

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL - 1946

OPINION NO. 46-258 COUNTY COMMISSIONERS—Power to Vacate Section of State Highway When No Longer Required as Such Highway.

Carson City, January 2, 1946

Hon. E E. Winters, District Attorney Churchill County, Fallon, Nevada.

Dear Judge Winters:

This will acknowledge receipt of your recent letter and our subsequent telephone conversation respecting a change in a part of the state highway leading from Hazen to Fallon which now leaves a section of about two miles as no part of the newly constructed State highway and which the County Commissioners desire to vacate.

You inquire if the County Commissioners have power to vacate the section of road in question where the State of Nevada is part owner of the highway.

We are of the opinion that the right of way acquired by the highway department in the name of the State, when relinquished by the department upon the determination that such right of way is no longer required as part of a State highway route, may be vacated by the Board of County Commissioners as provided by statute.

Section 5344 N.C.L. 1929 reads in part as follows:

Whenever in the construction, reconstruction, maintenance, or repair of any of the state highways it shall appear to the state highway engineer that any portion of the state highway as herein defined is dangerous or inconvenient to the traveling public in its present location, or as it may from time to time be located, by reason of grades, dangerous turns, or other local conditions; or that the expense in the construction, building, rebuilding, maintenance, or repair thereof would be unreasonably great and could be materially reduced or lessened by change of route, the state highway engineer is hereby empowered to divert or change said route in such manner as in his discretion may seem best, with the approval of the board of county commissioners. * * *.

Jurisdiction over that part of a road no longer included within a state highway route is exercised by the county commissioners with power to vacate the same.

Section 1942, 1929 N.C.L. 1941 Supp., defines the powers granted county commissioners in their respective counties. Subdivision fourth reads as follows:

To lay out, control, and manage public roads, turnpikes, ferries, and bridges within the county, in all cases where the law does not prohibit such jurisdiction, and to make such orders as may be necessary and requisite to carry its control and management into effect.

See Attorney General's Opinion No. 145, 1934-1936 Biennial Report, wherein it was held that the above-quoted section grants the county commissioners power to abandon a public county road or any portion of the same.

Section 5396 N.C.L. 1929 provides a method for the change or vacation of a highway upon petition of twenty-four freeholders of the county. The section provides that such petition shall be

laid before the county commissioners at their next session thereafter and thereupon the commissioners may within twenty days thereafter proceed to change or vacate such highway.

The statute is not clear as to what action by the county commissioners is limited to the twenty-day period. The language, "may, within twenty days thereafter, proceed to locate, open to public use, reestablish, change or vacate such road, highway," indicates that proceeding necessary to bring about the required action should be taken by the board and not that the establishment, change, or vacation should be completed within that time.

Relative to the objection to the closing of the road by one of the landholders, the general principle of law expressed in 25 Am. Jur., page 418, is as follows:

Ordinarily, the presumption is that a street or highway was vacated in the interest of the public and that its vacation was necessary for public purposes, and the burden of showing to the contrary will be put upon the person who objects to the proceeding.

So, it is within the province of the public authorities in whom the power to vacate is vested to determine when it shall be exercised, and their action in this regard will not be reviewed by the courts in the absence of fraud or a manifest abuse of discretion.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 46-259 SURPLUS PROPERTY ADMINISTRATION—Governor proper officer to waive or declare state's interest in acquiring surplus military airports—State Planning Board.

Carson City, January 8, 1946

Hon. Vail Pittman, Lieutenant and Acting Governor of Nevada, Carson City, Nevada

Dear Governor Pittman:

This will acknowledge receipt of your letter dated December 27, 1945, received in this office December 28, 1945, requesting an opinion as to the State agency authorized by statute to either declare or waive the State's interest in connection with the disposition of surplus airports by the Surplus Property Administration.

It appears from the copy of the letter of the regional administrator, inclosed with your request, that the State has equal priority rights with counties and municipalities and that the State should either declare or waive its interest in such property before a county or municipality can acquire the same.

The statutes do not specifically designate the department of the State which shall perform this duty, but grants authority to any department of the State to enter into any contract with the United States for the purchase of property.

We are, therefore, of the opinion that the Governor, as the head of the executive department of the State, is the proper officer to waive or declare the State's interest in acquiring surplus military airports. In discharging this function, we believe the Governor may well seek the advise and

report of the State Planning Board as to the situation now existing and the prospects for the future.

Chapter 43, Statutes of 1945, provides, quoting parts deemed relevant, as follows: "The state or any department, division, bureau, commission, board or authority, agency or political subdivision thereof, may enter into any contract with the United States of America or with an agency thereof for the purchase of any equipment, supplies, material or other property, real or personal * * *. (b) The governing body or executive authority, as the case may be, of any department, * * * may designate by appropriate resolution or order any office holder or employee of its own to enter a bid or bids in its behalf at any sale of * * * or other property real or personal owned by the United States of America or any agency thereof * * *."

The duties and functions of the State Planning Board are set out in section 6975.05, 1929 N.C.L., 1941 Supp., as generally to make a comprehensive State plan for the economic and social development of the State and additional powers are provided in the following section to promote the convenience and general welfare of the people, and authority is given to cooperate with Federal officials.

This board, therefore, should be useful to the Governor in the discharge of his duty in the present instance.

Cities, counties and municipalities are given authority to acquire and maintain airports under the provisions of sections 289-293 N.C.L. 1929, but this authority does not extend to the State, and if desired, would require legislative action.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 46-260 UNIVERSITY OF NEVADA—Minutes Board of Regents open to public—Records must be kept of action taken at either executive or open session of Board of Regents.

Carson City, January 11, 1946

Mr. Frank Helmick, Legislative Counsel, Room 449, 125 N.C.L. Center Street, Reno, Nevada

Dear Mr. Helmick:

We have your letter of December 18, 1945, which we received December 19, 1945.

You ask two questions which, eliminating questions of policy and public relations, we state as follows:

1. Are the minutes of the Board of Regents of the University of Nevada open to the public?
2. Does any law require that records be kept of the action taken at either an executive or an open session of the Board of Regents?

To both of these questions the answer is in the affirmative.

Subdivision 9 of section 3 of the Act of 1887, relating to the State University, as amended by chap. 229, Statutes of Nevada 1945, page 448 (sec. 7728 N.C.L. 1929, as amended), while not

referring specifically to “minutes,” makes it a duty of the Board of Regents “to keep open to public inspection an account of receipts and expenditures.”

Section 4 of the same Act, which retains its original text without amendment, provides:

The board of regents shall have the power to appoint a chairman, who shall receive no compensation therefor, nor shall any member of the board of regents receive any compensation for his services, except necessary expenses in attending meetings of the board. The board of regents may employ a clerk of said board, who shall receive a salary of twenty-five dollars per month, and who shall keep a full record of all proceedings of the board, which shall at all times be open to public inspection, and said clerk shall not be a teacher in said university. Sec. 7729 N.C.L. 1929.

This section is mandatory as to the duties of the clerk (who really acts for the board) and the requirement of exhibiting the records to public inspection would govern the board through the clerk. While the appointment of the clerk is not mandatory, a clerk actually exists and the statute applies.

The requirement to exhibit the record of “proceedings” to public inspection cannot be evaded by keeping no record. The board acts as a body by way of resolutions and motions, the former embracing the sense of the board respecting present or future questions, and the latter being the implements by which the desire of the board is translated into action. The record would necessarily include all resolutions and motions coming before the board and the votes thereon, but would not necessarily include debate or discussion.

By reason of your official duties you have a right to inspect this record and the account receipts and expenditures, apart from your rights as a member of the public generally. Should you have reason to believe the “record” incomplete or insufficient, you may make suitable protest. Section 4 of chap. 91, Statutes of Nevada 1945, at page 137, provides:

It shall be the duty of all officers, departments, institutions, and agencies of the state government to exhibit or make available for the inspection of the legislative counsel all books, papers and records of a public nature under their control, necessary or convenient to the proper discharge of his duties under this act, on his request of that officer or any clerk or inspector in his office.

Very truly yours,

ALAN BIBLE
Attorney General

By: Homer Mooney
Deputy Attorney General

OPINION NO. 46-261 TAXATION—Military exemption—Merchant Marine.

Carson City, January 21, 1946

Hon. L.E. Blaisdell, Acting District Attorney Mineral County, Hawthorne, Nevada

Dear Mr. Blaisdell:

This will acknowledge receipt of your letter dated January 11, 1946, received in this office January 12, 1946, requesting an opinion as to whether or not the \$1,000 tax exemption applies to one who has served in the Merchant Marine of the United States.

We are of the opinion that a person who has received an honorable discharge from the Merchant Marine Service of the United States in time of war is eligible to claim the tax exemption provided by statute.

Section 5 of the Act to provide revenue for the support of the government, the same being section 6418 N.C.L. 1929, as amended by chapter 32, Statutes of 1945, subdivision seventh, provides in part as follows: "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 any other branch of 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 * * *."

It appears from an analysis of the Federal statutes that service in the Merchant Marine in time of war is considered to be naval service in time of war.

The policy and purpose of the United States in the Merchant Marine Act as amended appears in the following language, "* * * and serve as a naval or military auxiliary in time of war * * *."

Section 1474, title 50, Appendix U.S.C.A., under the heading "Additional compensation to certain civilian employees during periods of merchant marine service," refers to sections 61(b), 61(e), title 50 U.S.C.A. The sections referred to do not use the term merchant marine, but read "* * * shall have entered upon active military or naval services in the land or naval forces of the United States by voluntary enlistment or otherwise shall be entitled to receive * * *."

The section provides pay or credit for accumulated leave of employees ordered to active military or naval duty.

The Act of May 10, 1943, title 50, Appendix, paragraph 901 U.S.C.A., make sit unlawful to manufacture, sell, possess, or display any insignia, decoration, medal, award, device, etc., provided for in the several Acts of Congress, including the Merchant Marine, without authority.

The Nevada statute as amended include those who have received an honorable discharge from the revenue marine, or any other branch of the armed forces of the United States in time of war, and therefore should be construed to include one who has received an honorable discharge from the Merchant Marine Service of the United States.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 46-262 COUNTIES—Suits against state not created where mere obligation is based upon moral claim and not legal liability.

Carson City, January 22, 1946

Hon. A.L. Scott, District Attorney, Lincoln County, Pioche, Nevada

Re: *Oliver v. Lincoln County et als.*, No. 3745

Dear Mr. Scott:

I received your letter of January 16, 2ith inclosures, and today wired you as follows:

Re inquiry sixteenth instant believe form of return on summons sufficient for Fogliani and Hollinger individually. Otherwise proof of service can be supplied to cure it. State not served to this date. Letter follows.

In explanation I may say I may have missed your point that the service gives no jurisdiction over Fogliani and Hollinger individually. They are sued both in their official and individual capacities, and the form of return recites service on them by name, including the delivery to each, of copy of summons with certified copy of complaint annexed. I do not see that it is necessary to serve them twice, once in their official and once in their individual capacities, or to leave with each two sets of papers.

As to your letter, the complaint sounds in tort against the county and its officials for damage to property in the performance of official functions or under color of office. I do not see how even a moral obligation can become a legal liability in this case. You may have in mind sections 1962.11-1962.13, 1929 N.C.L., 1941 Supp., but that Act has expired by limitation and is otherwise inapplicable.

As I wired you, the State of Nevada has not been served in this action. It seems that there is no liability against the State in any event.

Very truly yours,
ALAN BIBLE
Attorney General

OPINION NO. 46-263 PUBLIC SCHOOLS—Retirement Plan—Superintendent of State Orphans' Home entitled to participate.

Carson City, January 31, 1946

Mr. R. Van Der Smissen, Superintendent, Nevada State Orphans' Home, Carson City, Nevada

Dear Mr. Van Der Smissen:

This will acknowledge receipt of your letter dated January 25, 1946, received in this office January 26, 1946, containing an inquiry as to your eligibility to continue participation in the public school teachers' retirement plan while holding the position of Superintendent of the Nevada State Orphans' Home, and under the circumstances that you hold a valid Nevada teacher's certificate, have heretofore participated in the retirement system, and have credit for twenty years' teaching.

We are of the opinion that you, being a legally qualified teacher holding a valid Nevada teacher's certificate, may participate in the teachers' retirement plan while holding the position of Superintendent of the Nevada State Orphans' Home.

Subdivision (b), section 1, of the Act to provide for the payment of retirement salaries and annuities to public school teachers of this State, as amended by chapter 114, Statutes of 1943, defines the term teacher under class (2) as follows: "as an instructor in the Nevada state orphans' home, teaching under a valid Nevada teacher's certificate * * *."

While the children at the orphans' home attend the public schools, you instruct and supervise for industrial training in vocational education. Supervisors and superintendents in other vocational education departments of the State are included within the term "teacher."

As you have the qualifications specified in the section and have contributed for a number of years under the provisions of the Act, it appears to us that you can be classed as an instructor in the Orphans' Home and may continue to participate in the retirement plan.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 46-264 ORPHANS' HOME—Order of district court sufficient commitment to warrant admission.

Carson City, January 31, 1946

Mr. Herbert H. Clarke, Supervisor, Division of Old-Age Assistance, Post Office Box 1331,
Reno, Nevada

Dear Mr. Clarke:

This will acknowledge receipt of your letter dated January 25, 1946, received in this office the same date, in which you requested an opinion as to whether an order of the Eighth Judicial District Court, a copy of which was enclosed, was a sufficient commitment to keep a child in the Nevada State Orphans' Home.

Section 7586 Nevada Compiled Laws 1929 defines the procedure under which a child may be admitted to the Orphans' Home upon order of the court.

It must be presumed that the court followed the statutory procedure, and as the copy of the order shows the signature of the judge of the court, the order was evidently deemed to be sufficient.

We are of the opinion that the commitment is sufficient to warrant the admission of the child in question to the Orphans' Home.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 46-265 TAXATION—Military exemption—Nicaraguan Campaign.

Carson City, January 31, 1946

Hon. L.E. Blaisdell, Acting District Attorney Mineral County, Hawthorne, Nevada

Dear Mr. Blaisdell:

This will acknowledge receipt of your letter dated January 22, 1946, received in this office January 24, 1946, requesting an opinion as to whether or not a person in the military service of the United States during the "Nicaraguan Campaign" was entitled to apply for exemption under the statute providing a tax exemption for certain ex-service men or women.

We are of the opinion that a person who was in the military service of the United States during the Nicaraguan Campaign" was entitled to apply for exemption under the statute providing a tax exemption for certain ex-service men or women.

We are of the opinion that a person who was in the military service of the United States during the Nicaraguan Campaign cannot qualify for the tax exemption under the statute.

Chapter 32, Statutes of 1945, amending sections 6418 Nevada Compiled Laws 1929, under subdivision seventh, refers to persons who have served in time of war, in the following language, "The separate and/or community property, not to exceed 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 of the armed forces of the United States *in times of war*," * * *. (We supplied the italics.)

The statutes contemplate a situation where the United States is engaged in war with Nicaragua.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 46-266 STATE WELFARE DEPARTMENT—Returning veteran must be restored to former position at same step in salary range, including increases.

Carson City, February 6, 1946

Mr. Herbert H. Clarke, Supervisor, Nevada State Welfare Department, Division of Old-Age Assistance, P.O. Box 1331, Reno, Nevada

Dear Mr. Clarke:

This will acknowledge receipt of your letter dated January 22, 1946, in which you request an opinion relative to the rights of a veteran returning to his former position in the Nevada State Welfare Department. You ask if such employment is at the same step in the salary range as the one held by the employee when he entered military service, and if he would be entitled to salary increases he would have received if he had remained in active status with the department.

We are of the opinion that if possible to do so the employer must restore the person, honorably discharged from military service of the United States, to the position which such person left to enter the service, and at the same step in the salary range, including any increase of salary such position commands at the time of such person's reemployment.

Section 1 of chapter 58, Statutes of Nevada 1943, subsection (2) provides as follows:

If such position was as an appointive officer or as an employee in any department, commission, or agency of the State of Nevada, or in the employ of any city, town or irrigation district within the State of Nevada, 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.

The rule of construction to be applied to the statutes is expressed in the case of *In re Forsyth's Estate*, 45 Nev. at page 394, as follows: "All legislation must be construed in the light of the purpose sought to be accomplished."

It is evident that the purpose of the Legislature was to offer the returning veteran an opportunity to take up his former work with as little loss to the veteran as normally reasonable and possible.

Section 2 of the Act declares that such person shall be considered as having been on furlough or leave of absence and shall be restored as having been on furlough or leave of absence and shall be restored without loss of seniority. The word seniority is not used in its technical sense, but includes any rights or benefits which may have attached to the position during the absence of the veteran.

During such absence, if the status and pay of the position has advanced, and the person temporarily employed to fill such position has been paid these advances, it follows that the employer's circumstances have not so changed as to make it impossible or unreasonable to extend to the returned veteran the same advantages.

There is nothing in the statute to indicate that the word "restore" should be construed to have a technical or peculiar meaning such as "to the same state, without change." In the light of the legislative purpose the following rule is expressed in the *Estate of Lewis*, 39 Nev. at page 452, should be applied, "It is we think a general principle that technical words and phrases having peculiar and appropriate meaning in law shall be understood according to their technical import. This rule, however, has its exceptions where words are used to express

convertible terms in a statute, and where a court, seeking to carry out the will of the legislative body, applies to the terms the meaning that will give the most unrestricted scope to the enactment.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 46-267 SURPLUS PROPERTY ADMINISTRATION—Board of Control has no authority to create office of purchasing agent to purchase surplus property for state departments.

Carson City, February 5, 1946

Hon. Vail Pittman, Lieutenant and Acting Governor, Carson City, Nevada

Dear Governor:

On January 30, 1946, I received a copy of resolution of the State Board of Control outlining procedure for the purchase of surplus property from the Federal Government for the various departments and institutions of this State. At a meeting held on February 2, 1946, this office was called on for advice in the matter, and an opinion in writing was promised.

We have now made careful study of the matter and the following are our conclusions and suggestions:

The plan involves the appointment by the State Board of Control of a purchasing agent, paid out of the biennial appropriation for the State Board of Control, to make purchases of such surplus property for the use of the State Highway Department, the University of Nevada, the Nevada State Hospital for Mental Diseases, the Nevada State Prison, the State Orphan's Home, the Nevada School of Industry, the State Department of Education, the State Museum, and other similar agencies. It contemplates that these agencies shall reimburse the Board of Control for the service in proportion to the respective purchases.

The Act creating the State Board of Control (Stats. 1933, p. 155; 1929 Nevada Compiled Laws, 1941 Supp., secs. 6974-6974.10) gives "supervision over and control of the state capitol building, the capitol grounds, and State water works, the state printing office building and grounds, and State water works, the state printing office building and grounds, and all other state buildings, grounds, and properties not otherwise provided for by law." (Sec. 3 of Act.)

By section 4 of the Act the board is authorized to "control the expenditure of all appropriations for furnishing, repairing and maintaining said buildings and grounds, offices and property connected therewith," etc., but the section, by express proviso, does not apply to the University of Nevada, the Hospital for Mental Diseases, State Orphans' Home, Nevada State Prison, Nevada School of Industry, the State Highway Department, nor the State Printing Department.

By section 9 the board is authorized to employ an engineer, two janitors, one gardener, and two watchmen and fix their compensation and also "such additional assistants as necessity may require, and fix their compensation. Said employees shall perform such duties as said board may direct and be transferred from one branch of employment to another, and shall take care of all the buildings, grounds and offices under control of said board."

Section 13 of the General Appropriation Act, of 1945 (Stats. 1945, p. 481) sets aside from the General Fund \$64,000 for the fiscal years 1946 and 1947. Included in this amount is \$40,000 for "wages of janitors, watchmen, gardeners, engineers and extra help." \$14,000 for "fuel, light and laundry," and \$10,000 for "general upkeep of buildings and grounds."

Under this Act and under a liberal construction, the board might be deemed authorized to employ extra help who could purchase surplus property and fix his compensation, but by express exception such service would not extend to the University of Nevada, the Hospital for Mental Disease, State Orphans' Home, Nevada State Prison, Nevada School of Industry, State Highway Department, or the State Printing Department. This leaves under control the Educational Department and State Museum Board also has power to purchase property, 1929 Nevada Compiled Laws, 1941 Supp., sec. 4690.02(e).

It would appear, therefore, that if the Board of Control did employ extra help who could purchase surplus property the scope of his powers would be limited.

There is no statutory authority by which one department can reimburse another, nor can we find any money appropriated for such purpose in the General Appropriation Act. Your attention is directed to chapter 43, Statutes of 1945.

This statute was passed to remove certain restrictions upon the purchase of property by State and county offices so as to facilitate the purchase of available Federal surplus properties, materials, and equipment.

Subsection 1, subdivision III(b) provides: "The governing body or executive authority, as the case may be, of any department, division, bureau, commission, board, authority, agency or political subdivision of the state may designate by appropriate resolution or order any office holder or employee of its own to enter a bid or bids in its behalf at any sale of any equipment, supplies, material, or other property real or personal owned by the United States of America or any agency thereof and may authorize said person to make any down payment, or payment in full, required in connection with such bidding."

This Act is very clear and unambiguous and outlines a procedure by which the State, and its departments and its agencies can secure property, under this Act, simply designates one of its own employees to act for it.

This Act makes no appropriation, and assuming that any department of government desired to purchase Federal surplus property, it would be necessary to find funds appropriated by the Legislature for that purpose for its support, exclusive of salaries. In this search, recourse must be had to the General Appropriation Act. We do not find any such "earmarking" of funds in that Act.

We are advised that there is held a sum consisting of receipt from the N.E.R.A., the proceeds of the disposal of certain property. It is suggested this fund might be utilized to procure the services desired here. It is not clear how this fund is held, but if it were to be used for the purpose, legislative authority must appear, and we find none.

On the whole, we do not find authority for the proposal except, and to a limited extent, respecting the Capitol Building and grounds and the Educational Department.

Very truly yours,

ALAN BIBLE
Attorney General

By: Homer Mooney
Deputy Attorney General

OPINION NO. 46-268 CHIROPRACTOR—Practice of obstetrics or surgery prohibited—
May not make certificates of birth or death.

Carson City, February 11, 1946

Hon. V. Gray Gubler, District Attorney Clark County, Las Vegas, Nevada

Dear Mr. Gubler:

This will acknowledge receipt of your letter of February 5, 1946, received in this office February 7, 1946, in which you inquire if the amendment to the Act regulating the practice of chiropractic made by chapter 90, Statutes of Nevada 1945, gives a chiropractor the right to handle obstetric cases or the right to perform surgery, and also the right to sign birth and death certificates.

We are of the opinion that the amendment contained in chapter 90 Statutes of Nevada 1945, which added the provision that "nothing herein contained shall be construed to prohibit the use by any licensed chiropractor of all necessary electrical, mechanical, and hygienic and sanitary measures incident to the care of the body," does not extend the definition of chiropractic to include the practice of obstetrics, or of surgery, and there is no authority under the statute for a chiropractor to make a certificate of birth or death as the attending physician.

Chapter 90 Statutes of Nevada 1945 amends section 5 of "An Act to create a board of chiropractic examiners and to regulate the practice of chiropractic and to provide penalties for violation of this act, and to prohibit the practice of any other mode or system under the name of chiropractic."

This section defines chiropractic to be the science of palpating (touching, manipulation) and adjusting the articulations (joints, union, attachments, pivot) of the human spinal column. This is the extent of the science as evidenced by the following sentence: "This definition is inclusive, and any and all other methods are hereby declared not to be chiropractic." The Legislature has in plain and definite language declared that the manipulation of the human spinal column is the entire part and parcel of the practice of chiropractic.

The amendment to this section by chapter 90, supra, provides, "nothing herein contained shall be construed to prohibit the use by and licensed chiropractor of all necessary electrical, mechanical, and hygienic and sanitary measures incident to the care of the body." This proviso does not change nor add to the definition of chiropractic. The only effect it has is to modify the term "by hand only." The instrumentalities incident to the care of the body refer to mechanical agencies that may be necessary for the better manipulation of the spinal column and cannot be construed to extend the definition of chiropractic to the practice of medicine and surgery.

As a general rule, a provision is deemed to apply only to the immediately preceding clause or provision. 2 Lewis Sutherland Statutory Construction, sec. 352. The first sentence in this section being so clear as to meaning, there is no ground or reason to depart from the general rule. Although the exception to this rule was applied in the case of *State v. Beemer*, 51 Nevada 192, where the court held that the construction of the entire statute brought the case within exception, the court cited, with approval Sutherland Statutory Construction in the following language: "The natural and appropriate office of the proviso being to restrain or qualify some preceding matter, it should be confined to what precedes it, unless it clearly appears to have been intended for some other matter. It is to be construed in connection with the section of which it forms a part, and is substantially an exception, * * *."

The use of the terms "hygienic and sanitary measures" cannot be construed to extend the practice of chiropractic to that of medicine, surgery, and obstetrics as such is beyond the subject as expressed in the title of the Act.

The practice of medicine, surgery, and obstetrics is clearly defined in the Act of March 4, 1905, and its amendments.

Section 1 of this Act, being section 4090 Nevada Compiled Laws 1929 provides as follows: "That it shall hereafter be unlawful for any person, or persons, to practice medicine, surgery, or obstetrics in this State without first obtaining a license so to do as hereinafter provided."

Section 4096 Nevada Compiled Laws 1929 requires that an applicant present a diploma issued by some medical school which at the time of issuing the diploma shall have been recognized as a school under the rules prescribed by the American Medical Colleges.

There is nothing in the amendment to the Chiropractic Act to indicate an intent of the Legislature to nullify or supplement the Medical Practice Act.

As stated by the court in *Clover Valley Co. v. Lamb*, 43 Nevada on page 383, "The legislature is presumed to have a knowledge of the state of the law upon the subject upon which it legislates."

Therefore, a chiropractor may not under his license handle obstetric cases and cannot perform surgery of any nature.

The case of *People v. Mount*, 269 P. 177, California, was a homicide case in which a chiropractor was found guilty of manslaughter as the result of using instruments not permitted by his license.

The court held that testimony of a witness of having seen surgical instruments in the office of the chiropractor was competent to rebut defendant's testimony denying possession of such instruments. The appellate court said: "Furthermore there is evidence that the defendant used instruments in the treatment of the patient which his license as a chiropractic physician did not permit him to do."

The inevitable conclusion is that the Legislature has provided for the practice under license for the regular schools by definite acts which restrict such practitioners to their own particular methods of healing, under the respective systems taught by them, and under the certificates respectively issued to applicants therefor. Such was the opinion of the court in the case of *State v. Lyon*, 16 P.(2) on page 851.

Signing of Birth Certificate and Death Certificate.

Section 5247 Nevada Compiled Laws 1929 provides that it shall be the duty of the attending physician or midwife to file a certificate of birth. The section further provides if there be no attending physician or midwife, then it shall be the duty of the father or mother of the child, householder or owner of the premises, manager or superintendent of public or private institution

in which the birth occurred, and it shall be the duty of such officer to secure the necessary information and signatures to make a proper certificate of birth.

Under the provisions of the above section a chiropractor could give all the particulars required by the Act, but could not sign the certificate as the attending physician.

Section 5241 Nevada Compiled Laws 1929 defining regulations regarding death certificates, provides that the medical certificate shall be signed by the physician, if any, last in attendance on the deceased, and it shall show cause of disease or sequence of causes resulting in the death, giving the name of the disease causing death, primary and contributing disease.

The statute requires a medical certificate which contemplates a certificate issued by a physician of medicine.

The statutes of Minnesota defining chiropractic are essentially the same as Nevada, except that the Minnesota statutes in addition provide that chiropractors are entitled to the rights and privileges of other doctors and physicians in matters pertaining to public health.

Notwithstanding this provision of the statute, in the case of *State ex rel. Wentworth v. Fahey et al.*, 188 N.W. 260, the court said: "The chiropractor can practice only in a limited field. His diagnosis or practice cannot cover the general field of medicine or surgery. * * * It cannot well be claimed that a chiropractor was intended by the statute as one qualified to furnish the medical certificate were it not for the provisions of section 8. That section is borrowed from another statute, and is so uncertain of meaning that we cannot hold that it was intended to qualify a chiropractor to give the certificate."

The provision in section 8, referred to by the court is not contained in the Nevada Act to regulate the practice of chiropractic.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 46-269 PARKS COMMISSION—Lands in state parks may not be transferred and sold as other state lands—Lands designated for specific purposes may not be sold without legislative authority.

Carson City, February 11, 1946

Mr. Robert A. Allen, State Highway Engineer and Ex Officio Superintendent of State Parks,
Carson City, Nevada

Dear Mr. Allen:

We have your inquiry of February 4, 1946, respecting the sale or other disposition of the lands in the State parks designated in sections 1, 2, 3, and 4 of the Act of March 26, 1935 (1929 Nevada Compiled Laws, 1941 Supp., sections 5584.01-5584.04, inclusive).

You ask:

1. Is there any way by which lands within, and a part of these designated areas, can be transferred by any department of State government, including the Parks Commission, and sold as other State lands may be sold?

2. Is there any procedure in the law that would permit any State department to sell any lands as State lands which have been designated for a specific purpose without authority of the Legislature?

The answer to your first question is clearly in the negative.

The land known as Cathedral Gorge State Park was patented to the State of Nevada under patent 1052084, November 30, 1931. Section 1 of the Act of 1935, above referred to, not only sets this tract for all times for State park and recreational purposes, but expressly reserves it from sale.

A like reservation from sale is made respecting Kershaw Canyon-Ryan State Park in section 2 of the Act. Part of this land was donated by James Ryan and wife, and 200 acres included in the park and reserved from sale was expected to be received through an exchange of lands under the Act of Congress of June 8, 1926. We assume this 200 acres is now patented to the State.

A like reservation from sale is made respecting Beaver Dam State Park in section 3 of the Act. This also contemplated the later acquisition of the land, and we assume it is now patented to the State.

A like reservation from sale is made respecting Boulder Dam Valley of Fire State Park by section 4 of the Act. This land was already patented to the State under patent 1063084, November 30, 1931.

All the above-mentioned lands are "reserved from sale and set aside for all times for State park and recreational purposes." None of these lands may be sold by anyone at all unless and until the Legislature gives express permission. In the case of the 40 acres from James Ryan and wife, it cannot be sold without the consent of those donors or their successors.

If the lands in the above parks had been set aside for park and recreational purposes with no further restrictions, presumably some might be sold and the money used for those purposes. But the Legislature forbids this by reserving the lands absolutely from sale.

Your second question is more comprehensive, and the answer is in the negative. It must be understood, however, that the Legislature has adopted laws concerning the sale of the public lands. Those are to be found in vol. 2, Nevada Compiled Laws 1929, disclaiming minerals in public lands, is in point as to certain reservations from sale. Amendments to certain sections are to be found in 1929 Nevada Compiled Laws, 1941 Supp., under the same section numbers. No amendments were made in 1943 or 1945.

None of these laws are in point in the instant case. While it is true State lands generally are designated for a specific purpose, to wit, settlement, and may be sold accordingly, when a specific reservation from sale is made, it supersedes all general legislation and governs.

Very truly yours,

ALAN BIBLE
Attorney General

By: Homer Mooney
Deputy Attorney General

OPINION NO. 46-270 WATER LAW—Legal fee for recording certificate of water right \$1—
Certificate shall be issued to a party to the adjudication proceedings or successors in interest.

Carson City, February 14, 1946

Hon. Alfred Merritt Smith, State Engineer, Carson City, Nevada

Dear Mr. Smith:

You propound the following queries with respect to (1) the recording fee for recording of the water rights certificates provided in section 61 of the water law, section 7936 N.C.L. 1929, (2) the name of the person to whom the certificate is issued, and (3) the fund from which such recording fee should be paid with respect to proofs of appropriation filed prior to 1913.

Query No. 1—Does the statute fix the recording fee for recording of a certificate of water right at one dollar, if not, what fee should be paid?

First, your inquiries relate to water rights on streams that have undergone adjudication of the relative rights in court proceedings and the final determination there had, as evidenced by the final decree of the court entered in the matter.

Answering Query No. 1—Section 51 of the Water Law of 1913 (1939 Stats. page 205) is now section 7936 N.C.L. 1929. Such section has not been amended since its enactments. It provides that upon the final determination of the relative rights of water appropriators that be the duty of the State Engineer to issue to each person represented in such determination a certificate signed by the State Engineer, setting forth certain matters in detail then to be incorporated in such certificate. The statute then provides that the State Engineer shall transmit the certificate to the County Recorder in which the water right is located for recording, thereupon “it shall be the duty of the county recorder upon the receipt of a recording fee of one dollar, collected as hereinbefore provided, to record the same in a book especially prepared and kept for that purpose, and thereupon immediately transmit the certificate to the respective owners.”

It is clear that this section of the law fixes the recording fee at one dollar, and unless there is some other and later provision in the law fixing a different fee, such fee of one dollar is the legal charge.

We understand that it may be thought that section 27 of the water law of 1913, as amended at 1921 Statutes 171, now section 7914 N.C.L. 1929, changed such fee by reason of the following language appearing therein:

Such fee shall include the cost of recording the water-right certificate in the office of the county recorder, should such certificate of water right issue. All fees collected as above set forth shall be accounted for in detail and deposited with the state treasurer once in each mont; *provided, however*, that the state engineer shall deduct and hold such an amount from the said fees as may be estimated to cover the cost of recording the certificates of water right.

An examination of section 27 of the water law of 1913 (1913 Stats. 199) discloses that such section contained the same identical language with respect to the recording fee. There was no change made in 1921 with respect thereto. Section 27 of the 1913 Act was, and is, to be construed in *pari materia* with section 5 of the same Act with respect to the recording fee, *i.e.*, that the State Engineer retain in his possession the amount of money estimated necessary to pay the recording fees provided in section 51 at one dollar per certificate. There being no changes in the law in this respect by reason of the 1921 amendment to section 27, it follows the same construction of the law is the rule. Therefore, it is our opinion that section 51 of the water law, being section 7936 N.C.L. 1929, fixes the legal recording fee for recording certificates of water rights at one dollar.

Query No. 2—Should the certificate of water right be issued to recorded nit he name of the claimant shown in the decree, or should the State Engineer determine the present ownership and issue the certificate to the present owner, and if the certificate is issued to the present owner, what evidence f title should the State Engineer require?

Answering Query No. 2—Section 51 of the Water Law, section 7936 N.C.L. 1929, provides that the certificate of water right shall issue “to each person represented in such determination.” This language means that the certificate shall be issued to a party to the adjudication proceedings whose right was finally determined therein. Such being the meaning and the intent of the statute

then, we think, it follows that the certificate is to be issued to and in the name of such party, particularly where such party is still in possession of the property.

However, there is no question but that even during the adjudication proceedings, land and the water right appurtenant thereto changes ownership, and also, after the entry of the final decree and before issuance of such certificates, land and water rights set up in the decree changes ownership, and this without the knowledge of or even notice to the State Engineer.

We think that in this situation the successors in interest then become the proper parties to receive the certificates as they are the ones then most particularly interested in knowing just what their rights are under the decree.

We think, and so hold, that where decreed water rights have been conveyed to others before issuance of the certificates of water rights that the proper and legal practice in such issuance should be as follows:

The certificate issued in the name of the party in interest in the adjudication proceedings, this name to be immediately followed by the name of the next person as successor in interest as shown by the title of record. Thus notice of a record of transfer of title will appear upon the face of the certificate. When recorded the certificate of title then should be delivered to the last-named successor in interest as shown by the record. Evidence of title to the water rights shown in the certificate should be certified copies of the deeds from the parties to the adjudication proceedings to their immediate successors, and so on from successors in interest to the next succeeding successor. If such certified copies of deeds cannot be secured, the State Engineer should be furnished data from interested parties as to the record of all such deeds in the recorder's office of the proper county.

Query No. 3—Can the State Engineer pay for the recording of certificates of water rights issued on proofs filed prior to 1913 from funds in his possession that under the law would eventually be deposited in the General Fund of the State?

Answering Query No. 3—Since the submission of the above query you advised this office that there was sufficient moneys on hand to pay for the recording of all unissued certificates of water rights that were acquired for that purpose under section 27 of the water law, where the recording fee is fixed at one dollar. Such being the fact, we think your inquiry is now moot and requires no further answer.

Very truly yours,

ALAN BIBLE
Attorney General

By: W.T. Mathews
Special Assistant Attorney General

OPINION NO. 46-271 PUBLIC SCHOOLS—Every village, town, or incorporated city shall constitute but one school district—Annexation by Reno of certain contiguous territory within Sparks School District.

Carson City, February 27, 1946

Hon. Melvin E. Jepson, District Attorney Washoe County, Reno, Nevada

Attention: Harold O. Taber, Assistant District Attorney

Dear Mr. Jepson:

This will acknowledge your request for a written expression from this office regarding your opinion given the Board of Trustees of Reno School District No. 10 relative to the action taken by the city of Reno in annexing certain contiguous territory within the Sparks School District. The request was made at a conference held in this office Saturday afternoon, February 23, 1945, attended by Messrs. Proctor Hug, Earl Wooster, Ray Marks, and Harold Taber, Assistant District Attorney.

We are of the opinion that section 5725 N.C.L. 1929 controls in the matter of determining the status of the territory annexed by the city of Reno as to the same becoming a part of the Reno School District. We believe that your opinion is a correct statement of the law of the State of Nevada on this subject under the facts involved.

Section 5725 N.C.L. 1929 reads as follows: "Every village, town, or incorporated city of this State shall constitute but one school district; and the public schools therein shall be under the supervision and control of the trustees thereof."

Section 5727, 1929 N.C.L. 1929 which prohibits more than one school district within a village, town or incorporated city was contained in the statute before 1869.

The Act concerning public schools, approved March 20, 1911, carried this provision in section 76 and section 77 of the same Act provided for the creation of new districts and are a prohibition on the creation of more than one school district in a city. These sections cannot be extended to forbid the creation or extension of a city when such extension will have the purely incidental effect of causing the territory of the city to be divided between two school districts. This was the reasoning adopted by the court in the case of *Mitchell v. Henry*, 193 P.502, cited in your opinion which involved California statutes in substance the same as the above-mentioned Statutes of Nevada. Likewise *see* the case of *Matot v. Inglewood School District*, 235 P.667.

We believe that these California cases cited by you are directly in point and correctly lead to the conclusions which you have made.

Very truly yours,

ALAN BIBLE, Attorney General

cc to Miss Mildred Bray, Mr. Proctor Hug, Mr. Earl Wooster

OPINION NO. 46-272 ELECTIONS—Candidates for nomination for elective office shall file declaration not less than fifty days prior to the primary.

Carson City, February 28, 1946

Hon. Malcolm Mceachin, Secretary of State, Carson City, Nevada

Dear Mr. Mceachin:

This will acknowledge receipt of your letter of February 14, 1946.

Section 5(a) of the Primary Election Law of 1917 as amended by chapter 110, Statutes of 1945 (N.C.L. 1929, sec. 2408, as amended 1945 pocket part) provides:

(a) Every candidate for nomination for any elective office not less than fifty days prior to the primary shall file a declaration or acceptance of candidacy in substantially the following form * * *.

The only material change in the amendment of 1945 was in using the words "fifty days" in place of "thirty days."

Inquiry is made with respect to the primary election which occurs on Tuesday, September 3, 1946 (N.C.L. 1929, sec. 2406), as to the last day upon which a candidate for nomination for any elective office may file a declaration of candidacy.

It is the opinion of this office that the last day is the calendar day Monday, July 15, 1946.

This office has handed down a number of opinions on the question here presented and matters related thereto. *See* Attorney General's Opinions Nos. 136, dated August 25, 1914; 84, dated July 25, 1916; 224, dated August 29, 1918; and 130, dated April 5, 1934.

Only one question is presented by the instant inquiry. It concerns the computation of the time limit and we believe is completely answered by decisions of our State Supreme Court.

Section 540 of the Civil Practice Act of 1911 (N.C.L. 1929, sec. 9029) provides:

The time in which any act is to be done, as provided in this act, shall be computed by excluding the first day and including the last. If the last day be Sunday or other nonjudicial day, it shall be excluded. If the last day be a nonjudicial day and be directly followed by one or more nonjudicial days, they also shall be excluded.

In the case of *McCulloch v. Bianchini*, [53 Nev. 101](#), 292 P.617, the school law required a notice of election to be posted not less than ten days before the election and it was held proper to post the notice on May 27, 1929, for an election to be held June 6, 1929. Quoting section 540 of the Civil Practice Act the court computed the time by excluding the first day (May 27) and including the last (June 6.) On petition for rehearing it was contended that this ruling was at variance with the opinion and decision of the court in *State v. Brodigan*, [37 Nev. 458](#), 142 P.520. In denying the petition for rehearing the court at [63 Nev. 111](#), 297 P.504, rejected the contention, saying:

In that case the court had under review a statute providing that whenever a secular act is to be performed on a particular day, and the day is a nonjudicial one, the act may be performed on the next judicial day (Stats. 1913 c. 61, 3 Rev. Laws p. 3351). It was properly held that the act did not permit a nominee, at a primary election to be held on September 1, to file his papers on August 3, though August 2 fell on Sunday; section 7 of the Act (Stats. 1913 c. 284, subd. 3) providing that such papers shall be filed at least 30 days prior to the primary election. There is nothing in our former opinion which conflicts with this holding.

It is to be noted here that the statute relating to a nonjudicial day, cited as Stats. 1913 c. 61, 3 Rev. Laws p. 3351, is N.C.L. 1929, sec. 9408. Also the section of the election law is the predecessor of the amendment of 1945 and the proper citation is "section 7 of *chapter* 3, Statutes 1913, c. 284."

From *McCulloch v. Bianchini* we learn that the computation of time is in the light of N.C.L. 1929, sec. 9029 (sec. 540 Civil Practice Act).

