason thereof is entitled to have delivered to him by such company sufficient water to irrigate 250 acres of land during the irrigation season and which amount of water so delivered is not to exceed 1.75 acre feet of water per acre.
4. That the Pacific Reclamation Water Company has issued a certificate to the effect that said company will supply to Max F. Uhlig during the irrigation season of each year from May 1 to October 1 water for the irrigation of the 120 acres of land sought to be entered in your office by Max F. Uhlig, and such certificate further shows that the said Uhlig holds Certificate No. 146 of such company for the above-mentioned 250 shares of stock.
5. The State Engineer of Nevada advises this office that the Pacific Reclamation Water Company of Metropolis, Nevada, has perfected and now is the owner of all the decreed water rights of the Metropolis Land Company as set forth in the Edwards Decree adjudicating water rights of the Humboldt River Stream System, and further, that such company has a permitted right for the storing of water for the purpose of irrigation in said area of approximately 3,400 acres of land.
6. From your letter of inquiry it appears that the land desired to be entered by Max F. Uhlig, which land is described as S½SW and SW SE of section 20, T. 39 N., R. 62 E., has been patented to the State of Nevada under date of August 26, 1924.

It is our opinion that the application of the said Max F. Uhlig is in due and proper form and that is accompanied by the proper documentary evidence that the land sought to be entered by him will be furnished with water in accordance with our law. It is our opinion that all the provisions of section 17 of the State Act relating to the Act of Congress known as the Carey Act and being section 3080, Rev. Laws of 1912, insofar as the application is concerned, have been fully complied with and that you may legally accept such application. Further, if the provisions of the State law are complied with with respect to the conditions of final proof, it is our opinion that a patent to Max F. Uhlig can legally be issued.

We are returning herewith the file papers inclosed with your letter of inquiry.

Very truly yours,

ALAN BIBLE, *Attorney-General.*

By W.T. MATHEWS, *Special Assistant Attorney-General.*

229. Water Law—Humboldt River Board—State Engineer Not Authorized to Pay Expenses and Per Diem of Humboldt River Board—Creation of Water Districts Does Not Extend Such Authority.

CARSON CITY, September 27, 1945.

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

DEAR MR. SMITH: This will acknowledge receipt of your letter of September 14, 1945, in which you review a meeting of representatives of water users on the Humboldt River system and discuss the possibility of the formation of a board of eight members to assist the State Engineer by advise and recommendations in the work of water distribution and control throughout the entire Humboldt River district.

Your inquiry is directed to the authority of the State Engineer, under chapter 140, Statutes of 1913, the Act to provide a water law for the State of Nevada, to pay the members of such board a per diem and travel and subsistence expense at the legal rate paid for water commissioners.

The specific questions to which an answer is requested are as follows:

(1) Out of the Humboldt River Water Distribution Fund may the State Engineer pay a per diem and expenses of the Humboldt River board as now organized for attending meetings to work out plans for improving water service and control?

(2) If the answer to (1) is negative, may the members of said board be regularly appointed as water commissioners by the Governor, for services as designated in (1)?

(3) Will it be possible to create said board as an advisory board to Humboldt River District No. 1 (if created), and will the formation of a water district simplify the proceedings?

After a careful consideration of the statute in question, we are of the opinion that your first question must be answered in the negative.

Answering your second question, we are of the opinion that the statute enumerates certain duties to be performed by the water commissioners, and provides compensation and expenses for such commissioners while actually employed in the performance of their duties. The statute names all that it contemplates and cannot be construed to authorize such payments to commissioners appointed as an advisory board to the State Engineer.

Our opinion in answer to your third question is that the formation of a water district under the provisions of section 53 of the Act of 1913 will not extend the authority expressed in the statute to pay compensation and expenses to the members of the advisory board if created.

Chapter 140, Statutes of Nevada 1913, as amended by chapter 63, Statutes of Nevada 1945, expresses in its title the subject of creating the office of the State Engineer and other offices connected with the appropriation, distribution, and use of water, prescribing the duties of water users, providing penalties for failure to perform such duties, providing for the appointment of water commissioners, defining their duties and fixing their compensation.

Section 52 of the Act, as amended, provides for the appointment by the Governor, on the recommendation of the State Engineer, of one or more water commissioners for any stream system subject to regulation by the State Engineer, or for each district. The section provides the maximum salary, and provides for the payment of necessary travel and living expenses while actually employed in the performance of their duties.

Such commissioners are directed to execute the laws prescribed in sections 52 to 58 of the

Act under the direction of the State Engineer.

The duties of the water commissioners are designated, or that may be implied from the sections of the statute, are to carry out the directions of the State Engineer in dividing the waters of the streams or sources of supply among the several ditches and reservoirs, taking water therefrom according to the right of each user. To regulate the use of water and control the same by headgates and to give notice to parties interested when such control is exercised. Measuring devices must be maintained when required by the State Engineer for the purpose of assisting the water commissioners in determining the amount of water that is diverted from the stream by the various users.

Penalties are provided for the refusal to construct such devices and the water commissioners have the power to arrest any person for the violation of any of the provisions of the Act.

The duties of a water commissioner are enumerated and cannot be extended or restricted to any other service, and the compensation and expenses payable under the statute out of the Water Distribution Fund cannot be extended to members of a board not actually employed in performing the duties defined for water commissioners.

Section 53 of the Act provides that the State Engineers shall divide the State into water districts, when the necessity therefor shall arise, to insure the best protection for the water users and the most economical water supervision on the part of the State.

It does not appear from this section that the authority delegated to the State Engineer affirmatively authorizes the appointment and payment of officers other than those designated in the Act and such authority cannot reasonably be inferred or taken by implication.

The office of State Engineer is created by statute and possesses no power, except what the statute plainly confers upon such office.

As stated in Sutherland Statutory Construction, vol. 3, pages 272-274, "The rule has been variously phrased, including language to the effect that a power must be 'plainly' expressed; that a power is not to be 'inferred' or taken by 'implication'; or that the jurisdiction of an administrative agency is not to be 'presumed.'"

In the case of *McKenzie v. Douglas County*, 159 P.625, the court held that Acts conferring statutory powers on an officer are strictly construed. The court said, "It is an inflexible rule that the right even of an officer to demand expenses incurred by him in the performance of official duty must be found in the constitution or the statute conferring it, either directly or by necessary implication; * * *."

Board of County Commissioners v. Oregon R. & Nav. Co., reported in 2 L.R.A. 195, the court said, "It has for a very long time been considered the safer and better rule in determining questions of jurisdiction of boards and officers exercising powers delegated to them by the Legislature, to hold that their authority must affirmatively appear from the commission under which they claim to act."

Our Supreme Court in the case of *Ex Parte Arascada*, 44 Nev. p. 35, held in this respect as follows: "This is a well recognized rule of statutory construction and one based upon the very soundest of reasoning; for it is fair to assume that when the legislature enumerates certain instances in which an act or thing may be done, or when certain privileges may be enjoyed, it names all that it contemplates; otherwise what is the necessity of specifying any?"

Therefore, we are of the opinion that the statute in question cannot be construed so as to extend its provision for the payments authorized to be made to water commissioners to include members of an advisory board to the State Engineer.

Such a board as contemplated will be a definite advantage in the administration of the Humboldt River System, but the compensation of its members, in our opinion, is a subject for the Legislature.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

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

**230. Intoxicating Liquors—Instrumentalities of Federal Government—Navy
Commissioned Officers' Messes.**

CARSON CITY, September 29, 1945.

MR. H.S. COLEMAN, *Supervisor, Liquor Tax Department, Nevada Tax Commission,
Carson City, Nevada.*

DEAR MR. COLEMAN: After considerable correspondence, investigation and research, I am able to give you a definite reply as to the inquiry of National Distillers Products Corporation dated June 20, 1945.

Instrumentalities of the Federal Government are free from taxation by the State in the absence of any congressional Act permitting such taxation. This is established by a long line of decisions of the United States Supreme Court. The Buck resolution of October 9, 1940 (54 Stats. at Large p. 1059), specifically disclaims any intention to authorize States to tax instrumentalities of the United States.

Navy commissioned officers' messes have the status of instrumentalities of the Federal Government. *Fales City Brg. Co. v. Reeves*, 40 F.S. 35; *United States v. Query*, 37 F.S. 792, affirmed 121 Fed. (2) 631. Compare *Post Exchanges Standard Oil Co. v. Johnson*, 316 U.W. 481.

Regulation of Navy commissioned officers' messes is vested in the Bureau of Naval Personnel by the Navy regulations and other regulations having the force of law (under the constitution and Acts of Congress).

The Nevada liquor law, as amended by chap. 216, Statutes of Nevada 1945, governs the importation of liquors into this State and imposes an excise tax thereon. I do not find it necessary to discuss the question whether transportation from one State to a Federal reservation in another is "importation" under the rule announced in *Johnson v. Yellow Cab Co.*, 137 Fed. (2) 274, affirmed 321 U.S. 383, nor to discuss the effect of the first part of the Buck resolution (Title 4, U.S.C. sec. 13). See *Bowers v. Oklahoma Tax Com.*, 51 F.S. 652. I confine my opinion to dealings with the Naval officers on the reservation when furthering some instrumentality of government. The rule may well be distinguished respecting regulating and taxing civilians on a reservation.

Under the facts disclosed by the letter of National Distillers Products Corporation and amplified by the Acting judge Advocate General of the Navy in a letter dated September 11, 1945, "Navy Department authorized officers' messes may only procure certain types of alcoholic beverages under a ration plan, from the Merchandise Services Office, United States Navy, an official branch of the Bureau of Naval Personnel, located at 342 Madison Avenue, New York, New York. The latter office makes the purchase from the Navy allotment established by major suppliers, and pays for same from funds deposited in the account. * * * The Merchandise

Services Office * * * *takes title* to the merchandise at supplier's shipping dock, and *gives instructions* to the seller to deliver to a common carrier for shipment to a *designated* officers' mess." The shipping documents show the Merchandise Services Office, U.S. Navy, as the consignor, and the authorized mess as the consignee, at a Naval Station owned or controlled by the United States.

I advise that the National Distillers Products Corporation be advised when delivering goods so purchased, to a common carrier, to see that all these formalities are complied with by it. The title as owner of the Merchandise Services Office should appear and the name of the officers' mess, its location, and the name of such person appointed by the commandant to receive and receipt for the same should appear.

Notwithstanding any immunity from State taxation by reason of the existence of an instrumentality of the Federal Government, the State has and ought to have some reasonable power of inspection of such shipments. If for no other reason, it would be proper in order to distinguish between such transactions and those with civilians. In the case of *Duckworth v. Arkansas*, 314 U.S. 390-396, and again in the *Yellow Cab* case, 321 U.S. at 386, the Supreme Court said as much.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

By HOMER MOONEY, *Deputy Attorney-General*.

231. County Commissioners—Compensation of Justice of the Peace—Authority of Commissioners—Pioche.

CARSON CITY, October 3, 1945.

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

DEAR MR. SCOTT: I have your inquiry of September 11, 1945, relative to the compensation of the Justice of the Peace at Pioche and the means sought by the Board of County Commissioners to insure his compliance with their orders. Although the history of this matter is not quite clear, it is my opinion that the method proposed is not authorized.

Pursuant to an amendment of the constitution the Legislature passed a number of Acts culminating in that of February 21, 1921 (Stats. 1929, 19; Nevada Compiled Laws 1929, sec. 2201-2205). Section 1 of that Act makes it mandatory for Boards of County Commissioners to fix the compensation of township officers in their counties. The action must be taken at "the regular meeting in July of any year in which an election of township officers is held." The compensation is fixed respecting the "ensuing term" and must consider either of a "stated salary" or "by fees provided by law," or by both.

We find that in July 1942 the salary of the Justice of the Peace for the years 1943 and 1944 was fixed at \$75 per month. Nothing was added in the way of fees.

In 1943 on your suggestion the board ventured to construe its official action of 1942 as allowing the Justice of the Peace, in addition to his salary, such fees as he might collect in civil actions. It is observed that neither the regular action of July 1942 nor the "clarification" of 1943 purported to permit the Justice to retain costs assessed in criminal cases or to collect deficiencies in such costs assessed in criminal cases or to collect deficiencies in such costs from the county.

On the face of the record to this point it is apparent the Justice of the Peace was entitled to the

salary of \$75 per month for his term in 1943 and 1944. There does not appear to have been any official action taken in July 1944 to govern the compensation for 1945 and 1946.

Judge Marshall's decision is the law of the case in the absence of an appeal. However, if the payment made by the board involved a dismissal, the question may have been set at large.