From *State v. Brodigan*, [37 Nev. 458](#), 142 P.520, we learn that in the light of the court's construction of the general Act of March 10, 1913 (N.C.L. 1929, sec. 9408), the primary election law does not permit "a nominee, at a primary election to be held on September 1 to file his papers on August 3, though August 2 fell on Sunday." This was when the election law required the papers to be filed "at least 30 days prior to the primary election." The present law differs in time only, specifying 50 instead of 30 days.

On April 5, 1934, Opinion No. 130 was issued by this office and referred to the case of *McCulloch v. Bianchini*, [53 Nev. 101](#), 292 P.617. The question was as to the last day for candidates at a school trustee election to file their names with the County clerk. The election was the first Saturday in April. The time prescribed by law was "not later than five days before the day of election." This office ruled that the preceding Monday was the last day under the rule of excluding the first and including the last day. The five days would be Tuesday, Wednesday, Thursday, Friday, and Saturday.

In the instant case the election is on September 3, 1946, which is a Tuesday. IN counting the days prior to the primary, excluding the first and including the last, we begin with July 16 as the first day and the 50th day falling on September 3 is included. If the days ar counted back from September 3, excluding that day, the 50th day includes July 15, the date of the beginning, that is, of filing.

Very truly yours,

ALAN BIBLE
Attorney General

By: Homer Mooney
Deputy Attorney General

OPINION NO. 46-273 ELECTIONS—Provision of law restricting the furnishing of liquor on certain election days does not apply to school trustee election.

Carson City, March 1, 1946

HOn. Melvin E. Jepson, District Attorney Washoe County, Reno, Nevada

Dear Mr. Jepson:

Yesterday, February 28, 1946, you telephoned me that in your opinion section 63 of the General Election Law, being section 2501 N.C.L. 1929, prohibiting the furnishing of liquor on certain election days, did not apply to the school trustee election to be held in Reno School District Saturday, March 2, 1946.

I told you I thought you were correct and promised to write you. I note by the morning paper that you have made your opinion official.

After the devoting he intervening day to a search of the statutes, I desire to confirm my first advices and to say that, in my opinion, the section does not apply to the proposed election.

Section 63 does not expressly mention school district elections. Section 30 of the Registration Law, being section 2389, 1929 N.C.L. 1941 Supp., applies the word "election" to "general, special, primary nomination, and municipal elections, but in the case of any school district election shall only be necessary to comply with the provisions of chapter 6 of an Act entitled 'An Act concerning public schools, and repealing certain Acts relating thereto, approved March 20, 1911.'"

Chapter 6 of the school law does not refer to liquor on election day (compare section 5691, 1929 N.C.L. 1941 Supp.).

I think these circumstances sufficiently negative the idea that section 2501 affects elections for school trustees.

Very truly yours,

ALAN BIBLE
Attorney General

By: Homer Mooney
Deputy Attorney General

OPINION NO. 46-274 FULL CREW LAW—Brakeman required to have one year's experience in train service outside yard limits to qualify as flagman.

Carson City, March 4, 1946

Hon. V. Gray Gubler, District Attorney Clark County, Las Vegas, Nevada

Attention: Oscar W. Bryan, Deputy District Attorney

Dear Sir:

You request an opinion on the following query:

Can a student brakemen employed on the Union Pacific for two to four months, or less than one year, and enters military service, and while in military service he is placed in what is known as the Railway Battalion, doing railroad work in foreign countries. After being in the railway battalion from one to four years, he returns to his job on the Union Pacific as brakeman. Question: Can this man flag in the State of Nevada? Would his service in the Military Railway Battalion count as experience?

Section 4 of the Full Train Crew Act, being section 6321 N.C.L. 1929, provides:

The flagman mentioned in sections 1, 2 and 3 of this Act shall have had at least one year's *actual* experience in train service. (Italics ours.)

In an opinion of this office given you October 17, 1945, we held (1) that the Train Crew Law is applicable only outside of yard limits and has no application to yard operations, (2) that the construction of such law requires the flagman to have at least one year's actual experience in train service outside of yard limits, (3) 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 could qualify as flagman.

Your inquiry does not specify the kind of railroad service performed by the brakeman in question while serving in Military Railway Battalion. Many men in that service do not operate trains and engines. Assuming the brakeman did actually serve in the train and/or engine service outside of yard service while in the Railway Battalion and such service was given for a period of time sufficient to meet the condition provided in the statute of "at least one year's actual experience in train service," then, in our opinion, the brakeman in question is qualified to serve as flagman under the Nevada law.

Very truly yours,

ALAN BIBLE
Attorney General

By: W.T. Mathews
Special Assistant Attorney General

OPINION NO. 46-275 EMPLOYMENT SECURITY—No adequate provision for acceptance of Unemployment Compensation Act on behalf officers and employees of State of Nevada.

Carson City, March 4, 1946

Hon. Gilbert C. Ross, Executive Director Employment Security Department, Carson City,
Nevada

Dear Mr. Ross:

Complying with your request of February 14, 1946, we have the following comment to make concerning your correspondence with Mr. Gregory, Legal Counsel for your Department, as to the machinery for the acceptance by the State (and political subdivisions thereof) of the benefits of the Unemployment Compensation Law.

In reading over the questions of the Executive Director and the answers of the Legal Counsel of the Employment Security Department, we find that only one answer requires comment from this office. The other answers seem to be correct.

The question your Legal Counsel suggests ought to be referred to this office is:

Can an elected officer elect coverage for a period extending beyond his term of office?

The law may most readily be found as of 1945 in the 1945 Pocket Part to vol. I, 1929 N.C.L. 1941 Supp., from sec. 2825.02 to 2825.08, inclusive.

By section 2.9 of the Act as amended, subdivision 5(f) State employees are normally excluded from the operation of the Act, but permission is given to bring them under coverage by voluntary action on the part of state officers or departments including political subdivisions of the State. The acceptance, therefore, requires active rather than passive conduct.

When we come to section 8(c)1 we find States may come under the law for not less than two calendar years, but there is no definite maximum. The coverage continues presumably without limit unless the intent to withdraw is communicated 30 days before the two years elapses.

Section 8(c) provides further procedure mentioning state elections to accept and it provides:

Contributions paid by any such department, political subdivision, or instrumentality, shall be a proper charge upon the funds of such department, political subdivision, or instrumentality.

Subdivision (c-4) allows termination of coverage on 30 days' notice at any time by the Executive Director.

In considering the foregoing provision it is apparent that while acceptance is for a minimum period of two years so far as the acceptor is concerned, and holds over unless notice is given by the acceptor, the Executive Director (for good cause no doubt) may terminate the relation at any time on 30 days' notice.

As to the question whether an elected officer, the head of a department, can contract beyond his term of office, it must be remembered the elected officer is not personally affected because he cannot be insured at all. But, he can place his employees under coverage by an Act which commits the State to participation and contribution for at least two calendar years. This might involve a contract binding the State beyond the remaining period of an elected officer's four-year term. While we have no constitutional or statutory provision governing State officers (as we have governing county commissioners) in this respect, we believe it would be prudent to have the Board of Examiners consider a general resolution authorizing elective State officers and heads of departments to accept the provisions of this Act. While contributions might well come out of biennial appropriations for "support" of the various offices, institutions, and departments, some such action should be taken so that suitable specific provision could be made through legislative appropriations.

By way of analogy it is to be noted that while the acceptance of the Workmen's Compensation Act is "conclusive, compulsory, and obligatory" with respect to State employees, the Legislature currently appropriates \$15,000 biennially to pay the premiums.

Our current appropriation law does not provide any lump-sum appropriation for unemployment insurance, nor does it earmark any such item for the respective departments. The objects for expenditure are pretty definitely budgeted. Further legislation on this subject is needed. Specific funds should be provided for each department, office or a sum total provided for all departments, coupled with a plan for one central acceptance agency to cover all employees.

Very truly yours,

ALAN BIBLE
Attorney General

By: Homer Mooney
Deputy Attorney General

OPINION NO. 46-276 NEVADA HOSPITAL FOR MENTAL DISEASES—Statute does not contemplate the hiring of an assistant resident physician—State Emergency Fund replenishable only by act of legislature.

Carson City, March 14, 1946

Dr. S.J. Tillim, Superintendent, Nevada Hospital for Mental Disease, P.O. Box 2460, Reno, Nevada

Dear Dr. Tillim:

This will acknowledge receipt of your letter dated February 25, 1945, received in this office February 26, 1946, requesting an opinion on the following matters:

No. 1

The board was in agreement that an assistant resident physician full time would be desirable for the hospital. An opinion is desired whether the salary for such a position could come out of the special appropriation as published, page 202, chapter 125, Laws of the State of Nevada 1945, and whether there is a permissive under any other hospital appropriation to engage a resident assistant physician.

No. 2

Because of a number of previously unforeseen items in repair or improvement, essential to the safe operations of the hospital, the board desires to know whether the State Emergency Fund which has now been completely used by the University, is replenishable for further emergency needs. Such a fund available would permit the paying of the indebtedness to the city of Sparks and certain projects recommended by the fire chiefs of Reno and Sparks.

Our answer to your Question No. 1 is in the negative. Chapter 125, page 202, Statutes of Nevada of 1945, does not contemplate the hiring of an "assistant resident physician," but only "other additional labor and attendants." Likewise, the General Appropriation Act of 1495, page 485, in part appropriates \$129,216 for "salaries of attendants and employees" for a two-year period. We find no other hospital appropriation which grants the money for the purpose you desire.

In answer to your second question, we are of the opinion that the State Emergency Fund is only replenishable by Act of the Legislature.

Chapter 167, Statutes of 1943, which authorized the State Board of Examiners to declare the existence of an emergency and set aside a designated sum of money in the General Fund for the payment of costs of such emergency is confined to the amount specified in the Act. Legislative action is required to increase the appropriation.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 46-277 FOOD AND DRUGS—Department may establish a minimum weight for gallon for ice cream.

Carson City, March 20, 1946

Mr. Wayne B. Adams, Commissioner, Public Service Division, University of Nevada, Department of Food and Drugs, Fifth and Sierra Streets, Reno, Nevada

Dear Mr. Adams:

This will acknowledge receipt of your letter dated March 6, 1946, received in this office March 7, 1946, respecting the authority of the Department of Food and Drugs to adopt and promulgate a regulation under authority of section 15(a) of the Nevada State Food, Drug, and Cosmetic Act, establishing a minimum weight per gallon for ice cream.

We are of the opinion that such a regulation would be a reasonable exercise of your authority upon a consideration for the prevention of fraud.

Section 2293.04, 1929 N.C.L. 1941 Supp., which is section 5 of the Act relating to the manufacture and sale of ice cream, defines that ice cream, within the meaning of the Act, shall be the frozen produce made from cream with the addition of milk products and sugar. It prescribes the minimum percentage of milk fat that certain ice creams shall contain. The section determines the percentage of milk fat in the finished product, but does not provide a minimum weight when sold by measure.

Section 2283 N.C.L. 1929, being section 9 of the Act of 1921, fixing standards for dairy products, defines the standards for all creams sold in the State on the basis of richness or the percentage of milk fat contained therein which is based on a weighed sample.

Ice cream made from standard cream, milk, and sugar, when frozen would result in a product of a volume and weight corresponding to the quantity of the ingredient. The weight per gallon would therefore be general, and any considerable variance in one product from the general products of the same class and the same volume would indicate the use of some process not contemplated by the statute. Any process which would increase the volume of the ice cream in order to fill the measure by which the product is sold would be in violation of the Nevada Food, Drug and Cosmetic Act which is based upon consideration to prevent fraud as well as to preserve public health.

Subsection 4(b) of section 6 of the Act, section 6206.05, 1929 N.C.L. 1941 Supp., defining when food shall be deemed adulterated reads "if any substance has been added thereto or mixed

or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or greater value than it is.”

The Legislature used the word “substance” in the most comprehensive form in the expression “any substance.” Webster defines substance as that which makes a thing what it is, or gives it its essential mixture. Air is one of the four elements. The incorporation of air into the frozen product which the statute defines shall be ice cream, for the specific purpose of increasing its volume, would result in the reduction of its quality or strength as per gallon.

Section 15 of the Food and Drug Act, section 6206.14, 1929 N.C.L. 1941 Supp., authorized the commissioner to promulgate regulations for the efficient enforcement of the Act. It appears that the fixing of a standard weight per gallon, based upon ice cream manufactured according to the statute and having a generally accepted standard, of such a weight, if not shown to be arbitrary, would be a method to increase the volume or fill the measure at which the product is sold.

As expressed in *State v. McCool*, 111 P.477, the purpose of most of the food regulations has been to prevent fraud.

In the case of *Barron County Canning & Pickle Co. v. Niana Pure Food Co.*, 211 N.W. 764, the court held although the presence of brine is necessary in canned peas, an excess of such brine to fill the can was an adulteration under the Pure Food and Drug Act. Food under the statute was deemed adulterated, “if any inferior or cheaper substance or substances have been substituted wholly or in part for it.” The court said, “The presence of brine is necessary in canned peas. In view of the fact that brine is cheaper than peas, it is apparent that great fraud could be perpetrated if the canners were under no restrictions as to the amount of brine that might be introduced into the can.”

Delegation of authority of administrative officers or boards under the title “Food” in 22 Am. Jur., pages 807-808, recites the following rule, “Under this principle, Congress may, after fixing a primary standard, devolve upon administrative officers the ‘power to fill up details’ by prescribing administrative rules and regulations. Rules and regulations adopted pursuant to such delegated authority, if not unreasonable, or repugnant to the laws of the State or constitution, are usually upheld as the exercise of power specially conferred by the Legislature for more efficient enforcement of the statutes to which they relate.”

It appears, therefore, if the regulation proposed by the Commissioner of Food and Drugs providing a minimum weight per gallon for ice cream is based upon the general weight of ice cream, when the product is manufactured according to the statutory standard, that such regulation would be a reasonable exercise of his authority for the prevention of fraud.

Section 5 of the Food and Drug Act, section 6206.04, provides that before any criminal proceeding is instituted that the person against whom such proceeding is contemplated shall have the opportunity to present his views with regard to such contemplated proceeding, and under section 15, such hearings authorized or required by the Act shall be conducted by the commissioner or such officer, agent, or employee as the commissioner may designate for the purpose.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 46-278 STATE QUARANTINE OFFICER—No authority to adopt certain procedure to take care of inspection and grading of eggs.

Carson City, March 21, 1946

Mr. Lee Berge, State Quarantine Officer, c/o University of Nevada, Reno, Nevada

Dear Mr. Berge:

The following is our reply to your recent request for an opinion as to the statutory authority of the State Quarantine Officer to adopt a procedure that will take care of the inspection and grading of eggs, which inspection is no inadequate due to the lack of funds by legislative appropriation.

The procedure proposed is that certain packers will collect a fee from the persons offering eggs for market and then turn over such fees to your department to pay the inspectors.

We are of the opinion that there is no statutory authority for the adoption of such a plan.

It is our opinion that the Act to promote the development of the egg industry, as mended, and the Act providing standards for agricultural products should be construed together; that section 5 of the last mentioned Act, the same being section 451.04, 1929 N.C.L. 1941 Supp., provides sufficient authority to the State Quarantine to charge and collect fees for the service of inspection and grading of eggs in the same manner as that prescribed for the inspection and classification of agricultural products.

The Act to promote the development of the egg industry n the State, to standardize the grading of eggs displayed for sale, and providing penalties for the violation of the Act, was approved March 28, 1927. The provisions of the Act are found under sections 5160-5168 N.C.L. 1929. The act makes it unlawful to sell or offer for sale eggs unfit for human food, and then specifies that when certain conditions exist within the egg that the egg is unfit for food. There is no provision in the statute requiring the candling of eggs, nor the inspection by any person to determine the classification. Section 6 of the original Act made it the duty of the Food and Drug Commissioner to enforce the provisions of the Act and gave him authority to make such rules and regulations made by the commissioner.

The Act authorizing the State Quarantine Officer to fix and promulgate standards for all kinds of agricultural products, approved March 30, 1931, gives the State Quarantine Officer the authority to designate any competent employee or agent of the State Quarantine Officer to inspect or classify agricultural products, also to license any other person, and to charge and collect a reasonable fee for such license to inspect or classify such products in accordance with such regulations as he may prescribe and at such places as the volume of business may be found to warrant the furnishing of such inspection service. This authority is found in section 5 of the Act (sec. 451.04, 1929 N.C.L. 1941 Supp.)

On the same date that the foregoing Act was approved the Legislature amended section 6 of the egg industry Act to make it the duty of the State Quarantine Officer to enforce the provisions of the Act instead of the Food and Drug Commissioner. The amendment carried an appropriation of \$2,900 to the first day of July 1933. In 1935 the Legislature appropriated \$1,200 for the support of standardization and grading of eggs "in conjunction with the standardization of agricultural products." In 1937 an appropriation of a like amount was made "for standardization and grading of eggs under the direction of the State Quarantine Officer." Since 1937 there has been no specific appropriation for grading eggs.

The Act governing the standards for agricultural products, under section 1 (sec. 451, 1929 N.C.L. 1941 Supp.) defines agricultural products as follows, "shall include horticultural, viticultural, dairy, bee, and any and all farm products * * *." The words "all farm products" are not used as a definite, exact, or technical term to apply only to products directly from the soil.

In the case of *District of Columbia v. Oyster*, 54 American Reports, page 275, the court held that butter and eggs were farm products. The court said, "But the common parlance of the country, and the common practice of the country, have been to consider all those things as farming products or agricultural products which had the situs of their production upon the farm, and which were brought into condition for the uses of society by the labor of those engaged in agricultural pursuits, as contra-distinguished from manufacturing or other industrial pursuits. The

product of the dairy or the product of the poultry yard, while it does not come directly out of the soil, is necessarily connected with the soil and with those who are engaged in the culture of the soil.”

The amendment to the egg production Act and the Act to standardize agricultural products were passed at the same session.

As stated by the court in *Presson v. Presson*, 38 Nev. page 209, “It is also a well-recognized principle that statutes relating to the same matter which can stand together should be construed so as to make each effective.” On page 208 the court said, “The statutes in question having been passed at the same session and being in *pari materia*, the well-established rule is that they must be construed together as one statute. * * *. ‘If there be two affirmative statutes upon the same subject the one does not repeal the other, if both may consist together and we ought to seek for such a construction as will reconcile them together.’”

It appears, therefore, that section 5 of the agricultural standards Act, the same being section 451.04, 1929 N.C.L. 1941 Supp., can be applied to provide for the inspection and grading of eggs under the authority granted the State Quarantine Officer.

Section 451.04, 1929 N.C.L. 1941 Supp., reads as follows: “The state quarantine officer is hereby authorized to designate any competent employee or agent of the state quarantine office, and upon satisfactory evidence of competency may license any other person, and charge and collect a reasonable fee for such license, to inspect or classify agricultural products in accordance with such regulations as he may prescribe at such places as the volume of business may be found to warrant the furnishing of such inspection service, at the request of persons having an interest in such products, and to ascertain and to certify to such persons the grade, classification, quality or condition thereof, and such other pertinent facts as the state quarantine officer may require. The state quarantine officer is authorized to fix, assess and collect, or cause to be collected, fees for such services when they are performed by employees or agents of the state quarantine officer. The state quarantine officer may suspend or revoke any license whenever, after an opportunity for hearing has been afforded to the licensee, the state quarantine officer shall determine that such licensee is incompetent or has knowingly or carelessly failed to correctly certify the grade, classification, quality or condition of any agricultural product, or has violated any provision of this Act or of the regulations made hereunder. Pending investigations the state quarantine officer may suspend a license temporarily without hearing.”

The foregoing section of the statute, in our opinion, may be construed to afford the necessary authority to the State Quarantine Officer to adopt a procedure for the inspection and grading of eggs.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 46-279 STATE BOARD OF HEALTH—Proposed amendment to regulation for control of communicable diseases not consistent with law—Pulmonary tuberculosis.

Carson City, March 23, 1946

Harold W. Bischoff, M.D., Director, Division of Local Administration and Epidemiology,
Capitol Building, Carson City, Nevada

Dear Dr. Bischoff:

The following is in response to your oral inquiry as to the authority of the State Board of Health to adopt and enforce an amendment to its regulations adopted August 25, 1943, for the control of communicable diseases, a copy of which was submitted to this office for an opinion:

We are of the opinion that the amendment is in conflict with other provisions in your adopted regulations, and is not consistent with law.

The proposed amendment is to amend section 6 of the Control of Communicable Diseases adopted August 25, 1943, by the State Board of health, which defines the period of communicability of pulmonary tuberculosis. This paragraph reads as follows:

“As long as the specific micro-organism is eliminated by the host. Commences when a lesion becomes an open one, *i.e.*, discharging tubercle bacilli, and continues until it heals or death occurs. The degree of communicability varies with the number and virulence of the bacilli discharged, the frequency of exposure, and the susceptibility of the persons exposed.”

The amendment recites that it is to clarify the regulations governing pulmonary tuberculosis and sets out certain tests to be made from specimens obtained from the patient in order to determine if the patient is to be regarded as within the period of communicability.

The next paragraph in the amendment provides as follows:

“If any person shall report in writing to a duly constituted health officer a case of suspected tuberculosis, it shall be the duty of the health officer to investigate or cause to be investigate and reported back to him the result of the examination according to the method described herein above. Adequate X-ray examination shall also be included.”

This provision makes it the mandatory duty of the health officer upon receiving a report in writing from any person of a suspected case of tuberculosis to require such person to submit to the tests provided. This provision would apply to any person so informed against, whether or not such person was financially able to receive approved treatment from any licensed physician or clinic of his choice. The report is not limited to physicians, or other competent persons who may suspect the existence of the disease in patients who submit themselves for medical treatment.

The paragraph in the amendment providing quarantine is in direct conflict with the regulations adopted by the board, which under section 9, dealing with methods of control, subdivision 5, provides as follows: “Quarantine: None.”

Section 5951 N.C.L. 1929 makes it the duty of every attending physician to report to the local health officer certain diseases, among which is designated “tuberculosis.” Subdivision (c) of the same section makes it the duty of every attending physician upon the discovery of specifically named diseases to forthwith establish and maintain a quarantine. Tuberculosis is not named in this respect.

Section 5259, 1929 N.C.L. 1941 Supp., authorizes the State Board of Health by affirmative vote of a majority of its members to adopt, promulgate, amend, and enforce reasonable rule and regulations consistent with law.

A constitutional right that is guaranteed to every person is that no person shall be compelled in any criminal case, to be a witness against himself, nor be deprived of life, liberty or property, without due process of law.

In the case of *Potts v. Breen*, 167 Ill, 67, cited in 22 A.L.R. page 842, the court said, “Health authorities cannot promulgate and enforce rules which merely have a tendency to prevent the spread of an infectious disease which are not founded upon an existing condition, or upon a well-founded belief that a condition is threatened that will endanger the public health. The health authorities cannot interfere with the liberties of a citizen until the emergency actually exists.”

The Supreme Court of Nevada, speaking of the exercise of the police power of the Legislature, expressed this rule: “But a statute enacted for the prevention of a public offense which the Legislature deems essential to declare to promote the public good must be reasonably adapted to attain that end without unnecessarily invading personal or property rights, before it can be held a valid exercise of the police power.” *State v. Park*, 42 Nevada, on page 392.

We feel that the suggested amendment should more properly be accompanied by legislative enactment.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 46-280 BOND ISSUES—County hospital—High school gymnasium—
Courthouse—Petition of taxpayers necessary for county hospital bond issue—County
Board of Education may certify to County Commissioners necessity of gymnasium—
Various bond issues may be placed on same ballot.

Carson City, March 26, 1946

Hon. E.E. Winters, District Attorney, Fallon, Nevada

Dear Mr. Winters:

You request an opinion in answer to the following queries:

1. Does the Board of County Commissioners possess the right to call an election for the issuance of bonds for a county hospital without a petition therefor being first submitted to the board by taxpayers requesting the issuance of such bonds?
2. Does the County Board of Education possess the power to petition the Board of County Commissioners to call a special election in order to provide a bond issue for the building of a high school gymnasium?
3. Can three propositions for the issuance of bonds, *i.e.*, county hospital courthouse, and gymnasium bonds be placed on the same ballot?

Answering Query No. 1—Section 2225 N.C.L. 1929, as amended at 1943

Statutes 213, expressly provides:

1. To establish a county hospital a petition signed by at least 30% of the taxpayers of the county must be presented to the Board of County Commissioners specifying the maximum amount of money proposed to be expended in establishing such hospital, etc. Upon receiving such petition the Board of County Commissioners are then required to submit the question of the issuance of bonds for such proposed hospital at the *next general election* to be held in the county.
2. If the petition of the taxpayers proposing the establishment of a county hospital is signed by at least 50% of the taxpayers of the county then the Board of County Commissioners shall call a *special election* for the purpose of issuing bonds.

Thus, the express provisions of the statute relating to the establishment of a county hospital are clearly mandatory and provide conditions precedent that must be complied with.

3. The statute further provides that where a county hospital has already been established and the county hospital trustees thereof shall deem it necessary to enlarge, reconstruct or repair such hospital, such trustees shall by resolution request the Board of County Commissioners to levy a tax therefor, thereupon the Board of County Commissioners shall submit such proposition and the matter of issuing bonds therefor to the qualified electors of the county at the *next general election* to be held in the county. No petition of taxpayers is required in this situation.

This provision of the statute is also mandatory and is a condition precedent that must be complied with. Further, it appears that only in the case of the establishment of a county hospital and where the petition of the taxpayers therefor submitted to the board of county commissioners

is signed by at least 50% of the taxpayers of the county, that the board of county commissioners are empowered to call a special election.

Answering Query No. 2—Section 5904-5913, inclusive, N.C.L. 1929, provides the authority for the issuance of bonds for county high school purposes.

Section 5904 provides inter alia, that whenever the County Board of Education in a county having a county high school shall certify to the Board of County Commissioners that a new high school building is needed and that a bond issue is advisable to provide funds for the construction and furnishing such building, and shall furnish the Board of County commissioners with a definite statement of the amount of money needed for such purpose. Then said Board of County Commissioners are authorized and directed to submit the question to the voters of the county at the next general election, or such board may call a special election if so requested by the County Board of Education.

It is clear that the County Board of Education possesses the necessary power to petition the Board of County Commissioners to call a special election for the issuance of bonds to erect and furnish a new high school building.

The question now is whether a high school gymnasium comes within the meaning of the term “new high school building” as used in section 5904, inasmuch as *gymnasium* is not expressly mentioned.

In 1918, a former Attorney General ruled with respect to a bond issue for the construction of a dormitory for a county high school, the special Act providing for the construction of such dormitory did not cover the construction of a gymnasium. Opinion No. 171, Report of Attorney General, 1917-1918. While this opinion of the former Attorney General is entitled to great respect, still progress in school matters has made many changes in the years that have elapsed since 1918. Today physical education has a prominent place in the course of study provided for high schools. In fact, sections 5919-5921 N.C.L. 1929, makes it the duty for all officers of high schools to provide courses of study in physical training and employ teachers therefor. This being the law of this State, we think it follows that a gymnasium may be deemed necessary high school building.

It is stated in 43 Am. Jur. 327, sec. 69 that “a schoolhouse within the meaning of a statute permitting the issuance of bonds to build school house is any building which is appropriate for a use prescribed or permitted by law.”

A leading case on the question is *Alexander v. Phillips* (Ariz.), 265 Pac. 503, 52 A.L.R. 244, wherein the court held that statutory authority to issue bonds to build a schoolhouse included stadiums for conducting athletic games, where the statute permits the employment of teachers for physical education. To like effect: *Burlington ex rel. School Commissioners v. Burlington* (Vt.) 127 Atl. 892; *Woodson v. School District* (Kan.) 274 Pac. 728.

It is therefore our opinion that “gymnasium” comes within the meaning of the term “new high school building” as used in section 5904 N.C.L. 1929, and that a County Board of Education may petition its Board of County Commissioners to call a special bond election for gymnasium purposes.

Answering Query No. 3—An examination of the law of this State, pertaining to elections, including special elections, fails to disclose any express prohibition against the placing of more than one proposition for the issuance of bonds. However, it is to be noted that in all bond elections two ballot boxes must be used, one for real property owners and one for nonreal property owners, and in addition, ballots for nonreal property owners must be printed on white paper, while the ballots for real property owners must be printed on colored paper. Chap. 70, page 141, Stats. 1937. Obviously, propositions for bond issues could not be printed on the general election ballots if such bond elections were held at the same time as a general election. The voters necessarily would have to be furnished both the general election ballots and the bond election ballots.

However, it is our opinion that several propositions for the issuance of bonds can be placed on the ballots used for bond election purposes if the following conditions are complied with:

1. That due and legal notice of an election for each proposed bond issue to be voted on at the election shall be given and published for the required length of time provided in the statute

authorizing the particular bond issue. This requirement must be met as the time of notice in each case is not the same and the full period of notice in each case is not the same and the full period of notice in each particular instance must be had when several propositions are to be placed on the same ballot and voted on at the same election.

2. That each proposition for a bond issue shall be stated clearly on the ballot and so segregated from each of the other propositions that the voter will not be confused and that he be enabled to vote his ballot on each proposition as though submitted to him on a separate ballot.

Very truly yours,

ALAN BIBLE
Attorney General

By: W.T. Mathews
Special Assistant Attorney General

OPINION NO. 46-281 ELECTIONS—Hawthorne Naval Ammunition Depot—Civil service employees entitled to vote in Nevada if requirements for residence have been met—Officers and enlisted men not eligible to vote unless qualified to do so at the time of induction.

Carson City, March 29, 1946

Hon. Martin G. Evansen, District Attorney, Hawthorne, Nevada

Dear Mr. Evansen:

You request the opinion of this office in answer to the following queries:

Query No. 1—Do all Civil Services employees, at the Hawthorne Naval Ammunition Depot, who have their residence in the State of Nevada, but who are employed by the United States government, have the right to vote in this State at the coming election?

Query No. 2—Are there any restrictions relative to voting by other persons residing on the Naval Reservation?

Answering Query No. 1—This same question was submitted to this office for an opinion in 1932. In Opinion No. 90, dated August 9, 1932, reported at pages 34, 35, Report of Attorney General, July 1, 1932-June 30, 1934, former Attorney General Mashburn ruled that civil attachés employed by the Federal Government at the Hawthorne Naval Depot were legally entitled to vote in Nevada elections provided they met all of the requirements of the Nevada law as to residence.

This Opinion No. 90 was premised upon and followed the Opinion of Attorney General Diskin, No. 316, reported at pages 71-76, Report of the Attorney General, 1927-1928, which opinion dealt with the question of the right of U.S. Government employees residing upon Indian Reservations in this State to vote at Nevada elections. In such opinion the Attorney General exhaustively discussed the question in view of section 2 of article II of the Nevada constitution, which provides:

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

After discussing cases in other States, dealing with similar constitutional provisions, there being no determination of the question by the Supreme Court of this State (and such question has not as yet reached such court) some of which cases strictly construed such provisions and denied the right of suffrage, while other cases gave liberal interpretations thereon and permitted the right to vote, the Attorney General referring to a Colorado case, rendered his opinion as follows:

The Supreme Court of Colorado has ruled in a recent case that a Government employee cannot successfully establish a residence at a United States Government Hospital for voting purposes, because the residence of such person therein cannot be permanent in character for the reason that the employment period and, hence, the residence period is at the will and whim of the employer.

If the Colorado decision is accepted as declaring the correct rule in the matter establishing residence for Government employees, it would follow that they cannot establish a residence upon Indian Reservations, for, no matter what the intent may be to claim permanency of residence thereon, the uncertainty of their tenure of office makes such intent impossible of fulfillment.

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

Where an individual, whether an officer in Government service or a student in a seminary or an inmate of an asylum by acts and declaration makes manifest his intention of claiming a residence at a particular place and, to that end, complies fully with the requirements of law, the theory of which is advanced to deprive the right of such an individual to vote, because of intervening eventualities over which he has no control, seems to me to be too finely spun. If this theory were forced to its logical conclusion, then permanency of residence as affecting all individuals is impossible of attainment, because of the uncertainty of conditions surrounding ones domicile as evidenced by the happening of conditions causing change in domicile over which the individual has no control, and, finally, by the uncertainty of life itself.

I conclude, therefore, that there exists no legal reason which would prohibit an officer or employee of the Government from establishing a residence upon a Government Reservation.

We concur in the foregoing stated Opinions Nos. 90 and 316, we think there has been no change in the law or conditions since the rendition of such opinions as would operate to cause an overruling thereof.

We are not unmindful of the fact that in 1935 the Legislature of this State ceded jurisdiction to the United States upon and over the land comprising the "U.S.N. Ammunition Depot Near Hawthorne, in Mineral County, State of Nevada, 1935 Stats. 311." But the jurisdiction so ceded was of limited jurisdiction and, we think, carried with it no abrogation of the rights of citizens, and of civilian employees of the Federal Government residing therein to vote at Nevada elections, providing the necessary residential qualifications were and are present.

We call attention to the opinion of this office, No. 43, reported at pages 65-78, Report of the Attorney General, January 1, 1931-June 30, 1932, dealing with the application of the civil laws of this State to and in the so-called Boulder Canyon Federal Reservation, we there held, as follows:

That the law is well established in the United States that the laws regulating the intercourse and general conduct of individuals in force in a sovereignty at the time of cession of territory and jurisdiction thereon from that sovereignty to another remain in full force and effect until altered by the newly created sovereignty, is fully

sustained in *The American Insurance Co. v. 356 Bales of Cotton and David Canter* (U.S.), 7 Law Ed. 242; *Chicago, Rock Island and Pacific R.R. Co. v. McGlinn* (U.S.), 29 Law Ed. 270; *In Re O'Connor*, 19 Am. Rep. 765.

That all State laws relating to civil rights and intercourse of individuals in force and effect upon Federal reservations at the time of the establishment thereof remain in full force and effect and are enforceable thereon until supersede 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. McGlinn* (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.

With reference to the last-stated proposition, it is held in *People v. Lent*, 2 Wheeler Criminal Cases (N.Y.), 548, with respect to the exercising of jurisdiction by the Federal Government that legislation is first needed before jurisdiction can be exercised.

And see Danielson v. Connopray et al., 57 Fed. (2d) 656.

We find no Act of Congress legislating upon the residential qualifications and right to vote of the civilian attachés and employees residing at the Hawthorne Naval Ammunition Depot or reservation. We conclude that all civil service employees, civilian attachés, and employees possessing the qualified elector's qualifications set forth in section 1 of article II of the Constitution of Nevada, who by acts and declarations make manifest their intentions of claiming residence at that place, and who have complied fully with the registration laws of this State are entitled to vote at elections held therein.

Answering Query No. 2—It is our opinion that officers and enlisted men of the Naval and/or Marine Corps stationed at the time Ammunition Depot are not eligible to vote at Nevada elections, unless any such officers and men were qualified to vote in this State at the time of their commissioning, enlistment, or induction into the armed service of the United States. It seems that the universal interpretation of constitutional provisions similar or identical with the Nevada constitutional provision, hereinabove quoted, is to the effect that there can be and is no such permanency even of an indefinite duration or the exercise of individual will with respect to residence as will permit of the establishment of legal residence within a State for the purpose of voting therein. Officers and enlisted men in the armed forces of this country may not resist or ignore orders to remove to some other location. Civilian employees, so we are advised, may resign their employment at will thus proving the distinction between them and those in actual military service with respect to the declarations of intention as to residence for voting purposes.

Such is the effect of Opinion No. 220 of this office, dated July 22, 1936, and Opinions "P" and "Q." dated June 3 and June 8, 1938, reported at pages 40, 41, 154, 155, respectively, Report of Attorney General, July 1, 1936-June 30, 1938.

Very truly yours,

ALAN BIBLE
Attorney General

By: W.T. Mathews
Special Assistant Attorney General

OPINION NO. 46-282 FISH AND GAME—Law construed—Limitation of method of hunting—Limitation on open season for muskrats.

Carson City, April 3, 1946

Mr. H. Shirl Coleman, State Game Warden, P.O. Box 678, Reno, Nevada

Dear Mr. Coleman:

Answering your letter of February 26, 1946, received in this office the following day:

1. The use of bow and arrow is not expressly permitted in hunting game in Nevada. It is excluded by the definition requiring taking to be "by lawful means and in lawful manner; that is, with a gun held in hand and the discharging thereof in the manner known as hunting." (Sec. 4, N.C.L. 1929, sec. 3038.) IN the decisions the "explosive force of gunpowder" is universally mentioned in defining "gun."

Limitations on "guns" showing what is meant by "gun" are placed by section 63 (N.C.L. 1929, sec. 3097). Use of shotguns larger than 10-gauge is prohibited for hunting, and rifles and pistols are prohibited in hunting waterfowl.

2. A trapper's license is not required to trap predatory animals for their fur.

Predatory animals are "wild animals" (sec. 1, 1929 N.C.L. 1941 Supp., sec. 3089.) Predatory animals are not fur-bearing animals (sec. 1, 1929 N.C.L. 1941 Supp., sec. 3035).

The question of what a trapper is trapping for is one of fact.

3. The similarity in the definitions of "hunting" and "trapping" does not demand that a trapper must also possess a hunting license. These definitions are found in sections 4 and 5 of the Act (N.C.L. 1929, secs. 3038 and 3039).

Trapping "fur bearing" animals without a license is prohibited (sec. 55, 1929 N.C.L. 1941 Supp., sec. 3089). Trapping other wild animals without a trapper's license is lawful. "Hunting" includes the "trapping" of wild animals (sec. 4, N.C.L. 1929, sec.3038) but this must be considered as being amended so as to permit the trapping of all wild animals except "fur bearing" animals, without a license, because section 55, as amended, requiring a license for the trapping of "fur bearing animals" only, does not specify whether it shall be a hunting or a trapping license, but only "a license therefor."

4. The trapping of beaver under section 79 (as amended by Statutes 1945, p. 187) is not limited to the open season on fur-bearing animals as fixed by section 77 (sec. 3111, N.C.L. 1929). The Act as amended in 1945 is inconsistent with section 77 and protects beaver and otter at all times until January 1, 1947, with the sole exception that when they are doing actual damage to farms, ranches, or other property in a county they may be trapped under a specific nontransferable permit issued by action of the county commissioners and the Fish and Game Commissioners. The time of such trapping will be designated in the permit and not by any general law.

5. You inquire if there is any way in which the Fish and Game Commission could authorize an extension of the open season for trapping muskrats. The answer is "No." The general objective of the fish and game laws is stated in section 11 that "game animals, fur bearing animals, * * * shall not be * * * trapped at such times or places or by such means or in such manner as will impair the supply thereof."

Section 77 fixes the open seasons for certain fur-bearing animals "protected by the provisions of the Act" at the period from the 15th day of November and the 15th day of March of *each* year. This would close the season from November 16 of one year to March 14 the next year, both dates included. It is to be noted that muskrats were already protected by the earlier Act.

Section 4 of the special Act on the protection of muskrats, closes the season between March 1 and December 31 in *each* year. That would make the open season extend from January 1 to February 28 of each year. The section establishes these rules unless otherwise provided by ordinance, rules or regulations adopted by the Board of County Commissioners of any county.

This Act provides for a special muskrat trapping license and a special fee, as distinguished from the general State fish and game license. It would supersede in the county the provisions of sec. 77 which makes the open season the period between from the 15th day of March and the 15th day of November of *each* year.

Aside from the express limitations in section 4 of the Act for the protection of muskrats (N.C.L. 1929, sec. 3145) the State Fish and Game Commission has no power over the open season for muskrat trapping in the respective counties. Such power is delegated to the Boards of County Commissioners of the respective counties and each county may fix this particular matter to suit local conditions.

6. The Act of the Legislature (sec. 2 of the Fish and Game Code, sec. 3036 N.C.L. 1929) designating catfish as nongame fish, presumably in Churchill County alone, we think did no more than to declare an open season on catfish during the entire year. It is to be noted that notwithstanding the designation of catfish as nongame fish, the Legislature in 1945 enacted the following Act amending section 392 of the fish and game law:

SEC. 392. Notwithstanding any provision of the above-entitled act, it shall be unlawful for any person to take, catch or kill, or have in his, her, or their possession, on any one calendar day more than fifty (50) catfish or twenty-five (25) large mouth bass, regardless of weight. 1945 Stats. 348.

This general Act definitely indicates a legislative intent to protect catfish regardless of where they were caught.

Although it is true that in section 6 of the Fish and Game Code (sec. 3040 N.C.L. 1929) "fish" refers to "game fish" only, there has always been serious doubt in our minds as to the constitutionality of the special classification which has been attempted by the Legislature in the enactment of section 2. Legislative clarification should be sought.

7. Sections 3142-3148 N.C.L. 1929, the special Act for the protection of muskrats, do not conflict with sections 3087-3092, or sections 3111-3112, N.C.L. 1929. (Note that section 3089 has been amended by Stats. 1941, p. 245; 1929 N.C.L. 1941 Supp., sec. 2089.)

The license provided for by the Act for the protection of muskrats approved March 26, 1929, was in effect when the State Fish and Game law, approved March 29, 1929, went into effect. There was no express repeal and there is no repeal by implication. Both laws can stand together in harmony. The special Act merely provides that one trapping muskrats in a particular county must obtain a special license so to do from the Clerk of that County must observe the closed season prescribed by that special law or the rules relating thereto prescribed by the Board of County Commissioners of the particular county, adopted pursuant to the power delegated to them by that special law.

In the opinion of this office it would take more than the fact that section 77 enacted after the special Act referred to "any fur-bearing animals protected by the provisions of this act," to indicate that the legislature intended to repeal the special Act of March 26, 1929. Muskrats were already "protected" by the provisions of the earlier Act.

Very truly yours,

ALAN BIBLE
Attorney General

By: Homer Mooney
Deputy Attorney General

OPINION NO. 46-283 SURVEYOR GENERAL—Procedure for correcting error in records—
Patents.

Carson City, April 5, 1946

Hon. Wayne McLeod, Surveyor General, State of Nevada, Carson City, Nevada

Dear Mr. McLeod:

This will acknowledge receipt of your letter of April 1, 1946, received in this office on April 2, 1946, requesting an opinion as to your procedure in the matter of the error which appears in your records concerning Patent No. 2929.

Section 5515 N.C.L. 1929 provides in part as follows: "All applications to purchase lands shall be made in writing to the land register and shall be signed by the applicant or his or her agent, and shall designate in conformity with the United States survey the tracts of land applied for to purchase, the number of acres, and the amount necessary to purchase such land, * * *."

The facts as shown by the records of the Surveyor General are that on January 17, 1887, Matthew C. Gardner entered an application with the State Land Office to purchase 600 acres of State land described as follows:

T. 15 N.C.L., R. 20 E., Sec. 20, E2SE3; Sec. 21, W2SW3; Sec. 28, W2SW3, and W2NW3; Sec. 29, E2NE3, and E2SE3; Sec. 32, E2NE3; Sec. 33, NW3NW3.

On May 15, 1890, the applicant paid the State Land Office \$600 in principal and \$1 in interest for the purpose of obtaining a patent to the land embraced in the application.

The applicant performed everything required by statute to entitle him to a patent from the State of Nevada to the entire tract of land described in the application and for which payment was fully made.

The State, upon the application for the purchase of the land, entered into a contract with Matthew C. Gardner to convey by good and sufficient patent the land described in the application upon the payment of the consideration.

In the case of *State v. Jones*, [21 Nev. 510](#), the court decided a question as to the right of a party to pay for a part of the tract applied for and for a part of the tract applied for and forfeit the others and held that the application was the entire contract for all lands described therein. The court, on page 516, said, "The contracts to be sent out are to cover the lands applied for, and are to be executed just as sent, * * *."

It appears that the original patent from the land office is lost, but the records in the office of the Secretary of State show that this patent, No. 2929, issued to Matthew C. Gardner, does not include the W2SW3, sec. 21, T. 15 N.C.L., R. 20 E., which subdivision formed a part of the application for patent and included in the contract.

The records of the County Recorder of Ormsby County, where the same patent was recorded, show that the eighty acres in question were not described in the patent.

In the records of the Secretary of State and the Recorder's office it is shown that the patent specified 600 acres, but the description as recorded did not equal the total by 80 acres. It is, therefore, evident that the patent issued by the Land Office contained an error and did not describe the W2SW3, section 21, which land was described in the application and contract.

Matthew C. Gardner, the applicant, completed his part of the contract, but the Land Office did not convey by sufficient patent the land for which payment was made. The applicant and his successors in interest are entitled to a performance of the contract by the State.

The Land Office is an agency of the State, created by legislative action. The Surveyor General is named as Land Register. The office must have permanency and continuity.

We are of the opinion that the present Surveyor General, as Land Register, should issue a patent, bearing the date when issued, in the name of the original applicant, conveying the W2SW3, section 21, T. 15 N.C.L., R. 20 E., the land described in the application of Matthew C. Gardner of January 17, 1887, for which payment was made in full on May 15, 1890.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 46-284 ELECTIONS—Hawthorne Naval Ammunition Depot—Voting precincts may be established within limits of Babbitt.

Carson City, April 5, 1946

Hon. Martin G. Evansen, District Attorney Mineral County, Hawthorne, Nevada

Dear Mr. Evansen:

You inquire whether voting precincts may be established within the limits of the town of Babbitt, which is situated on lands belonging to the United States within the Hawthorne Naval Ammunition Depot.

Under date of March 29, 1946, this office rendered you an opinion that all Civil Service employees, civilian attachés and employees of the United States residing at the Hawthorne Naval Ammunition Depot, possessing elector's qualifications provided in the Nevada Constitution, who by Acts and declarations make manifest their intentions of claiming residence at such depot and who are properly registered, are entitled to vote in Nevada elections. It follows that pursuant to Nevada law, *i.e.*, section 2439 N.C.L. 1929, facilities to enable such persons to vote must be provided.

In Opinion No. 316, reported at page 71, Report of Attorney General 1927-1928, cited in our Opinion of March 29, 1946, it was held that voting precincts, provided in Nevada law, could legally be established on Indian Reservations. We concur in that opinion. The logic thereof is pertinent to the instant question. There is, we think, no difference in the situation surrounding the right to vote and the establishing of voting precincts on Indian Reservations and the instant situation with respect thereto at the Naval Ammunition Depot. We find no Federal Law or regulation to the contrary.

We conclude that voting precincts may be established in accordance with section 2439 N.C.L. 1929, within the limits of the town of Babbitt.

Very truly yours,

ALAN BIBLE
Attorney General

By: W.T. Mathews
Special Assistant Attorney General

OPINION NO. 46-285 NEVADA HOSPITAL FOR MENTAL DISEASES—Temporary parole of patients—No period defined by statute for termination of commitment.

Carson City, April 5, 1946

Dr. S.J. Tillim, Superintendent Nevada Hospital for Mental Diseases, P.O. Box 2460, Reno, Nevada

Dear Dr. Tillim:

This will acknowledge receipt of your letter dated March 21, 1946, received in this office March 23, 1946, in which you inquire as to the legal capacity of a person committed to the Hospital for Mental Diseases, when such person is subsequently released from the hospital on parole. You also present the question as to period defined by statute when a commitment is terminated for such patient released on parole.

The section of the statutes providing for the temporary parole of a patient at the hospital does not prescribe any period for the termination of the commitment of such person on parole. The provision for temporary parole is found in subdivision 3 of section 3523, 1929 N.C.L. 1941 Supp., and reads as follows:

May temporarily parole into the custody of any relative or friend or guardian who will be responsible for his conduct any patient who is not wholly recovered but whose parole, in the judgment of the superintendent, will not be detrimental to the public welfare, or injurious to the patient.

The first paragraph of this section provides that a patient may be discharged from the hospital for certain reasons, and requires a notice in writing of such discharge to the County Clerk. The provision for parole is expressed in the alternative which indicates that a discharge or a parole would each require such notice. Notice to the County Clerk of the parole of a patient would be a public record as to the condition of the person paroled.

The Legislature under an Act relating to insane persons, approved March 7, 1941 (section 3536 N.C.L. 1941) defined the legal capacity of an insane person and also the presumption established from a certificate of discharge in the following language:

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.

Reading this Act in conjunction with section 2533 supra, which provides for the discharge of a patient and notice to the County Clerk it follows that a certificate of discharge establishes a presumption of legal capacity. Such presumption may be controverted.

Section 3536.01, 1929 N.C.L. 1941 Supp., gives a district court jurisdiction to hear and determine the question as to whether or not a person previously adjudicated to be insane shall be adjudged to be sane.

It is impossible to formulate an accurate and inclusive test as to the character of the circumstances that will charge a person with notice of the insanity of a party with whom another undertakes to contact.

In the example given in your letter we do not see the possibility of the hospital becoming involved in such private matters as you mention.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 46-286 OLD-AGE ASSISTANCE—Initiative Act—Legislature cannot annul or set aside by amendment one or more sections.

Carson City, April 5, 1946

Mr. Herbert H. Clark, Supervisor Nevada State Welfare Department, Division of Old-Age Assistance, P.O. Box 1331, Reno, Nevada

Dear Mr. Clark:

This will acknowledge receipt of your letter dated March 26, 1946, received in this office March 27, 1946, submitting certain proposed amendments to the Initiative Act relating to old-age assistance, enacted November 7, 1944, and appearing in the Statutes of 1945, page 1.

Outline No. 1, *Increase in grant*. The Act, under section 3, fixes a minimum sum, and in addition defines the amount of assistance which any person shall receive, shall in any event, be sufficient, when added to all other income and support of the recipient, to provide such person with a reasonable subsistence compatible with decency and his or her needs and health.

No. 2. *Incorporating the confidential nature of old-age assistance records*. This provision is covered by chapter 30, Statutes of 1945, and an amendment is not required to make the provisions of this Act effective.

Nos. 3 and 4 which deals with the residence requirement and the deleting of section 12 providing for recovery from the estates of a deceased recipient, in our opinion, would be in violation of section 2577 N.C.L. 1929, which provides as follows:

An initiative measure so approved by the qualified electors shall not be annulled, set aside or repealed by the legislature within three (3) years from the date said act takes effect.

The Legislature cannot directly repeal the Act, and if this was construed to mean that one or more sections could be annulled or set aside by amendment, the Legislature could indirectly repeal the entire Act or set it aside as inoperative.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 46-287 JUDICIAL OFFICES—Appointed judges are not within the prohibition of Constitution and may seek other public office within their term.

Carson City, April 11, 1946

Hon. Clifford A. Jones, District Judge Eighth Judicial District, Las Vegas, Nevada

Dear Judge Jones:

You have requested the official opinion of this department on the question of the applicability of section 11, article VI, Constitution of Nevada, to the following circumstances:

You were appointed Judge of the Eighth Judicial District Court of the State of Nevada in and for the County of Clark for the period ending the 31st day of December 1946, pursuant to section 8446 N.C.L. 1929, as amended by chap. 228, Stats. 1945, p. 447. You qualified and took the oath of office and entered upon the discharge of the duties of the office and have resigned the office effective April 15, 1946. You contemplate seeking nomination and election to a nonjudicial office under the State Government. Declarations of candidacy must be filed not later than July 15, 1946; the primary election occurs September 3, 1946, and the general election occurs November 5, 1946. State officers elected take the oath of office January 7, 1947.

Section 11 of article VI, Constitution of Nevada (section 119 N.C.L. 1929) provides:

The justices of the supreme court and the district judges shall be ineligible to any office, other than a judicial office, during the term for which they shall have been elected; and all elections or appointments of any such judges by the people, legislature, or otherwise, during said period, to any office other than judicial, shall be void.

We are of the opinion that the foregoing facts and circumstances do not bring your case within the purview of the constitutional inhibition above-quoted.

We base our opinion on two grounds, viz:

(1) The constitutional provision sets up a period of time as one standard and it is "the term for which they shall have been elected." "They" relates back to Justices of the Supreme Court and District Judges. Nothing is said as to any term for which they shall have been "appointed." The persons affected by this inhibition must be *elected judges*.

In the case of *Magruder v. Swann*, 25 Md. 173, 213, it was held that:

"Elected," as used in [Const. art. 4, sec. 27](#), providing that the present judges of the circuit courts shall continue to act as judges of the respective circuit courts within the judicial circuits in which they were respectively elected, and until their successors are elected and qualified, is not synonymous with "appointed," and means chosen by the people."

State v. Torreyson, 34 P.872, [21 Nev. 517 at and State v. Irwin](#), [5 Nev. 111 at 1212](#), also establish the proposition that "election" as used by the constitution must be received in its ordinary and usual meaning which carries with it the idea of a vote, generally popular, sometimes more restricted, and cannot be held to be the synonym for any other method of filling of an office.

Statutes limiting the right of an elector to run for office must be construed in favor of the right. *Gilbert v. Breithuapt*, [60 Nev. 162](#), 104 P(2) 183, 128 A.L.R. 1111; *State v. Hockett*, 159 P(2) 299-303, 46 C.J. 937.

(2) The constitutional provision goes on to say "and all elections or appointments of any *such judges*, by the people, Legislature, or otherwise, *during said period*, to any office other than judicial, shall be void." (Italics ours.) This provision relates back to "such judges" meaning Justices of the Supreme Court and District Judges, but it also refers to "the same period," which, as we have shown, means the period of the term of elected judges and not appointed judges.

We do not believe that the word "during the term for which they shall have been elected" or the words "during said period" have any application to appointed judges. The question of the time the ineligibility attaches, whether at election or on applying to take the oath after election, does not enter into this case as it did in the case of *State ex rel. Nourse v. Clarke*, [3 Nev. 566](#). Since you are appointed judge, the constitution does not inhibit your candidacy for office at any time, or your eligibility to office at any time.

No help whatever upon the history surrounding the adoption of section 11 of article VI is gained by reference to the Nevada Constitutional Debates and Proceedings. We have carefully studied these Constitutional Debates and Proceedings and find that the constitutional inhibition in question was adopted without any comment whatever and without single amendment by the Constitutional Convention.

Very truly yours,

ALAN BIBLE
Attorney General

OPINION NO. 46-288 BONDS ISSUES—County hospital—Clark County—Bond election may be held without petition of taxpayers at next general election only—amendment does not provide for special election.

Carson City, April 12, 1946

Honorable V. Gray Gubler, District Attorney Clark County, Las Vegas, Nevada

Dear Mr. Gubler:

Reference is hereby made to your letter of April 9, 1946, wherein you inquire concerning the applicable statutes providing for bond issues to build additional buildings for the Clark County General Hospital. Your inquiry is directed mainly to the point of whether a petition signed by at least 50% of the taxpayers of Clark County be first presented to the Board of County Commissioners as provided in section 2225 N.C.L. 1931-1941 Supplement. You also call attention to sections 2228 and 2240 of the same supplement.

Section 2225 was amended at 1943 Statutes, page 213, and as amended provides among other things the following:

Whenever the board of county hospital trustees of any county shall deem it advisable that an annual tax be levied for the enlargement, maintenance, repair, or reconstruction of a public hospital, said board shall, by resolution, request the Board of county Commissioners of said county to levy an annual tax therefor and shall specify in said resolution the maximum amount of money proposed to be expended for any or all of said purposes, and thereupon said Board of county Commissioners shall submit the question of issuing bonds therefor to the qualified electors of the county at the next general election to be held in the county.

The foregoing amendment, in our opinion, so qualifies section 2240 as to now permit of the Board of County Commissioners upon proper resolution presented to them by the Hospital Trustees to call a bond election without the petition of the taxpayers. However, the amendment does not provide for a special election, and we think it follows that the election to provide a bond issue for the county hospital can only be held at the next general election.

Very truly yours,

ALAN BIBLE
Attorney General

By: W.T. Mathews
Special Assistant Attorney General

OPINION NO. 46-289 COUNTY COMMISSIONERS—Advertising for bids over \$500 not necessary for contracts involving professional skill.

Carson City, April 16, 1946

Hon. Rene W. Lemaire, State Senator Lander County, Battle Mountain, Nevada

Dear Senator Lemaire:

This will acknowledge receipt of your letter dated April 12, 1946, received in this office April 13, 1946, requesting an opinion on the following question:

Is it necessary under the statutes for County Commissioners acting as a Town Board for the Unincorporated Town of Battle Mountain to advertise for bids in order to secure the services of a Civil Engineer to prepare plans, specifications, and estimates of cost for a sewerage system when the amount involved is over \$500?

You state in your letter that the services required in connection with the preliminary work should be by one who is a highly trained specialist; that the funds involved are available from the Federal Works Agency for the specific purpose, and that any delay may further menace the health of the community.

We are of the opinion that section 1963 N.C.L. 1929, which requires county commissioners to advertise for bids for contracts where the aggregate amount exceeds the sum of five hundred dollars, does not apply under the circumstances presented.

Funds advanced to political subdivisions of the State under the War Mobilization Act of 1944 through the Federal Works Agency, Bureau of Community Facilities (Title 50, Appendix 74 F.C.A.), as stated in the Act are “* * * to aid in financing the cost of architectural engineering and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other actions preliminary to the construction of such public works * * *. Advances under this section to any public agency shall be repaid by such agency if and when the construction of the public work so planned is undertaken.”

Chapter 46, Statutes of 1943, defines the additional powers and jurisdiction conferred upon county commissioners with regard to the management of unincorporated towns, and under section 4 authorizes the boards to provide for the construction of sewers in such towns.

In order to provide for the construction of a sewer system at Battle Mountain the commissioners have the available funds, furnished by the Federal Works Agency, to obtain all necessary data and the economical cost of the project. When this is determined the question as to whether or not a bond issue may be authorized to pay for the construction of the project must be submitted to the people at an election. The money so expended is therefore authorized by the electors.

As a general rule statutory provisions prohibiting letting of contracts by municipal subdivisions, without first advertising for bids, do not apply to contracts for professional services.

The court, in the case of *Stratton v. Allegheny County*, 81 Atl. 894, 44 A.L.R. 1151, in construing such a statute, held as follows: “It has never been held, so far as we have been able to ascertain, that the above provisions applying the making of contracts for the employment of attorneys, physicians, engineers, or others involving professional skill.”

In *Hunter v. Whiteaker*, 230 S.W. 1096, 44 A.L.R. 1151, the court, in construing a statute requiring bids for the expenditure of money more than the amount specified in the statute, said: “To hold that the act would require that the services belonging to a profession such as that of the law, of medicine, of teaching, civil engineering, or architecture, should be obtained by a county only through competitive bidding, would give a ridiculous meaning to the Act and require an absurdity. Such at least would be the best that could be conceived for obtaining the services of the least competent man, and would be the most disastrous to the materials interests of a county.”

The provision or preparation for the construction of the sewer system is made by the expenditure of the Federal fund, and the town is not obligated to repay the same until the construction is undertaken as the result of the election held by the people for this purpose.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

cc to Arthur Platz, District Attorney, Austin, Nevada
Walter A. Schmidlein, Chairman Board of County Commissioners, Austin, Nevada
Marian S. Fisher, Chairman, Civic Improvement Committee, Battle Mountain, Nevada

OPINION NO. 46-290 PUBLIC SCHOOLS—Transportation of pupils—Consolidated districts—Pupils from outside districts.

Carson City, April 20, 1946

Hon. E.E. Winters, District Attorney Churchill County, Fallon, Nevada

Dear Judge Winters:

This will acknowledge receipt of your letter dated April 12, 1946, received in this office April 15, 1946, in which you inquire if a consolidated school district, wherein transportation of pupils is provided, can charge a pupil a fee for transportation when such pupil from an outside district has been permitted to attend the consolidated district school.

Section 5937 N.C.L. 1929 authorizes any board of school trustees to arrange with the trustees of an adjoining district in the same county for the attendance of children in either district that may be most convenient for such children. When such transfer is made as provided, notice of the transfer is given the Superintendent of Public Instruction, and the superintendent shall direct the County auditor and Treasurer of the county in which the districts are situated to transfer from the funds of the district in which such children live to the credit of the funds of the district in which they are attending, the pro rata of State and county moneys apportioned to each child in the county for each of such children transferred.

Section 5950 N.C.L. 1929 provides that funds for the transportation of pupils in consolidated school districts shall be raised by taxation on the property in the district.

The transfer of the State and county money as provided for in section 5937 supra would not include a fee for the transportation of the pupil transferred into the consolidated district from the district in which the child lived. There is no provision in the statutes for the trustees of the district in which the child lived under which such trustees could authorize the payment of such transportation.

Section 5951 N.C.L. 1929 requires that the proposition of providing transportation for children residing one mile or more from school in districts, other than consolidated districts, must be submitted at any general or special election held in the district, and such proposition favored by a majority of the voters before the trustees may provide for transportation.

Under section 4 of the Act providing for the consolidation of school districts (sec. 4949 N.C.L. 1929) the trustees shall contract for the transportation of children to school at the expense of the district. This section would only apply to children residing within the consolidated district.

The statutes, therefore, provide for the transfer of a child from one district into another, and provide for the transfer of the State and county apportionment of funds for the child, but make no provision for payment of transportation of the child.

There is nothing in the statutes which would prohibit the consolidated district from transporting the child in question if the taxpayers in the district did not object and the contract with the driver of the vehicle did not limit the transportation to pupils residing within the consolidated district.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 46-291 NEVADA HOSPITAL FOR MENTAL DISEASES—Not liable for torts committed by patient therein.

Carson City, April 20, 1946

Dr. S.J. Tillim, Superintendent Nevada Hospital for Mental Diseases, P.O. Box 2460, Reno, Nevada

Dear Dr. Tillim:

This will acknowledge receipt of your letter dated March 29, 1946, received in this office April 1, 1946, in relation to one Mabel F. Davis, an aged patient at the hospital who was injured as the result of her action in annoying another patient, and the subsequent attitude of those who are obligated to pay for her subsistence and care at the Nevada Hospital for Mental Diseases.

The patient was transferred to the Washoe General Hospital where she received proper medical and surgical care at the expense of the State. Her relatives now refuse to pay the charges fixed by the court for the care at the Nevada Hospital for Mental Diseases.

The patient was transferred to the Washoe General Hospital where she received proper medical and surgical care at the expense of the State. Her relatives now refuse to pay the charges fixed by the court for the care of the patient at the hospital for mental disease, and in addition threaten the hospital authorities with a suit for damages claimed as a result of the injury to the patient.

You ask for advice as to the course to follow.

We are of the opinion that the Nevada State Hospital for Mental Diseases is not liable for damages for torts committed by a patient therein. The relatives are liable for the payment of the charges fixed by the court, at the time of the commitment of the patient, and such charges are a lien against the property of the kindred liable for the payment.

The rule as to the responsibility for the torts of an incompetent person is expressed in 28 Am. Jur., page 734, as follows:

The custodian of an incompetent person is not, merely as such and in the absence of any negligence on his part, responsible for a tort committed by the incompetent person.

As to the responsibility of the institution, the general rule is stated in 26 A. Jur., page 594, as follows:

The general rule, in the absence of any statutory provision to the contrary, is that strictly public institutions created, owned, and controlled by the State or its subdivisions, such as state asylums for the insane, municipal and county hospitals, reformatories, etc., are not liable for the negligence of its agents.

The fact that the statute from which an eleemosynary insane asylum derives its corporate life and power declares that it may sue and be sued does not render the institution liable for torts committed by its inmates or employees. 5 C.J., page 1420; 12 Am. Cases, page 827.

The accident in question cannot be the basis for the refusal of the parties to pay the charges fixed by the court at the time of the commitment of the patient.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 46-292 PUBLIC SERVICE COMMISSION—Certificate of convenience—
Exemption applies only where transportation of minerals is made in producer's own vehicles.

Carson City, April 22, 1946

Mr. Lee S. Scott, Secretary Public Service Commission, Carson City, Nevada

Dear Mr. Scott:

This will acknowledge receipt of your letter dated April 12, 1946, received in this office April 13, 1946, in which you submitted copies of an agreement whereby the B.B.S. Mining Corp. leases five dump trucks from G.A. Peterson and Merl Swanson for the purpose of transporting ore from the Simon Silver-Lead Mine to the mill at Sodaville, Nevada, and ask for an opinion as to whether or not the mining company comes within the exemption as stated in section 4437.2 N.C.L. 1941 Supp.

A question involving like circumstances was answered by the Attorney General in an opinion given December 10, 1940, Opinion No. B-22, Biennial Report 1940-1942. The opinion sets out that part of the section quoted in your letter and recites the following: "We believe that this exemption is self-explanatory and that an exemption can apply only where the transportation of minerals is made in the producer's own vehicles. The agreement which you have submitted clearly indicates the mining company is not the owner of the vehicles used for transporting ore but simply rents or leases the same. We, therefore, conclude that the exemption does not apply."

The parties mentioned in your letter should cease their operations until a certificate of convenience or a contract carrier's permit is issued according to the fact determined by your commission.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 46-293 NEVADA HOSPITAL FOR MENTAL DISEASES—Vacation time employees—Authorization for proper relief during vacation.

Carson City, April 22, 1946

Dr. S.J. Tillim, Superintendent Nevada Hospital for Mental Diseases, P.O. Box 2460, Reno, Nevada

Dear Dr. Tillim:

This will acknowledge receipt of your letter dated March 25, 1946, referring to our letter to you under date of March 14, 1946.

Referring to our letter mentioned above we find that your question was specially directed to chapter 125, Statutes of 1945, and your inquiry was as to the authority, if any, contained therein permitting the hospital board to employ a full-time resident physician and pay such physician out of the special appropriation made in said chapter. Our answer was in the negative and gave our reason why this was not authorized by the statute.

Your criticism of our interpretation of this chapter of the statute as an exclusive clause and producing a situation which would make the superintendent of a veritable prisoner is based upon a wrong premise.

The question as to your eligibility for vacation time is defined by statute. Section 7279, N.C.L. 1929, provides as follows:

Each and every state employee who has been in the service of the state for six months or more, in whatever capacity, shall be allowed, in each calendar year, a leave of absence of fifteen days, with full pay, providing the head of each department shall fix the date of such leave of absence.

Chapter 154, Statutes of 1945, under section 6, provides that the superintendent shall employ all necessary help in and about the hospital. Obviously, this is ample authorization to enable you to have the proper relief during your vacation.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 46-294 NEVADA HOSPITAL FOR MENTAL DISEASES—Board has full power and control over all grounds of hospital—May give or refuse permission to occupy.

Carson City, April 22, 1946

Dr. S.J. Tillim, Superintendent Nevada Hospital for Mental Diseases, P.O. Box 2460, Reno, Nevada

Dear Dr. Tillim:

This will acknowledge receipt of your letter dated March 21, 1946, received in this office March 23, 1946.

You state that a number of shacks have been built on hospital ground and have so remained since the early thirties. That the question as to the right to occupy the land did not arise until someone bought two of the shacks and now seeks to get permission from the hospital board to improve them and offer them for rental. You desire to know the right, if any, that these squatters have acquired and what action should be taken.

The hospital board has full power and exclusive control over all the grounds of the hospital and may give or refuse permission to occupy the premises.

Mechanics National Bank v. Stanton, a Minnesota case reported in 43 Am. State Reports, page 492, held as follows:

Prima facie buildings belong to the owner of the land on which they stand as part of the realty. It is only by virtue of some agreement with the owner of the land that buildings can be held by another party as personal property. If erected wrongfully, or without such agreement, they become the property of the owner of the soil. But it is entirely competent for the parties to agree that they shall remain the personal property of him who erects them, and such an agreement may be either express or implied from the circumstances under which the buildings are erected.

Crest v. Jack, 27 Am. Decisions 353, "If a stranger enters on the land of an other and makes improvements by erecting buildings, they become the property of the owner of the land."

In the instant case it appears that the buildings were placed on the hospital land, beginning in the early thirties. They have evidently remained on the land with the permission of the authorities without the payment of ground rent.

Under the circumstances it does not appear that there is any basis for adverse possession. Although no rental was required, and it does not appear that any limited period for such occupancy can be determined, it follows that the person claiming or occupying the buildings may be termed tenants at will and the relation of landlord and tenant established.

The hospital board could permit the owner of the buildings to remove the same from the hospital property or require a ground rental or give the parties notice in writing to vacate the premises within a certain period. Failure of the tenants to comply with the demand would subject them to the procedure for unlawful detainer as provided by statute.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 46-295 BOND ISSUES—County hospital—Date for special election—Special elections for county high schools—Registration in divided precincts.

Carson City, April 22, 1946

Hon. E.E. Winters, District Attorney Churchill County, Fallon, Nevada

Dear Mr. Winters:

The following is our opinion in answer to your questions presented in your letter dated April 17, 1946, and discussed in this office on the same date. The questions comprehend the following subjects:

When a petition containing 50% or more of the taxpayers of the county is presented to the Board of County Commissioners to establish a county hospital and issue bonds for the same, when must the special election be held and when must the registration for such election be opened and closed?

What effect has the amendment to the election law respecting registration on the holding of an election to determine a bond issue for a county high school?

What are the requirements as to registration when the county commissioners divide voting precincts in order that not more than 400 voters shall vote in one precinct?

We are of the opinion that the provision in section 2225, 1929 N.C.L. 1941 Supp., as amended, which requires the county commissioners, when a petition of 50% of the taxpayers is filed with the board, to call a special election of 40 days is involved, is repealed by section 4 of chapter 108, Statutes of 1945.

The amendment contained in chapter 108, Statutes of 1945, does not conflict with the fixing of a date for the holding of a special election to submit the question of a bond issue for a county high school.

There is no statutory requirement that an elector must reregister in order to vote when his precinct has been divided in order to limit the number of voters to one precinct. The statutory privilege to transfer from one precinct to another would apply.

Chapter 160, Statutes of 1943, amends the Act to enable counties to establish and maintain public hospitals. Section 2225, 1929 N.C.L. 1941 Supp.

Section 1 of the Act provides whenever the Board of County Commissioners are presented with a petition signed by at least 30% of the taxpayers of a county asking that an annual tax be levied for the establishment and maintenance of a public hospital, naming the place in the county and specifying the maximum amount of money proposed to be expended, the county board shall submit the question of issuing bonds at the next general election. Under subdivision (b) of the same section the county commissioners, when presented with a like petition signed by at least 50% of the taxpayers of the county, are directed in the following language to call a special election: “* * * shall call a special election for the purpose of submitting the question of issuing bonds therefor to the qualified electors of the county, to be held within forty days after such petition shall have been filed with said board.”

When this amendment was adopted the statutes providing the time for registration of any election other than a primary or general election, section 2370, 1929 N.C.L. 1941 Supp., fixed the time when registration offices shall be open for registration for not more than 60 days nor less than 20 days prior to the date of the election.

The Legislature by chapter 108, Statutes of 1945, page 166, amended section 2370, 1929 N.C.L. 1941 Supp., in respect to elections other than primary or general elections in the following language: “* * * that the office of the county clerk as ex officio registrar, shall be open for registration of voters for any election, other than a primary or for registration of voters for any election, other than a primary or general election, for not more than eighty (80) days nor less than forty (40) days prior to the date of such election, * * *.”

This amendment requires the closing of registration for a special election forty days prior to the date of the election.

The county commissioners, under the mandatory provisions of section 225, 1929 N.C.L. Supp., as amended by chapter 150, Statutes of 1943, would set the date for the special election to determine a bond issue for a public hospital within forty days after the petition was filed, and under the amendment of 1945 providing for the registration for a special election the registration would be closed. Electors qualified to vote at such special bond election, who were not already registered, would not have the privilege of voting at such election. Thus the bond election might be declared invalid if shown that a sufficient number of legal voters were prevented from casting their ballots at such election.

The section providing for the calling of a special election under the public hospital Act and the section providing the period for registration to vote at a special election are conflicting to such extent that the two sections cannot be reconciled. Both sections relate to the subject of special elections, although one deals with registration periods.

Section 4 of chapter 108, Statutes 1945, amending the registration of electors, provides as follows: "all acts and parts of acts, insofar as they may be inconsistent with the provisions of this act, are hereby repealed."

The rule expressed by the Supreme Court in *Ronnow v. City of Las Vegas*, 57 Nev. on page 366, is as follows: "It will be presumed that the Legislature, in enacting a statute, acted with full knowledge of statutes already existing and relating to the same subject."

That part of chapter 150, Statutes of 1943, making it mandatory on the part of the county commissioners within the forty-day period to call a special election is, therefore, repealed.

As stated in *State v. Esser*, 35 Nev. on page 435, "In so far as there is any irreconcilable conflict between the two sections, the section which last became a law controls the provisions of the earlier enactment."

The county commissioners under the public hospital Act should call for a special election to determine the bond issue, but the date of such election should be fixed to permit registration for such election within the period fixed in chapter 108, Statutes of 1945.

Special Elections for High School Bonds

Section 5904 N.C.L. 1929 is section 1 of the Act to provide for bonding counties for the building or enlarging of county high schools, and this section authorizes the county commissioners to submit the question of bonding the county at any general or special elections.

Section 5905 N.C.L. 1929 provides that the county commissioners at any regular or special meeting held not less than eight weeks before any general or special election may make an order for the holding of such election, specifying the time and place. Under this section the date of the election could not be fixed at a time earlier than 56 days before the election, but could be fixed at a later date or to conform to the period for registration for a special election as defined in chapter 108, Statutes of 1945.

Registration in Divided Precincts.

Section 2439 N.C.L. 1929, which directs the county commissioners to establish election precincts and define the boundaries thereof, provides in the sixth paragraph as follows: "The several boards of county commissioners in the counties of this state in providing for and proclaiming election precincts shall so arrange and divide the voting places in the respective counties so that no greater number than four hundred voters shall vote in one precinct."

Section 2368, 1929 N.C.L. 1941 Supp., designates the form of registration card which requires the residence of the person to be shown.

Section 2373 N.C.L. 1929 provides that every elector on changing his residence from one precinct to another shall cause his registry card to be transferred to the register of the precinct of his new residence by a request in writing to the county clerk.

Section 2386 N.C.L. 1929 provides that any elector whose name is erroneously omitted from any precinct poll book may apply for and secure from the County Clerk a certificate of such error stating the precinct in which such elector is entitled to vote, and upon presentation of such

certificate to the judges of election, the elector shall be entitled to vote in the same manner as if his name had appeared upon the precinct poll book.

It appears, therefore, when the voting places are divided so that not more than four hundred voters shall vote in one precinct, it is not required that an elector reregister in the new precinct before he can vote therein.

As a suggestion, when the division of the precincts has been determined by the county commissioners and the boundaries established, if the county Clerk could ascertain from the residence given on the registration cards that a voter's residence was in the new precinct, he could file the card accordingly.

When the list of voters is published attention of the votes could be called to the necessity of having the name in the proper precinct, and if not so shown by the published list, to request the voter to apply for a transfer to the Clerk. This would save confusion and the extra work of making late transfers or issuing certificates of error.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 46-296 COSMETOLOGY—State Board—Cannot make rule to permit student at school of cosmetology to operate beauty parlor either with or without compensation until student has passed required examination and received license.

Carson City, April 24, 1946

Nevada State Board Of Cosmetology, P.O. Box 1814, Reno, Nevada

Attention: Mrs. Bernice Randall, Secretary-Treasurer

Dear Mrs. Randall:

This will acknowledge receipt of your letter of April 22, 1946, received in this office April 23, 1946, requesting an opinion as to the authority of the State Board of Cosmetology to permit the establishment of a beauty parlor at the Nevada Hospital for Mental Diseases for the purpose of permitting an attendant at the hospital, who is attending a beauty school, to practice hairdressing or cosmetology on the patients until such time as the attendant may secure a license.

We are of the opinion that the statutes do not authorize such a procedure and that a beauty parlor cannot be established or maintained at the hospital without a license from the State Board.

Section 1862.02, 1929 N.C.L. 1941 Supp., provides that every person who shall conduct or operate a cosmetological establishment, hairdressing shop, beauty parlor, or any other place of business in which any one or any combination of the occupations of a hairdresser and cosmetician are taught or practiced, and every person who shall engage in, or attempt to engage in such practice, whether for compensation or otherwise, without a license therefor, issued as provided by the State Board of Cosmetology, shall be guilty of a misdemeanor punishable by a fine of not less than twenty-five dollars nor more than two hundred dollars, or by imprisonment for a term not less than fifty days not more than one hundred and eighty days, or by both such fine and imprisonment.

The State Board of Cosmetology under section 1862.03, N.C.L. 1941 Supp., is given authority to make reasonable rules for carrying out the provisions of the Act for governing the recognition of and credits to be given to the study of cosmetology, or any of its branches, under a hairdresser and cosmetician or in a school of cosmetology licensed under the laws of this or another State.

It appears from the statute that a person desiring to apply for a license to operate as a hairdresser or cosmetician or in a licensed school of cosmetology.

The State Board could not, therefore, make a rule which would permit a student at a school of cosmetology to operate a beauty parlor either with or without compensation until the student has passed the required examination and received a license.

The State Board could not, therefore, make a rule which would permit a student at a school of cosmetology to operate a beauty parlor either with or without compensation until the student has passed the required examination and received a license.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 46-297 LABOR—Contracts—Nonunion men employed at regular union wages.

Carson City, April 27, 1946

Hon R.N. Gibson, Labor Commissioner State of Nevada, Carson City, Nevada

Dear Mr. Gibson:

Your letter of April 23, 1945, received in this office April 24, 1946.

1. You submit a form of contract made in December 1945 between the Reno Employer's Council and members and Local No. 533 of the union referred to here as Teamster's Union.

2. You also submit the employees' stub of a voucher check used by Peterson-McCaslin Lumber Co. of Reno in paying its employees.

You ask whether the contract in question governs in the case of an employee who did not join the union until after he was hired.

Section V of the contract provides conditions under which nonunion men may be employed "at the regular union wages." It contemplates that such men must join the union without delay. Sections II and III govern wages and overtime.

In the absence of any showing of the existence of any other contract it would appear that this contract applies in this case. It is assumed that the employee has complied with the conditions governing his membership in the union. If he has not done so the union until after he was hired.

Section V of the contract provides conditions under which nonunion men may be employed "at the regular union wages." It contemplates that such men must join the union without delay. Sections II and III govern wages and overtime.

In the absence of any showing of the existence of any other contract it would appear that this contract applies in this case. It is assumed that the employee has complied with the conditions governing his membership in the union. If he has not done so the union has a grievance against the employer, which it may present in its own way. If the employee engaged to work on terms not authorized by the contract then his remedy must be based on the special contract he made, if any,

or at any rate on the reasonable value of his services. We do not assume from your statement that he has made any such written or unwritten contract.

You state that the employee worked 68 hours for \$1 per hour but he was paid only \$57, less deduction itemized on the stub, for Federal Old-Age Retirement, \$0.58, withholding tax, \$8.10, and "Expense," of \$43.82. The stub notes in pencil "Time worked 68 hours," also "Amount received \$52.82." These pencil notes were evidently not made by the employer.

In the absence of the check itself, in addition to the stub retained by the employee, we cannot say that sec. 4 of the semimonthly pay law (sec. 2778 N.C.L. 1929) has been violated. This could be tested by a prosecution or a civil suit for the penalty provided by sec. 6, 1929 N.C.L. 1941 Supp., sec. 2780.

The function of the Labor Commission in assisting in the collection of wages is more clearly stated in sec. 4 of the Act creating that office (1929 N.C.L. Supp., secs. 2751, 2752, and 2752.01). *See also* N.C.L. 1929, sec. 2785.

In prosecutions of a criminal nature the defendant may stand on the strict letter of the law. Under 1929 N.C.L. sec. 2778, the employer does his fully duty when he furnishes the employee with an "itemized list showing the respective deductions." An employee receiving a sum of money and list of deductions knows what his total wages are. He also knows how many days he worked and what the rate was. If he is underpaid he has his remedy.

Under the facts so far disclosed we cannot say that a prosecution or suit for penalty would lie under N.C.L. 1929, secs. 2778 and 2780.

We are returning the papers you sent.

Very truly yours,

ALAN BIBLE
Attorney General

By: Homer Mooney
Deputy Attorney General

OPINION NO. 46-298 HEALTH—State health officer must qualify as to residence—Person appointed temporarily must have all qualifications defined in statute.

Carson City, April 29, 1946

Mr. John J. Sullivan, Acting Secretary State Board of Health, Carson City, Nevada

Dear Mr. Sullivan:

This will acknowledge receipt of your letter dated April 22, 1946, received the same date, containing a request for an opinion as to the authority of the State Board of Health to waive any of the qualifications defined in section 4 of chapter 184, Statutes of Nevada 1939, respecting the appointment by the board of a State Health Officer.

In addition to the request in the letter you have orally inquired as to the authority of the board to appoint a doctor now in Federal employment who has all qualifications, except the residence requirement, to act as State Health Officer until such time as the board may make an appointment for the unexpired term of Doctor Hamer, now deceased.

You also inquire if the term "full time to official duties" is limited to office hours.

Our answer to your first question is in the negative.

The answer to your second question is that the person appointed temporarily must have all of the qualifications defined in the statute for the appointment of the State Health Officer.

Full time is not limited to office hours and requires State Health Officer to confine his occupation to this official duties.

Quoting that part of section 4, chapter 184, Statutes of Nevada 1939, deemed relevant, it reads as follows: "The State board of Health, with the approval of the Governor, shall appoint the State Health Officer. He shall be a physician having the degree of doctor of medicine. He shall be a resident of Nevada for at least five years preceding the date of his appointment; he shall be licensed to practice in Nevada and shall have had at least one year's post graduate training in public health or at least three years' experience as a public health official. * * * A vacancy in the office shall be filled by appointment for the unexpired term. The state health officer shall devote his full time to his official duties and shall not engage in any other business or occupation. * * *"

The positive provisions in the section are plain and unambiguous and there is no occasion for construction. The person appointed by the board to the position of State Health Officer must have all of these qualifications before the board may select the appointee.

State v. Jepsen, 46 Nev. on page 196. "Where the language of a statute is plain and unambiguous, and its meaning clear and unmistakable, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself."

The verb "shall" is used positively and imposes an obligation upon the board as a condition precedent to the appointment.

Ex parte Araseada, 44 Nev. on page 35: "Every positive direction contains an implication against anything contrary to it which would frustrate or disappoint the purpose of that provision."

The person appointed to fill a vacancy in a public office must have the same qualifications, whether the appointment be temporary or for the balance of the term of the former incumbent.

The Supreme Court, in the case of *State v. Clark*, 21 Nev. page 338, in determining a public office expressed the following rule which is applicable here: "If the incumbent is ineligible to hold an office, it can make no difference whether he obtained it in the first instance by election or appointment."

A person who could not meet all the requirements of the statute could not be legally chosen and would, therefore, be incapable of legally holding. So held by the court in *State ex rel. Nourse v. Clarke*, 3 Nev. on page 570.

Devote Full Time to Official Duties

The provision in section 4, chapter 184, Statutes of 1939, requiring the State Health Officer to devote full time to his duties reads as follows: "The state health officer shall devote his full time to this official duties and shall not engage in any other business or occupation."

"Full time" will not be construed to mean entire time, twenty-four hours a day, but as a recognition of the precept, "Man cannot serve two masters."

Definitions of business found in Words and Phrases include the following examples: "The word 'business' means almost anything which is an occupation as distinguished from pleasure—anything which is an occupation or duty which requires attention as a business." *Taylor v. Seney*, 3 N.E. (2) 374-376.

"* * * since the word 'business' defined as that which busies one, or that which engages his time, attention or labor, as his principal concern or any particular occupation or employment engaged in for a livelihood or gain, as trade, art or profession, includes the practice of medicine." *Sample v. Schwartz*, 109 S.W. 633. Cited with approval in 72 Fed. (2) 956.