In the instant practice it seems the Justice of the Peace sees fit to commingle sums collected from defendants so as to leave it problematical as to how much is on account of fines and how much on account of costs. Fines go into the State Treasury for educational purposes and should be paid to the County Treasurer in 30 days (Nevada Compiled Laws 1929, sec. 11305), but the charge against the county should not exceed five dollars. The judgment should specify the fine "with or without costs" (Nevada Compiled Laws 1929, sec. 11296). Costs should be specified (State v. Jameson, [13 Nev. 429](#)). Costs should not be deducted from the fine (Nevada Compiled Laws 1929, sec. 11260). They may be collected as in civil cases (Nevada Compiled Laws (Nevada Compiled Laws 1929, sec. 11262; see State v. District Court, [16 Nev. 76](#)). Justices of the Peace are required to make quarterly itemized reports (Nevada Compiled Laws 1929, sec. 2951-2952).

If the Board of County Commissioners is wedded to the idea that the Justice of the Peace is entitled to the "fees provided by law" in criminal cases, the five dollar maximum is only a maximum (not an absolute liquidated amount) and does not dispense with a showing of the precise amount. While a Justice of the Peace may make a charge (or debit memorandum), in his dealings with the county, it is provided in sec. 12 of the County Government Act (Nevada Compiled Laws 1929, sec. 1946) that if any officer be (in fact) indebted to the county such indebtedness must be deducted from his claim.

I do not see any positive warrant for requiring the Justice of the Peace to turn over to the county all fines and costs collected (unless the board is disposed to deny all claims for costs in criminal matters). However, if an audit convinces the board that any debit memorandum or charge is unwarranted and that there is a deficiency in the amount turned over, the board would be justified in directing the auditor to withhold the deficiency from salary or other warrants. This would precipitate a suit but would clear the air.

If the board has made no formal or sufficient order in July 1944, the order of 1942 would probably govern (although the Legislature is on record as being against a carry-over order). At any rate a clear order should be made in July 1946.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

By HOMER MOONEY, *Deputy Attorney-General*.

232. Nevada Hospital for Mental Diseases—Pay Status of Patients.

CARSON CITY, October 10, 1945.

S.J. TILLIM, M.D., *Superintendent, Nevada Hospital for Mental Diseases, P.O. Box 2460, Reno, Nevada.*

DEAR DR. TILLIM: This will acknowledge receipt of your letter dated October 3, 1945, in which you request an opinion as to the pay status of patients for care and treatment at the Nevada Hospital for Mental Diseases.

The statutes consider two classes of patients in determining the pay status for the care and

treatment received at the hospital—the indigent insane and the insane who have sufficient property from which the expenses may be paid or near kindred who are financially able to supply such expense.

Section 3511, 1929 N.C.L. 1941 Supp., relates to the commitment of insane persons. If the judge is satisfied that a person is insane and should be committed to the hospital, and finds that such person is incompetent to provide for his support and care and has no kindred, in certain degrees mentioned, of sufficient ability to provide for such care and support, he shall cause such person to be conveyed to the hospital at the expense of the State.

If patients are committed to the hospital where no provision is made in the order either declaring the person to be cared for at State expense or designating a guardian to arrange for such payment out of property of the patient, or directing the payment by kindred of the patient, as provided in section s3513 and 3514 N.C.L. 1929, then the payment for such patient comes within the provisions of section 3515 N.C.L. 1929, which provides in part as follows: “Paying patients whose friends or property can pay their expenses shall pay according to the terms directed by the board of commissioners; * * *.”

Where the court commits a person and an order is entered that such person be cared for at the expense of the State and it subsequently appears that the patient is solvent or has responsible relatives, there is nothing in the statute to prohibit agreements for the payment of the expenses by kindred of the insane.

However, to secure such payments an application should be made to the court for a modification of the order declaring the person to be an indigent, setting out the facts of the later information. If satisfied, the judge might make an order in conformity with the provisions of the above-mentioned sections 3513 and 3514 N.C.L. 1929, by appointing a guardian of the property of the insane or directing payment by a kinsman.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

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

233. Full Crew Law—Qualifications of a Flagman.

CARSON CITY, October 17, 1945.

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

Attention: Oscar W. Bryan, Deputy.

DEAR SIR: Reference is hereby made to your letter of October 10, 1945, with respect to the qualifications of a flagman under the full crew law of Nevada. Your specific inquiry is, “If a man employed for one year or more on the engine or in yard service is eligible to flag.”

An examination of the full crew law, to wit, sections 6318, 6319, 6320, 6321 and 6322 N.C.L. 1929, discloses that the flagman, whose qualifications are provided in section 6321, is necessarily a brakeman under such law. The common designation of brakeman is one who is engaged in train service. The Nevada full crew law is applicable only outside of yard limits and has no application to the operation of trains within yard limits, and neither does it apply to the operation of light engines while running as such outside the yard limits.

A strict construction of the law with respect to the qualifications of a flagman requires that such flagman shall have had at least one year’s actual experience in train service outside of yard

limits and in practically all cases this would apply to a brakeman. However, we are of the opinion that a man engaged in engine service who has had actual experience in the operation of engines on trains outside of yard limits for the period of one year will meet the qualifications of flagman under the Nevada law due to the fact that such a man has undoubtedly acquired actual knowledge of the necessity for and the methods used in flagging trains.

It is the opinion of this office that to qualify as a flagman under the Nevada full crew law a man must have had at least one year's experience in the operation of trains outside of yard limits at sometime during his railroad career. It is conceivable that a man employed within yard limits in yard service has acquired the necessary knowledge and has qualified as a flagman prior to his engaging in yard service and, if so, we think he could be legally used as a flagman outside yard limits.

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

234. Public Schools—Trustees of First Class Districts Only Authorized to Sell or Lease Real Property.

CARSON CITY, October 18, 1945.

MR. L.E. BLAISDELL, *Acting District Attorney Mineral County, Hawthorne, Nevada.*

DEAR MR. BLAISDELL: This will acknowledge receipt of your letter dated October 3, 1945, received in this office October 5, 1945, in which you requested an opinion as to the authority of the Hawthorne School District No. 7 and the Mineral County High School to execute a lease to the Hawthorne Park Board for certain property belonging to the schools, and how the same may be legally done.

The powers and duties of School Trustees defined in section 5715 Nevada Compiled Laws 1929, includes the authority to buy or sell any schoolhouse or schoolhouse site directed to be bought or sold by a vote of the heads of families of the district.

The word "rent" as used in connection with build or purchase contemplates the taking of a schoolhouse and not letting as a lessor.

The power to lease school property does not appear among the powers granted the trustees nor does it appear to be necessarily incidental for the purpose of carrying such powers into effect.

See Attorney General's Opinion No. 266, 1938-1940 Biennial Report.

Section 6077.11, 1929 Nevada Compiled Laws, 1941 Supp., is section 1 of a new Act which specifically empowers boards of school trustees of school districts of the first class, county boards of education, and boards of school trustees in charge of high school districts to sell or lease real property owned by the respective districts. The Act provides for the classes mentioned and none other.

Therefore, the county board of education or the trustees in charge of high school district could lease the property owned by one or both of their respective districts, but the Hawthorne School District No. 7, unless the same is a district of the first class, has no power to let by lease real property belonging to the district.

Boards of school trustees, like boards of county commissioners, are bodies possessing but limited and special powers. The rule established by our Supreme Court for the determination of

powers of county commissioners applies equally to boards of school trustees.

The court in *Godchaux v. Carpenter*, 19 Nevada, on page 418, held: "It is well settled that a board of county commissioners is a body possessing but limited and special powers; that when its power or authority to do any particular thing is questioned, the record must show affirmatively all the facts necessary to give it authority to perform the act complained of, and that, when this is not the case, the presumption is against its jurisdiction."

There may be other methods of working out your problem, and if we can be of assistance please let us know.

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

235. Fish and Game—American Indians Under 60 Years of Age Entitled to Deer Tag, May Hunt Deer Free of Charge.

CARSON CITY, October 18, 1945.

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

DEAR JUDGE WINTERS: In your letter of October 11, 1945, you inquire whether an American Indian under 60 years of age is entitled to a deer tag (duplicate license) to hunt deer free of charge.

The answer is in the affirmative.

Under the independent Act of March 2, 1923, p. 353, resident Indians are entitled to free fishing and hunting licenses irrespective of age (N.C.L. 1929, sec. 3149).

By section 91 of the fish and game law as amended by chapter 119, Statutes of 1945 at page 188, section 3125, 1929 N.C.L. 1941 Supp., duplicate license tags are issued for \$1 to applicants holding current hunting licenses.

In respect to Indians there is no provision similar to that respecting all citizens 50 years of age and upwards whereby they are specifically relieved of the need to pay for deer tags. However, we are of the opinion that resident Indians (in addition to Indian "citizens" 60 years of age and upwards) are so relieved by necessary implication and construction.

In Opinion No. 72 of this office given to the Fish and Game Commission September 16, 1943 (Attorney General's Report 1943-1944, page 184), the question was whether citizens over 60 years of age must pay for antelope tags which were not mentioned in chapter 159, Statutes of 1935 (1929 N.C.L. 1941 Supp., sec. 3152.01). See also 1929 N.C.L. 1941 Supp., sec. 3088. We answered that question in the negative concluding with the following:

This section shows the clear legislative intent to grant fishing and hunting privileges free of charge to citizens 60 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 60 years of age or upwards should be granted free of charge.

The same reasoning would apply to Indian residents of Nevada (and all the more so if 60 years of age and upwards, if "citizens").

You ask whether the law of 1923 (sec. 3149) respecting Indian residents is repealed by the law of 1935 (sec. 3152.01) specifically exempting citizens 50 years old and upwards from payment of license fees, or by section 3088 passed in 1941 containing a similar proviso.

In my opinion so much repeal is effected. All the enactments can stand together without

conflict. The Act of 1923 is an independent and not an amendatory Act. It is for the benefit of all Indian residents irrespective of age. The other enactments are for the benefit of all "citizens" 60 years old and upwards, irrespective of race. Repeals by implication are not favored. *State v. Eggers*, [36 Nev. 372](#).

Very truly yours,

ALAN BIBLE, *Attorney-General*.

By HOMER MOONEY, *Deputy Attorney-General*.

236. Fish and Game—Deer—Boys Under 14 Years of Age Must Procure and Pay for Hunting Licenses and Deer Tags.

CARSON CITY, October 18, 1945.

MISS HELENE T. MALLOY, *County Clerk Lander County Austin, Nevada*.

DEAR MISS MALLOW: In your recent letter of October 11, 1945, you inquire whether boys under 14 years of age must procure and pay for hunting licenses and deer tags in order to hunt deer.

The answer is in the affirmative.

Section 91 of the Fish and Game Law as amended by chapter 119, Statutes of Nevada 1945, p. 188, section 3125, 1929 N.C.L. 1941 Supp., requires an applicant to hold a hunting license for the current year before being granted a duplicate license to hunt deer.

It is not unlawful for persons under the age of 14 to hunt (other than for deer) without a license. However, if a license is desired, it must be paid for. Section 3089, 1929 N.C.L. 1941 Supp.

The only persons who need not pay for hunting licenses and duplicate licenses to hunt deer are resident Indians of all ages, section 3149 N.C.L. 1929, and all citizens 60 years of age and over, section 3088, 1929 N.C.L., 1941 Supp. Also Statutes of Nevada 1935, p. 339; section 3152.01, 1929 N.C.L. 1941 Supp.

The same question as contained in your letter was answered in the same way by Opinion No. 338 of this office given to the Fish and Game Commission May 2, 1942. Attorney General's Report 1940-1942, p. 160.

If a youth under 14 should hunt generally without a hunting license, he would not be penalized, but should he hunt deer without a duplicate license he would be punished for a misdemeanor under subdivision (e) of section 91, Statutes of 1945, p. 189.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

By HOMER MOONEY, *Deputy Attorney-General*.

237. Public Service Commission—Emergency Act of 1943—Commission May Refund Such Fees as it May Deem Just.

CARSON CITY, October 27, 1945.

PUBLIC SERVICE COMMISSION, *Carson City, Nevada*.

Attention: Lee S. Scott, Secretary.

GENTLEMEN: This will acknowledge receipt of your letter in this office October 18, 1945, in which you request an opinion as to the authority of the Public Service Commission to grant a refund to a certain transportation company in a matter of license fees paid under the provisions of chapter 93, Statutes of Nevada 1943.

As we understand the circumstances this company was operating under temporary authority of the Interstate Commerce Commission to transport gasoline to Nevada Army bases and upon this authority applied for and paid license fees for the emergency temporary permit from August until the end of the current year. A very short time after the temporary permits were issued the authority granted by the Interstate Commerce Commission was revoked and operations by the transportation company ceased.