The State Health Officer's principal occupation is his official duties, defined by statute as the executive officer of the State Board of Health, and the provisions in section 4, chapter 184, Statutes of 1939, require that he confine his employment and occupation to such duties.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 46-299 INSURANCE—Students engaged in athletics—Pro rata payment of proposed premiums in accordance with act.

Carson City, May 1, 1946

Hon. Mildred Bray, Superintendent of Public Instruction, and Hon. Henry C. Schmidt,
Commissioner of Insurance, Carson City, Nevada

You have submitted to me a draft of proposal made by Western American Life Insurance Company to carry out the requirements of chapter 222, Statutes of 1945, relating to the insurance of students engaged in athletics.

Under this Act if this proposal “meets the requirements of the Act,” you are empowered to certify that fact.

It is my opinion that the proposal, if accepted, would meet the test prescribed by the Legislature, as a matter of law. While my opinion does not control on matters of policy, it seems to me that considering that only one proposal has been offered since the Act was approved March 26, 1945, and this promises perhaps as much in the way of benefits compared to the amount appropriated as may be expected at this time, it should be accepted.

We have rewritten the draft to incorporate some suggestions developed in discussion with yourselves and representatives of the company and we inclose this draft in quadruplicate.

We are of the opinion that the pro rata payment of premiums for the period fixed in the proposal is in accordance with the Act.

For your information we inclose, in quadruplicate, certain suggestions considered at the conference, but these form no part of the proposal or contract.

Very truly yours,

ALAN BIBLE
Attorney General

OPINION NO. 46-300 ELECTIONS—Elector whose registration card shows no political affiliation and is registered nonpartisan may reregister since last general election and qualify to file declaration of candidacy for primary election.

Carson City, May 7, 1946

Hon. V. Gray Gubler, District Attorney Clark County, Las Vegas, Nevada

Dear Mr. Gubler:

The following is response to your request of May 2, 1946, for an opinion upon the question, may an elector whose registration card shows that his political affiliations are nonpartisan change such registration declaring his affiliations to be with the Democratic party and file as candidate for nomination for the office of Sheriff as a member of the Democratic party.

Chapter 110, Statutes of 1945, section 2, quoting that part deemed relevant, reads as follows: "The name of no candidate shall be printed on an official ballot to be used at a primary election, unless he shall qualify by filing a declaration of candidacy, * * * as provided in this act. * * * For the purpose of having may name placed on the official primary ballot as a candidate for nomination by the party as its candidate for the office of, I the undersigned, do solemnly swear (or affirm) * * * that I am a member of the party; that I have not registered and changed the designation of my political party affiliation or an official registration card since the last general election; * * * that I affiliated with such party at the last general election of this state, * * *."

The official registration card of an elector who registered as a nonpartisan would show that he was not a member of any political party.

Section 2404 N.C.L. 1929 defines a political party as an organization of voters qualified to participate in a primary election.

The statutes define all judicial offices and school offices to be nonpartisan. Section 3537 N.C.L. 1929 of the primary law provides that no words designating the party affiliation of any candidate for a judicial or school office shall be printed upon the ballot.

The elector, although not a member of a political party, may have affiliated with a political party and may desire to become a member of such party.

In the case of *Wolck v. Weedin*, 58 Fed. (2) 928, wherein the court construed the word "affiliated," it was held that a person need not be a member of a party, but if he sympathized with the party's aims and desired to join when allowed to do so, that was sufficient to show his affiliation with such party.

The nonpartisan elector would not, therefore, reregister for the purpose of changing his politics, but to become a member of his selected party.

Section 2380, 1929 N.C.L. 1941 Supp., designates when registry cards must be cancelled and provides when the elector may immediately reregister. Subdivision 5 uses the following language: "Upon the request of any elector who desires to change his politics, or to affiliate with any political party * * *."

An elector who did not belong to any organized political party could reregister in order to affiliate with a designated political party and such reregistration would not constitute a change of politics.

The registration card of such an elector would then declare his belief in the principles of the party selected and also his future intentions as provided in section 2368, 1929 N.C.L. 1941 Supp., which in this respect provides as follows: "I believe generally in the principles of the party, and intend generally to support its principles and candidates at the ensuing general election; I have not affiliated or enrolled with or participated at any primary election or convention of any other political party since the first day of January last; and I register as a in good faith and not for the purpose of merely aiding in the nomination of any particular candidates; so help me God."

Chapter 110, Statutes of 1945, contains, in addition to the language "that I have not reregistered and changed the designation of any political party affiliation," the words, "or an official registration card since the last general election * * *." The entire phrase deals with the subject of reregistering for the purpose of changing political party affiliations, and it follows that such change must be made on the official registration card. The conjunction "or" would not be interpreted to express something unlike that subject and mean the change of the registration card for any purpose.

The manifest purpose of the Legislature was to prevent the switching from one political party to another in order to become a candidate of that party at a primary election, and the changing of a registration card for any other reason would not do violence to such purpose.

Roney v. Buckland, 4 Nev. 45, contains a rule of construction on page 57 expressed in the following language: "Hence in the interpretation of any phrase, sentence, or section of a law, the first thing to be ascertained is the ultimate and general purpose of the Legislature in the enactment of the law. When this is known or ascertained, then every sentence and section of the entire law should be interpreted with reference to such general object, and with a view of giving

it full and complete effect, extending it to all its logical and legitimate results. That object must, of course, be ascertained from the Act itself. But the whole Act must be taken together, and when the general object is apparent, any fugitive expression, or any sentence which is impossible to so interpret as to make it accord with, and further such general object, must be ignored entirely.”

In *Penrose v. Whitacre*, 61 Nev. on page 455, the court said: “The courts in each instance will endeavor to ascertain the true intent of the Legislature, resolving any doubt in favor of what is reasonable, against what is unreasonable.”

The word “or” should, therefore, be construed as “on” and the phrase would read, “that I have not reregistered and changed the designation of my political party affiliation on an official registration card since the last general election.”

For the foregoing reasons we are of the opinion that an elector whose registration card shows that he has no political affiliations, and is registered nonpartisan, may reregister since the last general election under the provisions of section 2, chapter 110, Statutes of 1945.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 46-301 PUBLIC SCHOOLS—Statute fixing salaries of deputy superintendents controls, notwithstanding deficiency in amount specified in appropriation act.

Carson City, May 21, 1946

Miss Mildred Bray, Superintendent of Public Instruction, Carson City, Nevada

Dear Miss Bray:

This will acknowledge receipt of your letter dated May 15, 1946, received in this office May 16, 1946, requesting an opinion as to whether the statute increasing the salaries of the Deputy Superintendents should control the payment of such salaries or should such payment be restricted to the amount specified in the appropriation Act which is insufficient for such increase.

We are of the opinion that chapter 231, Statutes of 1945, which fixes the salaries of the Deputy Superintendents controls, notwithstanding a deficiency in the amount specified in the appropriation under chapter 246, Statutes of 1945.

Section 13, chapter 231, Statutes of 1945, provides that the compensation of each Deputy Superintendent shall be fixed by the State Board of Education in an amount not to exceed the sum of three thousand three hundred dollars per annum, and shall be paid out of the State Distributive School Fund in the same manner as the salaries of other State officers are paid. The Legislature authorized the expenditure up to a certain amount and indicated the fund out of which it is to be paid.

In *State v. Eggers*, 29 Nev. page 475, the court said, “It is not necessary that all expenditures be authorized by the general appropriation bill. The language in any act which shows that the legislature intended to authorize the expenditure, and which fixes the amount and indicates the fund, is sufficient * * *.”

See Attorney General’s Opinion No. 176, Biennial Report 1925-1926, and Opinion No. 38, Biennial Report 1923-1924.

As stated in the opinion last mentioned, "It has been held by the Supreme Court of this State that, where the Legislature has fixed the salaries of an officer, the failure on the part of the Legislature in the appropriation bill to allow a sum sufficient to pay the salaries so fixed would not thereby prevent the officer from collecting his salary."

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 46-302 PUBLIC OFFICERS—Are not forbidden by Constitution to engage in contracts with the United States Government—Mail contracts.

Carson City, May 22, 1946

Hon. Peter Breen, District Attorney Esmeralda County, Goldfield, Nevada

Dear Mr. Breen:

Your letter of May 13, 1946, reached this office May 16, 1946.

You ask the official opinion of this office whether the Sheriff of your county would become ineligible to hold that office should he engage in the work of a mail contractor with the United States Government.

Our answer is in the negative.

Section 9 of article IV of our constitution provides: "No person holding any lucrative office under the government of the United States, or any other power, shall be eligible to any civil office of profit under this State, provided that postmasters whose compensation does not exceed five hundred dollars per annum, or commissioners of deeds, shall not be deemed as holding lucrative office." (N.C.L. 1929, sec. 60.)

We rest our opinion primarily on our understanding that a person entering into a contract with the United States does not thereby hold a lucrative office under the Government of the United States. As we understand it, a mail contractor undertakes to transport the mail between given points for a lump sum per year.

This office ruled in Opinion No. 367M, issued December 17, 1942, that a State Senator would not become ineligible to hold that office by accepting a \$1 per year appointment under the United States, the compensation being deemed nonlucrative and the occasion being a call for patriotic service in wartime.

In the case of *State v. Sadler*, [25 Nev. 131, at 172-174](#), it was held that when a State Senator acted as paymaster for the United States (during the war with Spain) he automatically created a vacancy in his office. This was an exposition of the meaning of the word "eligible."

On the question whether a mail contractor holds an office under the Government of the United States the Federal courts have repeatedly construed the word "office" to mean a public station or employment conferred by the appointment of government. The term embraces the ideas of tenure, duration, emolument, and duties. (See *Hawthorne v. Fisher*, 33 Feb. Supp. 891 at 895, citing *U.S. v. Hartwell*, 73 U.S. 385; *Hall v. Wisconsin*, 103 U.S. 5-8; *Auffmordt v. Hedden*, 137 U.S. 310-327.)

In *State ex rel. Kendall v. Cole*, [38 Nev. 215](#), speaking of Kendall, the court said: “None of the sovereign power of the state is entrusted to him. His compensation, period of employment and the details of his duties are all matters of contract with the board of directors.” *See also* on this last point *Hall v. Wisconsin*, 103 U.S. 5, at 8.

Very truly yours,

ALAN BIBLE
Attorney General

By: Homer Mooney
Deputy Attorney General

OPINION NO. 46-303 PUBLIC SERVICE COMMISSION—Taxicabs operating beyond corporate limits of city—Commission has jurisdiction.

Carson City, May 22, 1946

Hon. J.G. Allard, Public Service Commission, Carson City, Nevada

Dear Mr. Allard:

Pursuant to your request of May 21, 1946, by telephone, for a written opinion, directed to your office, respecting the construction of the exemption clause in section 3, Statutes of 1933, as amended, in connection with the operation of taxicabs which operate beyond the corporate limits of a city, we submit the following explanation and opinion.

After receipt of your letter in which you stated that the commission had directed your chief inspector to prefer charges against an alleged violator and that the District Attorney of Washoe county did not wish to proceed until he had received an opinion from this office as to his authority to act, we called Mr. Melvin Jepson on the telephone on April 12 and informed him that we were of the opinion that your commission had jurisdiction in the particular case mentioned. I thereafter called on Mr. Lee Scott, Secretary of the commission, and explained our conclusion and the action taken with respect to our opinion Mr. Jepson.

Your question concerns the operation of a taxicab company which is licensed by the city of Reno to perform service within that city, and although the company does not hold a certificate from your commission, it operates outside the limits of such city into the city of Sparks. The east-west boundaries of the respective cities are contiguous. Does such operation come within the jurisdiction of the Public Service Commission?

We are of the opinion that the exemption provided in section 3, Statutes of 1933, as amended by chapter 219, Statutes of 1945, extends only to taxicabs which have an established place of business in the city issuing the license, and such taxicabs must confine their service within that city. To operate beyond the corporate limits of such city will require the proper certificate from the Public Service Commission. The fact that the corporate limits of the two cities are contiguous does not change the construction of the statute.

Section 3, chapter 165, Statutes of 1933, as amended by chapter 219, Statutes of 1945, quoting the language deemed relevant, reads as follows: “None of the provisions of this act shall apply to any motor vehicle operated wholly within the corporate limits of any city or town in the State of Nevada * * *.”

Subdivision (1) of section 1 of the Act defines the term taxicab motor carrier.

The words “any city” should be considered in connection with the words “wholly within” in order to determine the intent of the Legislature in enacting the statute.

Webster, in defining the word “any,” gives the following definitions: “one indifferently out of a number” * * * “as one selected without restriction or limitation of choice.”

The one city selected would, therefore, be the city wherein the operation is confined wholly within its corporate limits.

This section, as it appeared in the Statutes of 1933, provided an exemption for a city licensed taxicabs operating within a ten-mile radius of the limits of a city or town. An opinion was requested of this office respecting a claim of exemption under the section by operators of taxicabs licensed in each of two towns where the distance between the prescribed limits of each town was less than twenty miles. *See* Attorney General’s Opinion No. 139, Biennial Report 1932-1934. The opinion recites in part as follows: “The revenue is derived from and for the use of the highways by motor vehicles used thereon in a gainful occupation. It is conceivable and very probable that, applying the interpretation to the law which the carrier here claims is correct, a taxicab operator obtaining licenses and permits to operate in towns other than where his principal stand is located could operate over many, many miles of public highway license fee. We think the Legislature intended no such result.”

The circumstances in this opinion are parallel with the present case and the conclusion reached is applicable in the construction of this section as amended by the Legislature the following year under chapter 126, Statutes of 1935, which amendment confined the exemption to any motor vehicle operated wholly within the corporate limits of any city or town in the State.

To otherwise construe this section would be in conflict with section 18, which provides for a license fee for motor vehicles operated by a taxicab motor carrier as defined by the Act.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 46-304 TAXATION—Military exemption—Services in the armed forces must be during time of war.

Carson City, May 22, 1946

Hon. Martin G. Evansen, District Attorney Mineral County, Hawthorne, Nevada

Dear Mr. Evansen:

This will acknowledge receipt of your letter dated May 18, 1946, received in this office May 20, 1946, requesting an opinion as to the eligibility of Mr. Edwin Fitzgerald to claim a tax exemption under chapter 32, Statutes of 1945.

We received a letter from Mr. Fitzgerald enclosing his record report of service in the National Guard of Kansas issued by the Adjutant General of the State. We informed Mr. Fitzgerald that this office was not authorized to furnish him an opinion, as the District Attorney was the legal adviser for his county, but would gladly render an opinion at your request.

The service record submitted was that of service with the National Guard of Kansas from June 1916 to June 1917, when he was discharged from the National Guard on the basis of dependents.

The call into service by the President of the United States on June 18, 1916, for active service on the Mexican Border and mustered out on the 30th of October 1916, was not service with the armed forces of the United States in time of war. During the year of 1916, as an outgrowth of the

raid on Columbus, New Mexico, the President called on the States for members of the National Guard to protect the border.

The United States was not at war. War was declared in World War No. 1 on April 6, 1917.

The exemption provided under subdivision seventh of chapter 32, Statutes of 1945, quoting the language deemed pertinent, reads as follows:

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 of 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.

The essential requirement is that a person must have served in some branch of the armed forces in time of war, and the honorable discharge must show service.

The meaning of the statute is clear and we cannot escape the conclusion that Mr. Fitzgerald is not entitled to claim the tax exemption under the statute.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 46-305 PUBLIC SCHOOLS—Maximum bonding limit county high school purposes—Chapter 70, Statutes of 1937, does not repeal section 5910 N.C.L. 1929.

Carson City, May 23, 1946

Miss Mildred Bray, Superintendent of Public Instruction, Carson City, Nevada

Dear Miss Bray:

This will acknowledge receipt of your letter of May 20, 1946, received in this office on May 21, 1946.

You ask whether or not section 2, chapter 70, Statutes of 1937, supersedes section 5910 N.C.L. 1929 providing maximum bonding limit for county high school purposes, by reason of language therein, "in any amount within the limit of indebtedness authorized by the constitution," it appearing that section 5, chapter 70, contains a general repealing clause with respect to all Acts or parts in conflict therewith?

It is our opinion that nothing in chapter 70, Statutes of 1937, repeals section 5910 N.C.L. 1929. If the change in economic conditions requires a change in the limitations contained in such section, then such is a matter for the Legislature. An examination of the statutory law of this State fails to disclose any other statute governing the question presented.

Chapter 70 purports to provide one subject only, *i.e.*, the method of segregating the ballots, in all bond elections, of real property owners and nonreal property owners. Debt limitations fixed by statute or constitution are not in conflict therewith. Election laws providing a different method of balloting in existence at time of enactment of two-ballot-box law in bond elections would be and are inconsistent—this is the meaning of section 5, chapter 70.

Repeals by implication are not favored—a clear intent to repeal a prior law must appear in the later Act. *State v. Ducker*, [35 Nev. 214](#); *State v. Eggers*, [36 Nev. 372](#); *Carson City v. Commissioners*, [47 Nev. 415](#); *State v. Boerlin*, [38 Nev. 144](#); *Kondas v. Washoe County Bank*, [50 Nev. 181](#).

It is said in *State v. Boerlin*, supra, “In the absence of a clear showing, the repeal or modification of a statute is not presumed, and, when there is a general and special statutory provision relating to the same subject, the special provision will control.”

The special provision herein is section 5910 N.C.L. 1929, expressly and specially fixing the limit of indebtedness of counties for county high school purposes. Chapter 70, Statutes of 1937, does not fix any debt limitations—in general language it refers to debt limitations that may have been fixed by the constitution and in effect prohibits bond issues exceeding such limitation. The only debt limitation fixed, *i.e.*, authorized by the constitution is found in section 3, article IX of the constitution, and this limitation relates to State purposes only and would and will be a restriction on the State if it proposed a bond issue and an election under chapter 70 or otherwise.

That the Legislature has full legislative power over the finances and projects of counties requiring financing cannot well be questioned. There is no prohibition against the exercise of such power contained in the constitution, save and except the Legislature could enact no law whereby the tax rate for all public purposes, including county and State, could by any means of any project exceed five cents on one dollar of valuation. Section 2, article X, constitution. Counties as well as the Legislature are bound by such constitutional provision.

If a broad interpretation of section 2, chapter 70, be adopted, then perforce no constitutional measuring stick for county or municipal purposes would or will be provided by law. It is clear section 3, article IX of the constitution provides no such measure for such purposes, and we think the Legislature intended no such result.

Very truly yours,

ALAN BIBLE
Attorney General

OPINION NO. 46-306 GAMBLING—Barbute.

Carson City, May 23, 1946

Hon. Alexander L. Puccinelli, District Attorney Elko County, Elko, Nevada

Dear Al:

Your letter of May 17, 1946, reached this office May 20, 1946.

You inquire whether the gambling game which is known as “Barbute” may be licensed in Nevada under our gambling laws.

The gambling game in question, as we understand it, is played with dice. If it is a gambling game as you say and is not a “cheating or thieving game or device” prescribed by section 6 of the Act of 1931 (1929 N.C.L. 1941 Supp., sec. 3302.05) it may be licensed. Gambling occurs when money or money’s worth is lost by one and won by another purely or in major degree through chance. Section 1 of the Act of 1931 (sec. 3302), after referring to such games by name, adds “or any banking or percentage game played with cards, dice, or any mechanical device or machine for money,” and provides that such a game must and therefore may be licensed. The licensee must be a citizen of the United States under the same section.

Subdivision second of section 2 of the Act of 1931 requires the applicant for license to state definitely the type of game for which he desires a license.

It seems that if the authorities do not know exactly how Barbute is conducted, they should insist on a particular description and a demonstration to disclose that it is not a cheating or thieving device before they issue a license.

I note with appreciation the kind words in the last paragraph of your letter.

Very truly yours,

ALAN BIBLE
Attorney General

OPINION NO. 46-307 SURPLUS PROPERTY ADMINISTRATION—School supplies—
Creation of revolving fund, no authority for.

Carson City, June 4, 1946

Mr. George E. Mccracken, Chairman, Nevada Educational Committee for Surplus Property,
Department of Education, Carson City, Nevada

Dear Mr. McCracken:

This will acknowledge receipt of your letter dated May 24, 1946, received in this office May 25, 1946, which we have set out in this reply as it explains fully the situation with which you are confronted:

I have been casting about to evolve some idea to provide for the creation of a revolving fund with which to purchase quantity lots of surplus war property for the schools of Nevada/ As you are probably aware, under present conditions, lots of goods are offered in quantities so large that no one school in Nevada would want or be able to buy. My plan is to create a fund with which large quantities could be purchased, paid for from a revolving fund, be shipped to Carson City, be broken down in Nevada in quantities which they could handle.

In talking with Miss Bray, and Mr. Dondero, it occurred to us that:

1. A loan of five or ten thousand dollars could be secured from some lending agency, if approved by the State Board of Finance, and your department. Quantity shipments could then be purchased from the War Assets Administration, be paid for from this fund, be shipped to the various schools needing supplies, and the fund could then be reimbursed by deposit of school orders made payable to the fund. Schools would be billed for the actual cost of the articles purchased plus a five percent or more additional charge for transportation and handling.

State Highway Engineer Robert Allen has agreed to let us have warehouse facilities here in Carson without charge, where such shipments could be handled by Mr. Dondero and me.

All funds would be handled through the State Treasurer and the State Controller of Nevada and bills against the fund would be paid for on claims duly made out by the State Department of Education, audited by the State Board of Examiners in the usual way, and be remitted by Controller's warrant. No claim for compensation for labor performed by Mr. Dondero or me would be made.

If you need more light on this question Mr. Dondero and I will be glad to call on you for a conference.

We believe the same to be a very practical plan, but we are unable to find any statutory authority under which the loan could be secured. Section 5663, 1929 N.C.L. 1941 Supp. defines the powers and duties of the State Board of Education. There is no authority under this section for that board to borrow money.

The statute adopted by the Legislature in 1945 to enable departments to purchase supplies from the United States does not help your situation.

Chapter 43, Statutes of 1945, provides that the State or any department may enter into any contract with the United States for the purchase of supplies, without regard to provisions of law which require advertising for bids or expenditures, competitive bids or delivery of purchase before payment, and states, "without regard to any provision of law which would, if observed, defeat the purpose of this act." The purpose of the Act as expressed in section three is to permit State and local governmental units to take full advantage of available Federal surplus properties.

There does not appear, however, to be any statute respecting the securing of loans by the State or its departments which, if observed, would defeat the purpose of the Act.

Chapter 61, Statutes of 1945, provides in part as follows:

The state board of education shall prescribe regulations under which contracts, agreements or arrangements may be made with agencies of the federal government for funds, services, commodities, or equipment to be made available to the public tax-supported schools and school systems under the supervision or control of the state department of education.

Chapter 64, Statutes of 1945, amending the Act regulating the fiscal management of governmental agencies relative to emergency loans does not contain any provision which would authorize such a loan as contemplated.

Chapter 167, Statutes of 1943, making an appropriation of \$25,000 to be used by the State Board of Examiners in cases of great necessity or emergency is confined to certain conditions that may arise in defending the State, assisting the United States in time of war, repairing injury to State property by catastrophes, fire, storms, or acts of God.

No authority can be found in the statutes which will enable the State Board Education or any representative thereof to negotiate the loan suggested in your plan.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 46-308 MINING—Resale of patented mining claims—Delinquent tax roll.

Carson City, June 4, 1946

Hon. Howard E. Browne, District Attorney, Lander County, Austin, Nevada

Dear Mr. Browne:

This will acknowledge receipt of the recent request of the Deputy District Attorney of Lander County for an opinion concerning the sale of patented mining claims. This will likewise acknowledge receipt of a letter from Hon. Helene T. Malloy, Clerk of the Board of County

Commissioners of Lander Counter, under date of May 16, 1946, and a letter from you under date of May 27, 1946, concerning this same manner.

It appears of record that on June 2, 1941, some 81 patented mining claims of Austin Silver Mining Company were sold by the tax receiver of Lander County to the County of Lander for \$2,317.13 "which was the whole of said tax, delinquency and costs" as shown on the delinquent roll for 1939. The items shown are:

Taxes "for the year 1939"	\$1,844.59
10% penalty	184.46
Advertising	49.00
Interest (September 9, 1940-June 1, 1941)	150.08
Advertising	89.00
	<hr/>
	\$2,317.13

On June 3, 1943, these claims were deeded by the County Treasurer to Lander County, the "cause of the sale being the nonpayment of the tax duly levied and assessed against said property and the delinquency thereon for the nonpayment of such tax in the time provided therefor." Said tax having been levied for the fiscal year ending December 31, 1939.

The *consideration* for the deed is expressed thus:

for and in consideration of the nonpayment of the tax, delinquency and penalty for the nonpayment thereof according to law, together *with* all subsequent or *accrued* tax, penalty and interest, and the above-mention sale.

The deed lists the sums due totaling \$8,045.74. This includes the amount recited in the certificate of sale plus interest from September 9, 1940, to June 1, 1943 (\$463.43), making for:

1939	\$2,780.56
1940	2,034.46
1941	1,744.80
1942	1,485.92
	<hr/>
	\$8,045.74

It will be noted from the letter of Deputy District Attorney Platz that this property was also sold September 12, 1938. No further proceedings on this sale appear to have been taken.

Messrs. Chessher and DeLongechamps received an exploration permit and option from the county November 5, 1945, under the pertinent law (1929 N.C.L. 1941 Supp., sec. 4309; Stats. 1945, page 351). They have now applied for a deed of the property from the county, tendering \$2,317.13, which sum they say is "the sum for which said mining claims became the property of the county." If they are correct then the deed to the county ought to be reformed because it expresses a different consideration. The form used is appropriate ~~when the certificate issues to a private purchaser.~~

The Act in question was first passed and approved March 6, 1933 (Stats. 1933, page 40; 1929 N.C.L. 1941 Supp., sec. 4309).

Prior to the Act of 1933, resales of all property acquired by the counties under the revenue laws was governed by the revenue laws exclusively when the assessed value was less than \$500 (N.C.L. 1929 sec. 6529). Other sales were under general powers set forth by the County Government Act (sec. 1942 (10) N.C.L. 1929).

In the case of *Lyon County v. Ross*, [24 Nev. 102](#)-113, it was held that County Government Act prescribing the powers of county commissioners to sell property of the county (sec. 1942 (10) N.C.L. 1929) superseded the revenue laws (Stats. 1893, page 106) providing for resales of property acquired under such laws where the assessed value did not exceed \$100. That Act has been amended to make the value not exceeding \$500 (N.C.L. 1929, sec. 6529; Stats. 1917, 423).

Under that decision the Act relating to the resale of property by the county would be governed by the Act of 1933 as amended (Stats. 1945, page 361; 1929 N.C.L. 1941 Supp., sec. 4309, as amended).

The only question is as to the meaning of the words “the sum for which said property became the property of the county.”

We conceive that the incentive in the new law consisted of a permit to explore and remove not exceeding 500 pounds of ore from each claim, together with an option to purchase for the amount named in the certificate of sale. Any other change would not be an incentive, over the existing law, to explore, develop, and work such claims. If the claims were worked they would not be taxed and we do not conceive that the new law, any more than the existing law, was passed to obtain taxes from abandoned patented mines. It was passed to encourage mining.

The section in question requires the petitioner to state “the amount of the tax and penalties and costs, if any, for which said claim or claims became the property of the county.” The deed shall be made “for the sum for which said property became the property of the county.”

It is not contended, and cannot be contended, that any money actually changed hands when the certificate of sale issued to the county or when the deed issued to the county. The language is “sum” and means the total of lawful items. The items clearly referred to are “the tax and penalties and costs, if any, for which said claim or claims became the property of the county.” The language clearly means that the claim or claims “became the property of the county” at the time the certificate of sale issued. It was taxed to the county from the date of the certificate (although tax was not collected). The county was the beneficial owner.

The language also mentions the “tax” in the singular indicating the tax for one year and negating three years’ taxes.

We are not unmindful of the fact that there has been considerable controversy concerning the exact amount which should be collected on the sale of these patented mines, and, in view of the fact that questions concerning the title thus secured from the county by such a sale might be placed in question by interested parties, it is respectfully suggested that the matter be presented to the next Legislature for amendment and clarification to the end that any future misunderstanding can be avoided.

I am returning herewith the certificate of sale and treasurer’s tax deed on this matter.

Very truly yours,

ALAN BIBLE
Attorney General

OPINION NO. 46-309 SOIL CONSERVATION DISTRICTS—Funds cannot be used to purchase stationery and stamps.

Carson City, June 7, 1946

Mrs. Florence B. Bovett, Secretary, State Soil Conservation Committee, Extension Building,
University of Nevada, Reno, Nevada

Dear Mrs. Bovett:

Your letter of June 1, 1946, reached this office June 3, 1946.

You inquire whether the funds appropriated by the Legislature of 1945 can be used to purchase stationery and stamps for your committee.

The answer must be in the negative.

The Legislature of 1945 (Stats. 1945, page 28) amended section 6 of the Act of 1937 (1929 N.C.L. 1941 Supp., sec. 6870.06) by appropriating \$300 for each of the years 1946 and 1947 to carry out the provisions of that section. That section has to do with the formation of and first elections for soil conservation districts. It is to be noted that section 7 has to do with annual elections thereafter the expense of which is borne by the counties.

There seems to be need of some legislation on the question of funds for your committee unless the members of your committee by virtue of their principal offices have some means of obtaining funds elsewhere. If your committee employs technical experts and agents and fixes their compensation, or expends money for travel expense, or obtains surety bonds for employees and officers (sec. 4), the question remains as to where the money is to come from. Likewise, the same question arises as to soil conservation districts (sec. 7, as amended Stats. 1945, page 29). We believe we have had occasion to comment on this situation before.

Very truly yours,

ALAN BIBLE
Attorney General

By: Homer Mooney
Deputy Attorney General

OPINION NO. 46-310 WELFARE BOARD—Section 1027 N.C.L. 1929 does not include dependent and neglected children.

Carson City, June 7, 1946

Mr. Albert Meyers, Director Washoe County Welfare Department, 40 Granite Street, Reno, Nevada

Dear Mr. Meyers:

Your letter of May 29, 1946, reached this office May 31, 1946.

You ask an interpretation of section 1027 N.C.L. 1929, which you think includes dependent and neglected children as well as delinquent children.

The question involves the assumption by the State or the respective counties of liabilities amounting to large sums of money. To solve it as an expense of the State would require a clear expression by the Legislature to that effect, which we are unable to find. Our answer, therefore, is in the negative.

Section 1 of the juvenile court law of 1909 (1929 N.C.L. sec. 1010) defines “dependent” child and “neglected” child. It separately defines “delinquent person.” An age limit of 18 years is made in both cases. The broad distinction is that a delinquent child is classed as an incorrigible whereas a dependent and neglected child is not.

Section 18 of the law (1929 N.C.L. sec. 1027) provides:

The State of Nevada shall be chargeable with and defray all expenses incurred for the support, maintenance, education, care, custody and control of each and every child after its commitment under the terms and provisions of this act.

The preceding sections of the Act use the word “commitment” somewhat loosely so as to seem to embrace children other than delinquents, but we believe this apparent ambiguity is dissolved on a reading of the entire Act. No appropriation is made by the law and none has been

made by subsequent Legislatures for the purpose. State institutions of a penal or corrective nature are supported by regular appropriations.

We believe your position has merit, but the plan you propose requires further specific action by the Legislature. It is suggested the plan be laid before your representatives in the next legislative session.

We are sending a copy of this letter to Hon. Melvin E. Jepson, District Attorney, for his information inasmuch as you advise he suggested writing to us.

Very truly yours,

ALAN BIBLE
Attorney General

By: Homer Mooney
Deputy Attorney General

OPINION NO. 46-311 FISH AND GAME—Penalty for violation cannot be changed by justice of peace—Carp taking, provision for permit of doubtful validity.

Carson City, June 13, 1946

Hon. A.L. Puccinelli, District Attorney, Elko County, Elko, Nevada

Dear Mr. Puccinelli:

With further reference to your letter of May 28, 1946, following our reply of March 6, 1946, to your letter of February 27, 1946, we beg to advise as follows.

If the boy (presumably over 14, *see sec. 3089, 1929 N.C.L. 1941 Supp.*) and his mother pleaded guilty to taking carp without a permit in violation of section 3064 N.C.L. 1929, and the Justice of the Peace accepted that plea, there would be no choice other than to punish them as provided in section 3128 N.C.L. 1929.

In our former letter we may have volunteered more than necessary to answer your question, but we gained the idea from your first letter that the defendants had “agreed to plead guilty.” It appears from your letter of May 28, 1946, that the “man” actually pleaded guilty.

I believe that Mr. Mooney has accurately stated the law. In our opinion, if an objection to section 3064 were raised on a plea of not guilty on the constitutional ground that the Legislature could not delegate to the Fish and Game Commission the power to fix a license fee for taking carp and make unlawful the taking of carp without a permit, such an objection would be sustained by the courts.

We also adhere to our opinion that if a person were charged with fishing without a license contrary to section 3089, 1929 N.C.L. 1941 Supp., he could not be convicted on evidence that he was fishing for carp. This is because the word “fishing” relates to game fish (section 3040 N.C.L. 1929) and carp are not designated as game fish. *See 1929 N.C.L. 1941 Supp., section 3036.*

We realize that the fish and game laws of the State may well be deficient in respect to enforcement under the set of facts which you have raised. Legislative enactments are clearly needed.

Very truly yours,

ALAN BIBLE
Attorney General

OPINION NO. 46-312 ELECTIONS—One united states senator to be elected in 1946 elections—Legislature has not created new interim office of United States Senator.

Carson City, June 15, 1946

Hon. Malcolm Mceachin, Secretary of State, Carson City, Nevada

Dear Mr. Mceachin:

Your letter of June 13, 1946, was handed to me on the same date.

The specific question you ask is whether, in sending out to the various County Clerks a notice designating the offices for which candidates are to be nominated at the forthcoming primary election, it is proper to include in the list "One United States Senator" (sec. 4 Primary Election Law, as amended Stats. 1945, 172.)

You also ask whether, in preparing the notice, you should also include "One United States Senator (Unexpired Term)."

We hold that there is but one United States Senator to be elected in the 1946 elections, and he is to be elected for a full term of six years. It is our further opinion that there is no unexpired term for United States Senator to be filled at the 1946 election.

Under our Constitution (art. V) the Governor and other officers of the executive department hold office for "four years from the time of his installation, and until his successor shall be qualified." There is at present no constitutional provision respecting the time United States Senators shall hold office. Section 34 of article IV provided for election of United States Senators by the Legislature, but did not declare how long they should hold office. That section was rendered obsolete by the adoption of the 17th amendment to the Constitution of the United States.

Section 3 of article I of the United States Constitution empowers the Legislatures of the States to prescribe the times, places, and manner of holding elections for Senators, but Congress may alter such regulations. Section 5 of article I provides that each house shall be the judge of the elections, returns, and qualifications of its own members.

The 17th Amendment, effective May 31, 1913, provides for the election of United States Senators "for six years." It also authorizes the Legislatures to empower the Governor to "make temporary appointments until the people fill the vacancies by election as the legislature may direct."

By the Act of 1915, 1929 N.C.L. secs. 2591-2594, the Legislature exercised the power committed to it by the 17th amendment. It provided that "at the general election next preceding the expiration of the time for which any United States Senator was elected or appointed * * * candidates for United States Senator may be nominated and elected" according to the law governing State officers.

As to vacancies, section 3 of that Act provides:

In case of a vacancy in the office of United States senator caused by death, resignation, or otherwise, the governor of Nevada may appoint some qualified person to fill said vacancy, who shall hold office until the next general election, and until his successor shall be elected and qualified.

The late United States Senator Key Pittman was elected for the term January 3, 1941, to January 3, 1947. Senator Scrugham was elected in November 1943, for the unexpired term of Senator Key Pittman expiring January 3, 1947. Thereafter there was a vacancy in the office caused by Senator Scrugham's death in 1945 and that vacancy has been temporarily filled, but a

successor to Senator Scrugham must be elected November 5, 1945, for the full term, January 3, 1947, to January 3, 1953. Senator Carville, by virtue of his appointment and the 20th amendment, will hold office until January 3, 1947, and the provisions of section 3 of the State Act of 1915, if in conflict, should be read in pari materia with the 20th amendment.

In our opinion, the Legislature of Nevada has not created a new interim office of United States Senator or a new term of an existing office at variance with the constitution and its amendments. There is but one office for United States Senator to be filled in November 1946, and the term thereof begins January 3, 1947, and ends January 3, 1953.

Very truly yours,

ALAN BIBLE
Attorney General

OPINION NO. 46-313 ELECTIONS—Under primary law candidates drafted have five days more than voluntary candidates to accept nomination.

Carson City, June 19, 1946

Hon. E.E. Winters, District Attorney Churchill County, Fallon, Nevada

Dear Judge Winters:

Your inquiry dated June 17, 1946, reached this office June 18, 1946.

You call attention to section 5 of the Primary Election Law as amended by chapter 110, Statutes of 1945 (sec. 2408 (a) (b) N.C.L. 1929).

You ask if there are two different times for filing an acceptance of candidacy, viz, 50 days before the primary and 45 days before the primary.

The provisions you quoted are as follows:

“Subdivision (a) provides as follows: ‘Every candidate for nomination for any elective office not less than fifty days prior to the primary shall file a declaration or acceptance of candidacy in substantially the following form:’

Subdivision (b) provides that when a nomination is made by ten or more qualified electors that the candidate shall have up to forty-five days before the primary to file his acceptance and the latter part of this subdivision provides that ‘The acceptance shall be in a form similar to that used by a candidate whose files a declaration of candidacy.’”

We hold that subdivision (a) fixing the 50-day limit applies to candidates at the primary who voluntarily and spontaneously become candidates for nomination at the primary election, and that subdivision (b) fixing the 45-day limit applies to candidates who are proposed as such by ten or more qualified electors.

Note the change in time of acceptance compared to one former law in effect in 1921 (sec. 2408, Statutes of Nevada 1921, page 388).

It will be noted that subdivision (b) follows subdivision (a) in its position in the law. Therefore, it is an exception to the rule in subdivision (a) in the case of so-called “drafted” candidates alone.

Subdivision (a) moreover uses the words “declaration or acceptance of candidacy.” It is apparent the words “declaration or acceptance” are used to signify the same thing for there is but one form to be filled and the action in either case is by seeker for nomination himself. Naturally

he knows his desire and approves of it. In the case of “drafted” candidates the “draftee” does not initiate the action and is not presumed either to approve or reject it. Therefore, he is given 5 days to think it over and act, otherwise the movement to draft him falls to the ground. It is to be noted that the first step in either case—the candidate’s own declaration and the designation of 10 qualified electors—must be filed at the same time, 50 days before the primary.

Very truly yours,

ALAN BIBLE
Attorney General

By: Homer Mooney
Deputy Attorney General

OPINION NO. 46-314 PUBLIC SERVICE COMMISSION—No special statute of limitations covering suits to recover overcharges by motor carriers.

Carson City, June 20, 1946

Mr. J.G. Allard, Chairman Public Service Commission, Carson City, Nevada

Dear Mr. Allard:

Your letter dated June 19, 1946, was received in this office June 20, 1946.

There is no special statute of limitations in Nevada governing suits to recover overcharges by motor carriers. The general statute of limitations, section 8524 N.C.L. 1929, would apply and the period of time would be six years or four years, depending on circumstances such as the evidence of the contract which may vary if the carrier is a common carrier holding a certificate of public convenience or is a “contract carrier of property.”

Very truly yours,

ALAN BIBLE
Attorney General

By: Homer Mooney
Deputy Attorney General

OPINION NO. 46-315 ASSEMBLY DISTRICTS—1945 Act amending Senators and Assemblymen Apportionment Act does not repeal provision relating to assembly district for Washoe County.

Carson City, June 21, 1946

Hon. Melvin E. Jepson, District Attorney Washoe County, Reno, Nevada

Dear Mr. Jepson:

You inquire whether chapter 127, page 205, Statutes of 1945, repeals section 3 of the Act apportioning the Senators and Assemblymen of the several counties to the Legislature of this State.

The present Act apportioning Senators and Assemblymen to the Legislature was enacted in 1927, and is now found at sections 7280-7282, Nevada Compiled Laws 1929. This Act contained three sections, *i.e.*, sections 1, 2, and 3, section 3 being the general repealing clause. In 1931, section 1, the apportioning section, was amended and a new section 3 inserted in the Act. *See* 1931 Statutes, 439. The section 3 so inserted divided Washoe County into assembly districts.

In 1945 the Legislature again amended the apportioning Act, by amending section 1, apportioning to Clark County five Assemblymen and inserting a new section 2 dividing Clark County into assembly districts. 1945 Statutes, 205. Section 3 of the Act inserted in 1931 was not amended or changed in any manner by the 1945 amendments. Whether the insertion of the new section 2 in the 1945 Act amends or repeals the original section 2 of the 1927 Act is immaterial. The original section 2 simply provided that nothing in the Act shall be construed to affect the term of office of Senators and Assemblymen then in office. It is clear that nothing in the 1945 Act affects the term of office of any Assemblyman then in office, and the new section 2 does not relate to State Senators.

One of the well-settled canons of statutory construction in this State is that repeals by implication are not favored. Our Supreme Court has so declared in so many cases that the rule is now axiomatic. To effect a repeal of a statute or a section of a statute there must appear the most evident intention on the part of the Legislature to so repeal. And with respect to repugnancy or inconsistency of the later Act with the provisions of the earlier Act, such repugnancy or inconsistency must clearly appear and be of such nature as to prevent the Acts from being construed in *pari materia*.

No express repeal of section 3 providing assembly districts for Washoe County is contained in the 1945 Act. Section 3 of the 1945 Act is simply a repealing clause of a general nature, providing that all the provisions of the 1945 Act are repealed. Certainly the dividing of Clark County into assembly districts cannot be said to conflict with the provisions of the Act of 1931 providing assembly districts for Washoe County. Each county is a separate entity insofar as the election of representatives to the Legislature is concerned. The mere fact that the Legislature provided Clark County with assembly districts has no effect upon the prior Act of the Legislature providing assembly districts for Washoe County.