Your question is, may a refund be granted in this case, either under chapter 93, Statutes of 1943, as amended, or by section 13 of Chapter 165, Statutes of 1933 as amended?

We are of the opinion that the Public Service Commission may conduct a hearing under the provisions of section 13, chapter 165, Statutes of Nevada 1933, and may grant such refund on fees collected as the commission may determine is justified by the facts presented.

Section 1 of the Motor Vehicle Carriers Act, being section 4437, 1929 N.C.L. 1941 Supp., declares the purpose and policy of the Legislature in enacting the law is to give the Public Service Commission of Nevada the supervision for the licensing of motor carriers who use the public highways in a gainful operation thereon and to provide for the public highways in a gainful operation thereon and to provide for the reasonable compensation for the use of such highways, and enable the State, by a utilization of license fees, to more fully provide for construction, maintenance, and repair thereof. Use of the public highways is the essence of the statute.

Chapter 93, Statutes of 1943, is an emergency Act made necessary by war conditions and authorizes the Public Service Commission to grant emergency temporary certificates or permits to common carriers or contract carriers where, under war conditions, existing service is found to be inadequate. The enactment of this measure does not conflict with or alter the provisions of the general Act; it is supplementary and merely adds the authority to grant temporary permits.

Section 11 of the general Act, same being section 4437.10, 1929 N.C.L. 1941 Supp., makes it unlawful for any motor carrier, contemplated by the statute, to operate on any public highway without first having obtained a permit therefor and paid the required fees.

The company in question, acting on the temporary authority of the Interstate Commerce Commission, applied for and obtained the emergency permit from the Nevada Commission, applied for and obtained the emergency permit from the Nevada Commission, paying the required fees for the privilege until the end of the year. After going to the expense of preparing equipment for operation in the area, according to the statement by the company, they were stopped by the Interstate Commerce Commission just after getting started. The public highway thereafter was not used by the company in a gainful operation.

Section 13 of the Act of 1933 as amended, being section 4437.12, 1929 N.C.L. 1941 Supp., provides that application for a refund to the commission may be made “* * * by any person who has heretofore paid the required license fees, as prescribed in this act, claiming that the license fees so paid have unlawfully been collected, * * *.” It provides that if the commission, after investigation or hearing, finds that the refund as claimed is justified in whole or in part, it shall authorize a refund.

The word “unlawfully” cannot be construed to mean only when such collection is made in

violation of the statute, as public officers are presumed to perform their duties in a lawful manner. The word must be construed in relation to the entire Act, and if such fees are retained by the State under circumstances not warranted by the policy and purpose of the Act, the provisions for a refund as set out in section 13 would apply. Where there was no use of the public highway as designated, the fees for such use were undue and unwarranted.

The rule approved by our Supreme Court in the case of *In re Forsyth's Estate*, 45 Nev. at page 394, is, "All legislation must be construed in the light of the purpose sought to be accomplished."

The purpose of the statute in question was determined in the case of *Ex Part Iratacable*, [55 Nev. 263](#), wherein the court held on page 283, "Its sole purpose is to require the operators of the motor vehicles therein named to contribute to the maintenance of the public highways."

Therefore, if fees are paid for the use of public highways under the emergency Act of 1943 and the highways are not subsequently used by the permittee, the commission is authorized to make such refund as it may deem just.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

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

238. Taxation—Proceeds of Mines, Assessment and Collection of Taxes On—Statutes Effective and Repealed Listed.

CARSON CITY, November 1, 1945.

NEVADA TAX COMMISSION, *Carson City, Nevada*.

Attention: R.E. Cahill, Chief Clerk.

GENTLEMEN: This will acknowledge receipt of your letter of October 17, 1945, with which you sent a letter of inquiry from Prentice-Hall, Inc., respecting net proceeds of mines taxes.

The law respecting the assessment for taxation and the collection of taxes on the proceeds of mines has been much altered since the passage of the Act of March 23, 1891. Assessment has been taken out of the hands of the county officers and placed with the Nevada Tax Commission. Collection and enforcement has been placed under the supervision of the Nevada Tax Commission which acts, however, by rules, regulations, and directives issued for administration to the county authorities. The time for paying taxes has been changed from quarterly to semiannually; the penalty for nonpayment has been modified and tax suits are solved by the payment of the tax collector to recover the amount claimed to be unauthorized. Section 6552, 1929 N.C.L. 1941 Supp.

As you point out, the succeeding Acts did not expressly repeal their predecessors. General provisions repealed so much of antecedent legislation as conflicted with the new law.

The courts have not specifically announced that any former provision of law has been repealed. In one case the court did point out what Acts governed.

In consequence, this office has never given an opinion on the questions presented in your inquiry. The matter has been one of administrative interpretation and fortunately has not been productive of litigation.

In the case of *Goldfield Con. M. Co. v. State* (October 28, 1940), [60 Nev. 241 pat p. 245](#), 106 Pac. (2) 613, the court said, speaking of legislation for taxing proceeds of mines:

This legislation is now found in sections 6578 to 6591, inclusive, N.C.L. 1929, and amendments thereof, namely, amendment of section 3, subsection 10, of section 6580, Stats. 1937, c. 68, p. 139, and the further amendment of section 3, subsection 10, of section 6580, Statutes 1939, c. 174, p. 256.

The amendments referred to by the court are compiled in 1929 N.C.L. 1941 supp., sec. 6580.

You ask us to compare the Act of 1891 with the Act of 1927 and advise what parts of the earlier law are considered as repealed and what parts are left in effect. You designate the sections as they appear in Nevada Compiled Laws 1929, sections 6481 through 6504. They are really sections 75 through 98 of the Revenue Act of 189a. Statutes, 1891, p. 135. You designate the sections of the Act of 1927 as they appear in Nevada Compiled Laws 1929, sections 6578 through 6591. They are really sections 1 through 14 of the Act for the assessment and collection of net proceeds of mines of 1927. Statutes 1927, p. 100, as amended by Statutes 1929, p. 120, Statutes 1937, p. 39, and by Statutes 1939, p. 156. See 1929 N.C.L. 1941 Supp., sec. 6580.

Using your section numbers we designate below which sections we deem repealed and which we deem continued in effect.

1891 Act—

- 6481 Repealed except for the declaration that the net proceeds of mines are subject to ad valorem taxation at the same rate as other property is taxed.
- 6483 Repealed.
- 6484 Repealed. See 6579-6583.
- 6485 Repealed. See 6586.
- 6486 Repealed. See 6584
- 6482 Effective as a declaration of lien.
- 6485 Inapplicable. See 6586.
- 6487 Inapplicable. See 6586.
- 6493 Inapplicable. See 6544 (Sec. 3 Nevada Tax Commission Law, Stats. 1917, p. 328, subds. 1, 3, 8, etc.). See, also, 1929 N.C.L. 1941 Supp., sec. 6552
- 6501 Same.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

By HOMER MOONEY, *Deputy Attorney-General*.

239. Labor—Appointment Deputy Labor Commissioner.

CARSON CITY, November 7, 1945.

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

DEAR SENATOR: This will acknowledge receipt of your letter of October 29, 1945, received in this office on October 30, 1945.

You state that X was a member of the 41st Session of the Nevada Legislature, with a term from November 1942 to November 1944. You state that he was also a member of the 42d Session of the Nevada Legislature, having been elected in November 1944.

You ask whether X is eligible for appointment as a Deputy Labor Commissioner as of November 1945, this being one year after the term for which he was elected in November 1942.

The answer to your inquiry is in the affirmative.

By chapter 182, Statutes of 1943, the 41st Session of the Legislature created the office of Deputy Labor Commissioner, prescribed his duties, and fixed his compensation. An appropriation was made for the period ending June 30, 1945, and section 6 of the Act provided that the Act should expire June 30, 1945.

By chapter 140, Statutes of 1945, the 42 Session of the Legislature amended the Act of 1943 by providing an appropriation at the same rate for the period ending June 30, 1947. It also repealed section 6 of the Act of 1943, effective from and after March 22, 1945, and before the said Act would have expired on June 30, 1945, by limitation.

The constitutional provision involved in your inquiry is section 8, article IV of the Constitution of Nevada, and reads as follows:

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

The only theory upon which a negative answer could be based is that the office in question was created by the 42d Session of the Legislature of which X was also a member with a term expiring in November 1946. In such case he would not be eligible until November 1947. It is clear to us, however, that the amendatory Act of 1945 did not create any office. It merely forestalled the abolition of the office on June 30, 1945, and continued the appropriation for the payment of the Deputy Labor Commissioner at the same rate as that set forth in the basic Act of 1943. Since the emoluments of the Deputy Labor Commissioner have not been increased by the 1945 Legislature and since it is our opinion that the office was created by the 1943 Act and not by the 1945 Act, it is our opinion that you can at this time constitutionally appoint X.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

240. Agriculture—Farm Bureaus—Cooperative Buying and Selling and Insurance Business Not Related.

CARSON CITY, November 21, 1945.

MRS. FLORENCE B. BOVETT, *Secretary, Nevada Stat Farm Bureau, Extension Building, University of Nevada, Reno, Nevada.*

DEAR MRS. BOVETT: This will acknowledge receipt of your letter of November 16, 1945, in which you submit a question as to the authority of the farm bureaus under the present statutes, by reorganization, to incorporate the operation of cooperative buying and selling of commodities and engaging in a cooperative health, life, auto, and fire insurance plan.

We are of the opinion that the authority to engage in such business cannot be found in the statutes and that the subject is one which will require legislative action.

County farm bureaus and the Nevada State Farm Bureau are organized under chapter 213, Statutes of Nevada 1919. The title of the Act reads, "An Act to provide for cooperative agricultural and home economic extension work in the several counties in accordance with the Smith-Lever Act of Congress, approved May 8, 1914; providing for the organization of county farm bureaus; for county and state cooperating in support of such work; making an annual

appropriation therefor, levying a tax and for other purposes.”

The purpose of the Act as expressed in section 1 (sec. 347 N.C.L. 1929) is to aid in diffusing among the people of the State of Nevada useful and practical information on subjects relating to agriculture, home economics, and rural welfare and to encourage the application of the same.

The Act provides for the preparation of an annual financial budget covering the cost of carrying on the work of the county farm bureau as the basis for the levy of a tax to pay the county’s share of such expenses. To provide for the State’s cooperation in the cost of extension work there is annually appropriated out of moneys in the State Treasury, or from the proceeds of any portion of the State tax levied therefor, a sum equal to the cooperative shares of the State in the cost of the work in the several counties.

Under the provisions of the cooperative agricultural and home extension work statutes as they now appear in the law it is evident that the organization is within the classification of public service corporations.

The purpose of the Act is to afford assistance of an educational nature designed to aid horticulture, animal industry, and to stimulate the production of crops and livestock of better quality which is of vital importance to the general welfare of the public.

The status of the State Farm Bureau may differ from that of the county farm bureaus in that its fund may be received for the most part by fees from its members and thereby be classed as a private corporation, but there is nothing in the present laws to indicate authority to engage in the business of a merchant or undertake the establishment of an insurance business under a cooperative health, life, auto, and fire insurance plan.

Section 6 of the Act (sec. 353, 1931-1941 Supp.) provides that the State Farm Bureau may incorporate under the laws of the State as a corporation not for profit and shall be recognized as the official body within the State representing the county farm bureaus as a whole. Its purpose is, therefore, a public one. Extending such purpose to authorize the State Farm Bureau to engage in the business of purchasing and selling commodities and engage in insurance business would be a subject not embraced in the title of the Act and in addition would invalidate the statute as an attempt to levy a tax for private purposes. The supreme court in *State v. Churchill County*, [43 Nev. 290](#), in determining the power of the State to tax property within its jurisdiction, said on page 296, “It is clear that the operation of the law might result in the taxing of a citizen for the use of a private enterprise conducted by other citizens. Such result is an unauthorized invasion of a private right and contrary to the fundamental principles that no tax is a valid tax except it be laid for a public purpose.”

The enterprises under consideration, namely, cooperative buying and selling and insurance business cannot be shown to be related in any manner to the subject of the Act as expressed in its title, and the Legislature did not attempt to include the authority to engage in such pursuits by any provisions contained in the Act.

The rule expressed in *State v. Commissioners Washoe County*, [22 Nev. 400](#), is as follows, “Where, by the title, the subject of an Act is restricted to certain purposes, the purview of the Act cannot be extended to other purposes not indicated in the title. The Act can be no broader than the subject expressed in the title.”

Therefore, if such authority is desired, it should be submitted to the Legislature for appropriate action.

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

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

241. Taxation—No Authority Given Assessor to Make Changes in Assessment Roll After it Leaves His Possession as Complete.

CARSON CITY, December 3, 1945.

MR. JOHN KOONTZ, *Deputy Auditor Nevada Tax Commission, Carson City, Nevada*.

DEAR MR. KOONTZ: The following is our reply to your oral request of November 27, 1945, regarding the authority of certain county officials to make changes on the tax roll after the completion of such roll by the County Assessor.

Section 6431 Nevada Compiled Laws 1929 provides when the Assessor shall complete the assessment roll and subscribe to an affidavit to the effect that he has made diligent inquiry and examination to ascertain all the property within the county subject to taxation, that it is assessed equally and uniformly, according to his best judgment.

The following section provides that the assessment roll as soon as completed shall be delivered to the Clerk of the Board of county commissioners who shall give notice of the meeting of the Board of Equalization.

Section 6434 Nevada Compiled Law 1929 directs the Clerk of the County Board of Equalization to make the authorized changes and corrections made by the board, after which the roll is immediately delivered to the County Auditor with the certificate of the Clerk attached.

From the foregoing it will be seen that no authority is given the Assessor to make changes in the assessment roll after it leaves his possession as complete. See *State v. Manhattan S. Min. Co.*, 4 Nevada 318, where it was held that the Assessor has no authority to alter the assessment roll after it has passed out of his hands, not even to correct a mistake.

Section 6437 Nevada Compiled Laws 1929 provides that the County Auditor as soon as all changes have been certified to him by the Secretary of the Nevada Tax Commission, shall enter all changes on the assessment roll, add up the valuations together with the taxes thereon and deliver the same to the ex officio Tax Receiver.

This statute is later than section 6436 above, which directs the Clerk of the Board of Equalization to make the changes ordered by the board and appears to conflict with the later statute directing the Auditor to make all changes.

This conflict was considered in *State v. C. & C. Ry. Co.*, 29 Nevada 488. On page 505 the court said:

As this is the latest expression of the legislative will upon this point, though seemingly in conflict with the statute directing the auditor to place the changes and alterations on the assessment roll, it was not error for the clerk to have made the changes and alterations as made by the county board of equalization on said assessment roll.

It appears, therefore, that the County Auditor is the only person authorized to make changes on the assessment roll after it leaves the Assessor.

Section 6438 Nevada Compiled Laws 1929 provides that the County Auditor on delivering the roll to the County Assessor as ex officio Tax Collector shall charge him with the full amount of the taxes levied and transmit a statement to the State Controller showing the assessed

valuation of all property in the county and the amount levied thereon for State purposes.

Section 6441 Nevada Compiled Laws 1929 defines the duty of the Tax Collector when the taxes are paid.

Section 6442 Nevada Compiled Laws, 1931-1941 Supp., s amended by chapter 185, Statutes of 1943, page 264, defines the duties of the Tax Collector and the time when he shall mark the word delinquent on the assessment roll opposite the name or description of the property the taxes upon which have not been paid and prepare the delinquent list under the provisions of the statute.

Changes made on the assessment should only be made at the time and by the official specifically authorized by statute, otherwise such changes have no force or effect.

In the case of *State v. Manhattan Silver Mines Co.*, 4 Nevada 318, the question of making a change on the assessment roll was before the court and on page 328 the court said:

Neither the District Attorney nor the Assessor was the agent of the State to alter an assessment roll in the hands of the ex officio collector. The acts were wholly unauthorized, and did not in any way affect the interest of the State or of Lander County; hence, the alteration is as if done by a mere stranger.

Section 6632 Nevada Compiled Laws 1929 provides for the adjustment of account between the Treasurer and Auditor. It designates the time when the Treasurer shall submit the roll and other information as to why said taxes remain unpaid, and the Board of County Commissioners shall at that time revise the delinquent list by striking therefrom all such taxes as in their judgment cannot be collected. The Clerk of the board shall cause to be written on the tax roll opposite the name or description of each delinquent so stricken such notation as the Board of Commissioners shall designate.

The statutes, therefore, in plain language specify when and by whom any changes on the tax roll shall be made.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

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

242. Intoxicating Liquors—Retail Dealer Cannot Be Granted Importer's License in the Same Name and Style as Retail Store.

CARSON CITY, December 3, 1945.

MR. H.S. COLEMAN, *Supervisor Liquor Tax Department, Carson City, Nevada*.

DEAR MR. COLEMAN: We have your inquiry of November 19, 1945, asking about the conditions under which importer's licenses can be issued beginning January 1, 1946, under the Nevada liquor law as amended in 1945.

You ask this specific question:

(1) "Can a retail liquor dealer be granted an importer's license in the name of his retail liquor store or" (2) "must an importer of liquors into Nevada be a sole owner or member of a concern other than a retail liquor store, and then be required to be the sole owner or member of a wholesale concern to dispose of his imported liquor?"

As we understand it, your question advances the proposition that the same man individually or uniting with others cannot import liquor under license, cannot wholesale liquor under license, and cannot retail liquor under license, all under the same name and style. In this we believe you

to be correct. With this understanding the categorical answer to your question (1) is no and to question (2) is yes.

We note when the amendments to the liquor law were drafted in 1945 it was intended to prevent retail liquor dealers, solely or in association with others, from importing, wholesaling, and retailing liquors for their own retail trade exclusively. It was not intended to prevent retail liquor dealers, solely or in association with others, from importing and wholesaling liquor for retail trade generally. We note that this object has been fulfilled in all the counties of Nevada except Clark County.

Notwithstanding the belief of proposers of legislation respecting its effect, the question whether that belief is well founded remains for the Supreme Court in the last analysis. This office does not decide such questions, but gives opinions based on Supreme Court decisions already made or legal principles which that court may be expected to follow. Among these principles are the following:

Courts in interpreting statutes will so construe them as to carry out the manifest purpose of the legislature, even though it may be necessary to disregard the literal meaning of certain of the language used. *State v. Eggers*, [36 Nev. 373](#).

In construing a statute the legislative intent controls, and in seeking the intent the evil sought to be remedied should be ascertained. *Escalle v. Mark*, [43 Nev. 172](#).

Where the language of a statute is plain and the meaning unmistakable, there is no room for construction, and the courts may not search for the meaning beyond the statute itself. *State v. Jepsen*, [46 Nev. 193](#); *State v. Beemer*, [51 Nev. 192](#)-199; *Ex Parte Smith*, [33 Nev. 466](#)-480; *In re Walters' Estate*, [60 Nev. 172](#)-183.

In approaching the instant question we must first look for provisions directly governing the granting of importer's licenses. "Importer" means any person who in the case of liquors which are brewed, fermented, or produced outside the State is first in possession thereof within the State after completion of the act of importation. Section 1(i) of Act as amended. Stats. 1945, page 372.

No person shall be an importer of liquors into the State of Nevada unless he first secures an importer's license or permit from the State of Nevada as hereinafter provided. An importer's license or permit shall authorize the holder thereof to be the first person in possession of such liquors within the State of Nevada after completion of the act of importation of liquors which are brewed, fermented, or produced outside of the State. It shall not authorize the sale of any type of liquors. In order to make such sales the licensee must secure the appropriate license *or licenses* applicable to the class *or classes* of business in which he is engaged, and all permissible persons must procure a permit. Section 2(a) of Act as amended. Stats. 1945, page 373.

Sections 3 and 4 of the Act relate to wholesaler's licenses. See 1929 N.C.L. 1941 Supp., secs. 3690.03 and 3690.04.

Application for State licenses "shall be made to the county commissioners of the county in which the applicant resides or maintains his principal place of business. *The application shall be made on such form as the state tax commission of the State of Nevada shall prescribe.*" Other provisions require to be given the name and address of the applicant and the location of his place of business. Section 5 of Act as amended. Stats. 1945, page 373.

Section 6 of the Act provides for the issuance of the license by the *State Tax Commission* upon approval of the application by the County Commissioners and receipt of the fee. 1929

N.C.L. 1941 Supp., section 3690.06

Section 7 provides:

Every license issued under this act shall set forth the name of the person to whom it is issued. If the license is issued under a fictitious name, such license shall set forth, in addition to said name, such license shall set forth, in addition to said name, the name or names of each of the persons conducting the business under the fictitious name. The license shall also specify the location by street and number of the premises in respect to which the license is issued and the particular class of liquor or liquors that the licensee is authorized to sell. 1929 N.C.L. 1941 Supp., sec. 3690.07

Section 15 of the Act as amended fixes the license fee of a beer importer at \$150 and \$500 for wine, beer and liquor importer and wholesalers \$75 and \$250, respectively. Stats. 1945, page 376.

Section 17 of the act as amended provides:

Wholesale dealers' licenses shall permit the holders thereof to sell liquor to *wholesalers* or *retailers* only anywhere in Nevada.

Importer's licenses shall permit the holders thereof to import liquor to the place specified therein and to no other place.

No retailer or retail liquor dealer shall purchase any liquor from other than a state licensed wholesaler. * * *. Stats. 1945, page 377.

This is in addition to the provisions of section 2(a) as amended, which we have already quoted.

Section 22 of the Act as amended provides:

The commission is hereby charged and empowered with the duty of administrating the provisions of this act and *it shall adopt and enforce all rules, regulations and standards necessary to carry out the provisions of this act.* Stats. 1945, page 381.

Section 23 of the Act seems to apply to importers and wholesalers both when holding imported liquor as importers and when the importer wholesales the liquor under wholesaler's license. This is in addition to the provisions of section 5 of the Act as amended (Stats. 1945, page 373), and would seem to require an importer to maintain a stock worth \$1,000 and keep records of his doings to do a wholesale business.

There is no provision in the Act designating the procedure for issuing retailers' licenses. Section 17 of the Act recognizes the power of counties, cities, and towns to require an "importer or seller of liquor to obtain a local license before engaging in such business." This would extend to importers, wholesalers, and retailers of liquor, but all local licenses would be subject to the general principle that they cannot authorize under guise of a local license the violation of the State law. (See Report of Attorney General, 1943-1944, page 53-55.) For example, a local license cannot authorize a retailer to buy liquor from anyone except a State licensed wholesaler, nor authorize a wholesaler as such to sell liquor at retail, nor authorize an importer as such to sell any type of liquor at wholesale or at retail or at all.

The State law is in full command of the situation and, in any respect in which the State law does not specify clearly, the Tax Commission, under section 6 of the Act (1929 N.C.L. 1941 Supp., sec. 3690.06) and under section 22 as amended (Stats. 1945, page 381), is authorized to fill in the details by "rules, regulations, and standards necessary to carry out the provisions of this

act.”

Very truly yours,
ALAN BIBLE, *Attorney-General*.
By HOMER MOONEY, *Deputy Attorney-General*.

**243. Public Schools—Deputy Superintendent of Public Instructions—Military Service—
Reinstatement.**

CARSON CITY, December 4, 1945.

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

DEAR MISS BRAY: This will acknowledge receipt of your letters of November 20 and November 26, 1945, relative to the reinstatement of a Deputy Superintendent of Public Instruction. You state in your inquiry as follows:

“On December 31, 1942, a Deputy Superintendent of Public Instruction was inducted into the armed services of the United States. A successor was appointed to fill his unexpired term on January 15, 1943, by the State Board of Education, under the provisions of section 5658 Nevada Compiled Laws 1929. Thereafter, and on June 14, 1943, when Deputy Superintendents for the five supervision districts were appointed by the State Board for the four-year term commencing on the first Monday in September 1943, another deputy was selected when the State Board member for that supervision district expressed disapproval of her services.

Having received his honorable discharge from service, the deputy first mentioned is making application for reinstatement by the State Board of Education. The question now arises as to whether or not this case comes within the purview of chapter 34, 1941 Statutes of Nevada as amended by chapter 58, 1943 Statutes of Nevada, in view of the fact that the term of office for which he was appointed expired in September 1943.”

The telegraphic offer of the State Board of Education, as forwarded by you to the successor, reads as follows:

“State Board offers you deputyship Fifth District commencing September first salary twenty-six eighty eight annually, four year term. Please wire Western Union collect whether interested. If you accept position should you or I seek your release? Need your help badly. Believe you would enjoy position and hope you accept.”

Under the particular set of facts submitted with your inquiry it is our opinion that the State Board of Education on June 14, 1943, made an unconditional appointment to the office of Deputy Superintendent of Public Instruction for the Fifth District as indicated by your telegraphic officer for a definite four-year term, which offer was accepted and the appointee subsequently qualifying for the position.