We conclude that no provision in the 1945 Act amends or repeals section 3 of the Apportionment Act providing assembly districts for Washoe County.

Very truly yours,

ALAN BIBLE
Attorney General

By: W.T. Mathews
Special Assistant Attorney General

OPINION NO. 46-316 ELECTIONS—Petition offered for filing designating candidate at primary reviewed and found proper in form and circumstances—Not required to be verified.

Carson City, June 26, 1946

Hon. Malcolm Mceachin, Secretary of State, Carson City, Nevada

DEAR MR. McEACHIN:

On June 25, 1946, you handed us your letter of that date inquiring as to the sufficiency in form and substance of the original petition submitted with the letter which has been presented to you for filing.

The petition is headed "Designation of Nomination of Morley Griswold for United States Senator from Nevada." Immediately after the heading is the following:

We, the undersigned, residents and qualified electors of the Republican Party of the state of Nevada, hereby designate Morley Griswold, a resident and qualified elector of the county of Washoe, state of Nevada, as a candidate for the Republican nomination as United States Senator from Nevada at the September primary election of 1946.

Immediately following the foregoing appear 131 signatures followed by Nevada addresses written in ink on six sheets of legal cap paper bound together firmly by three staples. There is nothing about the petition to establish, or even suggest, that the petition is not entirely genuine, or true, or that the signatures thereon are not authentic.

You advise that this petition has been offered to you for filing by Mr. Carl F. Doge of Fallon, Nevada, whose name appears upon the petition.

The petition contains no certificate, verification, or other writing other than above described.

It is the opinion of this office that the petition conforms to the governing statute and that it is your plain ministerial duty to file it and notify the Hon. Morley Griswold, designated therein, of the fact without delay.

Section 5 of the primary election law, as amended by chapter 110, Statutes of 1945, page 172, provides in subdivision (b) thereof:

Ten or more qualified electors may, not more than eighty nor less than fifty days prior to the September primary, file a designation of nomination designating any qualified elector as a candidate for the nomination for any elective office. When such designation shall have been filed it shall be the duty of the officer in whose office it is filed to notify the elector named in such designation thereof. If the elector named in the designation shall, not less than forty-five days prior to the primary, file an acceptance of such nomination and pay the required fee, he shall be a candidate before the primary in like manner as if he had filed a declaration of candidacy. If any such designation of nomination shall relate to a judicial or school office it may be signed by electors of any or all parties, but if it shall relate to any other office the signers shall be of the same political party as the candidate so designated. The acceptance shall be in a form similar to that used by a candidate who files a declaration of candidacy.

It will be observed that such petition may be filed this year not later than July 15, 1946. Thus, it is in ample time. The offer of filing by Mr. Dodge may be considered equivalent to a filing by ten or more of the petitioners since he obviously acts for them.

No certificate or verification is required by the law. Neither does the statute relating to initiative petitions, N.C.L. 1929, sections 2570-2580. To the contrary—the statute on referendum petitions, N.C.L. 1929, section 2582. It would seem the Legislature deliberately refrained from requiring a verification on petitions such as the one submitted to us.

Very truly yours,

ALAN BIBLE
Attorney General

OPINION NO. 46-317 TAXATION—Auxiliary Military Police not entitled to exemption.

Carson City, June 27, 1946

Hon. E.E. Winters, District Attorney Churchill County, Fallon, Nevada

Dear Judge Winters:

This will acknowledge receipt of your letter dated June 3, 1946, received in this office June 4, 1946, inclosing a copy of a certificate of meritorious conduct issued to J.H. Malloy for service in the Auxiliary Military Police of the Army at Basic Magnesium, Incorporated, during the period from November 19, 1942, to June 15, 1944.

You request an opinion as to the eligibility of Mr. Malloy to receive the exemption from taxation under the provisions of the Revenue Act as amended by chapter 32, Statutes of 1945.

We are of the opinion that the tax exemption provided by the statute cannot be construed to include persons who have served or are serving in the Auxiliary Military Police of the United States Army in time of war.

The seventh subdivision of chapter 32, Statutes of 1945, which specifies the tax exemption to be allowed ex-servicemen and women, reads in part as follows: "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 of 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 * * *."

Auxiliary Military Police would not come within any department of the armed forces specifically mentioned, and must, therefore, depend upon the interpretation of the term, "or in any other branch of the armed forces." Certain branches of the armed forces are specified and the words "other branches" but be interpreted to mean organizations that are in fact component parts of the armed forces of the United States.

In order to verify our conclusion we asked Brigadier General J.H. White to refer the matter to the War Department and following is a copy of the letter addressed to General White by the Adjutant General of the United States:

This is in reply to your letter of 13 June 1946, concerning service with the Auxiliary Military Police, with which you inclosed the attached communication from the Deputy Attorney General, State of Nevada, and also a copy of a Certificate of Meritorious Conduct.

You are advised that service with the Auxiliary Military Police does not constitute service in a component of the United States Army inasmuch as such personnel were civilian employees of the company at which they were working and not on active duty with the armed forces.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 46-318 INSURANCE—Officer of insurance company must have license to solicit insurance.

Carson City, July 2, 1946

Hon. Henry C. Schmidt, Insurance Commissioner, Carson City, Nevada

Dear Mr. Schmidt:

Reference is hereby made to your inquiry of July 1, 1946, as to whether an officer of a life insurance company, is required to have a license, or can he be legally licensed to solicit insurance for his company.

An examination of the Insurance Code discloses that there is no prohibition against an officer of either of the above-mentioned insurance companies from soliciting insurance business.

On the other hand, a reference to section 140 of the Insurance Code provides that article 18 shall apply to all agents, solicitors and nonresident brokers dealing in insurance. Section 142 provides: "This article shall not apply to * * * officers of companies, or of association of companies engaged in the performance of their *usual and customary executive duties*." Section 143 provides: "No person, partnership, association, or corporation shall act as an agent, solicitor, or commissioner." Section 141 defines the term "agent" to mean any person, partnership, association or corporation who or which solicits, negotiates, or effects in this State on behalf of any company for insurance of any of the classifications listed in section 5 of article 1. The classes of insurance listed in section 5 include life, accident, and health insurance companies.

From the Insurance code itself it is clear that officers of life, accident, and health insurance companies in order to solicit insurance business must have the license provided in the code. The provision, quoted from section 142 simply means that such officers will not be required to procure licenses where they are simply performing their usual and customary executive duties, which, in our opinion, does not mean, nor include, the soliciting of insurance business.

Very truly yours,

ALAN BIBLE
Attorney General

OPINION NO. 46-319 OFFICE PRICE ADMINISTRATION—Governor has no authority to restrain buyers, sellers, landlords or tenants in the matter of prices.

Carson City, July 3, 1946

Honorable Vail Pittman, Lieutenant and Acting Governor, Carson City, Nevada

Dear Governor Pittman:

I have your letter dated July 2, 1946, and the telegram dated July 1, 1946, sent to you by Honorable Chester Bowles, former Chairman of the OPA.

I have examined the Constitution and laws of Nevada carefully and find no power granted to you or the executive department generally to restrain buyers, sellers, landlords, or tenants in the matter of prices for commodities and services.

Mr. Bowles suggests that, if you do not have such power, you take steps to secure it through legislation.

Undoubtedly some relief could be secured by legislation, following the example of New York, Massachusetts, and other States.

The decision as to calling upon the Legislature to legislate in the matter at a special session is committed to you by section 9 of article V of the constitution of the State of Nevada.

Very truly yours,

ALAN BIBLE
Attorney General

OPINION NO. 46-320 NEVADA HOSPITAL FOR MENTAL DISEASES—Funds for fire protection available.

Carson City, July 3, 1946

Honorable Vail Pittman, Lieutenant and Acting Governor, Carson City, Nevada

Dear Governor Pittman:

This will acknowledge receipt of your inquiry of July 2, 1946, with which you inclosed a copy of a letter from Dr. S.J. Tillim, Superintendent of Nevada Hospital for Mental Diseases, which letter sets forth certain recommendations for reducing the fire hazards at the Nevada State Hospital.

You state that the needed installations will cost approximately \$10,000, and you state “under the present circumstances relative to available money, I wish you would give me an opinion as to what the board might do under an emergency condition of this type in obtaining funds for the needed fire protection.” You further state that the board will hold a meeting on Monday, July 8, and if at all possible you would like to have an answer by that time. Because of the urgency of your request, we have given your inquiry immediate attention and are pleased to submit our answer herewith.

It is our opinion that the funds for the purpose which you outline can be secured from three different sources.

Chapter 125, page 202, 1945 Statutes of Nevada, appropriates \$25,000 and made “available for use in making repairs to buildings and in repairing and replacing equipment at the Nevada Hospital for Mental Disease.” The installation detailed by Dr. Tillim could be paid from this appropriation.

Your attention is further directed to section 3509, N.C.L. 1929, which is section 5 of the Act creating the Nevada State Mental Hospital. This section in part provides: “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 * * *.” This Act in our opinion would authorize the construction of the installations and equipment detailed by Dr. Tillim.

The 1945 Legislature in the General Appropriation Act of that year, chapter 246, section 28, appropriated \$175,000 for the general support and \$16,393 for equipment of the Nevada Hospital for Mental Diseases. It is our opinion that the installations detailed by Dr. Tillim could be paid for from either one of these two items in the General Appropriation Act.

I have sent a copy of this opinion to Dr. Tillim, Superintendent, for his additional information and guidance.

Very truly yours,

ALAN BIBLE

Attorney General

OPINION NO. 46-321 PUBLIC SERVICE COMMISSION—Motor convoy license.

Carson City, July 8, 1946

Public Service Commission of Nevada, Carson City, Nevada

Attention: J.G. Allard, Chairman

Gentlemen:

This will acknowledge receipt of your letter of July 2, 1946, received in this office July 3, 1946.

STATEMENT

Due to the limited number of cars allotted to this territory, motor vehicles have been shipped to a common unloading point in California where the Nevada dealers pick up and drive same back to Reno and other Nevada points. For each motor vehicle so driven, this commission has collected the regular convoy fee of \$7.50 as provided for in section 18(3) of the Motor Vehicle Carrier Licensing Act.

It is claimed that vehicles were shipped by rail and freight charges paid to a Nevada point, therefore, the hauling back from California could not be construed as a convoy movement.

QUERY

Is the collection of the regular convoy license fee legal under the foregoing circumstances?

OPINION

Every motor vehicle traveling upon the highways of this State must be registered and licensed. Section 6, Motor Vehicle Registration Act. The exception to the provision is that dealers, that is Nevada dealers, may demonstrate and test motor vehicles upon the highways under dealers' licenses as provided in section 16(a) of the Motor Vehicle Registration Act. This provision, however, is qualified by a provision denying the right to use motor convoy licenses for demonstrating purposes. IN addition thereto the only exception dealers may employ in the operation of motor vehicles for sale or trade is that they may operate them over the highways of the State from the railroad depot, warehouse, or other place of storage, to the place of business of the dealer where said depot, warehouse, or place of storage, is within the same city or town or not more than five miles therefrom.

The term "motor convoy carrier" is defined in the Motor Vehicle Carriers Act at section 2(g) as follows:

The term "motor convoy carrier" when used in this act shall mean any person whether engaged in any of the carrier services hereinbefore defined, or otherwise, who drives or tows by means of another motor vehicle, or who drives a single motor vehicle, or causes to be driven, towed, or carried any motor vehicle or vehicles, or causes a single motor vehicle to be so driven, over and along the public highways of this state, when such motor vehicle or vehicles is so driven, towed or carried for the purpose of selling or offering the same for sale or exchange, or

storage prior to sale, or delivery subsequent to sale, or for use in public or contract carrier service.

This provision of the law was construed by this office as being all inclusive, save and except as modified by the use of dealers' plates as above stated. *See* Attorney General's Opinion No. 226, dated March 26, 1937, addressed to your department. In such opinion this office construed the Motor Convoy Carrier Licensing Act with its relation to the use of dealers' plates and pointed out why the motor convoy license was written into the law and therein pointed out the distinction between acquiring a motor vehicle under the convoy license or otherwise.

In considering the matter, supplementing your query, this office is of the opinion that the fact that motor vehicles are shipped to a common unloading point in California, and thence driven back into Nevada for the purpose of sale, is no different from the dealer purchasing the car at the factory and driving the same over the highways to his place of business in Nevada, a transaction which, of course, would require the payment of the convoy fee. The Nevada law makes no distinction with respect to motor vehicles shipped by rail, where the freight charges are paid to a Nevada point and which vehicles are then shipped to a point in California and returned to Nevada by convoy, than in the situation where the dealer would purchase the car at the factory as above stated. In brief, the car is secured by the dealer in an adjoining State at a distribution center and in so doing he then uses the highways of this State for transportation of such motor vehicle to his place of business. This, we think, brings the operation squarely within our convoy statute and provisions of section 18(3) of the Motor Vehicles Carrier Licensing Act are applicable in every respect.

Very truly yours,

ALAN BIBLE
Attorney General

OPINION NO. 46-322 PUBLIC SCHOOLS—Teachers' Retirement Salary Fund Board—
Power to convert investments exists.

Carson City, July 10, 1946

Honorable Dan W. Franks, State Treasurer, Carson City, Nevada

Dear Mr. Franks:

You have informed me that the Public School Teachers' Retirement Salary Fund Board has officially requested you to sell treasury bonds Nos. 5837H and 72688J, designated 2f's 1955-1960 purchased as an investment of moneys in the Public School Teachers' Permanent Fund and in your custody pursuant to 1929 N.C.L. 1941 Supp., secs. 6077.22 and 6077.42

You ask whether, inasmuch as these bonds are registered and non-negotiable in present form, you may lawfully comply with Treasury regulations by assigning the same in exchange for coupon securities of the United States, to be sold in due course.

You are advised that you do have such authority.

I enclose a form of certification to be executed by the Secretary of State, also an extra copy of this opinion. In completing the proposed transaction please be guided by the letter you have exhibited to me as to filling out forms. For the sake of the record your covering letter to the local bank should state the purpose for which it shall receive the coupon certificates.

Very truly yours,

ALAN BIBLE
Attorney General

By: Homer Mooney
Deputy Attorney General

STATE OF NEVADA
OFFICE OF THE SECRETARY OF STATE

I hereby certify that I am the officer charged by law with the custody of the record of the election of Dan W. Franks as Treasurer of the State of Nevada and said record in my custody shows that said Dan W. Franks was elected to said office November 3, 1942, for the term of four years from and after January 5, 1943, and that he duly qualified and took the oath of said office on January 5, 1943, which is in my custody, and at all times thereafter he has been and is the duly elected, qualified, and acting Treasurer of the State of Nevada.

I further certify that I have read the assignment appearing on the back of each of Treasury 2f's 1955-1960 No. 5837H for \$10,000 and No. 72688J for \$1,000 to which this certificate is annexed, and purporting to be signed by Dan W. Franks, Treasurer of the State of Nevada, and that said signature is in the genuine handwriting of Dan W. Franks, treasurer of State of Nevada.

I further certify that the Act concerning retirement salaries and annuities to public school teachers approved March 29, 1937, establishes among others a fund in the State Treasury known as the Public School Teachers' Permanent Fund (sec. 2, 1929 N.C.L. 1941 Supp., sec. 6077.22) and empowers the State Board of Education acting as a Public School Teachers' Retirement Salary Fund Board (sec. 21) to invest the moneys of the several funds; to deposit such securities in the State Treasury and to make sale of such securities; and gives the State Controller and the State Treasurer certain duties in respect thereto (sec. 22(4), 1929 N.C.L. 1941 Supp., sec. 6077.42(4)).

All the foregoing appears in the sections of law cited which are of record and on file in my office.

I further certify that said bonds were purchased as an investment of the said "Permanent Fund" and that the proposed assignments of said bonds in exchange for coupon bonds and ultimate sale is authorized and requested by the said State Board of Education acting as aforesaid in a letter to said State Treasurer dated July 2, 1946, signed by Mildred Bray, Superintendent of Public Instruction, who is the Secretary of the said Board of Education and Secretary of the Public School Teachers' Retirement Salary Fund Board, which letter was written pursuant to the order of said board and boards. I am advised by the Attorney General of Nevada in an official opinion, a copy of which is annexed hereto, that the direction to sell said securities is sufficient authority for the Treasurer to do all things required, convenient, and necessary to convert said securities into money, including their exchange into coupon bonds and the sale thereof in keeping with the regulations of the Treasury Department of the Government of the United States.

IN WITNESS WHEREOF, I have subscribed this certificate and authenticated it with the Great Seal of Nevada at the Capitol in Carson City, Nevada, this day of July 1946.

(Seal)

.....
Secretary of State of State of Nevada.

OPINION NO. 46-323. Health—State Housing Act Does Not Provide a Building or Plumbing Code.

Carson City, July 12, 1946

MR. W.W. WHITE, *Director, Division Public Health Engineering, State Health, 35 East Second Street, Reno, Nevada.*

Department of

DEAR MR. WHITE: This will acknowledge receipt of your letter dated July 2, 1945, received in this office July 3, 1946, inclosing an inquiry from Dr. Thomas E. Morgan, Public Health Officer, with regard to plumbing fixtures required by the State Housing Act.

The State Housing Act empowers the housing authorities to construct housing projects, but does not provide a building or plumbing code.

We have endeavored to answer Dr. Morgan's question by the following analysis of the relevant statutes:

The Emergency Housing Act, as amended by chapter 237, Statutes of 1945, under section 3 thereof, empowers the housing authority to provide for the construction, improvement, alteration, and repair of any housing project. Section 4 indicates the intention of the Legislature to provide that eligible persons shall be enabled to live in safe and sanitary dwellings. The authority is authorized to construct housing units, but the statute does not provide regulations beyond the specification that they shall be safe and sanitary.

Housing projects or apartments constructed under the housing authority do not appear to come within the statutes relating to hotels.

Chapter 136, Statutes of Nevada 1915, as amended by chapter 218, Statutes of 1945, in section 1 of the Act, reads as follows: "Every building or structure, kept as, used as, maintained as, or held out to the public to be, a place where sleeping or rooming accommodations are furnished to the transient public, whether with or without meals, shall for the purpose of this Act, be deemed to be a hotel, and whenever the word 'hotel' shall occur in this act, it shall be deemed to include lodging house and rooming house where transient trade is solicited."

The policy of the State Housing Act is to furnish dwellings for protracted residence rather than transient occupation.

An apartment house, as a general rule, has been defined by the courts to differ from a hotel, lodging or rooming house. *See Words and Phrases*, vol. 3, "Apartment House in General."

"An 'apartment house' is not a hotel, but is a building used as a dwelling for several families, each living separate and apart." *Pierce v. Helner*, 156 A. 61.

"As used in restriction against erection of 'hotel,' 'apartment house' is not a hotel but a building used as a dwelling for several families living separate; a hotel being a building held out to the public as a place where all transients will be entertained as guests for compensation." *Satterthwait v. Gibbs*, 135 A. 862.

"An 'apartment house' is a building arranged in several suites of connecting rooms, each suite designed for independent housekeeping but with certain mechanical conveniences, such as heat, light, or elevator service, in common to all families occupying the building." *Konick v. Champneys*, 183 P.75, 6 A.L.R. 459.

The sections of chapter 218, Statutes of 1945, requiring the number of bathtubs and toilets in hotels, lodging houses and rooming houses, would not apply to apartment houses.

The copy of the provisions of the Standard Plumbing Code adopted by the city of Las Vegas, submitted with your request, requires that plumbing fixtures for apartment houses and hotels shall not be less than the minimum required by the State Housing Act of Nevada, which Act does not provide any plumbing regulations for the housing projects. Therefore, section 11 of the hotel Act of 1945, which charges the State Health Officer with the enforcement of the Act, will not apply to housing projects under the State Housing Authority, unless such authority operated as a hotel as defined by the Act regulating hotels.

Very truly yours,

ALAN BIBLE, Attorney General

By: George P. Annand, Deputy Attorney General
cc Dr. Thomas E. Morgan.

OPINION NO. 46-324. County Commissioners—May Invest Funds in One-Year United States Bonds.

Carson City, July 17, 1946

HONORABLE HAROLD O. TABER, *Assistant District Attorney, Reno, Nevada.*

DEAR HAROLD: Your letter dated July 5 reached this office July 6, 1946.

You submit the letter you wrote the Board of Commissioners of Washoe County on May 9, 1946, respecting the resolution of the Trustees of Washoe County Library that the Commissioners invest \$25,000 bequeathed to the county in United States Savings Bonds.

Section 10 of the will of William E. Goodfellow under which the bequest was paid to Washoe County provides:

I give and bequeath to Washoe County, Nevada, for the use and benefit of Washoe County Library at Reno, Nevada, the sum of Twenty-five Thousand (\$25,000) Dollars to be used for the purpose of books and other publications under the direction of the Library Trustees.

You have advised the Board of Commissioners that they do not have the power to make the investment. You invite the opinion of this office on the question.

As the power of the commissioners to make such investment we call your attention to chapter 95, Statutes 1945, permitting such investment of moneys in the various county funds in the purchase of short term (one year) bonds and debentures of the United States.

We believe if this were done the situation could be tided over until the Legislature could provide a more elastic power of investment than the one existing from year to year.

Very truly yours,

ALAN BIBLE, Attorney General

By: Homer Mooney, Deputy Attorney General

OPINION NO. 46-325. Fish and Game—Commission Has No Power to Declare Closed Season On Upland Game Birds Over Entire State—May Fix Period of Time for Hunting Sagehen and Different Period for Grouse.

Carson City, July 18, 1946

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

Attention: S.S. Wheeler, Representative.

GENTLEMEN: Reference is hereby made to your written request of July 1, 1946, for an opinion upon the following queries:

1. Does the State Fish and Game Commission have the power anywhere within the fish and game code to declare a closed season over the entire State on an upland game bird, such as the sagehen?
2. Section 61 of the fish and game code states that upland game birds may be hunted only during a 15-day period between the 15th day of July and the 1st day of December. Sagehen are usually hunted during the months of August, while an open season on grouse should fall during Oct. or Nov. Can the fish and game commission set different 15-day open season periods for the various species, such as the 15-day period for the upland game bird—grouse, and another 15-day period for the upland game bird—sagehen, or should the two, or more, seasons only total 15 days?

OPINION

Answering query No. 1—In Opinion No. 116, dated August 24, 1933, Report of the Attorney General, July 1, 1932—June 30, 1934, which opinion was rendered your Commission, this office dealt with the powers of the State Fish and Game Commission to fix an open season for the hunting of deer for a lesser period than fixed in the law. It was there held that the Commission possessed only such powers as are granted in the statute defining and providing its duties and powers, and that unless the power to perform a certain act is granted in express language, or by the most evident implication contained therein, then such power does not exist. *See also* Opinion

No. 124, dated February 23, 1934, in the above Report of the Attorney General, addressed to your Commission relative to the power of the Commission to provide a closed season for fishing in a stream or a portion thereof. It was there held that the Commission did not have such power.

An examination of the Fish and Game law discloses there has been no change in such law in this respect since the rendering of the foregoing opinions. The Legislature has not delegated, either expressly or by implication, to the Commission the power to effect a closed season on upland game birds over the entire State. The power of the Commission, insofar as it relates to the hunting of upland game birds and the fixing of dates for such hunting, remains as set forth in section 67 of the law, *i.e.*, section 3101 N.C.L. 1929, which said section also provides that boards of county commissioners only have the power to shorten or close the open hunting seasons as may have been fixed by the State Fish and Game Commissioners pursuant to such statute. *See also* section 69 of the law, as amended at 1945 Statutes, page 186, where the county commissioners of the various counties are vested with the power to entirely prohibit the hunting of hen pheasants (which are upland game birds) entirely within their respective counties.

We conclude that the State Fish and Game Commission possesses no power to declare a closed season on upland game birds over the entire State.

Answering query No. 2—Sagehen and grouse and grouse are included in the definition of upland game birds. Section 2, Fish and Game law, as amended at 1941 Statutes, page 241. As stated in your query, section 61 of the law fixes the period of time in which upland game birds may be hunted as some fifteen-day period between July 15 and December 1 in each year. The Commission is empowered to divide the State into such districts as it may find expedient with reference to hunting and fix the dates for hunting therein within the limits provides in the statute for each species of game. Section 67 of the law, *i.e.*, section 3101 N.C.L. 1929.

The scope and object of the Fish and Game law is that the wild life of this State is to be protected and that it shall not be taken in such manner or at such times as will impair the supply thereof. Section 10, *i.e.*, section 3044 N.C.L. 1929. The general powers of the Commission as provided in section 12, as amended at 1933 Statutes, page 282, and as set forth in said section 67 provides the Commission with discretion, within the limits of the law, as to the means of protecting fish and game within the limits of the law, as to the means of protecting fish and game within the scope of the law. It therefore follows, we think, that if for the protection of upland game birds, different dates or open seasons are necessary to prevent the undue depletion of different species, that different open seasons on different species within the limits fixed by statute therefor and within the districts of the State as determined by the Commission pursuant to section 67, are and will be legal.

We therefore conclude the Commission may fix one period of time for the hunting of sagehen and a different period for grouse, within the time limits as fixed in section 61, *i.e.*, section 3095 N.C.L. 1929.

Very truly yours,
ALAN BIBLE, Attorney General

OPINION NO. 46-326. Mines—Resale of Patented Mining Claims—Approval of Deed.

Carson City, July 18, 1946

HON. HOWARD E. BROWNE, *District Attorney, Lander County, Austin, Nevada.*

DEAR MR. BROWNE: I have your letter dated July 8, 1946, respecting a proposed deed to Fred J. DeLongchamps and H.B. Chessher of certain patented mining claims formerly owned by Austin Silver Mining Company, which have become the property of Lander County through the operation of the revenue laws of Nevada. You very properly hesitate to pass on this deed in your official capacity because of a prior connection or relation of attorney and client between yourself and the grantees named in the deed.

The deed is made subject to and will be accepted by the grantees subject to an agreement between Lander County and Fred A. Growing respecting certain dumps on the claims conveyed.

I agree that the agreement referred to might provide vulnerable to attack, but the county grantor does not covenant to defend it and the grantees waive all right to object to it either on the ground of ultra vires or at all.

Section 4309, as amended Statutes 1945, page 351, is mandatory and the consideration is certain or capable of ascertainment. We believe it supersedes section 6462 (sec. 55 of the Revenue Law) insofar as that section may be repugnant. *See* Opinion 48, Report of Attorney General 1940-1942, and note that section 2 of chapter 44, Statutes 1933, has not been repealed.

The deed made and executed by the County Commissioners and also executed by the County Treasurer seems substantially in compliance with all pertinent laws, even if it should be the theory that the County Treasurer holds all property acquired by the county through tax deed in trust for the State and county. The form of the deed is hereby approved.

Very truly yours,

ALAN BIBLE, Attorney General

cc to Chairman Board of County Commissioners, Lander County.

OPINION NO. 46-327. Elections—Qualified Elector Entitled to Appear as Candidate at Primary Election—Registration Not an Electoral Qualification.

Carson City, July 19, 1946

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

DEAR MR. EVANSEN: This will acknowledge receipt of your letter dated July 16, 1946, received in this office July 19, 1946, containing a request for an opinion upon the following subject:

Mr. "X" found in 1942 that he was not a citizen of the United States although he had voted in all elections previous to that time. Immediately, however, he was admitted to citizenship. He failed to reregister for voting with the Mineral County Clerk and Treasurer. Without reregistering, Mr. "X" filed as a candidate on the Democratic Ticket for the office of County Commissioner. * * * Is he eligible to appear as a candidate on the ticket?

Registration is not an electoral qualification. A person who is a qualified elector as defined by section 1, article II, of the Nevada Constitution, and executes and files in a time a declaration of candidacy in substantially the form prescribed by statute, is entitled to have his name appear on the official ballot to be used at a primary election as a candidate for an elective office.

A qualified elector is defined in our Constitution as follows: "All citizens of the United States (not laboring under the disabilities named in this constitution) of the age of twenty-one years and upwards, who shall have actually, and not constructively, resided in the State six months, and in the district or county thirty days next preceding any election, shall be entitled to vote for all officers that now or hereafter may be elected by the people, * * *."

Section 3, article XV, of the Constitution, requires that a person to be eligible to any office must be a qualified elector under the Constitution.

As determined in the case of *State v. Board of Examiners*, [21 Nev. 67](#), "The qualifications of an elector are those prescribed by the Constitution, and they cannot be altered or impaired by the Legislature. Registration is not an electoral qualification, but is only a means for ascertaining and determining in a uniform mode whether the voter possesses the qualifications required by the Constitution, and to secure an orderly and convenient manner the right of voting."

See Attorney General's Opinion No. 68, Biennial Report 1915-1915, defining a qualified elector and determining that such qualified elector was entitled to be a candidate and elected to office even though the person be not registered.

Chapter 110, Statutes of 1945, section 5, provides the method of filing a declaration of candidacy for a primary election, and fixes the time within which such declaration shall be filed.

Therefore, if the party in question was at the time of filing his declaration of candidacy a qualified elector, signed and subscribed to substantially the form prescribed by statute and filed the same on or before July 15, 1946, he is eligible to appear as a candidate at the primary election.

The registration for the primary is open until 9 p.m. on July 24, 1946, and if the person is a qualified elector, he may register and vote at the primary election.

Very truly yours,

ALAN BIBLE, Attorney General

By: George P. Annand, Deputy Attorney General

OPINION NO. 46-328. Public Schools—No Statutory Authority for Investment of Money Derived From Sale of County High School Building Bonds in U.S. Government Bonds.

Carson City, July 22, 1946

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

DEAR MR. JEPSON: This will acknowledge receipt of your letter dated July 18, 1946, received in this office July 19, 1946, containing an inquiry as to the authority of the board of trustees governing the county high school district to invest funds derived from the sale of bonds authorized pursuant to a bond election held for the purpose of securing funds for the building of a high school. The reason for delaying the construction of the building, as stated in your letter, is due to the scarcity of labor, building materials and other conditions, and board wishes to invest a greater portion of the fund in United States Government Bonds until such time as the proposed high school building can be constructed more advantageously.

We are of the opinion that there is no statutory authority for such a loan or investment.

The rule of law that governs in this respect is expressed in 42 Am. Jur. page 721, as follows: "Unless a valid statute authorizes it, no public agency has a right to loan its funds." Citing *Storm v. Sexton*, 104 A.L.R. 1359.

Section 5908 N.C.L. 1929 provides for the issue and sale of bonds for the purpose of constructing a high school building and the purchase of property for a building site. It also provides that all moneys derived from the sale of such bonds shall be paid into the county treasury and placed in a special fund known as the County High School Building Fund and shall be paid out in the manner provided by law for payment from such fund and for the purposes provided in the Act.

The Acts of 1943 and 1945 do not contemplate the investment of such special funds. Chapter 191, Statutes of 1943, declares what bonds and securities shall be considered proper and lawful investments for the funds of the State and its various departments and agencies. This refers to funds that may be invested under authority of statute, but does not extend the statutory authority to invest in public funds.

Chapter 234, Statutes of 1945, provides a method of raising a post-war fund by taxation and authorizes the taxing authorities to include in the budget an estimated sum to be collected annually and which may be allowed to accumulate from year to year.

You call our attention to these statutes, but we cannot see their relevancy.

As stated in 42 Am. Jur. page 775, "Whenever a special fund is raised for a particular purpose under legislative authority by a special tax or bond issue or the like, it cannot be used for any other purpose either permanently or temporarily until the purpose for which it was intended has been fully accomplished." Citing *Newport v. McLean*, 77 S.W. (2) 27, 96 A.L.R. 655.

The county treasurer, under section 5796 N.C.L. 1929, is required to hold as a special deposit all public school moneys, whether received from the State or raised by the county for the benefit of the public schools, or from any other source and disbursements can only be made as specifically authorized by statute.

Very truly yours,

ALAN BIBLE, Attorney General

By: George P. Annand, Deputy Attorney General

OPINION NO. 46-329. Elections—Explanatory Statement Concerning Proposed Amendment to Section 11 of Article XV of Nevada Constitution.

Carson City, July 23, 1946

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

DEAR MR. McEACHIN: Reference is hereby made to your letter of July 18, 1946, concerning the synopsis and explanatory statement to be placed upon the general election ballot in connection with the Assembly Joint Resolution proposing an amendment should be as follows:

The proposed amendment adds a sentence to present Section 11 of Article XV of the Constitution, and provides that the tenure of office or the dismissal from office of any officer or employee of any municipality governed under a legally adopted charter shall be controlled by such charter. The effect of such amendment is to except such municipality from the present constitutional provision that the legislature shall not create any office the tenure of which shall be longer than four years.

Very truly yours,
ALAN BIBLE, Attorney General

OPINION NO. 46-330. Muddy Valley Irrigation Company—Not Province of State Engineer to Initiate Proceedings to Reopen Decree.

Carson City, July 23, 1946

MR. EDWIN MARSHALL, *President, Muddy Valley Irrigation Company, Overton, Nevada.*

DEAR MR. MARSHALL: A short time ago Dr. Israelson presented to this office a proposed copy of a stipulation agreement entitled:

“Stipulation Agreement Between the Muddy Valley Irrigation Company of Overton, Nevada, and the Office of Indian Affairs, United States Department of the Interior, Washington D.C. Relative to the Division and Administration of the Waters of Muddy River, Clark County, Nevada.”

He also left with this office a copy of the Court Decree entered by Wm. E. Orr, District Judge in the Tenth Judicial District Court of the State of Nevada, in and for the County of Clark, on March 12, 1920, entitled:

“Muddy Valley Irrigation Company, a corporation, Nevada Land & Livestock Company, a corporation, Samuel H. Wells, John F. Perkins and Ellen C. Perkins, his wife, *Plaintiffs v. Moapa & Salt Lake Produce Company*, a corporation, George Baldwin and Aletha L. Baldwin, his wife, Isaiah Cox and Anna M. Cox, his wife, Joseph Perkins and Kathryn Perkins, his wife, D.H. Livingston and Richard Smith, G.S. Holmes and Julia May Knox, W.J. Powers and Mary A. Powers, his wife, Sadie George, Los Angeles & Salt Lake Railroad Company, a corporation, and Walker D. Hines, as Director General of Railroads, and Jacob Bloedel, Defendants.”

And

“In the Matter of the Determination of the Relative Rights in and to the Waters of the Muddy River and its Tributaries in Clark County, State of Nevada.”

Dr. Israelson also brought me up to date on the various conferences held between representatives of your Muddy Valley Irrigation Company and himself since the meeting that I attended with you at Overton several years ago.

At the conclusion of my conference with Dr. Israelson, I promised him that this office would review the proposed Stipulation Agreement, would discuss it with the State Engineer's office, and would write to you directly concerning our views as to the correct legal procedure involved.

This conference was held last Thursday, July 18, 1946, in this office. Attending the conference were State Engineer Alfred Merritt Smith, and Assistant State Engineers Hugh Shamberger and Edmund Muth. This office was represented by W.T. Mathews, Special Assistant, and myself. We carefully examined and studied the documents referred to above and discussed the problem of flood control, and the division of the waters of Muddy River in Clark County pursuant to the decree of the District Court of the Tenth Judicial District of the State, in and for Clark County, adjudicating the relative rights of the claimants to the waters of such river, entered in the Court, March 12, 1920. We learned from the State Engineer that there is a problem of division of the waters of the river amongst the parties to the adjudication proceedings and the United States Indian Service with respect to the Moapa Indian Reservation, as well as a possible secondary problem of flood control. After a thorough discussion of the matter and an exploration of possible legal methods that might be invoked to solve the problem and cause a satisfactory and amicable settlement of possible disputes, it was left to this office to offer such suggestions as to those methods.

Without going into detail or dealing with the amounts of water claimed by the Indian Service, or the number of acres of land irrigated or to be irrigated on the Indian Reservation, but looking only to the mechanics of the possible steps necessary to arrive at a definite solution of the problem satisfactory to interested parties and providing for the legal application of the court decree to all rights involved, we suggest the following:

I.

That all interested parties or their representatives, including representatives of the Indian Service, gather in conference for the purpose of arriving at a mutual understanding of the problem and there advance and discuss the respective claims of the parties, the necessity of ironing out the claimed rights of the Indian Service and whether, if necessary, the surrender of some of the water rights of other parties can and will be amicably arranged. We are of the opinion that such a conference, or series of conferences, as above suggested are necessary in order to provide a foundation for the subsequent action necessary to give validity to any change that may be made in decreed water rights, and, possibly, the decree itself. Such conferences should precede any other proceedings.

II.

We are advised that the waters of Muddy River are fully appropriated and the rights thereto vested. We are also advised that the Indian Service claims more water and greater acreage of land to be irrigated than is provided in the court decree. That to satisfy the claimed rights of the Indian Service the amount of water now allotted to it must be augmented and can only come from water decreed to others, either individually in the decree or from water decreed to the Muddy Valley Irrigation Company, a corporation, and conveyed to individual stockholders of the company. We understand that the company has so disposed of all its water, and that all such water or the right to the use thereof is owned in proportion to the stock held by each stockholder.

In view of the fact that the decree adjudicating the water rights of the Muddy River has long since become final and binding upon all parties thereto, with the possible exception of the United States Government, we suggest the following method as providing a legal way of transferring title to the right to use the water necessary to provide the Indian Service with the amount it claims it is legally entitled to and necessary for its beneficial use.

That all stockholders of the corporate irrigation company adopt a resolution wherein they and each of them agree to convey back to the company such amount of stock necessary to provide the amount of water to augment the amount now allotted to the Indian Service in the decree to the amount necessary or the amount agreed upon to satisfy the claimed right of the Indian Service. That the company after acquiring such stock from its stockholders then convey or transfer such stock to the Indian Service or to the United States as government regulations may require, or if preferred by the Indian Service, the water rights evidenced by such stock may be conveyed to it

or the United States by deed. Upon receipt of the stock or deed the Indian Service and/or the United States becomes successor in interest to parties to the decree and vested with the title to the rights so conveyed.

III.

In this suggestion we are dealing with the possibility of reopening the decree entered in the adjudication proceedings. Reopening final decrees, particularly after a long period of years, is not easily accomplished. However, in the instant matter it is possible that it can be done. If such method is attempted, we think that the following procedure must be had:

1. That each stockholder of the company just join in a resolution duly adopted, authorizing the proper officers of the company to join in and sign a petition to the District Court of Clark County praying that the decree be reopened for the purpose of settling and incorporating into the decree the water rights claimed by the Indian Service.

2. That all other water users on the Muddy River must join in such petition, as their rights are involved and will be affected by a new decree.

3. That the Indian Service also join in the petition in order to set up its rights.

Such a petition when presented to the court, we think, will pave the way for a reopening of the decree and an adjustment of the rights involved. No doubt each water right will be affected to some extent, but not to a great degree.

We desire to point out that it is not the province of the State Engineer to initiate proceedings to reopen the decree. As to him the present decree is final. Also the interested parties to the matter under discussion should and no doubt will consult their private attorneys concerning the problem. This office offers the foregoing suggestions as *amicus curiae*, in hopes that the suggestion will prove helpful to you.

Very truly yours,

ALAN BIBLE, Attorney General

cc to Hon. Alfred Merritt Smith and Dr. O.W. Israelson.

OPINION NO. 46-331. Elections—Assemblymen—Three Candidates of Same Party Must Be Placed on Primary Ballot for Purpose of Eliminating One.

Carson City, July 24, 1946

MR. WAYNE O. JEPPSON, *District Attorney, Lyon County, Yerington, Nevada.*

DEAR MR. JEPPSON: This will acknowledge receipt of your letter of July 22, 1946, with which you inclosed a copy of an opinion which you have delivered to the Lyon County Clerk.

The question involved in your opinion is whether or not there is a primary contest in the Republican party for the office of Assemblyman from Lyon County, in view of the fact that Lyon County is entitled to two Assemblymen, for which one Democrat and three Republicans have filed.

Your opinion is absolutely correct, and it is unquestionably the law of the State of Nevada that under the set of facts as you have given, the three Republican candidates must be placed on the primary ballot for the purpose of eliminating one therefrom and determining the two who will be the nominees of the Republican party.

The case of *State Ex Rel. Cline v. Payne*, [59 Nev. 127](#), which construes section 2425, Nevada Compiled Laws 1929, as amended, is the law of the State upon your inquiry, and since the statute construed has not been changed since the Supreme Court's decision, this decision is decisive.

Very truly yours,

ALAN BIBLE, Attorney General

OPINION NO. 46-332. Mineral County Power System—Manager Not Disqualified to Seek Party Nomination.

Carson City, July 25, 1946

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

DEAR MARTIN: In your letter of July 17 received here July 19, 1946, you state that Fred F. Parker, Power System Manager, filed his declaration of candidacy for the Republican nomination for Sheriff of your county and "there is no primary fight." Under the circumstances he became the nominee of the Republican party for that office automatically and he will appear as such on the general election ballot in November.

You call attention to Statutes of Nevada 1945, page 330. This is the further amendment of section 17 of the Mineral County Power System Act of 1921. The last paragraph of subdivision (a) of section 17 reads:

No person who holds a public office shall be permitted to occupy the position of general manager. In the event such general manager is nominated or appointed to public office he shall be immediately removed from the position of general manager and another appointed in his place.

Both these sentences contemplate a disability preventing an office holder from being employed as general manager. There is no punctuation such as commas to create uncertainty.

We believe the word *nominated* as used in the above section is synonymous with the word *named*.

The nomination you speak of is a nomination as a party candidate and not a "nomination or appointment" to public office. The latter words are used synonymously. (*People v. Fitzsimmons*, 68 N.Y. 514, 519; 28 Words and Phrases (Permanent Edition) 705). The two sentences taken together prevent any appointed or elected public officer from being or continuing to be general manager.