At the time of making this appointment there was in effect chapter 58, Statutes of 1943, which is an Act declaring as its purpose the re-employment of persons who enlisted or were inducted into the military service of the United States in time of war. Section 1 of this Act provided for the re-employment of any person who held office as an appointee in any department, commission, or agency of the State of Nevada, in the following language:

* * * such employer shall restore such person to such position or to a position of like seniority, status, and pay, unless the employer's circumstances have so

changed as to make it impossible or unreasonable to do so.

In the present case the term of appointment of the deputy who entered the military service expired before his return from the service. The State Board evidently determined that there was a vacancy created and that a full-time appointment should be made. The State Board of Education could have appointed the successor until such time as the present applicant had returned from the service in accordance with the language of the Nevada statutes protecting and securing rights to those entering the military service. We are not advised as to why the State Board of Education did not choose to make a type of an appointment which would have clearly protected the present applicant in receiving his former position upon returning from military service. Suffice it to say that the board did not make this type of an appointment and we cannot read into the clear unmistakable offer any language which is not there.

It occurs to us that if it was the intention of the State Board of Education to protect the present applicant in his position that you might still be able to do so by voluntary arrangement with the applicant's successor. This would seem to be in line with the usual appointment of Deputy Superintendents of Public Instruction when such deputy's work has been satisfactory, which, in a nature, could be construed to give him a definite seniority right.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

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

244. Counties—Exemption Under Serviceman's Statute—Property in Excess of Statutory Limit—Shares of Stock—Duty of Assessor.

CARSON CITY, December 4, 1945.

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

DEAR MR. GUBLER: This will acknowledge receipt of your letter of November 23, 1945, received in this office November 26, 1945, in which you request an opinion as to the duties of the County Assessor and other officers if they have information leading them to believe that an applicant for exemption under the serviceman's statute owns personal property in the State of Nevada sufficient when added to the value of his or her real property to exceed the statutory limit of four thousand dollars. You also state that the specific situation is one in which the person seeking exemption is the owner of shares of stock of high valuation.

The duty of the County Assessor specifically is to ascertain, by diligent inquiry and examination, all property in his county, real and personal, subject to taxation, as provided by section 642 N.C.L. 1929.

Article X of the Constitution of the State of Nevada as amended and approved and ratified at the general election of 1942 provides, quoting that part deemed relevant as follows: “* * * 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. * * *.”

Section 6418 N.C.L. 1941 Supp., as amended by chapter 32, Statutes of 1945, provides that all property of every kind and nature whatsoever within this State shall be subject to taxation, and then proceeds to enumerate certain exemptions. The seventh subdivision of section 5 of the above-mentioned Act provides an exempt of an amount not to exceed \$1,000 of any person who has served or is serving the military forces of the United States in time of war, upon affidavit

filed annually before the County Assessor to the effect that they are actual bona fide residents of the State of Nevada, that such exemption is claimed in no other county within this State, and that the total value of all property of affiant within this State is less than four thousand dollars.

The expression "all property of affiant" can only be construed to be all property subject to taxation and cannot include such shares of stock which are constitutionally exempt. If such shares of stock were taken into consideration by the County Assessor in arriving at the total value of affiant's property and used as basis for refusing an exemption under the statute, the result would be an attempt to indirectly collect a tax which would not be collected directly, as some part of the tax would be assessed against exempt property.

That which the Legislature or the taxing authorities cannot do directly cannot be accomplished indirectly. This rule is declared by the Supreme Court in *Moore v. Humboldt Co.*, 46 Nev. Rep. 226. The court said, "This court has repeatedly held that what cannot be done directly cannot be done by indirection."

Where taxable property and exempt property are intermixed for the purpose of tax assessment, the rule as expressed in 51 Am. Jur. 504, is as follows: "A tax on exempt property is absolutely void because for an unauthorized purpose, and where the assessment is so interwoven with an assessment on other property as to be inseparable therefrom, the whole becomes void."

Therefore, these shares of stock cannot be taken into consideration by the county as a basis for denying the exemption claimed by affiant.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

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

245. Grazing Board—Funds May Be Used for Flood Control—Repairing Banks of River.

CARSON CITY, December 4, 1945.

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

DEAR MR. REYNOLDS: This will acknowledge receipt of your letter dated November 29, 1945, received in this office December 1, 1945, enclosing a letter from Mr. Gordon Griswold, Secretary of the Nevada Grazing Board, District No. 1, requesting an opinion relative to the use of funds of the grazing board for flood control in repairing the banks of the river at Beowawe.

We are of the opinion that the funds of the grazing board may be expended for flood control in repairing the banks of the river if such board determines by a vote of its members, at a meeting of the board, that such flood control is for the construction and maintenance of range improvement or for a purpose beneficial to the stock raising and ranching industry.

The Act to provide cooperation between State and county officers and agencies and between State agencies and the Federal government in relation to grazing lands and other relative matters as amended by chapter 25, Statutes of 1943, under section 4 as amended, provides as follows, quoting that part deemed relevant, "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 said funds shall be so deposited 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.” * * *.

Section 6 of the Act provides, in part, as follows: “In case of any project involving other than construction and maintenance of range improvements, and in the case of which the said state grazing boards are empowered by section 4 of this act to guide and direct the disposition of the said funds, such project shall be undertaken only under cooperative agreement entered into on the part of the state grazing boards and either the Federal or State officials, a the state grazing boards may decide, who are in charge of whichever governmental department, division, bureau, service, board, or commission happens to be in charge of and have jurisdiction over the kind of project concerned.”

Either the boards of county commissioners or the State grazing boards concerned, as the case may be, are hereby authorized to enter into such cooperative agreements and to take such steps as may be, are hereby authorized to enter into such cooperate agreements and to take such steps as may be necessary, under the provisions of this Act, to contribute from their respective funds to such projects under the terms of such cooperative agreements.

This section also contains the provision that such projects shall be under the direct management and supervision of Federal or State officials in charge of the department in the case of the project concerned.

It appears therefrom that when stock raising and ranching are combined the fund may be used for the benefit of such industry as well as for the construction and maintenance of range improvements.

See Opinion of Attorney General, No. 141, in Report of 1943-1944.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

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

246. Corporations—Failure to File Annual Lists of Officers, Directors, and Designation of Resident Agents—Penalties.

CARSON CITY, December 4, 1945.

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

DEAR MR. McEACHIN: This will acknowledge receipt of your letter of November 8, 1945, received in this office on November 9, 1945, inclosing a letter from a corporation at Los Angeles requesting information from your office relative to penalties imposed by statute for failure of corporations to file annual lists of officers, directors, and designation of resident agents.

You express a reluctance to submit the question in the following language, “In view of my understanding of the disinclination of the department of Attorney General, as such, to furnish legal advise, other than such as respects the performance of the duties of some official, board, or commission, and then only at his, or its, specific request. I reluctantly attach hereto a letter dated November 5th from the C.T. Corporation System seeking a construction of sections 1807 and 1808 N.C.L. 1929 as quoted above.”

You need have no reluctance in asking for assistance since the request seems to be one that very clearly calls for an answer from your department. We presume that you are unable to furnish this information without asking for an opinion.

We are of the opinion that the language of the statute is plain and there is no room for

construction.

Section 1 of the Act requiring all corporations to file annually with the Secretary of State a list of their officers and directors, a designation of resident agent, and a certificate of acceptance of resident agent, etc., as amended in 1931, the same being section 1804, 1929 N.C.L., 1941 Supp., provides that such filing shall be made by corporations organized under the laws of this State and foreign corporations doing business in this State. The filing must be made on or before the first day of July of each year.

Section 4 of the Act, being section 1807, 1929 N.C.L. 1941 Supp., provides "any corporation required to make the filings and pay the fee herein provided, which shall neglect to do so within the time herein provided, shall be deemed in default, and for such default there shall be added to the amount of the fee a penalty of \$2.50. * * *."

This language means if the filing is not made and the fee paid on or before the first day of July, the corporation guilty of failure shall be deemed in default and the penalty added to the tax.

Continuing, the section reads, "* * * and unless such filings shall be made and such fee and penalty shall be paid on or before the first Monday in August following * * *." This language means that the corporation failing to file on or before the first day of July will have the penalty added to the fee, and it is given until the first Monday in August to make such payment before as forfeiture is declared as provided in the following language, "* * * the defaulting corporation shall, by reason of such default, forfeit to the State of Nevada the amount of the tax and penalty aforesaid, and shall likewise forfeit its right to transact any business within this State, and the fee and penalty shall be collected as hereinafter provided."

Section 5 of the Act, which has not been amended, is found under section 1808 N.C.L. 1929.

This section provides the manner in which a corporation shall be declared to have forfeited its right to do business in the State and payment of tax and penalty and costs collected. This section provides in part, "The Secretary of state, on or before the 15th day of October of each year, shall file with the governor of the state a complete list of all defaulting corporations, together with the amount of the filing fee, penalties and costs remaining unpaid" (that is all corporations that had not paid the fee and penalty on or before the preceding first Monday in August.) The language continues as follows, "The governor, for at least ten days prior to the first Monday in November following, shall publish such list in the newspaper designated to do the official advertising required by the State of Nevada, and shall append to such list, and publish therewith, his proclamation to the effect that unless the filing fee owing by such corporation, together with the penalties and all costs, shall be paid to the secretary of state, on or before noon of the said first Monday in March following, such defaulting corporation shall forfeit the amount of the tax and penalty and costs to the State of Nevada, and shall also forfeit its right to carry on business within said state, and, further that the characters of all defaulting domestic corporations will be revoked unless such payment is made aforesaid. * * *." The section further provides for the collection of filing fee, penalty and costs due from a foreign corporation as upon execution.

The sections of the Act do not, when read together, appear to be contradictory as to the date when a forfeiture of the right to do business in the State becomes effective. The filing and fees are due on or before the first day of July of each year. If such filing is not made and fees paid within that time the corporation is declared in default and a penalty is added. If such filing is not made and fees paid within that time the corporation is declared in default and a penalty is added. If such filing is not made, fees and penalty paid on or before the first Monday in August following, the corporation, by reason of such default, shall forfeit its right to do

business in the State. The language in section 1807 does not specify how this forfeiture is finally determined, but uses the term “as hereinafter provided.”

The following section 1808 provides that the Secretary of State shall file with the Governor a complete list of all defaulting corporations, and the section proceeds to outline the method by which a defaulting corporation shall finally forfeit its right to do business in the State of Nevada.

The defaulting corporation is a delinquent upon failure to file and pay the fee on or before July 1, and unless the filing is made, fee, penalty, and costs are paid, the final judgment of forfeiture is entered in the afternoon of the first Monday in March following such delinquency.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

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

247. Fish and Game—Permit for Storage of Game birds Lawfully Killed Outside of State Not Required—No Limit on Number Out-of-State Hunters Obtaining Deer Tags Annually.

CARSON CITY, December 6, 1945.

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

Attention: S.S. Wheeler, Representative.

GENTLEMEN: We have your letter of November 29, 1945, asking two questions which we will answer in the order presented.

1. Is it proper for the commission in granting a permit for the storage of game birds (pheasants, for example) lawfully killed in a sister State to specify the limit according to the law of that State, or should it be the Nevada limit?

Our construction of section 69 of the Nevada Fish and Game Law is that it relates to the storage of such game birds up to the Nevada limit as are killed in Nevada in one calendar day during the Nevada open season. It does not require or authorize a permit for the storage of other game birds.

There would be no objection if, in the absence of a permit, the commission on request should certify that the applicant had exhibited validated tags from the State origin. This might save him some trouble in case he were prosecuted under section 69 or section 92 of the Act.

Although not within the scope of your inquiry, it appears problematical whether game birds, wherever originating, may be stored longer than 60 days after the beginning of a Nevada closed season before consuming the same. We would suggest that any permits that you do issue normally bear the notation that they are issued subject to the provisions of section 69 and 92 of the Fish and Game Law.

2. Is there any way under the law to limit the number of out-of-State hunters obtaining deer tags annually?

We find no way to establish any such limit.

Under section 91 of the Fish and Game Law, as amended by statutes 1945, page 188, deer tags “shall” be issued “to any person holding a hunting license for the current license year” upon application and the payment of one dollar.

Sections 53, 54, and 56 of the Fish and Game Law do not limit the number of hunting licenses to be issued. They do classify the license fees for resident citizens, nonresident citizens,

aliens, and residents who have declared an intention to become citizens.

Provision for a hunt to kill surplus deer, antelope, elk, and bighorn sheep of either sex is made by section 66 of the law as amended by Statutes 1943, page 52, contemplating the issuance of a limited number of special licenses to be issued for a special license fee on recommendations from local committees and under regulations by the State Commission. This, however, seems entirely independent of the provisions of section 91 respecting deer tags and sections 53, 54, and 56 respecting hunting licenses.

In order to accomplish the limitation desired, legislation will be necessary amending the section cited. Section 66 ought to be clarified at the same time. An extra copy of this letter is inclosed.

Very truly yours,
ALAN BIBLE, *Attorney-General*.
By HOMER MOONEY, *Deputy Attorney-General*.

248. State Board of Health—Tuberculosis—Subsidy to Patients Hospitalized in Private Facilities Not Authorized—All Warrants Must be Issued to County in which Care is Given.

CARSON CITY, December 10, 1945.

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

DEAR DR. HAMER: This will acknowledge receipt of your letter dated December 6, 1945, received in this office the same day, in which you request an opinion on the following questions involving the construction of chapter 224, Statutes of 1945:

1. Is it possible to subsidize patients hospitalized in approved private facilities?
2. Must all warrants be issued to the order of the county in which care is given, regardless of the type of facility extending the care?

In answer to your first question, we are of the opinion this cannot be done under authority of the statute.

In answer to your second question, we are of the opinion that the warrant must be issued directly to the county qualified to receive the relief, regardless of the facility extending the care.

The purpose of chapter 224, Statutes of 1945, as expressed in its title and preamble, is to improve the care of persons in active stages of tuberculosis who are being cared for at public expense, and to aid counties in the State that find it difficult to provide proper facilities.

Section 2 of the Act provides in part as follows: "Each county which maintains a tuberculosis facility for the treatment of persons in the active stages of tuberculosis shall receive from the state the sum of seven (7) dollars per week for each patient cared for in the facility at public expense * * *."

The subsidy is not granted the patient, but to the county which has the duty under the law to provide relief for the poor or distressed by reason of disease. Such care may be provided by a private facility, but the obligation to pay for the same rests with the county.

The allowance is only sufficient to pay for a small part of the expense of such care, and a private facility has no obligation to extend aid to the indigent sick. If such care is furnished, the county responsible for the patient is charged with the expense, and under the provisions of the

Act is entitled to be reimbursed at the rate of seven dollars per week for each patient, as shown by the report of the medical officer of the facility, whether it be a private facility or one operated at public expense. The private facility must look to the county for the full payment for care of such patient, and the county responsible is entitled to the allowance made by the State. Otherwise it would be necessary to check each demand made by a county for the allowance in order to determine if payment had been made directly to the private facility for the same patient.

Before the State Controller would draw his warrant against the appropriation to pay the allowance to a private institution, such authority must be found in the statute. There is no such specific authority and we are of the opinion that the Act cannot be so construed.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

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

249. Nevada Hospital for Mental Diseases—No Limitation on Length of Time a Commitment Remains in Force for Return of Patient Released on Parole—Escape—Status of Patient Discharged or Paroled.

CARSON CITY, December 17, 1945.

DR. S.J. TILLIM, *Superintendent, Nevada Hospital for Mental Diseases, Box 2460, Reno, Nevada.*

DEAR DR. TILLIM: This will acknowledge receipt of your letter of December 7, 1945, in which you request information as to the length of time a commitment of a person adjudged insane remains in force and effect after release from the hospital of such patient on parole or in the event of an escape.

Also, what would be the status of a patient as regards discharge or parole when no action is taken on the matter by the County Clerk on the notice required by statute.

In answer to your first question, we are of the opinion that there is no limitation fixed by statute as to the period in which a commitment remains in force for the return to the Hospital for Mental Diseases of a patient released on parole.

In the matter of a patient who escapes from the hospital and leaves the State, the Uniform Act for the Extradition of Persons of Unsound Mind, being sections 11341-11346 N.C.L. 1929, would apply. Section 11345 provides as follows: "Any proceeding under this act shall be begun within one year after the flight referred to in this act."

As to the status of a patient discharged, who, in the judgment of the superintendent and board, has recovered sanity, the answer appears in chapter 23, Statutes of 1941, An Act relating to insane persons. Section 1 of the Act, being 3536, 1929 N.C.L. 1941 Supp., provided as follows: "After a person's insanity has been judicially determined, such person can make no conveyance or other contract, or delegate any power or waive any right until his restoration to presumed legal capacity, or until he has been judicially declared to be sane. A certificate from the superintendent or resident physician of the insane asylum to which such person may have been committed showing that such person had been discharged therefrom shall establish the presumption of legal capacity in such person from the time of such discharge." The following section gives the district courts of the several counties the jurisdiction to hear and determine the question as to whether or not a person, previously adjudicated to be insane, shall be adjudicated to be sane.

Section 19, chapter 98, Statutes of 1943, provides that no patient shall be discharged except upon ten days' notice to the County Clerk of the county from which such patient or patients were committed. The County Clerk is ex officio Clerk of the District Court in the county. Notice to the County Clerk in such matters would become record in the court and the status of a person under a certificate from the hospital authorities showing his discharge would be that of presumed legal capacity from the time of such discharge.

There is no provision in the statute to determine the status of a patient on parole from the hospital.

The general principle of law that courts have the inherent power to entertain proceedings to establish the competency of persons adjudged incompetent is adopted in this State by statute.

The rule as to the jurisdiction of courts in such matters is expressed in Am. Jur. vol. 28, page 689, as follows: "Much is to be said in favor of the view that a court which is vested by statute with jurisdiction to judge a person incompetent has jurisdiction, independent of any statute relating to restoration of proceedings, of a further hearing held for the purpose of restoring the person previously adjudged incompetent to competency."

Chapter 23, Statutes of 1941, supra, was amended by chapter 68, Statutes of 1945, by adding a new section which provides that no county official shall charge any fee for the filing of a petition, for the recording of an order, or for any service rendered, in any proceeding to restore any person previously adjudicated to be insane to the status of a sane person.

The certificate from the authorities of the mental hospital that a person had been discharged therefrom on the basis of recovery from insanity had been established the status of such person as presumed to possess legal capacity, and would be indirect evidence in a court proceeding to adjudge such person to be sane.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

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

250. Fish and Game—All Fines Collected for Violations Belong to State.

CARSON CITY, December 17, 1945.

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

DEAR JUDGE WINTERS: This will acknowledge receipt of your letter of December 8, 1945, received in this office December 10, 1945, in which you request an opinion from this office on the following question:

Churchill County has an ordinance on the protection of wild game in Ordinance No. 58, section 6, which provides as follows: "All fines collected for the violation of this Ordinance shall be placed in the fish and game fund of Churchill County, Nevada."

The question to be decided is whether or not Churchill County has the right to retain fines collected under violation of this ordinance, or if such fines should be turned into the state regardless of the provisions of the ordinance.

We are of the opinion that the provision in section 6 of the ordinance in question is not supported by law. The Legislature by statute has provided for the conservation and protection of game within the State and fixed a penalty for the violation of such statutes. All fines collected as

the result of such violations belong to and should be paid to the State under the provisions of the statutes and the constitution of the State.

The Legislature by statute has provided for the protection, propagation, restoration of wild animals, wild birds and fish, and matters connected with the licensing and regulating of hunting and fishing and providing penalties for the violation thereof, and from time to time has provided amendments to meet contingencies as they arise. This protective power belongs to the State and is exercised by the Legislature.

As stated in Am. Jur. vol. 24, page 381, "The absolute power to control and regulate the taking of game vested in the colonial governments as a part of the common law passed with the title to game to the several states as an incident of their sovereignty, and is retained by the states for the use and benefit of the people of the states, subject only to any applicable provision of the Federal Constitution."

This power has never been delegated by the Legislature to the counties of the state.

Violation of the provisions of the game laws are punishable as a misdemeanor and triable in the justices' courts.

Section 11260 Nevada Compiled Laws 1929 provides, "The full amount of all fines imposed and collected under and for violation of any penal law of this state shall be paid into the state treasury, and costs shall in no case be deducted from the fine fixed by law or imposed by the court, but shall be taxed against the defendant in addition to the fine and separately stated on the docket of the court."

Section 11305 Nevada Compiled Laws 1929 provides, "The county treasurer of each and every county in this state shall, on the third Monday of June and December of each year, settle in full with the state controller, and send to the state treasurer all funds which shall have come into his hands as county treasurer for the use and benefit of the state, taking therefor a receipt from the state treasurer. He shall hold himself in readiness to settle and pay all moneys in his hands belonging to the state at all other times whenever required to do so by order signed by the state controller, who is hereby authorized to draw such order whenever he deems it necessary."

Section 3, article XI, of the State constitution provides that all fines collected under the penal laws of the State shall be and the same are solemnly pledged for educational purposes and shall not be transferred to any other funds for other uses.

The Legislature has no power to authorize the use of funds, nor any part thereof, received from the violation of the penal laws of the State for any other purpose than that designated by the constitution.

The question was settled by the Supreme Court in the case of *Ex Parte McMahon*, 26 Nev. 243, in which the court held that a statute enacted for the protection of wild game directing that a portion of the fines collected thereunder for violation thereof shall be paid to the informer, is unconstitutional.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

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

251. Nurses—Date When Yearly Renewal Fee Due—Statute and Not Ruling of Examining Board Controls.

CARSON CITY, December 19, 1945.

NEVADA STATE NURSES' EXAMINING BOARD, *1134 West First Street, Reno, Nevada.*

Attention: Claire Souchereau, R.N., Secretary.

DEAR MISS SOUCHEREAU: This will acknowledge receipt of your letter of December 8, 1945, received in this office December 10, 1945, in which you request a ruling from this office on the date when the yearly renewal fee of one dollar for registered nurses will become due under the provisions of section 3, chapter 238, Statutes of 1945.

Under the statute the Attorney General is the legal advisor on State matters arising in the departments of the State, and the policy of this office is to confine our opinions within the limits of statutory authority. The question was presented to this office from one of the State departments and our answer was that the section was not retroactive. However, since you ask us if the Nevada State Nurses' Examining Board was justified in making immediate functioning of all sections of the law, we reply that the statute controls and not the ruling board.

Chapter 238, Statutes of 1945, is a new Act and supersedes the Act of 1933, an Act to regulate professional nursing of the sick in the State of Nevada.

Section 3 of the Act of 1945 provides, quoting that part deemed relevant, as follows: "A yearly renewal fee of one (\$1) dollar shall be paid on January 15 of each year to the secretary of the board by all nurses duly registered as may be required by the board."

The Act was approved March 27, 1945, and provided that it shall take effect upon its passage and approval.

The old Act of 1933 did not require a yearly renewal of registration nor fix a fee for such renewal, consequently there was no law in effect on this subject in January of 1945. Chapter 238, Statutes of 1945, became effective on the day following the 27th day of March 1945, and the yearly renewal fee of one dollar for registration became due on January 15 of each year as expressed in the section which can only be interpreted as being the January following the 27th day of March 1945.

The section also fixes the first day of March of each year as the time when a registration will expire if not renewed as provided, which cannot be interpreted to work a penalty before the statute should take effect. The language of the section clearly expresses an intent to operate in the future and not retroactive, and should be so interpreted.

The rule in such cases is stated by the Supreme Court of this state in the case of *Varden v. Smith*, 46 Nev. on page 212, wherein the court held as follows: "There is always a presumption * * * that statutes are intended to operate prospectively only, and words ought not to have a retroactive operation unless they are so clear, strong, and imperative that no other meaning can be annexed to them, or unless the intention of the Legislature cannot be otherwise satisfied. Every reasonable doubt is resolved against a retroactive operation of a statute."

Very truly yours,

ALAN BIBLE, *Attorney-General.*

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

252. County Commissioners—Chapter 12, Statutes of 1945, Does Not Repeal, Supersede or Limit Section 1 of Act of March 13, 1867—Unaudited Claims.

CARSON CITY, December 19, 1945.

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

DEAR JUDGE REYNOLDS: I have your letter of December 10, 1945, asking my opinion as to the effect of chapter 12, Statutes of Nevada 1945, page 21. You ask in particular whether it repeals, supersedes, or limits section 1 of the Act of March 13, 1867 (Statutes of Nevada 1867, page 115; sec. 1968 N.C.L. 1929).

It is my opinion that the answer is in the negative.

Chapter 12 of the Statutes of 1945 amends section 25 of the County Government Act of March 8, 1865 (section 1947 N.C.L. 1929). The original Act of 1865 as a whole relates to the powers and duties of the boards of county commissioners in the several counties in this state.

From the beginning section 25 provided, insofar as material here, 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 become due or payable * * *.

Section 26 provides as follows:

No claim or account against any county 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.