The validity of the provision is not in issue.

Very truly yours,

ALAN BIBLE, Attorney General

By: Homer Mooney, Deputy Attorney General

OPINION NO. 46-333. Intoxicating Liquors—Retailer or Liquor Dealer May Not Purchase Liquor From Other Than State Licensed Wholesaler.

Carson City, July 25, 1946

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

DEAR MR. COLEMAN: Your letter of July 20 received here July 20, 1946, inquires whether it is a violation of the State Liquor law for a retail liquor dealer to purchase liquor in wholesale lots from another person who does not have a wholesale dealer's license. The answer is yes.

Section 70 of the Act provides that "No retailer or liquor dealer shall purchase any liquor from other than a state licensed wholesaler." No punishment is expressly provided.

Section 22 of the Act provides that "Any person violating any of the provisions of this Act * * * shall be punished upon conviction thereof as for a misdemeanor, except as may be otherwise expressly provided in this Act."

Section 9969, N.C.L. 1929, being section 20 of the Crimes and Punishments Act, fixes the punishment for a misdemeanor when not otherwise prescribed at a jail sentence of not more than six months or a fine of not more than \$500, or both.

Very truly yours,

ALAN BIBLE, Attorney General

By: Homer Mooney, Deputy Attorney General

OPINION NO. 46-334. Elections—Primary—Existing Rivalry For Nomination Must Be Settled at Primary if There is an Independent Candidate.

Carson City, July 25, 1946

HONORABLE PETER BREEN, *District Attorney, Goldfield, Nevada.*

DEAR PETE: This will confirm my night letter to you of today reading as follows:

Reurlet it is our opinion that where there is one Independent candidate and two Democratic candidates for an office to which only one person can be elected the names of both of the partisan candidates must go on the primary ballot. The one successful partisan candidate at the primary election would then become the nominee of his party and would then go on the general election ballot to be opposed by the Independent at the general election to be opposed by the Independent at the general election. *See cases of State ex rel. Cline v. Payne, 59 Nevada, 127, and State v. Beemer, 51 Nevada, 192.* Regards.

The telegram is completely self-explanatory. In our opinion the first two provisos of section 22 of the Primary Election laws, being section 2425, N.C.L. 1929, 1941 Supp., when read together make it clear that in those cases where there is an Independent candidate as under the facts in your case, the names of two partisan candidates must be placed on the primary ballot. Although the cases cited in the telegram are not under exactly the set of facts, we believe much of the language and reasoning is pertinent in reaching the foregoing conclusion.

We had occasion to rule on this same question presented to us by John W. Bonner, District Attorney, Ely, in 1942. *See Attorney General's Opinion 345-M, 1943-1944 biennium, and particularly our answer to question number 2.*

Regards and best wishes.

Very truly yours,
ALAN BIBLE, Attorney General

OPINION NO. 46-336. Insurance—State Fund—General Refunding Bonds of The Borough of Avalon Approved for Investment.

Carson City, July 26, 1946

HONORABLE D.J. SULLIVAN, *Chairman, Nevada Industrial Commission, Carson City, Nevada.*

DEAR SIR: Pursuant to your request conveyed to us by Mr. Richard Cullen of Cullen & Co., Reno, Nevada, we give you herewith our official opinion in writing for the benefit of the Nevada Industrial Commission as to the validity of the Acts under which certain refunding bonds offered the Commission for investment of surplus and reserve funds of the State Insurance Fund, are issued. (*See 1929 N.C.L., 1941 Supp., sec. 2721*). We find that the Borough of Avalon is an incorporated city within the meaning of said section 2721. *See also Ch. 191, Stats. 1943, 1945 pocket part, sec. 7058.*

The bonds in question are all part of an issue of General Refunding Bonds of the Borough of Avalon, County of Cape May, State of New Jersey.

The following table gives the numbers of the bonds respecting which this opinion applies including either the exact serial numbers of the bonds offered for purchase with the exact maturities or the brackets of numbers in which the bonds lie and to which the maturities noted apply. All maturities are absolute except that acceleration is validly permitted in the case of the bonds R481-\$534. All bonds are dated November 1, 1945, and are in denominations of \$1,000 each except as hereinafter noted.

Bonds C-270-277 for \$100 each not included in the table noting amounts of bonds 320-235 with maturity November 1, 1963, are also approved by this opinion.

1953, 85-100;* 1954, 101-117; 1955, 118-134; 1963, 320-325;* 1965, 359-281;* 1966, 382-405; 1967, 406-429; 1968, 430-454; 1969, 455-480;* 1970/55, R481-R507; 1971/55, R508-R534.

We have examined the papers presented by J.B. Hanauer & Co., Inc., of Newark, N.J., through Richard Cullen, who offer to sell the bonds, said papers including document duly certified showing that the bonds under consideration are part of an issue properly made pursuant to all applicable laws, ordinances, rules and regulations of the State of New Jersey, the County of

Cape May, the Borough of Avalon, and all other agencies having authority in the premises, and not contrary thereto nor in excess of any limitation or authority imposed or conferred thereby or by any of them, and that proper and adequate provision is made for the payment of the principal and interest thereof. We find that all bonds issued in exchange for other bonds were issued validly and under due authority, and for lawful consideration.

Our findings in this respect are in agreement with the legal opinion dated March 17, 1946, of the law firm of Hawkins, Delafield & Wood, 67 Wall Street, New York 5, New York, directed to the Mayor of said Borough of Avalon, which opinion is included in the papers exhibited to us above referred to.

It is our opinion based on the showing made that said bonds are legal, binding and existing obligations, and in due and legal form.

Very truly yours,

ALAN BIBLE, Attorney General

By: Homer Mooney, Deputy Attorney General
cc to Mr. R.S. Cullen, Clay Peters Bldg., Reno, Nevada.

OPINION NO. 46-337. Health—No Specific Statute Creating a State Mental Authority—State Board of Health Appropriate Authority to Administer Service in Cooperation With United States.

Carson City, August 2, 1946

MR. JOHN J. SULLIVAN, *Acting Secretary, State Board of Health, Carson City, Nevada.*

DEAR MR. SULLIVAN: The following is in reply to your oral request of July 30, 1946, for an opinion on the question submitted by letter from the United States Public Health Service.

The question relates to the administration in this State under the National Mental Health Act (Public Law 487, 97th Congress) to determine the State Mental Health Authority.

The copy of the letter from the Assistant Surgeon General Bureau of Medical Services, states that the Mental Health Act amends the Public Health Service Act, thereby weaving mental health activities into the duties and functions of the Service. The law provides that the term "State mental health authority" is defined as the State health authority, except that in the case of any State in which there is a single State agency, other than the State health authority, charged with the responsibility for administering the mental health program of the State, it means such other State agency.

As stated in the letter, this authority in the State is one that is in a position to carry forward a program of out-patient care, training and research and could most easily participate in the mental health program.

There is no specific statute in this state creating a State mental authority.

In our opinion, after considering the public health statutes and the statutes concerning the insane, the State Board of Health is the appropriate authority in this State to administer the service in cooperation with the United States Public Health Service, until such time as the Legislature takes determinate action on this particular subject.

Section 5259, 1929 N.C.L. 1941 Supp., designates six division of the department and recites, "together with such other divisions and bureaus as the state board of health may from time to time determine."

Section 5259.02, 1929 N.C.L. 1941 Supp., reads as follows: "The state department of health is hereby designated as the agency of this state to cooperate with the duly constituted federal authorities in the administration of those parts of the federal social security act which relate to the maternal and child health services, care and treatment of crippled children, and the general promotion of public health, and is authorized to receive and expend all funds made available to the state department of health by the federal government, the state or its political subdivisions, or from any other source for the purposes provided in this act."

Statutes relating to the insane are confined to the commitment of the insane who are determined to be dangerous to be at large, and to the care and administration of the accepted and appropriate treatment of such insane patients after commitment.

Chapter 154, Statutes of 1945, an amendment to the original Act, creates a board of commissioners for the purpose of providing for the care and maintenance of the indigent insane of the State. The superintendent, appointed by the board, has charge of the State mental hospital and is directed, when requested, to perform neurological and psychiatric examinations at the State Prison, State Orphan's Home, and State Industrial School.

Chapter 98, Statutes of 1943, which amends section 19 of the Act concerning the insane of the State, provides that the superintendent may, with the approval of the board, discharge any patient at any time, provided he shall report to the board a list of persons committed to his care as insane, who in his opinion have recovered their sanity, or are persons who in his judgment will not be detrimental to the public welfare or injurious to themselves.

There is no provision in the statute for the care or supervision of out-patients.

No authority is vested in the board of commissioners to cooperate with the Federal Government to conduct researches, investigations, experiments relating to the cause, diagnosis and treatment of psychiatric disorders, as declared to be its purpose in the National Mental Health Act, and there is no statutory authority to receive and expend funds made available by the Federal Government.

The National Mental Health Act is associated with the National Advisory Health Council, the National Advisory Cancer Control, and is under the general Public Health Service Act. The Act provides that the term "State mental health authority," means the State health authority, unless there is a single State agency charged with the responsibility for administering the mental health program of the State. As this State has no single State agency for that purpose, it appears that the State Board of Health is the organization within the State with which the Surgeon General should deal in carrying out the principles of the Act, until such time as the Legislature shall take definite action upon the subject.

Very truly yours,

ALAN BIBLE, Attorney General

By: George P. Annand, Deputy Attorney General

OPINION NO. 46-338. Counties—No Authority to Expend County General Road Funds for Improvement in Unincorporated Town—County Road Department May Perform Certain Work at Expense of Town.

Carson City, August 3, 1946

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

DEAR MARTIN: This will acknowledge receipt of your letter dated July 23, 1946, received in this office July 25, 1946.

As we understand your question it relates to the authority of the county to charge an unincorporated town for street work performed within such town, notwithstanding the fact that the town received no specific portion of the General Road Fund.

We are of the opinion that the county has authority to charge the town for such work and that the statutes do not provide for an apportionment from the County General Road Fund to unincorporated towns.

Section 5402, N.C.L. 1929 under the Act establishing road districts, provides for the creation of a general road fund, which shall be expended within the several road districts only upon order of the County Commissioners.

It appears therefore that the County Commissioners could not pay for the improvement or work on the streets of an unincorporated town out of the County General Road Fund, but could employ the county road department to perform certain work at the expense of such town.

Section 5394, N.C.L. 1931-1941 Supp. requires the County Commissioners, upon request of the City Council of an incorporated city, to apportion to such city a certain portion of the General Road Fund of the county. This section does not apply to unincorporated towns, and after a careful search of the Nevada statutes we are unable to find any authority whereby the County Commissioners of a county may apportion part of the County Road Fund to an unincorporated town.

Very truly yours,
ALAN BIBLE, Attorney General
By: George P. Annand, Deputy Attorney General

OPINION NO. 46-339. Elections—Residence For Purposes of Voting Neither Gained Nor Lost by Reason of Service in the Armed Forces of the United States.

Carson City, August 6, 1946

HON. FRANK E. BELL, *County Clerk, Nye County, Tonopah, Nevada.*

DEAR MR. BELL: This office acknowledges receipt of your letter of August 1, 1946, propounding the following inquiry:

Is a soldier who has resided in the State, county, and precinct the required length of time, entitled to register and vote and the next succeeding election?

Your query does not state whether the soldier in question had acquired a Nevada residence prior to his induction into the armed services. We assume that he did not, and by reason thereof your inquiry is answered in the negative.

This question has been ruled upon by this office in prior opinions, particularly Opinion No. 220, dated July 22, 1936, and reported in Report of Attorney General, July 1, 1936-June 30, 1938, and which opinion was followed by Opinions P and Q, reported at pages 154 and 155 of the same report. A more recent opinion covering the question was rendered by this office March 29, 1946, relative to the right of the enlisted personnel of the Naval and Marine Corps stationed at the Hawthorne Naval Ammunition Depot.

Briefly, the Constitution of this State provides in section 2 of article II as follows:

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

The foregoing provision, as applied to officers and men in the armed forces of the United States, has been universally construed to mean that residence cannot be gained nor lost by reason of such service. An enlisted man coming into the State of Nevada and serving in the armed forces in this State does not lose the residence of his home State for the purpose of voting and cannot gain a residence in this State. During all of the time that he is in the service of the armed forces he is subject to the will of superior officers, and by reason thereof can form no intention to make Nevada his place of residence because he is subject to be removed against his will, perhaps at any time.

The foregoing opinion, as stated above, is given upon the assumption that the soldier in question had not acquired a Nevada residence prior to his induction into the armed forces. If he had acquired such a residence and had not changes his place of residence prior to his induction, then, of course, he would be entitled to register and vote in this State.

Very truly yours,
ALAN BIBLE, Attorney General

OPINION NO. 46-340. Legislature—Vacancies Filled by Election or Appointment, When.

Carson City, August 8, 1946

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

DEAR GOVERNOR PITTMAN: This will acknowledge receipt of your letter dated August 8, 1946, received in this office on the same date.

You inclose an opinion by District Attorney C.A. Eddy of White Pine County and ask if in the opinion of this office we concur with that of Mr. Eddy.

We are of the opinion that Mr. Eddy overlooked the amendment to section 12, article IV, of the Constitution of Nevada, which was approved and ratified by the people at the general election of 1944 which reads as follows:

In case of the death or resignation of any member of the legislature, either senator or assemblyman, the county commissioners of the county from which such member was elected shall appoint a person of the same political party as the party which elected such senator or assemblyman to fill such vacancy; *provided*, that this section shall apply on in cases where no biennial election or any regular election at which county officers are to be elected takes place between the time of such death or resignation and the next succeeding session of the legislature.

The amendment added the words "no biennial election or any regular election at which county officers are to be elected," and deleted the words "general election."

A biennial election will take place in the State on November 5, 1946, and in the event of the resignation of a Senator or Assemblyman before that date, the vacancy would be filled at such election and not by appointment.

In the event the resignation occurs after the biennial election and an appointment rather than an election fills the vacancy, the Constitution remains unchanged in requiring the appointment of a person of the same political party as the party which elected such Senator or Assemblyman.

Very truly yours,

ALAN BIBLE, Attorney General

By: George P. Annand, Deputy Attorney General

OPINION NO. 46-341. Employment Security—Uniform Standards of Pay and Hours for Public Employment Offices and Employment Security Department.

Carson City, August 10, 1946

HON. GILBERT C. ROSS, *Executive Director, Employment Security Department, Carson City, Nevada.*

DEAR MR. ROSS: Your letter of July 29, 1946, was received here on the same date.

In contemplation of the return of public employment offices to the States, effective November 16, 1946, and your resumption of control of them in addition to the Unemployment Compensation Service, you propose to establish uniform standards of pay and hours for both divisions, involving a 40-hour week for Employment Security employees with a comparable adjustment of pay.

Under section 4(d) of the Employment Security Administration law of 1941 (1929 N.C.L. 1941 Supp., sec. 2825.25c, as last amended by Stats. 1945, page 119), you have ample power to do this in the exercise of a reasonable discretion (always implied).

Very truly yours,

ALAN BIBLE, Attorney General

By: Homer Mooney, Deputy Attorney General

OPINION NO. 46-342. Taxation—Veterans Not Entitled to Tax Exemption as to Special Tax Levied on Livestock.

Carson City, August 14, 1946
NEVADA TAX COMMISSION, *Carson City, Nevada.*

Attention: R.E. Cahill, Chief Clerk.

GENTLEMEN: This will acknowledge receipt of your letter of August 12, 1945, requesting an opinion upon the following query:

Should the special tax on livestock as provided in section 3829 N. Supplement 1931-1941, be collected on livestock that is covered by the veterans' tax exemption as prescribed on page 43, Statutes 1945?

OPINION

Your query relates to a question of whether the veterans' exemption from taxation, as provided in subdivision (7) of section 6418 N.C.L. 1929, as amended at 1945 Statutes, page 43, can be applied to the special tax provided in the Board of Stock Commissioners Act as found at sections 3826-3848 N.C.L. 1929, and particularly to section 3829, as amended at 1935 Statutes, page 61, and being found at section 3829 N.C.L. Supp. 1931-1941.

Section 6418 N.C.L. 1929, as amended in 1945, is a section of the general revenue law of this State. This law relates to and provides for the securing of revenue for the support of the State Government and also, incidentally, county governments, and provides for an ad valorem tax upon property for the source of such revenue and, of course, the exemption provided for veterans in such law applies to the taxes provided for in such law.

An examination of the Board of Stock Commissioners Act, above stated, discloses that such Act is purely and simply an inspection Act for the protection of the livestock industry in the State, and the funds derived from the so-called tax provide in section 3829 is for the sole purpose of administering such Act for the benefit of the livestock industry and the owners of the livestock covered by the Act. It is a police measure giving the State Board of Stock Commissioners broad powers with respect to policing the industry concerning diseases of livestock, quarantine measures and, as an incidental matter, the theft of livestock. No part of the money derived from the so-called tax provided in the Act goes to the support of the government of the State. It is also to be noted that in this particular Act no exemptions are provided for anyone. The general rule with respect to taxation is that taxation is the rule, and exemption therefrom the exception, and that a person liable for the payment of the tax provided in the law must point to an exemption that is clear and express and which provides an exemption beyond a doubt. 51 Am. Jur. 526, sec. 524.

The precise question presented by your inquiry was submitted to Attorney General Diskin in 1925. The inquiry there being whether the Lovelock Mercantile Banking Company and also a veteran was entitled to his tax exemption, as provided in the amendment to the General Revenue Act added to such Act at 1923 Statutes, page 360, which was the first addition to the General Revenue Act providing exemption for veterans, and later became a part of section 6418 N.C.L. 1929, on 150 stands of bees, the special tax upon which was provided in sections 6 and 7 of the Act regulating apiaries, approved March 22, 1921, and now constituting sections 460-483, N.C.L. 1929. This Act is very similar to the State Board of Stock Commissioners Act and provides entirely for the inspection and protection of the bee industry, and the moneys derived from the tax provide in such Act was and is used exclusively for that purpose. We cannot do better than to quote from Attorney General Diskin's Opinion No. 207, dated October 28, 1925, and reported in the Report of Attorney-General 1925-1926. In course of the opinion he said:

As to whether an Act of this character is to be denominated a measure for the collection of taxes or a license or inspection measure, we must look to the provisions of the Act itself to make this determination. It is true that the legislature has called the fees to be collected a "tax," but this name, given by the Legislature in the statute, is not decisive. It will be observed from a reading of this statute that the owner of a stand of bees is required to submit to the Commission the number of stands owned by him, and, from this information the commission is authorized to inform the Board of County Commissioners of the county of money required to be raised for supporting the Commission and the deputies and inspectors appointed for enforcing the law. The rate is then determined, based upon the amount of money required to pay the salary and expenses of inspectors,

and, in making this determination, the total number of stands of bees is computed by the Commission. It will be noted, therefore, that only the amount necessary to pay the running expenses in the enforcement of inspection regulations is all that accrues by reason of the collection of the fee as made, and the money so collected is not placed in the General Fund of the State, but, under the statute, is kept in a separate fund to be known as the "Apiary Inspection Fund." It was the plain intent of the Legislature to make the business of raising bees pay the expense of its proper police regulation. It must be admitted that the State may make any business requiring police regulation pay the expense of regulating and controlling it, and this may be done by exacting fees, license fees, or inspection fees from those engaged in the business.

I am of the opinion, therefore, that upon its face this law is a bona fide police regulation and proper inspection law, and the fees are in good faith exacted to reimburse the State for the expense of inspection and enforcing observation of the law.

In concluding that this measure is an inspection measure and does not provide for a tax on property as the word "tax" is generally understood, the conclusion must necessarily follow that neither the Lovelock Mercantile Banking Company nor the ex-soldier is entitled to an exemption under its provisions.

We concur in the foregoing opinion and find that it is particularly applicable to the instant question, inasmuch as there has been no change in applicable law since that date. Therefore, it is the opinion of this office that veterans are not entitled to tax exemption as to the special tax levied on livestock under the provisions of section 3829 N.C.L. 1931-1941.

Very truly yours,

ALAN BIBLE, Attorney General

OPINION NO. 46-343. Old-Age Assistance—May Increase Grants Paid To Recipients in Conformity With Revised Federal Provisions.

Carson City, August 15, 1946

MRS. HERMINE G. FRANKE, *Supervisor, Division Old-Age Assistance, P.O. Box 1331, Reno, Nevada.*

DEAR MRS. FRANKE: This will acknowledge receipt of your letter dated August 13, 1946, received in this office the same date, requesting an opinion as to the authority of the Division of Old-Age Assistance of the Nevada State Welfare Department to increase the grants paid to the recipients of this conformity with the revised Federal provisions governing old-age assistance payments as provided in the amendments to section 3 of the Social Security Act.

We are of the opinion that the Division of Old-Age Assistance may increase the grants paid to the recipients of this State under the authority granted in sections 3, 14, 15 and 24 of the Old-Age Assistance Act of this State.

The amendment of the Social Security Act relative to old-age assistance provides in section 3, in part, as follows:

(a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which as an approved plan for old-age assistance, for each quarter, beginning with the quarter commencing October 1, 1946, (1) an amount which shall be used exclusively as old-age assistance, equal to the sum of the following proportions of the total amounts expended during such quarter was old-age assistance under the State plan with respect to each needy individual who at the time of such expenditure is sixty-five years of age or older and is not an inmate of a public institution, not counting so much of such expenditures with respect to any such individual for any month as exceeds \$45.

(A) Two-thirds of such expenditures, not counting so much of any expenditure with respect to any month as exceeds the product of \$15 multiplied by the total number of such individuals who received old-age assistance for such month, plus

(B) One-half of the amount by which such expenditures exceed the maximum which may be counted under clause (A);

and (2) an amount equal to one-half of the total of the sums expended during such quarter as found necessary by the Administrator for the proper and efficient administration of the State plan, which amount shall be used for paying the costs of administering the State plan for old-age assistance or both, and for no other purpose.

The provision to pay to the State two-thirds of the third of the maximum amount of forty-five dollars and one-half of the remaining amount which exceeds the amount allowed under subdivision (A) results in the Federal government paying two-thirds of one-third plus one-half of two-thirds which equals five-ninths. Thus, the Federal government's share upon the payment to an individual of forty-five dollars would be twenty-five dollars, the State's share ten dollars and the county's share ten dollars.

Section 3 of the Old-Age Assistance Act of this State provides that the amount of income reasonably necessary to support each needy aged person requiring assistance, including all income from every source, is determined to be not less than forty dollars per month, thus fixing a minimum and not a maximum allowance.

Section 15 provides for the raising of funds sufficient to pay the State's one-fourth of the total amount of such old-age assistance and administration thereof.

Section 14 provides for the payment by each county of the necessary expenses of county administration and for the payment of one-fourth of the total amount of old-age assistance to be paid in that county pursuant to section 3 of the act.

Section 24 provides as follows: "If in the future the Congress of the United States shall pass any law or laws that have the effect of liberalizing the participation of the Federal Government in the Nevada Old-Age assistance Act either as the reduction of the age of eligibility for assistance, or otherwise, the State and county boards are hereby authorized and empowered to accept the increased benefits of such congressional legislation, insofar as such acceptance may be legally delegated by the legislature to such boards."

Very truly yours,

ALAN BIBLE, Attorney General

By: George P. Annand, Deputy Attorney General

OPINION NO. 46-344. Public Officers—Justices of the Supreme Court—Vacancy Filled, How.

Carson City, August 21, 1946

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

DEAR GOVERNOR PITTMAN: In your letter of August 20, 1946, received here August 21, 1946, you ask two questions, viz:

1. In making an appointment to fill the vacancy in the office of Justice of the Supreme Court caused by the death of the late Justice Edward A. Ducker, what should your commission recite as to the term for which the appointment is made?
2. What procedure should be followed by one who seeks election to fill such vacancy?

As to question No. 1, we suggest your commission should name the appointee and designate him "as Justice of the Supreme Court of the State of Nevada to fill the vacancy in the office lately held by Hon. Edward A. Ducker, deceased, until said vacancy is filled at a general election by the people."

This form is substantially approved in the case of *ex rel. Penrose v. Greathouse*, [48 Nev. 419-420](#). We think it is well to show specifically in this way that the vacancy is in the "office" and was caused by the death of the officeholder.

As to question No. 2, similar light is shed by the same decision cited above. Section 25 of the Primary Election Law is held to apply in such case (sec. 2429 N.C.L. 1929). The pertinent part of that section is the second paragraph, reading as follows:

In the event of vacancies in nonpartisan nominations, the vacancy shall be filled by the person who received the next highest vote for such nomination in the primary for such office. If there be no such person then the vacancy may be filled by a petition signed by qualified electors equal in number to five percent of the total vote cast for representative in Congress at the last preceding general election in the county, district, or state, as the case may be. Such petition shall be filed on or before fifteen days before the November election.

The court cited section 48 of the General Act of 1866 relating to officers (sec. 4812 N.C.L. 1929) providing that in case of vacancy in the office of Justice of the Supreme Court a successor shall be chosen at the next general election for the balance of the unexpired term. Section 48 also indicates clearly that the interim commission by the Governor will expire at the general election "and upon the qualification of his successor."

Any person seeking election to this office at the November election this year should cause to be filed with the Secretary of State, the petition mentioned in section 25 of the Primary law. IN computing the number of qualified electors required to sign such petition the general election returns should be consulted covering the election of 1944. No declaration of candidacy seems provided for, but an acceptance of designation appended to the petition or filed separately would not be in appropriate. The form suggested in the last paragraph (b) of section 5 of the Primary Election Law might be substantially followed. (Sec. 2408 N.C.L. 1929. *See* Stats. 1945, 174.)

In referring tot he office to be filled by election, words similar to the following should be used:

We the undersigned qualified electors of the State of Nevada constituting in number at least five percent of the vote cast for Representative in Congress at the last preceding general election therein do hereby petition that the name of, a duly qualified elector of said State and in all respects eligible, be placed on the general election ballot to be used at the general election to be held in said State November 5, 1946, for election to the office of Justice of the Supreme Court of the State of Nevada to supply the vacancy in said office caused by the death of Hon. Edward A. Ducker for the remainder of his unexpired term.

Very truly yours,

ALAN BIBLE, Attorney General

OPINION NO. 46-345. Nevada Hospital For Mental Diseases—Board of Control Not Required to Advertise For Bids For Reconstruction of Cottage—Public Policy.

Carson City, August 21, 1946

MR. EDWARD P. PARSONS, *Architect, 210 West Second Street, Reno, Nevada.*

DEAR MR. PARSONS: Referring to your request contained in your letter of August 19, 1946.

Examination of the law discloses there is no requirement for the Board of Control of the State Hospital for Mental Diseases to advertise for bids for the reconstruction of the cottage in question. Section 3509, N.C.L. 1929, provides very broad powers for the Board of Control.

I fail to find any special Act dealing with the question. The provisions of chapter 225, page 443, 1945 Statutes, relates to construction, equipping, and furnishing of certain wards at the hospital. Likewise the Act of the 1939 Legislature relating to the repairing and conditioning of certain State buildings as found at section 6974.20, N.C.L. Supp. 1931-1941, relates to an

addition to the same hospital. Consequently, I think as a matter of law there is no absolute requirement that the Board of Control shall advertise for bids for the repair of the cottage. However, public policy no doubt dictates that such advertisements be had.

The difficulty lies in finding statutory periods of time for the advertisement of such bids. The general law is that where the statute specifies no length of time of publication of notice, the time of advertising must be a reasonable time (Donnelly on Public Contracts, sec. 114, citing *Chippewa Bridge Co. v. Durand*, 99 N.W. 603; *Augusta v. McKibben*, 60 S.W. 291).

What would be considered a reasonable time may be somewhat debatable. However, referring to the 1945 Act above cited, we find that the Board of Control is there authorized to advertise for bids for the construction provided in the statute for a period of three weeks in a newspaper of general circulation in the State of Nevada. The same provision is contained in the 1939 Act above provided. Certainly the publication for three weeks should be ample time in any event. Perhaps a shorter period of publication three times in each week for a two-week period would be ample.

Very truly yours,
ALAN BIBLE, Attorney General

OPINION NO. 46-346. Nevada State Prison—Mode of Imprisonment Within Discretion of Warden.

Carson City, August 22, 1946

HONORABLE RICHARD SHEEHY, *Warden, Nevada State Prison, Carson City, Nevada.*

DEAR WARDEN: You ask whether you can lawfully enlarge prisoners committed to your custody for imprisonment in the State Prison, by permitting them to participate in athletic competition under suitable guard outside the walls of the institution.

There are no statutes dealing specifically with this subject. As warden you are responsible for the safe and secure custody of prisoners. However, under custom and regulations concerning the prison farm (sec. 11499, N.C.L. 1929) trustees, etc., it is not contemplated that a prisoner shall be kept continuously within the walls of the prison. The matter is largely in your discretion provided the enlargement is the exception and not the rule.

In the matter of John Maynard Skaug, October 29, 1945, the Supreme Court dismissing a petition to cite you for contempt of its order as to suspension of warrant of execution did not cover the mode of imprisonment of the prisoner, *i.e.*, confinement in the death cell, that being a matter for your discretion.

The warden is subject to the orders of the Board of State Prison Commissioners, but subject thereto has general powers as Superintendent (N.C.L. 1929, sec. 11453-11454; *See Stats. 1942, 223*).

Our attention has not been called to any rules or regulations of the board, limiting your authority in respect of the subject matter.

Very truly yours,
ALAN BIBLE, Attorney General

OPINION NO. 46-347. Taxation—County Treasurer May Not Accept Deed to Property for County in Payment of Taxes.

Carson City, August 26, 1946

NEVADA TAX COMMISSION, *Carson City, Nevada.*
Attention: R.E. Cahill, Chief Clerk.

GENTLEMEN: This will acknowledge receipt of your letter dated August 15, 1946, received in this office August 16, 1946, reciting a situation wherein the collection of taxes on certain real property was deferred under the provisions of the Soldiers' and Sailors' Relief Act until the

owner was released from the armed services. After his release from the service there was due on the property taxes for the years 1942, 1943, 1944 and the current taxes for 1945. About June, 1945, the owner decided not to pay the taxes and offered to deed the property to the county treasurer for taxes due. It appears from the statement that the owner of the property has been out of the service for more than a year.

Your questions are, can the treasurer accepted a deed made out to the county as payment of taxes, or is the treasurer obliged to advertise the property for sale as required by section 6447, 1929 N.C.L. 1941 Supp., also would the redemption period run from the date of the deferment period of the date the property was actually sold.

We are of the opinion that the provisions of the Soldiers' and Sailors' Relief Act do not apply in the particular case presented and that the property may be sold for delinquent taxes under the provisions of section 6447, 1929 N.C.L. 1941 Supp. We call attention, however, that this section requires the tax receiver, immediately after the first Monday in August of each year, to advertise the property upon which taxes are a lien for sale.

The redemption period runs from the date of the sale of such delinquent property.

Title 50 Appendix, section 560 U.S.C.A. under the Soldiers' and Sailors' Relief Act, provides for the deferment of the collection of taxes (other than taxes on income) whether falling due prior to or during the period of military service. Subsection two provides that no sale of such property shall be made, or any proceeding or action for such purpose commenced, except upon leave of court. The court may, when the circumstances warrant, grant a stay of proceedings and extend the period for payment to six months after the termination of the period of military service of such person. Article I of the Act defines the policy to be the protection of persons in military service by suspending enforcement of civil liabilities in certain case of persons in such service in order to enable them to devote their entire energy to the defense needs of the Nation.

It appears that the Act of Congress is limited to taxes falling due prior to entry into the service and becoming due while the person affected is still in the service. The instant case indicates that the owner of the property left the service more than a year ago and did not wish to claim the protection offered by the Federal Act.

In the case of *Tolmas v. Struffer et al.* reported in 21 S. 387, the court held as follows: "Thus it may seem that this legislation was enacted to protect the rights of the men in the military service of the Nation during the present emergent conditions; but this protection is offered them only in those cases in which the rights of the persons in the military service might be prejudiced without their presence to either prosecute the action or conduct their defense, and is only in those cases that the courts are authorized to stay the proceedings for the duration of their absence. Otherwise, the act has no application." "To permit a stay of the proceedings in this case for the duration of the war would, it seems to us, work an injustice and hardship to the owner who desires possession of his property without serving any purpose for which the Soldiers' and Sailors' Relief Act was adopted."

The action was brought to secure possession of certain property under lease, not to secure payment of taxes, but the rule declared by the court will apply in the instant case as the owner of the property upon which the taxes are due seeks to relieve himself of the tax debt; he apparently has been out of the service for a period of a year, and, in any event, the court, under the provisions of subsection 2, supra, could not extend the protection for a period of military service of such person.

The redemption period fixed in section 6447, 1929 N.C.L. 1941 Supp., must conform to the provision of the section which is expressed in the following language: "* * * and that such sale is subject to redemption within two years after the property upon which delinquent taxes are a lien for sale shall be noticed immediately after the first Monday in August of each year by publication in a newspaper at least once a week from the date thereof until the time of sale.

Very truly yours,

ALAN BIBLE, Attorney General

By: George P. Annand, Deputy Attorney General

OPINION NO. 46-348. Insurance—Life Insurance Agent May Not Act as Solicitor for Agent of Fire and Casualty Company—No Person Shall act as solicitor Without first Procuring License.

Carson City, August 27, 1946

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

Attention: G.C. OSBURN.

DEAR SIR: I have studied your letter of August 21, 1946, and the queries contained therein. I have also carefully examined the sections of the insurance law relating to such queries.

At first it might appear that no harm could arise from a fire and casualty insurance agent appointing as a solicitor an agent of a life insurance company. No doubt such arrangement might be beneficial, not only to the agent of the fire and casualty company but to the agent for the life insurance company to secure additional remuneration for acting as a solicitor for agents of fire and casualty companies.

However, it seems to me that the provisions of section 3656.150, 1929 N.C.L. 1941 Supp., contains a provision which makes it impossible for the agent of a fire and casualty company to comply with such section in making application for the appointment of the agent of a life insurance company to act as his solicitor. This particular section contains the following pertinent language, “* * * and then only when such employer certifies that the solicitor is his bona fide, full-time employee * * *.” The life insurance agent, no doubt, is required to devote his time to his own company and by reason thereof could not reasonably be expected to act as a full-time employee of the agent for the fire and casualty company. It would seem that if it is desirable that agents of insurance companies other than life insurance companies appoint agents of life insurance companies as solicitors for their companies, a change in the law should be effected by the Legislature.

With respect to the second inquiry contained on page two of the letter, I would advise that fire and casualty agents cannot pay commissions for the solicitation of their business to agents who are licensed by life insurance companies without the requirement of a solicitor's license. Such procedure is prohibited by paragraph (1) of section 3656.143, which provides, inter alia, that no person shall act as solicitor without first procuring a license so to act.

Very truly yours,

ALAN BIBLE, Attorney General

OPINION NO. 46-349. County Commissioners—No Authority to Change Assessed Valuation of Property—Ely Water Company.

Carson City, August 27, 1946

HON. C.A. EDDY, *District Attorney, White Pine County, Ely, Nevada.*

DEAR MR. EDDY: This will acknowledge receipt of your letter dated August 8, 1946, received in this office August 12, 1946.

You request an opinion from this office as to the authority of the Board of County Commissioners to reduce the assessed valuation on certain property purchased by the city of Ely under circumstances disclosed by the following condensed statement of facts.

During the months of April, May, and June of the present year negotiations were had between the City of Ely and the Ely Water Company for the purchase by the city of the entire water rights, plants and facilities of the water company, and that the city on July 1, 1946, acquired the property and took possession thereof. That on August 5, 1946, the president and general manager of the company applied to the County Board of Equalization to reduce the assessed value of the property one-half for the reason that the city of Ely became the owner of the property as of July 1, and that the company should not be assessed for but one-half of the year.

We are of the opinion that the plant and equipment purchased by the city of Ely from the Ely Water Company is exempt from the State and county taxes covering the period from July 1, 1946.

The county commissioners as such have no authority under the statutes to change the assessed valuation of property. Such authority is vested in the County Board of Equalization and the State Board of Equalization, while acting in such capacities and within the periods defined by statute. The members of one board of county commissioners, therefore, acting as the County Board of Equalization could lower the valuation at their annual meeting. The authority of the board of county commissioners respecting changes in taxes is expressed by the court in the case of *State v. Central Pacific R.R. Co.*, 9 Nev. on page 89, as follows: "The only authority giving to county commissioners any power to reduce or in any manner change the taxes as assessed is vested in them as a board of equalization, and while acting in that capacity it was held in *State of Nevada v. The Board of County Commissioners of Washoe County* that they must literally comply with the plain provisions of the statute."

Under the provisions of the Constitution of Nevada and the statutes, the property of a municipal corporation is exempt from taxation. Article X, section 1, of the Constitution defining assessment and taxation, excepts municipal, educational corporations in the following language "*** and there shall be excepted such property as may be exempted by law for municipal, educational, literary, scientific or other charitable purposes."

Chapter 32, Statutes of 1945, being an Act to amend the Act to provide revenue for the support of the government provides, quoting that part deemed relevant, as follows, section 5, "All property of every kind and nature whatsoever within this State shall be subject to taxation except: First—All lands and other property owned by *** municipal corporations ***."

Section 6416 N.C.L. 1929, provides that every tax levied under the provisions of the Act shall be a perpetual lien against the property assessed until such taxes, penalty, charges, and interest which accrue thereon shall be paid.

Section 6415 N.C.L. 1929, provides that the board of county commissioners on the first Monday in March of each year fix the rate of county taxes and shall levy the State and county taxes upon the taxable property of the county. The Legislature at each session fixes the rate and tax levy for State purposes for the current and following year.

Section 6421 N.C.L. 1929, directs the county assessor, between the first day of January and the second Monday in July in each year to determine all property within the county subject to taxation and assess the same to the owner of such property.

Section 6434, 1929 N.C.L. 1941 Supp., provides for the board of equalization which is authorized to determine the value of the property assessed and may change and correct any valuation. Fixing the rate of taxation does not create a lien until the assessed value of the property is determined and a debt created.

State of Nevada v. Western Union Tel. Co., 4 Nev., on page 345, "When the assessment was made and the Board of Equalization had acted thereon, then an obligation immediately arose to pay the state the amount thus fixed."

State v. Manhattan S.M. Co., [4 Nev. 318](#), held that the levy of State taxes by the commissioners, though provided for in the revenue laws, is an idle ceremony for the reason that the levy is made by the Legislature.

The case of *City of Harlin v. Blair*, 64 S.W. (2) 434, a Kentucky case, was decided upon facts substantially the same as involved in the present question. The city of Harlin purchased on August 20, 1932, from the Harlin Public Service Company its water plant for the purpose of operating the same as a municipal plant and the proceeds derived from its operation were to be applied to the payment of the bonds issued for the purchase of the plant. At the time of the purchase the taxes for the year 1932 were in the hands of the tax collector for collection. The city tendered that portion of the taxes due for the year 1932 which would represent the proportional part of the State and county taxes due upon the plant covering the period from January 1, to August 20, which amount had been turned over to the city by the vendor for such purpose. The tax collector refused to allow the credit and release the city. The city filed an action to enjoin the officer from collecting taxes from the city for that portion of taxes that the assessment against the

water company's property had been made as of July 1, 1932, and that a lien for the taxes for the entire year had already attached. The lower court held that the lien would follow the property into the hands of such exempt purchaser. The appellate court reversed the decision of the lower court, holding as follows, "*** we are of the opinion that the appellant's water plant was, upon its purchase or acquisition by the city, a public property, operated for its municipal use; that it then became tax exempt, and the city was thereby relieved from liability for the payment of such prior lien tax, or in the instant case, of the proportional part of the state and county tax lien on the plant for the year 1932 as might be found ratably due for the period of August 20, to December 31, covered by appellant's ownership and possession thereof ***."

This rule has been applied in *Foster v. Duluth*, 140 N.W. 129; *State v. Snohomish County*, 128 P.667; *Smith v. Santa Monica*, 121 p.920; *State v. Locke*, 219 P.790.

Your second question involving the liability for taxes on property included in the purchase by the city and located outside the city, some of which is a part of the water supply system, and other property apparently independent of such system, will be answered under a separate opinion.

Very truly yours,

ALAN BIBLE, Attorney General

By: George P. Annand, Deputy Attorney General

OPINION NO. 46-350. Courts—Supreme Court—Stenographic Clerks Appointed by Court, Not by Individual Justices.

Carson City, August 28, 1946

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

Attention: Mr. William G. Gallagher, Deputy.

DEAR MR. SCHMIDT: This will acknowledge receipt of your letter of August 27, 1946, referring to the payment of salary to Mrs. Lucy D. Crowell, stenographic clerk in the office of Justice Ducker, deceased. The inquiry relates to the payment of salary to her since the death of Justice Ducker.

An examination of the statute authorizing the appointment of stenographic clerks for the Supreme Court discloses that the appointment is made by the Supreme Court and not by individual Justices. Section 8441, Nevada Compiled Laws 1929. This statute provides for the appointment of two stenographic clerks by the Court.

In addition to the two stenographic clerks the law provides for the appointment of an official reporter for the Supreme Court. Section 8439, Nevada Compiled Laws 1929.

As a practical matter, according to advise received from Chief Justice Taber, the official reporter also acts as stenographic clerk for one of the Justices while the two stenographic clerks are each assigned to a particular Justice although their work is interchangeable, and, as I am advised, a stenographic clerk entitled to a vacation may leave on a vacation and the other stenographic clerk take over her work so far as possible.

I am also advised, although this particular matter perhaps is not pertinent to an opinion, the stenographic clerk for Justice Taber contemplates taking her vacation shortly and Justice Taber intends to call in Mrs. Crowell during that interim.