Chapter 12, Statutes of 1945, amends section 25 of the original Act so as to read 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 *certified* by the claimant, within six months from the time such claims or accounts become due or payable; *provided*, that the certification required by this section shall be in substantially the following form:

“I hereby certify that the above and foregoing claim against County, State of Nevada, is just and reasonable, and that said claim is now due, owing and unpaid.”

The verbal changes made by the amendment consist of substituting the words “duly certified by the claimant” for the words “duly authenticated” in the original section, and the addition of a form of “certification.”

It is to be assumed that the Legislature intended to give some new meaning to the old section by changing the words, or possibly to use more apt words to clarify the old meaning.

The old law was a guide to the commissioners as to their duties and powers. Section 25 was intended to prevent the presentation or allowance of stale claims, *i.e.*, claims made more than six months after they become due and payable. The words “duly authenticated” might well be considered to contemplate that some certification should be made to show that the claim was made within the six months’ limit. But here we enter a realm of conjecture. The ordinary definitions of the words “authenticate” and “authentication” in respect of claims against estates of deceased persons, claims in bankruptcy, public documents and statutes, court and other records, sometimes mean “sworn to” and sometimes mean “vested with all due formalities and legally attested.” According to Webster “authenticate” means “to render authentic to give authority to or proof, attestation or formality required by law as sufficient to entitle to credit.” Other definitions are to be found in as sufficient to entitle to credit.” Other definitions are to be found in vol. 4, Words and Phrases, pages 825, 826, 827.

Our Supreme Court in *Washoe County v. Humboldt County*, [14 Nev. 123](#), made a definition of “audited accounts” so as to hold that “unaudited accounts” are those that have not been previously examined and allowed by the commissioners and auditors in the ordinary transactions of county business.

The majority opinion of Justice Hawley in that case and the dissenting opinion of chief Justice Beatty agree that “all unaudited claims must be ‘sworn to’ in order to give the board of commissioners and county auditor any authority to audit and allow them.” The majority opinion cites sections 25 and 26 of the old Act while the dissenting opinion cites those sections and, in addition, section 1 of the Act of 1867 (sec. 1968 N.C.L. 1929). It appears, therefore, that as far back as 1879 the Supreme Court considered that the words “duly authenticated” as used in section 25 (sec. 1957 N.C.L. 1929) means “sworn to.” Chief Justice Beatty relied on not only section 25 and the words “duly authenticated” therein, but on section 1 of the Act of 1867 to establish that all unaudited claims must be “sworn to.” We know historically that all such claims were to be sworn to after 1867, but the courts have not pointed out where it was because of the Act of 1865 or the Act of 1867 or both said Acts.

It may be concluded that the Legislature was not satisfied with the words “duly authenticated” and desired to use the expression “duly certified,” as well as the form of “certification,” so as to prevent that section at least from being construed so as to require unaudited claims to be “sworn to.” The Legislature may have concluded to confine section 25 to the purpose of preventing the presentation of stale claims and to leave section 26 of the Act unchanged so as to prevent the audit or allowance or payment of any stale claim, whether certified or not.

The question whether this alteration or clarification of section 25 of the old Act by the amendment of 1945 repeals, supersedes, or limits section 1 of the Act of 1867 (sec. 1968 N.C.L. 1929) might be given a short answer by stating that it does not say so expressly or by implication. The amendatory Act of 1945 has no general repeal or specific repeal section.

The Act of 1945 is a later and independent enactment under a different title and if in conflict with the Act of 1867 it would not be necessary to amend the Act of 1867 (*State v. Cole*, [38 Nev. 488](#); *Magee v. Whitacre*, [60 Nev. 202](#)). If two statutes are irreconcilably conflicting, the last enacted controls (*State v. Esser*, [35 Nev. 429](#); *Ronnow v. City of Las Vegas*, [57 Nev. 332](#)). One statute is not repugnant to another unless they relate to the same subject and are enacted for the same purpose (*Gill v. Goldfield Con. Mines Co.* 43, Nev. 1).

My opinion is based on the foregoing principles of law.

The Act of 1945 contains no section repealing any specific enactment or any enactment “in conflict herewith.” The two sections come under two separate Acts with different titles.

The two sections serve different purposes. Section 25 governs County Commissioners in order to prevent the allowance of stale claims. Section 1 of the Act of 1867 has as its purpose the prevention of the presentation of false claims. One relates to “all unaudited claims or accounts.” The other relates to “accounts” and seems to contemplate liquidated accounts in dollars and cents. It does not appear that the continued observance of section 1 of the 1867 Act (sec. 1968, N.C.L. 1929) would interfere with the observance of section 25 of the 1865 Act (sec. 1957 N.C.L. 1929) as amended in 1945.

It may be urged that section 26 a claim or account cannot be allowed or paid if the provisions of section 25 are not “strictly complied with” does not mean that any claim or account which is in strict compliance with section 25 must be paid. Claims are regulated by the general law. They

must be examined and approved. They may be rejected altogether or allowed conditionally on a reduction of the amount. They must be sworn to (sec. 1968 N.C.L. 1929).

I am aware that the Legislature may have considered it desirable to dispense with the necessity of swearing to claims generally. Apparently, however, they failed to express that desire. For the text of the law we must go to the enrolled bill. For the meaning of the text we must apply the principles cited in the foregoing.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

By HOMER MOONEY, *Deputy Attorney-General*.

253. Soil Conservation Districts—Election in Clark County in January, 1946, Not Required.

CARSON CITY, December 19, 1945.

MR. GEORGE HARDMAN, *Member, State Soil Conservation Committee, University of Nevada, Reno, Nevada.*

DEAR MR. HARDMAN: We have your letter of December 12, 1945. You request our opinion for the guidance of your committee as well as for the information of Mr. Lloyd Payne, County Clerk of Clark County, Nevada, as to whether the latter should proceed to conduct an election in the first week in January, 1946, under the provisions of the Soil Conservation Districts Law of March 30, 1937, as amended by chapter 20, Statutes of Nevada 1945.

The answer is in the negative. A proper construction of the law, as amended, indicates, notwithstanding certain express provisions in the amendment, that the law does not mean that the election provided for should be conducted in every year. A further consideration of the special circumstances affecting the Soil Conservation District in Clark County discloses that the law does not require such an election in Clark County in January of the year 1946.

Section 7 of the law, as amended in 1945, provides so far as pertinent here:

The county clerk of the county in which a soil conservation district is situated, shall conduct an annual election for the replacing of any elected supervisor(s) whose term has expired and shall pay all costs of such election from county funds.

Such election(s) shall be held during the first week of January of each year.

The foregoing provisions would seem to be clear and compelling. However, the following principles have been laid down by our Supreme Court:

So it is always the first great object of the courts in interpreting statutes, to place such construction upon them as will carry out the manifest purpose of the legislature *and this has been done in opposition to the very words of an act.* Gibson v. Mason, [5 Nev. 283, at 311](#). (Cited and quoted in Abel v. Eggers, [36 Nev. 372, at 381](#).)

It is not within the province of the courts to assume the powers or functions which properly belong to the Legislature to the extent of either enacting laws or supplying defective enactments with language sufficient to make them operative for a presumed purpose, *unless, from the reading of the entire act, the purpose and intent is made manifest*, which instance courts are warranted in supplying sufficient language to carry out of the purpose and intent of the Legislature to the

end that the law may be made operative for the purpose for which it was intended by the legislative body. *State v. Brodigan*, [37 Nev. 245, at 248](#), 249.

In the last case above the Legislature of 1913 passed an Act providing for the election of judges for the ten judicial districts in the State. The Act as passed provided for the election of one judge in the Second district and two judges in all the others, whereas there was need for two judges in the Second district and for but one judge in each of the others. The court considering the general conditions in the State as a matter of judicial notice and considering the purpose of the Act as a whole felt free to declare the meaning of the Act contrary and opposite to the meaning of the words in question themselves.

Taking the provisions of section 7 of the Act, as amended, in the light of the purpose of the whole law found in various sections, we find:

By section 6 of the original Act provision is made for the creation of Soil Conservation Districts which shall be governmental subdivisions of the State and public bodies corporate and politic. Two appointed supervisors and three elected supervisors shall be the governing body of each district.

Section 6 of the Act, as amended, provides for the first election of three elected supervisors. The time is not fixed by specific day but in relation to the time the district receives its certificates of organization.

Section 7 of the Act, as amended, provides that the “term of office” of each elected supervisor shall be three years. For the want of other provision this would be three years from and after election. A supervisor “holds office” until his successor has been elected or appointed and has qualified.

By section 7 before amendment it was provided that the selection of successors to fill an unexpired term, or for a full term, shall be made in the same manner in which the retiring supervisors shall, respectively, have been selected. In the case of elected supervisors this meant by election for the unexpired term or for the full term, as the case might be. The election for a full term would naturally follow the expiration of the first three-year term and each succeeding term every three years thereafter.

Section 7, as amended, made two changes. The first provided that unexpired terms could be filled by appointment by the remaining supervisors (instead of election as before). The second provided more specifically for elections for full terms which were formerly conducted in the manner in which the elected supervisors were originally elected under section 6 of the Act.

The first change is not significant here.

The second change involves new provisions for the election of elected supervisors for a full term. Naturally, that would be after some three-year term had ended, and, naturally, it would be for the succeeding three-year term. The amendment in fact says as much: The election is “for the replacing of any elected supervisor(s) whose term has expired.” The term of an elected supervisor does not expire until three years after his election. To replace an elector whose term has expired means to place him or someone else in the office for the succeeding three-year term.

The amendment, however, by apparent inadvertence, requires an election “in the first week in January of each year.” The old section 7 is wiped out by setting out section 7, as amended, in full. In order to preserve the legislative intent the requirement of an “annual” election must be disregarded or such words supplied as to harmonize the meaning with the purpose. The amendment must necessarily be read as if its words were:

The county clerk of any county in which a soil conservation district is situated

shall conduct an * * * election for the replacing of any elected supervisor(s) whose term has expired and shall pay all costs of such election from county funds.

Such an election(s) shall be held * * * (in the case of every conservation district in which the term of office of its elected supervisors has expired), on the day following such expiration or so soon thereafter as conveniently may be.

The remainder of the section including provision for notice of election would remain as it is.

We are aware that while an election is contrary to the purpose of the law, it might be that the term of elected supervisors in some districts in Nevada may have expired or may expire in 1945, so as to make an election the first week in January 1946 appropriate. We do not understand, however, that this is the case in Clark County, and if an election did not take place in January 1946 (on expiration of term) it would be for a full three-year term with no further election until three years later.

We do not consider the holding over beyond the term by any elected or appointed supervisor would change the situation here. If a term has expired an election is indicated, but not an annual election, and only for a full three-year term.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

By HOMER MOONEY, *Deputy Attorney-General*.

254. Fish and Game—Beaver Skins Need Not Be Marked with State Seal—State Board Required to Grant Permits if Applications “Certified” by County Commissioners.

CARSON CITY, December 21, 1945.

MR. S.S. WHEELER, *Representative, Nevada Fish and Game Commission, P.O. Box 678, Reno, Nevada.*

DEAR MR. WHEELER: Since receiving your letter of December 5, 1945, we have discussed some aspects of the questions there outlined with representatives of the Federal Fish and Wildlife Agency and your Commission.

We will here make direct response to your questions.

Your first question is whether the commission has the power to require that all legal beaver skins be stamped or in some other way e marked with the State seal.

We do not find any such power expressly given. Beaver are classed as “fur-bearing” animals by paragraph 3 of section 1 of the Fish and Game Law (1929 Nevada Compiled Laws, 1941 Supp., sec. 30305). Prohibitions respecting other forms of wildlife, therefore, do not apply. (Compare secs. 75 and 92.)

Section 79 contains all the law on beaver. Section 77 has probably been repealed by implication. The latter part of section 79 provides for nontransferable permits to trap beaver. The State board is authorized to count furs trapped under such permits; to divide them equally; to deliver one-half of them to the permittee and to authorize him to dispose of his share and retain the proceeds as “compensation.” The section then provides:

It shall be unlawful for any person to have in his possession any hide or fur from said animals unless the same has been lawfully taken and is lawfully in the possession of the holder thereof.

Penalties for violation of the law generally are provided by section 94 of the law.

Under this section the State board should satisfy itself that furs presented were trapped under its permit and on making division could, if it desired, give the permittee a certificate showing that fact and that the permittee was legally entitled to have and dispose of his share. If it desired, the board could make the certificate with respect to a specified number of furs on in the case of each fur. If made to accompany each fur there could be a blank at the bottom for delivery with the fur on sale to a purchaser as evidence of his lawful possession of fur lawfully taken. This would be beneficial to the permittee and to whomsoever the furs were sold, but the board could not require any particular marking or identification of the furs. That would be a rule of evidence not required by the law.