It is my opinion that the stenographic clerks being appointed by the Court are not affected by the death of a particular Justice, but are entitled to remain in employment until such time as the Court itself sees fit to make a change or a different appointment.

Very truly yours,

ALAN BIBLE, Attorney General

OPINION NO. 46-351. Bowling Alleys—Licensing of—No Change in Law Since Opinion B-54, Report of Attorney General, July 1, 1940, to June 30, 1942.

Carson City, August 28, 1946

HONORABLE A.L. PUCCINELLI, *District Attorney, Elko, Nevada.*

DEAR AL: Your inquiry of today concerning the licensing of bowling alleys is acknowledged.

The opinion of this office on the above subject is Opinion B-54, Report of the Attorney General, July 1, 1940, to June 30, 1942, dated May 10, 1941, addressed to District Attorney Tapscott of Elko.

There has been no change in the State law concerning this question since that opinion was rendered. The section governing the license fee of bowling alleys is section 6664, Nevada Compiled Laws 1929. There has been no amendment of this section since the above opinion. A search of the biennial statutes fails to disclose any other law covering the question.

My regards.

Very truly yours,
ALAN BIBLE, Attorney General

OPINION NO. 46-352. Counties—Manager of County-Owned Telephone System May be Bonded Under Bond Trust Fund Act—Bookkeeper Does Not Come Within Provisions of Act.

Carson City, August 28, 1946

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

DEAR MR. McEACHIN: This will acknowledge receipt of the letter from the County Clerk of Churchill County submitted by you to this office August 24, 1946, in which request is made as to whether or not the manager and bookkeeper of the Churchill County-owned telephone system can be bonded by the State of Nevada.

We are of the opinion that the manager of the company may be bonded under the Bond Trust Fund Act, but that the bookkeeper is not such an official as to come within the provisions of the Act.

Chapter 128, Statutes of 1943, which amends section 3 of the Bond Trust Fund Act, provides for the bonding under the act of every State, county, and township official, and his or her deputy, and officials of incorporated cities and irrigation districts and their deputies in State required by law in his or their official capacity to furnish surety bonds or bonds. The statute uses the term county official which does not include a county employee.

See Words and Phrases, vol. 29, under Officer and Official citing *Anderson v. Industrial Commission*, 57 N.E. (2) 620, which holds "The word 'official' as used in Workmen's Compensation Act defining terms 'employed,' 'workmen' and 'operative' as including every person in service of State, county, city, etc., except any official thereof, means any one holding or vested with public office of State or any designated political subdivision thereof."

Officer, as defined in *State ex rel. Gibbs v. Martens*, 193 So. 835, holds if the powers and duties reposed in the incumbent of a position is such that exercises the functions of sovereignty, the incumbent is an "officer" regardless of the name by which he is designated.

Manager is defined in *Clemens Horst Co. v. Industrial Accident Commission of California*, 193 P. 105, as a person in the corporation's employ, either elected or appointed, invested with the general conduct and control of a particular place of business.

A bookkeeper, however, is not considered an official.

"A corporation's bookkeeper is not 'an official' within Workmen's Compensation Law * * * providing that notice of the injury may be given to any agent or officer of employer corporation on whom legal process may be served." *Cuccia v. John J. Roberts Contracting Co.*, 198 N.Y.S. 613.

Very truly yours,
ALAN BIBLE, Attorney General
By: George P. Annand, Deputy Attorney General

OPINION NO. 46-353. Taxation—Water Rights, Mains and Other Equipment of Water Supply System Located Outside City Limits Exempt—Ely Water Company.

Carson City, August 29, 1946

HON. C.A. EDDY, *District Attorney, White Pine County, Ely, Nevada.*

DEAR MR. EDDY: The following is our opinion on your second question contained in your letter received in this office August 12, 1946, requesting an answer, first, as to the authority of the taxing officials of the county to adjust the assessed value of a water-works system purchased by a municipal corporation, and second, the authority of the county to assess and collect taxes upon that part of the plant located outside the boundaries of the city. Also, the liability for taxation of ranch property within the county which was purchased at the time of purchase of the water system by the city.

Your first question was answered in our opinion dated August 27, 1946, and forwarded to you at your office.

In answer to your second question, we are of the opinion that the water rights, mains, and other equipment of the water supply system located outside the city limits are exempt from taxation under the Constitution and the Revenue Act.

Under your statement of facts the ranch is cultivated land, not operated by the city and forms no part of the water supply system. This property is, therefore, not exempt from taxation.

Article X, section 1, of the Constitution of the State of Nevada, which declares that the Legislature shall provide by law for a uniform and equal rate of assessment and taxation, contains the following language relative to exceptions: “* * * and there shall also be excepted such property as may be exempted by law for municipal, educational, literary, scientific, or other charitable purposes.”

Chapter 32, Statutes of 1945, which amends section 5 of the Revenue Act, respecting exemptions, quoting that part deemed relevant, reads: “All property of every kind and nature whatsoever within this State shall be subject to taxation except: First—All lands and other property owned by * * * municipal corporation, * * *.”

The Constitution provides for the exemption of such property as may be exempted by law for municipal purposes while the statute uses the language, all lands and other property owned by a municipal corporation. Reading the statute and the Constitution together on the same subject, purposes and ownership should be combined.

As stated in 61 C.J. 420 under exemption based on use and ownership, “In some jurisdictions the test of exemption is the ownership of the property; in others the test seems to be the use of the property; while in others it is both ownership and use.” There is less conflict in the decisions where ownership and use are considered together.

3 A.L.R. 1447 cites many cases from Kentucky, Maine, Massachusetts, New Jersey, Pennsylvania, Tennessee, and Vermont wherein it has been generally held “that a water works system owned and operated by a municipality is a public property devoted to a public use, and as such is entitled to exemption from taxation, and the fact that it is also a source of revenue does not affect its character.”

In *City of Eugene v. Keeney*, 293 P. 924, on page 925, the court said, “It is a well established general rule that the property of a municipal corporation used for public or corporate purposes is exempt from taxation by the State or county in which it is situated, whether the property is within or without the municipality by which it is owned. Where such public corporations are involved, exemption is the rule and taxation the exception. As to private ownership of property, the rule is reversed.”

Traverse City v. Blair, 151 N.W. 81 held, “That after, supplying its own direct municipal needs, the city furnished light or power to private parties, and received a revenue therefrom, in no way detracts from the municipal or public purpose for which such authorized public utility was owned and operated.”

Board of Commissioners of Summer County et al. v. City of Wellington, 72 P. 216, was a case where the city purchased a water works system from a company which formerly operated under a franchise from the city. The officers of the county undertook to impose taxes upon the plant owned by the city. The plant was located partly within and partly without the boundaries of the city. The court held that a water works plant owned and operated by a city is exempt from taxation, and the fact that water is furnished by the city to citizens and other consumers at prescribed rentals does not affect the exemption. Rule followed in *Alpha Tau Omega Fraternity v. Board of County Commissioners*, 18 P.(2) 573.

Section 1128 N.C.L. 1929, which is section 28 of the Act providing for the incorporation of cities, subdivision 39 to 44, which authorizes the city to purchase and maintain a water supply system, does not prohibit the supplying of water outside the boundaries of the city, and the ownership and purpose of use is not confined within the municipal limits by the Constitution or statute.

Exemptions based on use and ownership follow the rule expressed in 61 C.J. 420, section 456, which is, "Under constitutional and statutory provisions exempting property owned by municipal corporations and held for public or municipal purposes, municipally owned property, not used for public or municipal purposes is not exempt, * * *."

Therefore, it appears that the water rights, mains and other equipment of the city water works system located outside the boundaries of the city are not subject to taxation under the constitutional and revenue statutes, but the ranch property that makes up no part of the water system is subject to taxation. This property would come under the principle expressed in 3 A.L.R. 1454 in that lands leased to individuals are subject to taxation, the theory being that the tax is levied against the lessee and not against the municipality.

Very truly yours,

ALAN BIBLE, Attorney General

By: George P. Annand, Deputy Attorney General

OPINION NO. 46-354. Nevada Hospital For Mental Diseases—In the Event of Failure to Receive Bids for Construction of Cottage—Commissioners May Contract With Responsible Contractor Without Further Advertisement.

Carson City, August 30, 1946

MR. EDWARD S. PARSONS, *Architect, 210 West Second Street, Reno, Nevada.*

DEAR MR. PARSONS: Reference is hereby made to your letter of August 27, 1946, concerning the probable failure to receive bids for the construction of the Superintendent's cottage for the Nevada State Hospital for Mental Disease. It is noted that you are fearful that no bids will be received pursuant to your published notice to contractors. Your inquiry is, what shall be done in the event no bids are received.

As I advised you in my letter opinion of August 21, 1946, there is no statutory requirement that you advertise for bids for this particular purpose. On the other hand, you were advised that public policy, no doubt, dictates that such advertisements be had.

It is my opinion that in the event no bids are received pursuant to your notice to contractors, then public policy has been served in this particular instance and that by reason of the failure of contractors to bid for the construction of the cottage the board of commissioners may contract with any responsible contractor for the building of the cottage without any further advertisement of notice to contractors. Such is the general law even where a statute requires the advertising for bids in the first instance but where such statute does not specifically cover the reletting of the contract pursuant to advertisements in the event of failure to receive bids pursuant to the published advertisements in the first instance. Donnelly on Public Contracts, section 150.

Very truly yours,

ALAN BIBLE, Attorney General

OPINION NO. 46-355. Taxation—Commission Has Power to Require Budget Making Authorities to Change Individual Rates.

Carson City, August 30, 1946

NEVADA TAX COMMISSION, *Carson City, Nevada.*

Attention: R.E. Cahill, Chief Clerk.

GENTLEMEN: This will acknowledge receipt of your letter dated August 19, 1946, received in this office August 23, 1946, requesting an opinion as to the authority of the Tax Commission to require the budget making authorities to change the individual or particular tax rate submitted on the detail distribution of fund items in the budget, when such change is deemed proper by the Commission, and would not affect the availability of the actual amount of money listed under budget expenditures for the particular purpose.

We are of the opinion that authority for such change is given the Tax Commission under section 3012, 1929 N.C.L. 1941 Supp., and section 6544 N.C.L. 1929.

Section 3012, 1929 N.C.L. 1941 Supp., provides that the county commissioners of each county shall prepare a budget of the amount of money estimated to be necessary to pay the expenses of conducting the public business of the county for the current year and for the next following year.

The budget shall be prepared in such detail as to the aggregate sums and items thereof as shall be prescribed by the Nevada Tax Commission and shall in any event show certain details enumerated in the section. The budget shall be supported by distributions in such detail as shall be prescribed by the Tax Commission.

Section 6544 N.C.L. 1929, subdivisions 7 and e, empowers the Tax Commission to require boards of county commissioners to submit a budget estimate of the county expenses in such detail and form as may be required by the Commission.

Subdivision 8 provides, "The commission shall have, in addition to the specified powers enumerated, the power to exercise general supervision and control over the entire revenue system of the state."

Subdivision 7 was construed by the Supreme Court in *Las Vegas ex rel. v. Clark County*, [58 Nev. 469](#). On page 481 of the report the court said, "We think the provisions of said subdivision seven, considered in connection with the other provisions of the act heretofore set out, and its spirit and purpose manifest an intention to bring the county revenue system as well as the revenue system of cities, towns, municipalities, and school districts under review and final adjustment by the tax commission; and that this applies to rates as well as to the valuations and other matters connected with the machinery of raising revenue for their support."

It appears, therefore, that supervision over the detail items in the budget would extend to the individual rates involved.

Very truly yours,

ALAN BIBLE, Attorney General

By: George P. Annand, Deputy Attorney General

OPINION NO. 46-356. Insurance—Life Insurance Agent Cannot Receive Commissions for Soliciting Fire and Casualty Insurance Without First Being Licensed as a Solicitor.

Carson City, August 30, 1946

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

Attention: G.C. Osburn, Deputy.

DEAR SIR: Reference is hereby made to your letter of August 29, 1946, with respect to the second query propounded by you and answered in our opinion of August 27, 1946. Such query and opinion thereon relating to the matter stated in your letter of August 21, 1946, as follows:

Also, if fire and casualty agents could not pay commissions for the solicitation of this line of business to agents who are licensed by life companies without the requirement of solicitors' licenses.

In answering that particular query we advised that fire and casualty insurance agents "cannot pay commissions for the solicitation of their business to agents who are licensed by life insurance companies without the requirement of a solicitor's license" in that such procedure is prohibited by paragraph (1) of section 3656.143 N.C.L. Supp., 1931-1941.

You now state that you did not make yourself clear with respect to the foregoing question and you inquire whether an agent licensed by a life insurance company could solicit fire or casualty business, and then broker this business through a fire or casualty agent, and receive a commission from such agent.

Frankly, we think your last query is answered by our opinion of August 27, 1946, and that such life insurance agent could not receive a commission in the manner suggested by you without first being licensed as a solicitor. Such is the plain import of the law. We quote:

(1) No person, partnership, association, or corporation shall act as an agent, solicitor or nonresident broker without first procuring a license so to act from the commissioner. (Sec. 3656.143 N.C.L. 1931-1941 Supp.)

(2) An agent may pay money or commission for or on account of the solicitation or negotiation in this State of contracts of the kind or kinds enumerated in section 5 of article 1 of this act on property or risks in this State only to his duly licensed solicitor, a duly licensed nonresident broker or agent. (Sec. 3656.144, N.C.L. Supp., 1931-1941.)

In our previous opinion we pointed out that under the present insurance law a life insurance agent could not be licensed as a solicitor for fire and casualty insurance. It is the opinion of this office that your last query must be answered in the negative.

Very truly yours,

ALAN BIBLE, Attorney General

OPINION NO. 46-357. Taxation—Veterans Exemption.

Carson City, August 30, 1946

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

DEAR MR. GUBLER: In your letter of August 8, 1946, you ask an official opinion on the query number two contained in your letter of July 26, 1946. That query was:

In determining the four thousand dollars maximum valuation of property to ascertain the eligibility of a veteran to receive the one thousand dollars exemption, should the separate property and community one-half interest only of the veteran be computed or should the computation include the separate property of the veteran and the entire community estate of the veteran and his or her spouse?

In our opinion the first proposition above is correct. In other words, if the total separate property of the veteran claimant plus one-half of the community property of the veteran claimant and spouse, if any, is of the total value of \$4,000 or more, the \$1,000 exemption shall be denied.

This is based on our construction of the seventh subdivision of section 5 of the Revenue Act of 1891, as amended by Stats. 1941, page 22, unchanged by amendments of said section 5 of Stats. 1943, page 5, and Stats. 1945, page 22 (1929 N.C.L. 1941 Supp., sec. 6418; 1945 Pocket Part, sec. 6418). It would unreasonably limit eligibility for tax exemption to charge a veteran with ownership of all the community property of claimant and spouse. To so hold would impair the "present property right" and "vested interest" of a wife under the decision in the leading case of *Estate of Williams*, [40 Nev. 241](#); 161 P. 741. The *Williams* case settles community property law in Nevada and is not modified by the late case of *Nixon v. Brown*, [46 Nev. 439](#), 214 P. 524, on the general subject.

This office in its current report is recommending that the language of subsection 7 of section 5 of the Revenue Law be clarified and harmonized.

Very truly yours,
ALAN BIBLE, Attorney General

OPINION NO. 46-358. Public Service Commission—Railroad Employees Supplied With Free Transportation.

Carson City, September 4, 1946

HON. HAROLD O. TABER, *District Attorney, Washoe County, Reno, Nevada.*

DEAR MR. TABER: Reference is hereby made to your letter of August 31, 1946, inquiring whether certain railroads in Nevada entering into contracts for the construction, maintenance and repair of their roads and structures may provide therein for the free transportation for the employees of such contractors contracting for such work. You refer to section 6121 N.C.L. 1931-1941 Supp.

You do not state in your letter whether the railroads in question are wholly intrastate railroads or interstate railroads. If the railroads are interstate roads, we are of the opinion that the State statute has no application, but that the Federal statute upon the same subject would apply and, of course, any violations of the Federal Act would fall within the jurisdiction of the United States District Court for punishment and we think that it would be the problem of the United States Attorney to solve. In all probability your question arises on an interstate railroad and, if so, we suggest that it be submitted to the United States Attorney. The Federal statute is paragraph (7) of section 1, title 49, U.S.C.A. It will be noted that in such statute jurisdiction of offenses thereunder is the same as that provided for in sections 41, 42, and 43 of the same title, lodging the jurisdiction in United States courts.

You do not advise how the question presented arose. This is somewhat important from the prosecution standpoint on the part of the State as to whether the contracts are contrary to public policy, due to the fact that the contractor contracting with the railroad company is not contracting with such company for the purpose of common carriage, but is only contracting to perform certain work for the railroad company and if any of its employees were injured by being transported to the place of work, a serious question would probably arise as to whether the State was interested from a negligence standpoint. We make this observation due to the fact that the carriage of such employees would, undoubtedly, be in the nature of a private contract and not one of common carriage. We think this observation is warranted by the case of *Santa Fe Railroad Company v. Grant Bros.*, 228 U.S. 177, cited in your letter.

If the question presented by your letter relates solely to an intrastate road, then, of course, we think it would be governed by State law, but even so, we think the contract would still be one for private carriage and not as a common carrier.

Very truly yours,
ALAN BIBLE, Attorney General

OPINION NO. 46-359. Gambling—Construction of Term “Month” With Respect to Licenses—No Authority to Issue License For One Month.

Carson City, September 5, 1946

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

DEAR MR. BROWNE: Your letter dated August 28, received here August 30, 1946, asks the meaning of the words “month” appearing in secs. 3302-3302.16, 1929 N.C.L. 1941 Supp. You are aware, no doubt, of the fact that the law was amended in 1945 (Statutes 1945, p. 492).

Section 2 of the law (unchanged by amendment) fixes the fee schedule of licenses collected by the county officers. Card games are licensed “at the rate of \$25 per table” per month, payable three months in advance. These are licensed “independently of other games.” The words “at the rate of” are not repeated respecting other games and devices, but the license entitles the holder to conduct the game “for a period of three (3) months next succeeding the date of the issuance of

the license.” Licenses are issued and accounted for as in the case of other county licenses (*see* N.C.L. 1929, secs. 2037-2040).

As we construe the law a license issued September 10 would be good for three months next succeeding the *date* of issue. It would run from September 10 to December 10.

If the reference to the “date” of issue were not made by the statute, it is the rule that when “month” is used a calendar month is meant. This is one determined by looking at the calendar for the same date in following month. Words and Phrases, vol. 5 (3d series) 209. See, also, 26 R.C.L. “Time,” sec. 6 p. 733; *Greulich v. Monnin*, 45 N.E. (2) 212, 218, 219; Ex p. Neisler, 69 SW (2) 422, 423; *In re Custer*, 55 F(2) 718.

In the last case it is said, “The term ‘month’ in a statute ordinarily denotes the period terminating with the day of succeeding month numerically corresponding to the day of its beginning, less one.”

You will observe there is no authority to issue a license for one month.

Very truly yours,

ALAN BIBLE, Attorney General

By: Homer Mooney, Deputy Attorney General

OPINION NO. 46-360. Taxation—Veterans Exemption.

Carson City, September 5, 1946

HON. HAROLD O. TABER, *District Attorney, Washoe County, Reno, Nevada.*

DEAR MR. TABER: In your letter of August 22, received here August 23, 1946, you propound several questions respecting construction of subdivision 7 of section 5 of the Revenue Law (sec. 6418, 1929 N.C.L. 1941 Supp.).

You ask:

1. If a man and wife have each served in the armed forces and received honorable discharge, is each entitled to the \$1,000 exemption granted by the statute?

2. Would such couple be entitled to divide the property valued at \$8,000 so as to enable each to claim the exemption?

3. If a widow and her son jointly own property valued at \$10,000 would each be entitled to the \$1,000 exemption?

4. In the case of question 3 would the parties be able to apportion their joint property so that each would be eligible to claim the exemption?

In answering the above questions, two elements require consideration; first, whether the claimant is eligible to ask any exemption whatever and, second, to what property the exemption applies.

The answer to question 1 is in the affirmative.

As to question 2, husbands and wives may mutually transfer their separate property to each other or their interest in community property (not in fraud of creditors) but lacking a record of transfer each has his or her own separate property and his or her half interest in community property. Once spouse is eligible to the exemption he may spread it over all the community property as far as it will go.

As to question 3, a widow is entitled to spread the \$1,000 exemption over her own interest in property and a veteran to spread his \$1,000 exemption over his own interest in property.

As to question 4, eligibility depends on actual ownership of property worth less than \$4,000 in case of a veteran and \$6,000 in case of a widow (subdivision 6). In the absence of a record of transfer showing the respective joint interests in property each party would presumably own an undivided one-half interest in the whole. An affidavit at variance with the record title would be subject to scrutiny by the assessor.

Very truly yours,

ALAN BIBLE, Attorney General

By: Homer Mooney, Deputy Attorney General

OPINION NO. 46-361. Mines—Salary of Watchman for Patented Claims May Be Considered Exemption for Assessment Under Certain Conditions.

Carson City, September 9, 1946

NEVADA TAX COMMISSION, *Carson City, Nevada.*

Attention: R.E. Cahill, Chief Clerk.

GENTLEMEN: This will acknowledge receipt of your letter of September 6, 1946, requesting an opinion on the following subject:

STATEMENT OF FACT

Under the provisions of section 6593 N.C.L., as amended, patented mining claims are required to be assessed at a valuation of \$500 unless an affidavit is filed that \$100 in labor has been actually performed upon such patented mining claim during the calendar year for which the assessment is levied. John Doe has six patented mining claims assessed at \$500 each on the county tax roll. He has performed no actual work on the claims but he has hired a watchman to take care of valuable improvements and movable equipment on such claims. Upon the theory that the watchman is essential to preservation of the property, and his salary as watchman exceeds \$600, he has filed a claim for exemption upon the basis that the salary of the watchman is work performed upon the claims.

QUERY

Can the affidavit filed upon this basis be recognized, and exemption of the assessments on the six mining claims be allowed on the basis of such affidavit?

The assessment of patented mines for taxation (in addition to the net proceeds) was not directed until the amendment of 1906 to section 1 of article X of the constitution. The Act of 1915 was passed to carry out that direction (sec. 6593 N.C.L. 1929). That Act spoke of "\$100 in labor actually performed upon such patented mine." A form of affidavit was provided (sec. 6598) to set forth upon what the portion of the mine the labor was done.

By the amendment of 1933 the Act now speaks of "\$100 in development work actually performed upon such patented mine." (Sec. 6593, 1929 N.C.L. 1941 Supp.). Section 6598 respecting the form of affidavit is not materially changed by amendment (sec. 6598, 1929 N.C.L. 1941 Supp.).

It would seem that the change from "labor actually performed upon such patented mine" to "development work actually performed upon such patented mine" was made to liberalize the scope of the exception from taxation granted by the Constitution, or at least to guide tax collecting agencies as to the legislative understanding of the scope of that language as used in the Constitution. Strictly speaking, the Legislature could not liberalize the exception defined by the Constitution.

The problem, therefore, is to construe the constitutional exception "where one hundred dollars (\$100) in labor has been actually performed on such patented mine."

It seems apparent that when the Constitution was amended to provide conditions under which a patented mine might be exempted from taxation as such, it adopted the plan in the Federal mining laws for requiring assessment work to be done annually on possessory claims to hold them from year to year. When the amendment was made the Legislature and the people knew that if the work was directly calculated to develop the mine, its character was considered within the rule. In the later case of *Strattan v. Raine*, decided in 1921, 45 Nev. at 19; 197 P. 694 (cited *Porter v. Tempa M. & M. Co.*, [59 Nev. 332 at 338; 93 P\(2\) 741](#)), the court said:

Every case must stand on its own particular facts and the courts should be reluctant to accept the services of a watchman as applying on annual labor. In this case we do deem it necessary to determine whether the services of a watchman should be considered, since we think the other facts will justify the conclusion that there had been no forfeiture on January 26, the morning of the attempted location by appellant.

In notes at 14 A.L.R. beginning at page 1463 the subject is treated under the heading "Watchmen" (page 1468). *Strattan v. Raine* is digested and also *Hough v. Hunt* (Cal. 1902) from which case the Nevada court seems to have quoted. *Hough v. Hunt* states:

The cases must be rare in which it can justly be said that such money is expended in prospecting or working the mine. There may be cases where work has been temporarily suspended, and there are structures which are likely to be lost if not cared for, and it appears that the structure will be required when work is resumed, and that the parties do intend to resume work * * *.

A similar holding is found in *Altoona Quicksilver M. Co. v. Integral Quicksilver M. Co.* (Cal.), 45 P. 1047, and in 1907, *Kinsley v. New Vulture M. Co.* (Ariz.), 80 P. 438.

We do not believe it is the meaning of the constitution or of the statute as amended in 1933 that the expense of a watchman cannot in a proper case be counted to make up the \$100 worth of development work required to exempt each patented mine from taxation. Each case must stand on its own particular facts. A watchman employed while mining work was in full operation would do nothing to "develop" a mine. But, a watchman to guard workings and structures already done and in place, during a temporary cessation of operations, in a case where there was a definite intention to resume work in a reasonable time, might perform a distinct service in preserving the development from loss or deterioration. Of course, after patent the owner has a full, and not merely a possessory title, and that title cannot be taken away. Patented mines are subject to taxation and if it appears that a watchman is employed merely to establish a \$100 expenditure to relieve the mine from taxation and so to save the mine from being sold for taxes, the exemption should not be allowed. The entire theory of taxing patented mines is based on a desire to encourage the development of patented mines and prevent their being held idle to secure an unearned increment through a speculative or evident increase in the market price of mining ground in general.

We suggest the facts in each case as shown by affidavit be considered. Work to hold one claim should be \$100 and for more than one, multiples of \$100. It may all be done at one place or of one kind if for the benefit of all. A watchman's services should not be included in the computation unless they appear from the affidavit to be in guarding premises when work is temporarily suspended with a view to early resumption of operations. The truth of the affidavit is a matter for the commission to inquire into if necessary to satisfy itself as to the justice of the claim of exemption.

Very truly yours,

ALAN BIBLE, Attorney General

By: Homer Mooney, Deputy Attorney General

OPINION NO. 46-362. Health—State Board May Require Companies Selling Potable Water to Treat Same—State Board Has No Power to Require Treatment of Water Acquired for Irrigation Purposes.

Carson City, September 10, 1946

PUBLIC SERVICE COMMISSION, *Carson City, Nevada.*

Attention: Lee S. Scott, Secretary.

GENTLEMEN: I have considered the matters submitted by the Public Service Commission in its letter of September 5, 1946, supplemented by the letter of W.W. White, Director, Division of Public Health Engineering, of August 15, 1946, addressed to Fred Loe, State Health Officer, relating to the problem of the Sierra Pacific Power Company selling water along its canal for domestic service. Due consideration of the letters discloses that the principal question is whether the State Board of Health may require the Sierra Pacific Power Company to treat water from its Highland Ditch before serving it to customers, particularly where such customers seek to purchase such water for human consumption. Incidentally, it is disclosed by the communications that applications have been made to the power company for water for irrigation purposes and other domestic uses not including the domestic use of human consumption.

I think the problem is divided into two separate and distinct questions. One pertaining to the power of the State Board of Health to regulate the use of water for human consumption and, second, whether by such regulation it can control the use of water for irrigation and fire purposes.

An examination of the law discloses that the State Board of Health in 1939 was declared by the Legislature to be supreme in all health matters and to have general supervision over all matters relating to the preservation of health and life of citizens of the State. Section 5259 N.C.L. 1931-1941 Supp. Under this provision of the law the State Board of Health, I think upon issuing proper rules and regulations, may control the disposal of potable water by companies having water to sell insofar as it relates to human consumption. Section 10223 to sell insofar as it relates to human consumption. Section 10223 N.C.L. 1929, contains a prohibition against any person or company furnishing water for public or private use who shall knowingly permit any act or omit any duty or precaution by reason whereof the purity or healthfulness of the water supplied shall become impaired, shall be guilty of a gross misdemeanor. This section of the law, combined with the powers of the State Board of Health, in all probability gives the State Board of Health power to insist that water used for potable purposes, furnished by a company or any other person selling water, shall be pure and in the event it is not suitable for human consumption to, by proper regulations, require that it be made potable. Applying this rule to the instant question, I believe the State Board of Health may require the Sierra Pacific Power Company, where it disposes water for human consumption only, to see to it that such water is pure and not dangerous to human health.

A different situation, however, arises when the consumer makes application for water for irrigation purposes or for fire purposes. In that event, it is my opinion that the State Board of Health has now power to prevent the water company from delivering water for such purposes, even though it may be impure. Many years ago our Supreme Court held, without qualification, that water for irrigation was the life-blood of the State and most certainly, if the consumer needs such water for the purpose of raising crops, produce, and food supplies, then he cannot by reason of the impurity of the water be deprived of its use for such purposes.

From a perusal of the annexed letters it would appear that the persons making application to purchase the water in most instances require it for irrigation purposes. This being true I know of no law which would prevent such consumer from using water for potable purposes even though dangerous to his health. In the final analysis it seems to me that the instant inquiry can well be answered by the State Health Department in advising the proposed consumers that it would be extremely dangerous to health to drink such water, but that so long as it was acquired for irrigation purposes if they did drink such water, it would be at their own risk.

Very truly yours,

ALAN BIBLE, Attorney General

cc to Dr. Fred Loe.

OPINION NO. 46-363. Motor Vehicles—Drivers License Division—Stricklan Revocation.

Carson City, September 10, 1946

HON. ROBERT A. ALLEN, *Administrator of Drivers License Division, Carson City, Nevada.*

DEAR MR. ALLEN: This office has had before it for consideration, the file in the Frank N. Stricklan revocation matter. We have carefully studied this action and we are returning herewith your file in the case, together with our opinion as to the law governing the revocation or suspension of drivers' licenses.

A Nevada driver's license was issued to Stricklan July 12, 1945, for the period ending June 30, 1947.

On May 14, 1946, Stricklan was convicted of "Drunk Driving, Code Section 502" in the Justice Court, Truckee, California.

On June 20, 1946, Stricklan's California driver's license was suspended effective May 27, 1946, for thirty days with permission to apply for a license in the regular manner. Notification was sent the Nevada department on the same day, together with copy of conviction report and suspension notice. The letter stated the suspension was required by section 307 of the Vehicle Code.

On June 25, 1946, the Nevada department revoked Stricklan's Nevada license effective on that day for the period until June 25, 1947, and until a new license should be issued. Section 33(2) of the Nevada law was cited.

The question arises as to the application of the law as to this case.

The pertinent law is embraced in article IV of the "Uniform Motor Vehicle Operators' and Chauffeurs' Act" of 1941 (as amended by Statutes of 1943, page 268), and particularly sections 31-34, inclusive, (1929 N.C.L. 1941 Supp., secs. 4442.30-4442.33, inclusive).

On the subject of suspensions and revocations of operators' licenses, the law seems broadly divided respecting mandatory and permissive action relating to offenses against the laws of Nevada and those against the law of other States, respectively.

Section 31 authorizes, but does not require, the department to suspend or revoke a license of any resident upon receiving "notice" of the conviction of such person for a violation of the laws of another State, which offense would be grounds for the suspension or revocation of a license, if committed in Nevada. In such case the action is permissive.

Sections 32 and 33 provide in the case of an offense against the laws of Nevada the court shall forward a record of conviction to the department and if the conviction is for driving a motor vehicle while under the influencing of intoxicating liquor, the court shall take and forward the operator's license, and the department must revoke the license. In such case the action is mandatory.

Section 34 authorizes the department to suspend a license in certain circumstances. The action is not mandatory. The pertinent circumstance here is a showing in the records of the department, or by other evidence, that the licensee has committed an offense which would invoke the mandatory provisions of the law upon conviction. But the provision remains permissive.

Under subdivision (b) of the section, if a suspension be ordered, the licensee shall be notified immediately and on request afforded a hearing not more than twenty days after his request.

Upon that hearing (and not otherwise) the department is required to choose one of three final orders, *i.e.*, (1) to rescind the suspension, (2) to extend it, or (3) to revoke the license. It is not mandatory to choose the third order. The subdivision remains permissive.

It is to be noted that sections 32 and 33 it is made mandatory to revoke a license on receiving a record of conviction for violating a Nevada law.

It is to be likewise noted that the reception by the department of a mere notice of conviction for violating a law of another State does not require the Nevada department to revoke the resident's license. The section (31) is permissive only, in such case of foreign violation, and there is a double option, *i.e.*, to exercise the authority and, if so, to choose between suspension and revocation.

The department is an administrative body, not a judicial one. The offenses requiring mandatory revocation, as noted above, are upon conviction of a court of competent jurisdiction of this State and not determined by the department. Suspension or revocation by the department in all other cases is reviewable by a court of record. (In either case the person has his day in court.) *See* section 4442.38.

Penalties and forfeitures are not favored and will not be imposed unless the statutes so clearly direct. *State v. Brodigan*, [37 Nev. 488](#). Where the law is doubtful it is the duty of the court to adopt that construction which will be the least likely to produce mischief and which will afford the most complete protection to all parties. *Arnold v. Stevenson*, [2 Nev. 234](#).

It may be noted that section 502 of the Vehicle Code of the State of California denounces driving a vehicle upon any highway while under the influence of intoxicating liquor as a misdemeanor.

The suspension in the instant case was made under section 307(b) of the Vehicle Code to extend from May 27, 1946, to June 27, 1946, after which the former licensee had the right to apply for a California license "in the regular manner."

The disparity between the penalties invoked by the Nevada department and the California department is a strong argument for a construction of the Nevada law, if need be, to bring about comity and uniformity between the several States and especially as this is a law designed to promote uniformity of legislation between the States.

In our opinion the Nevada revocation should be rescinded. Despite the reliance of the Nevada department on section 33(2), its action was not made mandatory by that or any other section of the law. The order of revocation is to that extent irregular. It is further irregular in reciting that its records show the operator was convicted of "Drunk Driving" and there is no reference to any California law to explain that term. This office has previously pointed out that this expression should not be used as there is no such offense known to the law of Nevada.

If the department chooses, it may rescind the revocation and take no action. Or, it may make an order of suspension, grant a hearing, if requested, and make a final order. This final order could either be one of suspension or one of revocation.

Very truly yours,
ALAN BIBLE, Attorney General

OPINION NO. 46-364. Fish and Game Commission—County Commissioners Have Power to Entirely Close Hunting Seasons Within Specific Area Within County.

Carson City, September 11, 1946

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

Attention: S.S. Wheeler, Representative.

GENTLEMEN: This will acknowledge receipt of your letter of September 9, 1946, received in this office on September 10, 1946, requesting an opinion on the following question:

Can boards of County Commissioners, under the State Fish and Game Act, close any specific area within the county to hunting?

Section 67 of the Fish and Game Act, being section 3101 N.C.L. 1929, reads as follows:

The state fish and game commissioners are hereby authorized to divide the State of Nevada into such districts as they may find expedient with reference to hunting or fishing, and fix the dates for hunting or fishing in each of said districts within the limits provided in this act; *provided*, that the county commissioners of any county in this state may shorten or close the season entirely, and it shall be unlawful for any person to hunt or fish in any such district or county on any other day or days than may be designated by the fish and game commissioners or the county commissioners of any county affected.

A similar question was propounded to this office relative to the power of a board of county commissioners to close the fishing season on a portion of the stream within its county. The opinion of this office was that the county commissioners had such power. The opinion being based upon the language of the above-quoted statute. *See* Opinion 124, dated February 23, 1934, reported in Report of Attorney General, July 1, 1932, to June 30, 1934.

There has been no change in the law since the rendition of the foregoing opinion. We think that boards of county commissioners have the power to entirely close hunting seasons within a specific area within the county.

Very truly yours,
ALAN BIBLE, Attorney General

OPINION NO. 46-365. Taxation—Assessor May Place Houses of Boulder City on Real Property Roll—Tax in Quarterly Installments.

Carson City, September 12, 1946

NEVADA TAX COMMISSION, *Carson City, Nevada.*
Attention R.E. Cahill, Chief Clerk.

GENTLEMEN: This will acknowledge receipt of your letter of September 9, 1946, reading as follows:

We would appreciate your opinion on the following subject matter:

STATEMENT OF FACT

Property owners in Boulder City place their houses and other improvements on land owned by the U.S. Government which is leased to them. No assessment has been placed on the land but the improvements and personal property thereon are assessed to the owner thereof. To date this property has not been placed on the real roll that is turned over to the County Treasurer or tax receiver, but was assessed as personal property. This means that these taxpayers do not have the advantage of being able to pay their taxes in installments commencing the first Monday in December, as do those who do not own real estate, but must pay immediately as required by the provisions of section 6472, N.C.L. 1929.

QUERY

In your opinion would it be possible for the Assessor to place this property on the real roll certified to the County Treasurer as tax receiver, thereby allowing them the privilege of paying their taxes in the same manner as other owners of real property in the county?

This opinion is being requested for the State Board of Equalization which is required by law to complete its business on or before September 16, 1946.

The reading of section 6419 N.C.L. 1931-1941 Supp., discloses that houses and buildings placed upon land of the United States when used in the Revenue Act (N> 1929, as amended, secs. 6415-6528) are deemed to be real property. Such being the effect of our Revenue Law there could be, in our opinion, no objection to the Assessor placing such houses on the real property roll and permitting the payment of the tax thereon in quarterly installments as provided in the law.

Very truly yours,
ALAN BIBLE, Attorney General

OPINION NO. 46-366. Taxation—Lease-Hold Interests in Land Taxable.

Carson City, September 12, 1946

NEVADA TAX COMMISSION, *Carson City, Nevada.*
Attention: R.E. Cahill, Chief Clerk.

GENTLEMEN: Reference is hereby made to your letter of September 10, 1946, and also the letter of Thatcher and Woodburn of September 9, 1946, relating to protest of Horseshoe Cattle Company concerning the taxation of certain leased lands in Lander County, such lands belonging to the United States.

We think a short answer to the contention made by Thatcher and Woodburn is to be found in section 6419 N.C.L. 1931-1941 Supp. This section defines real estate and includes therein the following language: "The ownership, or claim to, or possession of, or right of possession to any lands in this State, and claim by or the possession of any person, firm or corporation, association or company to any land, the same shall be listed under the head of real estate." This section of the law beyond question provides for the taxation of a possessory right to land even though the land itself belongs to the United States. Section 6418 N.C.L. 1929, as amended at 1945 Statutes, page 42, provides: "All property of every kind and nature whatsoever within this State shall be subject to taxation," except, of course, the exceptions contained in the statute including lands and other

property owned by the United States. This language has been in the Revenue Law practically since the inception of the State.

The copy of the lease annexed to the letter of the Tax Commission shows beyond any question that the Horseshoe Cattle Company will have absolute possession of the land in question for a period of five years and that it will pay at least \$4,500 per year rental therefor. This lease provides for a possessory right to the land in question for that length of time. Our Supreme Court long ago in *State v. Central Pacific Railroad Company*, [21 Nev. 247](#), in discussing the statute, substantially the same as section 6419, supra, held that the possessory right to lands was subject to taxation even though the land itself could not be taxed by the State. Further, in *Wright v. Cradlebaugh*, [3 Nev. 341](#), the Supreme Court held that possessory rights to public lands are subject to taxation in this State.

The fact that the State has never taxed a lease-hold interest in land does not mean that the State cannot do so, and particularly so where the lease provides for actual possessory right to the land.

The conclusion should be that the State Board of Equalization should not strike this assessment from the tax roll. On the other hand, if the assessment is out of line with respect to valuation, particularly if the valuation indicates that the valuation was placed upon the land itself, it should be corrected.

Very truly yours,
ALAN BIBLE, Attorney General

OPINION NO. 46-367. Bonds—Clark County Educational District No. 2—Meet Requirements on Law.

Carson City, September 16, 1946

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

DEAR MR. GUBLER: Your letter of September 10, 1946, was received here on September 12, 1946.

You submit copy of letter to you from Messrs. Ham & Taylor, Attorneys, dated September 9, 1946, which contains a question relative to the issue of \$950,000 in bonds on behalf of Clark County Educational District No. 2. This question is raised by the successful bidder for the bonds.

The question is whether the issue and execution of the bond certificates in the name of the Board of Education of Las Vegas Union School District is in conformity with the law in such cases provided. In the alternative the question is whether the proper agency is not the Board of Education of Clark County Educational District No. 2.

We hold that the execution and issuance of the bonds by the Board of Education of Las Vegas Union School district on behalf of Clark County Educational District No. 2 fully meets the requirements of law.

As we understand it the personnel of both boards is identical. Both act in an avowedly official capacity. If there were any defect it would be in respect of "decriptio personnae" which is rarely fatal. In addition, District No. 2, receiving the benefit of the transaction could never deny liability on the ground of ultra vires. Even were the personnel not identical our opinion would remain unchanged.

Section 5 of the Union School District Act of 1925, as amended (Stats. 1927, page 118), provides that the Board of Education of said union district shall "have the power to issue bonds * * * on behalf of any school district included in the union * * *."

The Act dividing Clark County into educational districts (Stats. 1919, page 218) has been practically rewritten by the amendments made in 1945 (Stats. 1945, page 455). These changes became effective December 31, 1945.

Under section 1 of the original Act, District No. 2 was a high school district. Under section 2 of the Act, as amended in 1945, the following provision is found:

The control and government of the high schools in educational district No. 2 shall be vested in a board of education which shall have all the powers and duties of

any board of trustees of a school district or the board of education of a union school district in the State of Nevada, said board to be composed of five persons elected under the provisions of sections 5968-5970 N.C.L. 1929; *provided*, that until the next general election the members of the board of education of educational district No. 2 as at present constituted shall be the duly elected, qualified, and acting board of education of educational district No. 2. Vacancies which may hereafter arise in the board of trustees of educational district No. 2 shall be filled in accordance with the provisions of section 5970, N.C.L. 1929.