You ask if the State board is required to grant permits to applicants whose applications have been "certified" by the respective Boards of County Commissioners. In our opinion the answer is "yes." By the amendment of 1945 the Legislature changed the word "may" to the word "shall" and in our opinion thereby made the provision mandatory. The law, however, provides that the permits shall be to trap beaver "under their supervision" and "such permits shall not be transferable." We believe that if any permits should be abused either through an attempt to transfer them or by acting contrary to reasonable supervisory regulations adopted by the State board, they could be revoked by the State board.

The permit could provide that it was issued by authority of and subject to the provisions of section 79 of the Fish and Game Law of Nevada as amended by chapter 119, Statutes of Nevada 1945.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

By HOMER MOONEY, *Deputy Attorney-General*.

255. Nevada Petroleum Products Inspection Law—Refund for Overpayment of Inspection Fees.

CARSON CITY, December 21, 1945.

HON. WAYNE ADAMS, *State Sealer, Department of Weights and Measures, State of Nevada, Reno, Nevada.*

DEAR WAYNE: Last week you again discussed with us the claim of the Shell Oil Company for a refund for an alleged overpayment of inspection fees arising under the Nevada Petroleum Products Inspection Law.

On August 13, 1945, you discussed the matter of a refund to the Shell Oil Company with us and at that time we advised you that the statutes under which you operate made no provision for a refund on the alleged overpayment of petroleum products inspection tax. As shown by a copy of your correspondence which you have furnished to us, you, in turn, so advised the Shell Oil Company on August 14, 1945.

The Shell Oil Company is now suggesting that the matter of an adjustment of the alleged overpayment can be handled by way of credit against future inspection fees instead of by way of refund.

There is no statutory procedure for this method of adjustment by crediting against future inspection fees instead of by way of refund.

There is no statutory procedure for this method of adjustment by crediting against alleged overpayments. Very obviously the Shell Oil Company cannot do indirectly what it cannot legally do directly. Current inspection fees must be paid in full when due without deduction and in accordance with the Nevada Petroleum Products Inspection Law.

It is our opinion that the only remedy available to the Shell Oil Company in the problem and under the facts which you have presented is by means of a relief bill to be presented to the next session of our Nevada Legislature.

I am returning herewith the correspondence which you have furnished us concerning this problem.

My regards and best wishes.

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

256. Motor Vehicles—Punishment for Driving While Under Influence of Intoxicating Liquor—Conflicting Statutes.

CARSON CITY, December 26, 1945.

HON. A.L. PUCCINELLI, *District Attorney Elko County, Elko, Nevada*.

DEAR MR. PUCCINELLI: This will acknowledge receipt of your letter dated December 17, 1945, received in this office December 20, 1945, requesting an interpretation of section 4351 N.C.L. 1929 and section 4442.31, 1929 N.C.L. 1941 Supp., respecting the conflict that appears therein governing the punishment for the offense of driving a motor vehicle while under the influence of intoxicating liquor.

There is an apparent conflict, but as one statute deals with the jurisdiction and duties of a court and the other with the licensing of operators of motor vehicles, the two statutes should be considered together so far as they may be consistent.

Our answer to your question appears at the conclusion of our analysis of the statutes in question.

Section 4351 N.C.L. 1929 is section 2 of an Act to regulate traffic on the highways of the State and this section makes it a misdemeanor to drive while under the influence of intoxicating liquor. The Act was adopted March 21, 1925. This section was amended by chapter 30, Statutes of Nevada 1937, page 52, making the violation a misdemeanor and providing a punishment by a jail sentence of not less than thirty nor more than ninety days. Upon a second conviction the person so convicted shall, in addition, be deprived of his license to operate a car for a period of not to exceed one year.

The section was again amended by chapter 161, Statutes of 1939, page 243, retaining the misdemeanor provision and the thirty- or ninety-day jail sentence, and provided “or the person so convicted shall be deprived of his license to operate a car for a period of not less than 30 days nor more than one year”; and upon a subsequent conviction the person so convicted shall be punished by imprisonment in jail “and in addition thereto shall be deprived of his license to operate a car in this state for a period of not to exceed one year.”

In 1941 the Legislature passed an Act, chapter 190, Statutes of 1941, page 529, approved March 31, 1941, relating to the licensing of persons operating motor vehicles on the highways. Section 32(a) of that Act (sec. 4442.31 Supp.) provides:

Whenever any person is convicted of any offense for which this act makes mandatory the revocation of the operator's or chauffeur's license of such person by the department, the court in which such conviction is had shall require the surrender to it of all operator's and chauffeur's licenses then held by the person so convicted, and the court shall thereupon forward the same, together with a record of such conviction, to the department.

The Act under section 33 (sec. 4442.32 Supp.) defines the Act which make mandatory the revocation of a license by the department. Section 33, quoting parts deemed relevant, provides as follows:

The department shall forthwith revoke the license of any operator or chauffeur upon receiving a record of such operator's or chauffeur's conviction of any of the following offenses, when such conviction has become final.

Subdivision 2 reads as follows:

Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug.

Section 32 of the Act was amended by chapter 187, Statutes of 1943, page 273, by inserting "within ten days" before the phrase "forward to the department a record of the conviction of any person."

Section 51 of the Act of 1941, which was not amended, specifically repeals the old license Act of March 25, 1931, and reads "and all acts or parts of acts inconsistent with the provisions of this act are hereby repealed."

The opinion of Attorney General Mashburn upon this question, Opinion No. 324, 1940-1942 Biennial Report, in effect, held that the courts looked to section 4351 N.C.L. 1929 to determine their jurisdiction and duties in the trial and punishment of driving a motor vehicle while under the influence of intoxicating liquor, and that chapter 190, Statutes of 1941 (section 4442.31 Supp.), did not repeal section 4351 supra, but the two sections should be considered together so far as consistent.

We are of the opinion that legislative action should be taken to make clear these sections of the statutes. Under the existing statutes any person convicted of the offense of driving a motor vehicle while under the influence of intoxicating liquor is required to surrender his driver's license to the court, and the court must within ten days after final conviction forward the license to the State Department of Highways where such license is revoked by the department forthwith. It appears, therefore, that the court may pass judgment and sentence that the license of the person so convicted be revoked and reissued only after the period of one year upon application to the Department of Highways.

Under section 4351 the court still has the power to fix a jail sentence, but in view of the fact that the offender stands convicted of a driving a motor vehicle while under the influence of intoxicating liquor, it follows as a matter of law that the license is revoked under sections 4442.31 and 4442.35, 1929 N.C.L. 1941 Supp., by the administrator of the Act providing for the licensing of operators of motor vehicles.

Very truly yours,

ALAN BIBLE, *Attorney-General*.

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

257. Intoxicating Liquors—Annual Licenses May Be Renewed by State or County

**Boards Without Application Upon Payment of Fee—Importers' Licenses
May Be Issued to Persons in Retail Business.**

CARSON CITY, December 29, 1945.

MR. H.S. COLEMAN, *Supervisor, Liquor Tax Department, Carson City, Nevada.*

DEAR MR. COLEMAN: We have your letter of December 24, 1945, asking advise as to your duty in respect of the application of Safeway Stores, Inc., for a renewal over the year 1946 of its license to import beer into Las Vegas, Nevada. You have handed us the letter to you, dated December 18, 1945, from Thatcher, Woodburn and Forman. Attorneys for Safeway Stores, Inc., asking such renewal and inclosing draft of applicant for \$150, the statutory license fee, returned herewith.

You advise that Beverage Distributors, Inc., hold a license to import liquors into Reno, Nevada, for the current year. Beverage Distributors, Inc., applied for a license to import liquors into Las Vegas, Nevada, but the application was rejected by the County Commissioners of Clark County. You also advise that the same commissioners have rejected the application of Safeway Stores, Inc., for a license to import beer into Las Vegas, Nevada, during 1946.

On the face of the facts presented it is our opinion that you may consider the rejected application and approve or disapprove it. If you approve it (having received the statutory license fee), you should issue the license. Or, you may consider the present application for a renewal now before you and renew or refuse to renew the license for the year 1946. Either procedure would be proper under the circumstances.

On the face of the facts thus far recited you should grant and issue the license for the year 1946, or issue your receipt and certificate of renewal.

You further advise, however, that you understand "that the Commissioners of Clark County and the City Commission of Las Vegas are going to refuse all food markets or stores a license to sell or handle 'liquors' in these types of stores."

At the present time we do not know whether a retail license will be issued for 1946 or under what name or style. The State law does not provide for the issuance of retail licenses or any fee therefor. When the local authorities act in the premises there will be time to consider the effect of their action.

As to your procedure in the instant matter, section 5 of the liquor law, as amended by chapter 216, Statutes of 1945, provides for the filing of applications for State licenses with the County Commissioners and for the examination of the same. The requisite fee must accompany the application.

Section 6 of the law (1929 N.C.L. 1941 Supp., sec. 3690.06) provides:

The county commissioners shall approve or disapprove such applications, and in the event an application is disapproved by the county commissioners, the county commissioners shall forthwith return to the applicant the license fee accompanying such application. If the county commissioners approve an application they shall forward it to the state tax commission of the State of Nevada, together with their written approval thereof and the license fee accompanying the same. Upon receipt thereof the state tax commission of the State of Nevada shall forthwith issue the appropriate license to such applicant.

Sections 9, 10, 11 and 12 of the law provide procedure for the suspension or revocation of

any license. Section 12, as amended by chapter 216, Statutes of 1945, provides for a new hearing before the Tax Commission on questions affecting suspensions and revocations. There is then added at the close of the third paragraph of said section (Stats. 1945, page 375) the following:

The commission shall have the same power respecting an original application for any license.

Section 15 of the law prescribes the schedule of license fees. It is further provided:

All license or permit fees are due and payable on the first day of January of each year. If not paid by the fifteenth day of January of each year the license shall be automatically cancelled.

In view of the foregoing, the action of the County Commissioners after examining an original application for a license is subject to the power of the commission to grant a new hearing and issue a license.

After a license is once issued the licensee may continue in business for the next year as a matter of course if he pays the requisite fee before January 15. If he does not so pay, his license is "automatically cancelled." It is apparent that a receipt for the fee for the coming year would be a sufficient protection from automatic cancellation of his license in that year. The receipt would be a form of renewal of his license.

This construction is fortified by the provisions for the suspension or revocation of a license. These provisions at all times afford a means of insuring that a license continues by his character and conduct to deserve the protection of his license, even after he has paid the license fee.

It seems in this case the procedure for a receipt and certificate of renewal is more appropriate in view of the fact that the applicant already holds a license which remains uncanceled.

Referring again to your letter of December 24, 1945, you say:

On November 19, 1945, I wrote your department and asked the question "Can a retail liquor dealer be granted an importer's license in the name of his retail store * * *?"

On December the 3d your department answered in effect that they could not be granted a retail importer's license.

In this connection we beg to call your attention to the fact that our answer of December 3, 1945, to the question quoted by you was "No." If you have construed the effect of our answer to be that a retail liquor dealer cannot be granted an importer's license or that an importer cannot be granted a retail liquor dealer's license, you have mistaken the effect of our letter. Your letter of November 19, 1945, which we answered December 3, 1945, stated, "There was no intention of excluding a retail liquor license from becoming a member of, or a sole owner of an importing and wholesaling concern." The emphasis in our opinion was on the words "under the same name and style."

Section 23 of the liquor law as amended by chapter 216, Statutes of 1945, requires each importer and wholesaler of liquor to keep on hand at a fixed place of business in Nevada certain liquor stocks, to keep a record of all liquor received in said State of Nevada, together with copies of invoices and a monthly inventory of all liquor on hand on the last day of each month. We referred to this section in our letter of December 3, 1945.

Our emphasis on the words "under the same name and style" was to provide you with information as to the source of authority for and character of regulations you might adopt respecting liquor in Nevada. All stocks of liquor and records should be identified with the particular license and absolutely identical designations of the licensee under different licenses

would cause confusion and permit evasion of the law.

On this point we may add that only a slight difference in designation would be needed. Licenses might be in the name of "John Smith, Importer," and "John Smith, Wholesaler," and "John Smith, Retailer" or "Smith Liquor Co., Importing Branch," "Smith Liquor Co., Wholesale Branch," and "Smith Liquor Co., Retail Branch." If the designations served to keep the records and liquor separate and capable of identification, they would suffice.

Very truly yours,

ALAN BIBLE, *Attorney-General.*

By HOMER MOONEY, *Deputy Attorney-General.*