It will be noted that sections 5968-5970 N.C.L. 1929, comprise sections 2, 3, and 4 of the Union School District Law. But the declaration of a similarity in powers to that of "any board of trustees of a school district or the board of education of a union school district in the State of Nevada * * * elected under the provisions of sections 5968-5970 N.C.L. 1929," has its emphasis on "election" under those provisions and not on the powers of a union district. In other words, the power of a union district is not necessarily displaced in respect of issuing bonds "on behalf of any school district included in the union."

We feel that the language might have been made clearer. When newly elected members assume office and the district assumes full autonomy, the interpretation should be stricter.

If the purchaser remains in doubt after considering our opinion the bonds can be purchased as an investment of public funds of Nevada under our opinion (Stats. 1943, page 280) or the Legislature of 1947 may pass a special validating Act.

Very truly yours,

ALAN BIBLE, Attorney General

By: George P. Annand, Deputy Attorney General

OPINION NO. 46-368. Public Lands—Grants of—Constitutional [illegible] Authorize State Legislation Accepting Conditions of Grants Made by Congress.

Carson City, September 17, 1946

MR. VERNON METCALF, *Consultant to Central Committee, Nevada State Grazing Boards, P.O. Box 1429, Reno, Nevada.*

DEAR MR. METCALF: Your letter of September 4, 1946, reached here September 5, 1946.

You inquire whether the present constitutional and statutory provisions of Nevada are adequate to comply with and take full advantage of the conditions annexed to any grants or trusteeships of public lands of the United States in the event they are made by Acts of Congress or executive action.

It is my opinion that such power is an essential possession of every sovereign State. Furthermore, our Constitution contemplates the exercise of such power and where not self-executing the Constitution has been supplemented with considerable statutory law on the general subject. While powers delegated by law to the executive branch of the Federal Government may enable the changes indicated to be carried out in part at least, it is certain that Congress will be called on to pass enabling legislation. Such legislation generally contains requirements calling for formal acceptance and ratification by the States. This is the general course of procedure and the detail varies with the situations as they arise. Fundamentally, however, the State is competent to meet such problems and to a large extent this is declared by the Constitution and statutes presently existing.

An analysis of our Constitution and some statutes will give the picture.

The enabling Act of March 21, 1864, authorized the admittance of Nevada into the Union upon an equal footing with the original States. In addition, grants were made of lands for schools and public buildings and a percentage of the proceeds of public lands was pledged to the State for public roads and irrigation.

The preamble to our Constitution is followed by an "Ordinance" the third subdivision of which disclaims on the part of the people of Nevada "all right and title to the unappropriated

public lands lying within said territory and that the same shall be and remain at the sole and entire disposition of the United States.”

Article IX of the Constitution was amended in section 3 in 1916 and again in 1934. The latter amendment authorizes the State “pursuant to authority of the Legislature” to make and enter into any and all contracts necessary, expedient, or advisable for the protection and preservation of any of its property or natural resources, or for the purpose of obtaining the benefits thereof, however arising and whether arising by or through any undertaking or project of the United States or by or through any treaty or compact between the States or otherwise.

Section 3 of article XI of the Constitution was amended in 1912 and in 1916, devotes to educational purposes all lands granted or to be granted to the State by the United States. (This does not forbid the use of part of the proceeds for strictly administrative purposes. N.C.L. 1929, sec. 5532.)

The statute of 1885 provides for the selection and sale of lands granted to the State. Section 182 thereof added (Stats. 1925, page 107; N.C.L. 1929, sec. 5529). This was in view of a plan to obtain 30,000 acres of land by grant or by exchange and it is limited to 30,000 acres.

The Act referred to is a comprehensive one governing the selection and sale of public lands granted to Nevada by the United States. Practically all the pertinent legislation in this matter is in Vol. 2, N.C.L. 1929, pages 1537 and 1578, inc. This embraces special legislation adopted in 1911 concerning the Carey Act which has never been productive of great benefit.

We may say in general that legislation will probably be required to meet any new plans of Congress for the administration or disposition of the public lands. The Constitution is broad enough to support such legislation. Once public opinion is crystallized it should not be difficult to draft the necessary laws. Laws anticipating the problem are generally unsatisfactory although resolutions generally are helpful.

Very truly yours,

ALAN BIBLE, Attorney General

By: Homer Mooney, Deputy Attorney General

OPINION NO. 46-369. Taxation—Veterans Exemption—Widows and Orphans.

Carson City, September 18, 1946

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

DEAR MR. JEPSON: Your letter of September 13, 1946, reached this office September 14, 1946.

You inquire respecting section 5 of the Revenue Act of 1891, as amended (Stats. 1943, page 5; Stats. 1945, page 42), being 1929 N.C.L. 1941 Supp., sec. 6418, Pocket Part 1945.

You call attention to certain facts that must be recited by the affiant (claimant) before any exemption whatever can be granted.

In the case of widows and orphans, subdivision six provides that “no such exemption shall be allowed anyone the total value of whose property within the state exceeds six thousand dollars.”

In the case of a person who served in the armed forces in war and was honorably discharged, or who is now serving therein, subdivision seven requires claimants to make an affidavit “that the total value of all property of affiant within this state is less than four thousand dollars.”

This office has ruled that the “property” referred to is the “taxable” property. Opinion No. 244, dated December 4, 1945, to District Attorney of Clark County. For example, stocks and bonds are not counted because by the Constitution (sec. 1, art. X), they and mortgages “are deemed to represent interest in property already assessed and taxed, either in Nevada or elsewhere, and shall be exempt.”

Pursuing this thought that a mortgage is taxed when the property is taxed the assessed valuation for tax purposes as returned by the assessor is the test of value (not the owner’s “equity” in the property nor the sale value).

We also hold that if the affidavit of claimant appears to be untrue the assessor may reject it and leave the claimant to any remedy the law gives him—as, for instance, a petition for mandamus.

We have advised assessors heretofore that only a married claimant's half interest in community property is considered in computing value (in addition, of course, to any separate property).

Very truly yours,

ALAN BIBLE, Attorney General

By: Homer Mooney, Deputy Attorney General

**OPINION NO. 46-371. Veterans Administration—Certified Copies of Records
Furnished to Administration Without Charge.**

Carson City, September 27, 1946

MR. A.T. SPATZ, *Contact Officer, Veterans Administration, Reno, Nevada.*

DEAR MR. SPATZ: This will acknowledge receipt of your letter of September 24, 1946, received in this office September 25, 1946, respecting the furnishing to the Veterans Administration certified copies of public records required by the bureau to be used in determining the eligibility of veterans to participate in benefits made available by the United States through the Veterans' Bureau.

We are of the opinion that officials charged with the custody of public records shall furnish to the Veterans Administration, upon request, certified copies of such records without charge.

The Uniform Guardianship Acts, approved March 5, 1929, the same being sections 9548-9568, N.C.L. 1929, provides that it shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it, and also it shall be construed liberally to secure the beneficial intents and purposes and shall apply only to beneficiaries of the bureau.

Under definitions given in the Act, the term bureau means the United States Veterans' Bureau or its successor. The term benefits shall mean all moneys payable by the United States through the bureau.

Section 14 of the Act, being section 9561, N.C.L. 1929, reads as follows:

Whenever a copy of any public record is required by the bureau to be used in determining the eligibility of any person to participate in benefits made available by such bureau, the official charged with the custody of such public record shall without charge provide the applicant for such benefits or any person acting on his behalf or the representative of such bureau with a certified copy of such record.

Under the definition contained in the Act and its policy of liberal construction to secure the beneficial intents and purposes to beneficiaries of the bureau, the section above quoted cannot be interpreted to apply to records in guardianship matters exclusively.

This Act read in connection with section 6875, N.C.L. 1929, which provides that no fee or charge shall be made by any state, county, or township officer of this State for administering oaths or certifying or acknowledging any paper for United States pensioners in any matter pertaining to their pensions is indicative of the intent of the Legislature that the fees established by statute to be charged by officers on charge of public records does not apply to certified copies of such records required by the Veterans Administration or beneficiaries under laws administered by that bureau.

Very truly yours,

ALAN BIBLE, Attorney General

By: George P. Annand, Deputy Attorney General

**OPINION NO. 46-372. Elections—Justice of Supreme Court—Two Nominating
Petitions to Fill Vacancy on Election Ballot Can Be Received to at Least 15
Days Before November Election.**

Carson City, September 27, 1946

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

DEAR MR. McEACHIN: Your letter dated September 23, reached this office September 25, 1946.

You ask if you may properly assume that no further nonpartisan nominating petitions can be filed to fill the vacancy on the Supreme Court caused by the death of Judge Ducker, in view of the fact that a petition has been filed on behalf of Judge Eather.

You indicate that on an affirmative answer you will proceed to certify the nomination (with others) to the respective county clerks pursuant to section 33 of the General Election Law (sec. 2470, N.C.L. 1929, as amended, Stats. 1943, p. 103).

The answer is in the negative. Section 25 of the Primary Law provides:

“In the event of vacancies in nonpartisan nominations, the vacancy shall be filled by the person who received the next highest vote for such nomination in the primary for such office. If there shall be no such person then the vacancy may be filled by a petition signed by qualified electors equal in number to five percent of the total vote cast for Representative in Congress at the last preceding general election in the county, district, or State, as the case may be. Such petition shall be filed on or before fifteen days before the November election.” (Sec. 2429, N.C.L. 1929.)

A similar situation was presented in the case of *State ex rel. Penrose v. Greathouse*, [48 Nev. 419](#). District Judge Hart died October 12, 1924, while serving a term to expire by time on January 1, 1927. A general election was to be held by law November 4, 1924. The Secretary of State declined to file a nominating petition presented to him under section 25 of the Primary law on October 17, 1924.

The Supreme Court ruled that the petition be filed by an order made October 22, 1924. Formal opinion was filed February 19, 1925.

It appears from the opinion that Judge Kenny who occupied the office after Judge Hart's death under a commission from the Governor, also filed a nominating petition so that if Judge Guild's name was placed on the ballot for the November 4 election, Judge Kenny's name would likewise be so certified and printed. This was stipulated and the court made no objection. The record does not disclose when Judge Kenny's petition was filed but like Judge Guild's it was probably filed more than fifteen days before November 4. However, after the court decided the matter only thirteen days remained to prepare the ballots. The court held that a vacancy in office caused by death is a vacancy in nomination to be filled by petition.

The court did not expressly decide the question here presented. By implication it approved two petitions. The court said:

“Assuming for example that *more* than two persons should be nominated by petition to fill a vacancy for an unexpired term, which of such nominees should have a place upon the general election ballot?”

“We express no opinion upon the subject but suggest that the question is one worthy of the attention of the legislature * * *.”

The court therefore contemplated that two petitions were covered by the law reserving decision on *more than two*.

As to your “immediate” duty under section 33 of the General Election Law we hold this means “as soon as may be.” The former provision was thirty-five days before the general election. It now is “immediately following the primary election.” Even here the officer must wait for a canvass of the votes cast at the primary.

In the Greathouse case notwithstanding the thirty-five day law, the Secretary of State certified the nominations after October 22.

Until the Legislature changes the law, this office cannot change it. Two petitions can be received and must be filed if presented at least fifteen days before the November election.

The law certainly should be changed to cover the problem presented by your question. Both the Supreme Court and this office have recommended changes. However, until the law is amended we must abide by the Supreme Court's decision.

Very truly yours,

ALAN BIBLE, Attorney General

By: Homer Mooney, Deputy Attorney General

OPINION NO. 46-373. Elections—Death of Candidate After Primary Election—Party Committee Can Designate Candidate in Lieu of Dead Person for November Election.

Carson City, September 30, 1946

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

DEAR MR. KRICK: This will acknowledge receipt of your letter of September 12, received in this office on September 13, 1946.

The facts of your letter disclose that at the time of the September primary there were two Republican candidates for State Senate. There were no Democratic candidates nor Independent candidates. Because of this fact the two Republican candidates were not required to run in the primary election. After the primary election one of the candidates for State Senate died.

You now ask—is there a vacancy on the Republican ticket which can be filled by the Republican party.

It is the opinion of this office that in such a situation as is presented by your facts that the law and public policy of the State permit the selection of a candidate to fill the vacancy caused by the death of one of the Republican candidates. The time has long since expired whereby an Independent could file his petition. Likewise no Democrat having filed prior to the September primary, such party now in my opinion has no standing in the matter.

We realize, of course, that the problem presented involves very substantial rights, particularly to the one remaining candidate now seeking the office of State Senator. Because of the importance of the problem, we think that it might be well if those vitally interested would seek a final decision from the Supreme Court of the State.

Our decision is based upon section 2425, Nevada Compiled Laws 1929, 1941 Supplement, read in connection with section 2429 Nevada Compiled Laws 1929. We likewise have the benefit of the Court expressions from the Supreme Court of our state in the cases of *Riter v. Douglas*, 32 Nevada, page 433; *Ex rel. McGill v. Oldfield*, 48 Nevada, page 264; and *Penrose v. Greathouse*, 48 Nevada, page 419.

Section 2425, Supplement, provides in part as follows: "*provided*, that if only one party shall have candidates for an office or offices for which there is no independent candidate, then the candidates of such party who received the highest number of votes at such primary (not to exceed in number twice the number to be elected to such office or offices at the general election) shall be declare the nominees of said office or offices; *provided further*, that where only two candidates have filed for a partisan nomination for any office on only one party ticket, and no candidates have filed for a partisan nomination on any other party ticket, for the same office, to which office only one person can be elected, the names of such candidates shall be omitted from all the primary election ballots, and such candidates' names shall be placed on the general election ballots."

Am Jur. vol. 18, p. 179, defining the meaning of the term election, recites the following rule:

"An election may be broadly defined as the expression of a choice by voters of a body politic, or as otherwise expressed, it is the means by which a choice is made by the electors."

It appears from section 2425, *supra*, that the Legislature intended that a choice of persons in the candidates for office should be offered the electors whether or not there was a choice in a political party.

The first part of the section quoted provides for a situation wherein only one party has candidates for an office. In that event the candidates, not to exceed in number twice the number to be elected, who receive the highest number of votes at the primary election shall be declared the nominees for the office. Thus, if one party had three candidates for an office to which only one person could be elected the primary election would determine that two out of the three should be named at the primary as nominees, not of the party, but nominees for the office, thereby supplying the electors at the general election an opportunity to express a choice.

This intention is supported by the further provision in the section which authorizes the placing of the names of two candidates on the general election ballots when only two candidates on one party ticket have filed and no candidates have filed on any other party ticket.

The names of the two Republican candidates in the question presented were by statute omitted from the primary ballot, and the two names would have been placed on the general election ballot as nominees for the office.

After the holding of the primary election one of the candidates for the office died.

Is there then such a vacancy occurring after the holding of the primary as to come within the provisions of the statute for filling such vacancy?

Section 2429, N.C.L. 1929, provides in part as follows: "Vacancies occurring after the holding of any primary election shall be filled by the party committee of the county, district or state, as the case may be."

In the case of *State v. Irwin*, 5 Nevada 111, the court held that there was no technical or peculiar meaning in the word vacant; that it means empty, unoccupied, without an incumbent.

By operation of the statute the names of the two candidates of the same political party should be placed on the general election ballot, but due to the death of one there would be only the name of the one candidate placed on the ballot. As the statute contemplates that candidates of the same party, not to exceed in number twice the number to be elected to the office shall be declared the nominees of said office when there are no other candidates for the office, it follows that upon the death of one of the two candidates, there would be a candidacy in the Republican party that was unoccupied and therefore a vacancy after the holding of the primary election that could be filled as provided in section 2429, supra.

In the case of *Stewart v. Polley*, 137 N.W. 565; 143 A.L.4. 999, under a statute that used the words "after a nomination as a party candidate has been made," it was clear that the main purpose of the Legislature in enacting the primary law was to take the making of all nominations out of the hands of conventions and political central committees, and require that the people themselves, by their direct vote, should name party nominees; and that the only vacancies contemplated by the Legislature to be filled by conventions or central committees were such as might occur after the people themselves had made nominations, and vacancies therein had occurred by death, resignation or otherwise. It was decided on the basis of the clause "after a nomination as party candidate had been made." In the case of *Curryea v. Wells*, 138 N.W. 165, the court distinguished this case upon a statute that did not contain such a limitation, but used the word "occurred" (the same as the Nevada statute) and held that the word must be given its ordinary meaning and that if after a primary there was a vacancy it had occurred within the meaning of the statute.

Riter v. Douglass, 32 Nevada on page 433, the court held that a primary election is not an election of officers within the constitutional test; indicating that if so construed it would be unconstitutional.

Chapter 43, Statutes of 1913, section 22 (sec. 2425 N.C.L. 1929) provided that in case there is but one person to be elected to a nonpartisan office, any candidate who receives at the primary election to such office a majority of the total votes cast for all candidates for such office shall be the only candidate for such office at the general election.

The Supreme Court, construing this section in the case of *Ex rel. McGill v. Oldfield*, 48 Nevada, on page 264, held that the intention of equivalent to an election to such office, under the conditions prescribed.

This case was decided October 1924, and on March 21, 1925 the Legislature amended this section to read in case of a nonpartisan office to which only one person can be elected, the two

candidates receiving the highest number of votes shall be the nominees; also when but two candidates have filed for an office to which only one can be elected, the names of such candidates shall be omitted from the primary ballot and shall be the nonpartisan nominees for such office.

The plain purpose of the Legislature in enacting the statute was to remove any intention to make a nomination at a primary election equivalent to an election to office, and to provide an opportunity for each political party to name its candidate.

Very truly yours,

ALAN BIBLE, Attorney General

OPINION NO. 46-374. Nevada Hospital for Mental Diseases—State Not Responsible for Personal Loss By Fire—Board May Provide Living Quarters for Superintendent Outside Hospital—Insurance Paid to State and Placed in General Fund.

Carson City, October 2, 1946

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

DEAR MR. TILLIM: This will acknowledge receipt of your letter dated September 27, 1946, received in this office September 30, 1946, requesting an opinion on the following questions:

1. Whether any responsibility for the hospital exists in the event of personal loss for employees of the hospital who are given subsistence and quarters as part of their remuneration, and in any event, whether compensation for loss by fire is permissive if the loss by fire is partly or in whole reimbursed by insurance for the State.

2. Where the statute provide that living quarters, household provisions, supplies and other facilities and accommodations as are available at the hospital shall constitute part of the remuneration, the board wishes to know if it would be proper to consider compensation in lieu of such extra services when, by reason of fire, the facilities intended were destroyed, specifically whether the hospital board may make reasonable allowance for essential extra costs to the Superintendent in maintaining a level of household commensurate with his position. It also wishes to know whether acquisition of proper housing accommodations, such as an apartment or house would be proper expense against the general support operations of the hospital.

3. The substance of this question is—Will the money received by the State from the insurance on the building destroyed by fire be credited to the hospital fund for repairs and equipment and can it be applied toward the cost of installing certain fire-escapes, which the board considers necessary, and for other purposes of construction rather than the rebuilding of the Superintendent's house.

The answer to your first question must be in the negative as we cannot find authority in law or equity that places responsibility upon the State to pay for the loss of personal property of State officials or employees.

In answer to your second question we are of the opinion that the authority of the hospital board must be restrained within the limitations of the statute, insofar as the facilities and accommodations are reasonably available.

Section 6, chapter 154, Statutes of 1945, relating to the employment of a superintendent for the Mental Hospital reads in part deemed relevant as follows:

The superintendent shall live at the hospital in quarters to be furnished, shall devote his full time to his position, and not engage in private practice, and shall receive as an annual compensation therefor the sum of five thousand (\$5,000) dollars per year, and in addition thereto shall be entitled to living quarters and household provisions and supplies and such other facilities and accommodations as are available at the hospital.

The unqualified provisions of the statute are that the Superintendent shall live at the hospital in quarters to be furnished, he shall devote his full time to his position and not engage in private

practice and shall receive a salary of \$5,000 per year. The equivocal or contingent provision is that in addition to such salary he shall be entitled to living quarters, household provisions, supplies, facilities and accommodations as are available at the hospital.

The living quarters of the Superintendent at the hospital were destroyed by fire. If there are no living quarters available for the Superintendent at the hospital, then the hospital boards has authority under the circumstances to furnish living quarters for the Superintendent outside the hospital, and this would be a proper charge against general support.

The definite purpose, as expressed by the Legislature is that the Superintendent shall live at the hospital, and the exception under the circumstances cannot be extended to authorize the hospital board to acquire permanent housing accommodations outside the hospital or increase the compensation of the Superintendent to maintain, as suggested, a level of household commensurate with his position.

The answer to your third question is in the negative.

State buildings are covered by blanket or group insurance, the premiums on which are paid by the State from appropriations for that purpose. The loss, if any, is paid to the State and placed to the credit of the General Fund.

Respecting the general problem of fire hazards and other purposes of construction, sufficient money may be obtained from the appropriation to be expended by the Board of Hospital Commissioners under chapter 125, Statutes of 1945, which made available \$25,000 for use in making repairs to buildings and replacing equipment at the hospital. In this connection, see our letter to you of July 3, 1946, dealing with the various sources which can be used for this purpose.

As you know, the Legislature will convene within a few months and matters which are not specifically provided in the statute, and pay desirable changes in the administration of the hospital should be presented to the Legislature for consideration and appropriate action.

Answer to your fourth question has been delayed pending receipt of further information as requested by our letter to you of today.

Very truly yours,

ALAN BIBLE, Attorney General

By: George P. Annand, Deputy Attorney General

OPINION NO. 46-375. Elections—Secretary of State Authorized to Give Final Certifications for Nominations for General Election as of the Final Date of October 21, 1946.

Carson City, October 4, 1946

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

DEAR MR. McEACHIN: This will acknowledge receipt of your letter of October 3, received in t his office on the same date, respecting an opinion from this office under date of September 27, 1946.

Our opinion of September 27 specifically answered your question to the effect that nonpartisan nomination petitions to fill the vacancy on the Supreme Court of this State caused by the death of Judge Ducker could be filed if presented to you at any time 15 days before the November election. You obviously could not make a final certification of all the candidates until that day had passed. We so held then and so hold now. Likewise, your letter of October 1, 1946, to the County Clerk was entirely correct.

Honorable Elwood Beemer, County Clerk of Washoe County, now makes the suggestion that it might be possible to have a certification by you of all names now filed, with the understanding that the certification will not become final until October 21, 1946. Mr. Beemer has stated that this would enable the printers to get their type and forms all set and ready before October 21, in order that immediately after the deadline the printing could begin. If the printers are able to set up their ballots or poll books in such a manner as to leave a space for the possible inclusion of another candidate for the Supreme Court, we can see no legal objection whatsoever against proceeding in this manner. In short, the law outlined in our letter of September 27, 1946,

reaffirmed in your letter of October 1, 1946, is still absolutely correct and there is nothing in there which will in the slightest prevent you from cooperating with the County Clerks by sending them the certificates of nomination for the general election, with the express understanding that they will not be final until October 21, 1946.

If you so desire we see no reason at all why you cannot cooperate in this manner. We believe that if you will mail a copy of this opinion to each of the County Clerks that it will be of material assistance to them and that it will likewise very definitely conform with the former opinions both of this office and your office.

Very truly yours,
ALAN BIBLE, Attorney General

**OPINION NO. 46-376. Elections—Hospital Trustees Are Nonpartisan Officers—
Names Placed on Ballot Under Election Law Relating to Nonpartisan Offices.**

Carson City, October 7, 1946

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

DEAR JUDGE WINTERS: This will acknowledge receipt of your letter dated October 2, 1946, received in this office October 3, 1946

You state that after the approval at the election of the resolution by the county commissioners for a bond issue to establish a public hospital, the commissioners appointed a board of five trustees to carry out the establishment of such hospital. You refer to section 2226, 1919 N.C.L. 1941 Supp., which provides that such trustees shall hold their offices until the next general election.

(1) Does this section require the names be placed on the ballot for the offices of hospital trustees in the coming general election in November?

(2) If these offices must be filled by the next general election, what procedure is necessary to put their names on the ballot?

(a) Is it necessary for those desiring to run to obtain a petition signed by five percent of the total vote cast for representative in Congress at the last preceding general election in this county?; or

(b) If this not be necessary, is there any way in which the appointments by the County Commissioners may be construed as nominations of the prospective candidates?

(3) If it is necessary that these officers be chosen in the coming general election are they required to pay the filing fee necessary in filing nomination papers?

We are of the opinion that these officers come within the provisions of section 2429, N.C.L. 1929, which defines the procedure for the filling of vacancies in nonpartisan offices occurring after the primary election. Trustees of the hospital are declared in section 2226, 1929 N.C.L. 1941 Supp., to be nonpartisan officers.

There are no nominees for the office of hospital trustee and the vacancy may be filled as provided in section 2429, N.C.L. 1929, which requires a petition signed by qualified electors equal in number to five percent of total vote cast for representative in Congress at the last general election in the county.

Section 2227 N.C.L. 1929, provides that no trustee shall receive any compensation for his services, but he may be reimbursed for any compensation for his services, but he may be reimbursed for any cash expenditures actually made for personal expenses incurred as such trustee.

Section 2410, N.C.L. 1929, provides that no filing fee shall be required from a candidate for an office the holder of which receives no compensation.

Very truly yours,
ALAN BIBLE, Attorney General
By: George P. Annand, Deputy Attorney General

OPINION NO. 46-377. Railroads—Issuance of Passes to Employees of Contractors Not Permitted.

Carson City, October 15, 1946

HONORABLE HAROLD O. TABER, *District Attorney, Reno, Nevada.*

DEAR TABE: This will acknowledge receipt of your letter of September 24, 1946, received in this office on September 27, 1946, concerning the issuance of free transportation by railroads to the employees of contractors.

This office has carefully studied the problem which you present and we agree with you that in view of the fact that the Federal Act deals only with interstate trips that a State does have the right to regulate the issuance of passes by an interstate carrier for intrastate transportation.

The pertinent section of the Nevada law dealing with your question is section 6121, N.C.L. 1931-1941 Supp., which insofar as it deals with your question reads as follows:

It shall be unlawful for any person, firm, or corporation engaged in business as a common carrier to five or furnish * * * other than those named herein, any pass * * *; *provided, however,* that nothing herein shall prevent the carriage of the equipment of a contractor under contract with a common carrier for use under such contract, * * * or prevent the exchange of passes with officers, attorneys, or employees of other railroads * * *.

It appears clear to us that under this law governing the issuance of passes to railroads within the State that the issuance of passes to employees of contractors is not permitted. Obviously the employees of contractors are not officers or employees of other railroads and would not come under this exchange provision.

In addition and as you have previously noted, although the section relating to your question provides that equipment of a contractor may be transported free of charge, it does not mention the employees of such contractor.

Accordingly, it is our opinion as a strict legal proposition that an interstate railroad company issuing free intrastate transportation to employees of contractors would constitute a violation of section 6121 and you undoubtedly would have the right as District Attorney of Washoe County to bring suit for such violation.

My regards and best wishes.

Very truly yours,
ALAN BIBLE, Attorney General

OPINION NO. 46-378. Warrants, State—Board of Examiners Authorized to Require Controller to Issue New Warrant in Lieu of One Lost.

Carson City, October 15, 1946

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

Attention: William G. Gallagher, Deputy.

DEAR SIR: This will acknowledge receipt of your letter dated October 11, 1946, received in this office on the same date, requesting an opinion respecting the issuance of another warrant by the State Controller under circumstances wherein warrants issued by the Controller and cashed at a branch bank were lost in transit to the bank upon which such warrants were originally drawn.

It appears from the statement contained in the letter from the bank, inclosed in your letter to this office, that the warrants in question are more than ninety days old and therefore have been canceled by your office as provided by statute.

We are of the opinion that the bank which cashed the warrants within the ninety-day period may proceed as provided in section 7372, N.C.L. 1929, and file with the State Board of Examiners an affidavit setting forth the details necessary to identify the warrants together with the reasons for the failure to present such warrants for payment.

If the State Board of Examiners is satisfied that the original warrants are lost or destroyed and that the claim has not been paid by the State, the Board may authorize the Controller to issue other warrants in lieu of such original warrants payable to the bank entitled as holder for value to receive the amounts of the claims.

Section 7372 N.C.L. 1929, provides that all Controller's warrants issued in payment of claims against the State shall become void if not presented for payment to the State Treasurer within ninety days from the date of issuance, and all such warrants remaining unpaid after the expiration of said ninety days shall be canceled by the Controller and the State Treasurer shall be immediately notified and he shall pay no warrants presented more than ninety days from the date of issuance.

The warrants in question were not presented to the Controller within the ninety days and are therefore canceled and payment stopped.

The above-cited section contains the provision that the person or persons in whose favor such warrants may have been drawn may within one year from the date of the original warrants file with the State Board of Examiners an affidavit setting forth the reasons for the failure to present such warrants for payment and that such warrants are not to the knowledge of affiant held by any other persons, and the Board of Examiners, if it is satisfied that the original warrants are lost or destroyed and the claim has not been paid by the State, may authorize the Controller to issue other warrants in lieu of such original warrants.

The original payee named in the warrant has no claim against the State. The warrant was drawn on a certain bank in favor of the payee or order of such payee and is a negotiable instrument.

Section 4495, N.C.L. 1929, section 25 of the negotiable instrument law, provides where value at any time has been given for the instrument the holder is deemed a holder for value in respect to all parties who became such prior to that time.

Very truly yours,

ALAN BIBLE, Attorney General

By: George P. Annand, Deputy Attorney General

OPINION NO. 46-379. Welfare, State Department—State Board Has Authority to Lease Office Space For.

Carson City, October 16, 1946

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

DEAR MRS. FRANKE: This will acknowledge receipt of your letter dated October 2, 1946, received in this office October 4, 1946, requesting an opinion as to the authority of the State Board of Relief, Work Planning and Pension Control to enter into a contract of lease for office space for the Nevada State Welfare Department and if so, whether there is any limitations as to the specified length of time.

We are of the opinion that the State Board of Relief, Work Planning and Pension Control has the implied authority under the statute to enter into a contract of lease to provide office space for the State Welfare Department and that the period of such lease may extend beyond the term of office of the members of the board.

The proposal to make such a lease should be submitted to the State Board of Control, which, under the statute, is empowered to lease office rooms for State officers whenever there is insufficient space in the Capitol building.

Section 5151.01, 1929 N.C.L. 1941 Supp., creates the State Board of Relief, Work Planning and Pension Control.

Section 5154.52, 1929 N.C.L. 1941 Supp., creates the State Welfare Department, which shall consist of the State Board of Relief, Work Planning and Pension Control which is authorized to exercise direct supervision of the administration of old-age assistance or pensions and such other welfare activities and services as may be vested in it by law.

Section 5154.53, 1929 N.C.L. 1941 Supp., as amended by chapter 87, Statutes of 1943, which outlines the duties of the State Board of Relief and its authority to supervise the State Welfare Department does not designate the place where the State boards shall meet, nor any particular location wherein the administration of the State Welfare Department shall be lodged.

The Legislature makes a biennial appropriation to provide for the necessary expenses of the Welfare Department and office rent would be included in such expense. The statute does not specifically authorize the State Board or State Department to enter into a contract of lease for this purpose, but if such lease is in the nature of a business transaction for the better administration of the service, such authority will be implied as a necessary pore to effectively carry out the purpose of the law. Such a rule of construction is approved by the Supreme Court of this State in the case of *State ex rel. Hinckley v. Court*, 53 Nev. on page 352, expressed as follows: "It is a well known rule of statutory construction that, whenever a power is given by statute, everything lawful and necessary to the effectual execution of the power is given by implication of law."

The State Board, therefore, has authority to lease office space for the State Welfare Department and administration of the Division of Old-Age Assistance.

The limitation as to the period of time for which a lease may be made involves the power of public officers to enter into contracts which extend beyond the term of their offices.

43 Am. Jur., sec. 292, page 101, relating to contracts extending beyond the term of office, recites: "The power of the public officers to enter into contracts which extend beyond the term of their offices depends primarily on the extent of their authority under the law. A distinction has been drawn between two classes of pores, governmental or legislative and proprietary or business. In the exercise of the governmental or legislative powers, a board, in the absence of statutory provision, cannot make a contract extending beyond its term. but in the exercise of business or proprietary powers, a board may contract as an individual, unless restrained by statutory provision to the contrary." The same principal is expressed in 70 A.L.R. 794 and annotations.

Securing premises under lease for occupance as an office from which to administer the work of the department, under supervision of the State Board, would not be of a nature to limit or diminish the efficiency of those who may succeed the incumbents of the present State Board.

The acquiring of a leasehold by a contract extending beyond the term of office of members of the Board would come under its proprietary or business powers and such power is not directly restrained by statute.

As stated in 70 A.L.R., page 796: "If the contract is fair and just and reasonable and prompted by the necessity of the situation, or was in its nature advantageous, then such a contract will not be construed as an unreasonable restraint upon the powers of succeeding boards."

The only statute which might be construed as a restraint of the leasing powers of the State Board of Relief, Work Planning and Pension Control is section 6974.04, 1929 N.C.L. 1941 Supp., which empowers the State Board of Control to lease and equip office rooms outside of State buildings for the use of State officers whenever sufficient provision for such offices cannot be provided in the Capitol building.

Therefore, it is our opinion that in order to avoid conflict in any future plans for the housing of the department in question, the proposal to lease premises for a period of years should be presented to the State Board of Control for approval.

Very truly yours,

ALAN BIBLE, Attorney General

By: George P. Annand, Deputy Attorney General

OPINION NO. 46-380. Old-Age Assistance—Recipient May Make Will Without Consent of County Board.

Carson City, October 16, 1946

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

DEAR MRS. FRANKE: This will acknowledge receipt of your letter of October 3, 1946, concerning the interpretation of sections 12 and 19 of the Nevada Old-Age Assistance Act.

You do not inform us as to the nature of the property in question, that is, whether the same is community or separate property, or if the surviving spouse has title to the property through the administration of the estate of the deceased. The question is in the abstract and we suggest you present the facts of your specific case.

Relative to the question of a will, there is no provision in the Old-Age Assistance Act which requires consent of the county board before a recipient may make a will. The contents of a will are seldom known until the will is offered for probate. It is not such an instrument as may be classed as a conveyance or transfer of property until the proceedings required by the statutes relating to the estates of deceased persons have been had before a court.

Very truly yours,

ALAN BIBLE, Attorney General

By: George P. Annand, Deputy Attorney General

OPINION NO. 46-381. Bonds—General Refunding Bonds of Township of North Bergen Approved for Investment.

Carson City, October 17, 1946

HON. D.J. SULLIVAN, *Chairman, Nevada Industrial Commission, Carson City, Nevada.*

DEAR SIR: We have examined the photostatic copy of the record proceeding relating to the issuance of \$14,988,000 General Refunding Bonds of the Township of North Bergen in the County of Hudson, a municipal corporation of the State of New Jersey.

We note that the certificate of the Township Clerk relating to the election at which the provisions of chapter 221, Laws of New Jersey, 1911, were adopted by the town, also contains a certification that no election has been held on the question of whether the town shall abandon its organization under the said Act. This certificate is dated April 1, 1937. The resolution authorizing the bond issue was adopted by the Board of Commissioners of the Township of North Bergen on April 25, 1941.

It may be assumed from the entire record that the town was a municipal corporation at the time of the issuance of the bonds and we are of the opinion that said bonds are valid and legally binding obligations of the Township of North Bergen, County of Hudson, State of New Jersey.

The numbers and maturing dates of the following listed bonds are included within the numbers 1 to 1,169 set out in the schedule as shown in the records:

Numbers Maturing date

7053-7057 incl. Dec. 1, 1957

7436-7476 incl. Dec. 1, 1958

7866-7885 incl. Dec. 1, 1958

8565-8579 incl. Dec. 1, 1959

8586-8685 incl. Dec. 1, 1959

8711-8718 incl. Dec. 1, 1959

8761-8770 incl. Dec. 1, 1960

The said bonds come within the provisions of chapter 191, Statutes of 1943, designating the various classes of bonds and other securities in which funds of the State and its various departments may be invested.

Very truly yours,

ALAN BIBLE, Attorney General

By: George P. Annand, Deputy Attorney General

cc to Mr. R.S. Cullen, Clay Peters Bldg., Reno, Nevada.

OPINION NO. 46-382. Labor—Employment Agency May Not Accept Fee From Employee and Also Remuneration From Employer.

Carson City, October 18, 1946

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

DEAR MR. GIBSON: This will acknowledge receipt of your letter dated October, 9, 1946, received in this office October 11, 1946, requesting an answer to the following questions relating to fees that may be charged by private employment agencies under the statutes.

1. Is it lawful for an employment agency to accept a fee from the employee, if he likewise receives a remuneration from the employer for this service?
2. If he is an agent for the employer and other employers as well but accepts remuneration from the employer, is it lawful for him to charge a fee for his services when referring an employee to a job?
3. Is it lawful for the employment agency to accept a fee for which they agree to furnish information to the applicant so that he can secure a job?

It is the opinion of this office that the acceptance by an employment agency of fees as outlined in your first question would be a violation of section 10605, N.C.L. 1929.

The answers to your second and third questions are in the negative.

Section 1 of the Act regulating employment agencies and requiring a license for the conducting of such agencies, being section 2835 N.C.L. 1929, defines the term "employment agency" as an agency for the purpose of procuring or attempting to procure help or employment for persons seeking employment and charging a fee for such service.

The agency is, therefore, the agent of the employee.

When the agency receives remuneration from an employer for the purpose of securing employees it becomes an agent of such employer.

Section 10605, N.C.L. 1929, declares it to be unlawful for an agent of an employer to demand or receive either directly or indirectly from any workman or laborer, employed through his agency, any fee, commission, or gratuity of any kind or nature as the price or condition of the employment of any such workman or laborer. Violation of the provisions of the section is declared to be a misdemeanor.

Therefore, the agency, under its license, cannot receive remuneration from the employer for securing employees without a violation of the above section.

Section 2844, N.C.L. 1929, reads in part as follows: "No such licensed person shall accept a fee from any applicant for employment, or send out any applicant for employment without having obtained, either orally or in writing, a bona fide order therefor."

This language requires that the agency have a request from an employer for a person to fill a specified job before the agency may accept a fee from the applicant he sends to such employer. There is no provision in the section that authorizes the agency to accept a fee from the employer in placing the order.

The section contemplates that the applicant for employment have value received upon payment of a fee as expressed in the following language: "In case the applicant paying a fee fails to obtain employment, such licensed agency shall repay the amount of said fee to such applicant upon demand being made therefor; * * * where the applicant is employed and the employment lasts less than seven days by reason of the discharge of the applicant, the employment agency shall return to said applicant the fee paid by such applicant to the employment agency."

There is no provision in the Act under which an employment agency can accept a fee for furnishing information so that the applicant can secure a job. Section 2844, supra, contains the following language: "* * * *provided*, that in cases where the applicant paying such fee is sent beyond the limits of the city in which the employment agency is located, such licensed agency shall repay in addition to the said fee any actual expenses incurred in going to and returning from any place where such applicant has been sent; * * *."

The section provides that the actual employment of the applicant be a condition precedent to the acceptance of any fee by the employment agency. Therefore, the acceptance of a fee for information as to possible employment is precluded by the statute.

Very truly yours,

ALAN BIBLE, Attorney General

By: George P. Annand, Deputy Attorney General

OPINION NO. 46-383. Insurance—Regular Salaried Employee Defined.

Carson City, October 22, 1946

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

Attention G.C. Osburn, Deputy.

DEAR SIR: This will acknowledge receipt of your letter dated October 10, 1946, received in this office October 11, 1946, requesting an opinion relative to the countersigning of insurance policies under section 3656.154, 1929 N.C.L. 1941 Supp. Your question is directed to that part of the section which provides where a contract of insurance covering property or insurable interests within this State is negotiated by a nonresident agent or broker outside of this State all such contracts shall be countersigned by a resident agent who is compensated on a commission basis and shall not be countersigned by a salaried company employee unless such employee be a regular salaried employee of a mutual company and a licensed resident agent.

Your specific question is, would a person who receives a salary of \$100 per year from the insurance company and performs no other function for the company than the countersigning of policies be such a regular salaried employee as to come within the exception in the section in question.

We are of the opinion that one who is employed by an insurance company and receives a salary for the sole purpose of countersigning policies is not a regular salaried employee as contemplated by the statute, but is one who comes within the prohibition expressed in the language. “* * * shall not be countersigned by a salaried company employee.”

Section 3656.154, 1929 N.C.L. 1941 Supp., provides in part as follows: “All policies of insurance for or on behalf of any insurance company doing the kind or kinds of business described in classes 2 and 3 of section 5, on any property or insurable business activities or interests located within or transacted within this State, shall be countersigned by an agent licensed under this Act; * * * where a contract of insurance covering property or risks or insurable interests within this State is negotiated by a nonresident agent or broker outside of this State every such policy or bond shall be countersigned by a resident agent who is compensated on a commission basis and shall not be countersigned by a salaried employee unless such employee be a regular salaried employee of a mutual company and a licensed resident agent; * * *.”

First, the section provides that the policies shall be signed by an agent licensed under the Act. It then provides where a contract of insurance is negotiated by an on resident agent outside this State every policy shall be countersigned by a resident agent who is compensated on a commission basis and not on salary.

The exception to these provisions is that a regular salaried employee of a mutual company and a licensed resident agent may countersign such policies.

A construction of the language in the section that a person who receives a salary for the sole purpose of countersigning policies is a regular salaried employee of the insurance company would negative the express provision that every such policy shall be countersigned by a resident agent who is compensated on a commission basis and shall not be countersigned by a salaried employee. *Torreyson v. Board of Examiners*, [7 Nev. 19](#), “No part of a statute should be rendered nugatory, nor any language be turned to mere surplus, if such consequences can properly be avoided.”

A regular salaried employee means something more than an employee paid for the purpose of securing the exemption provided by the section; it means an employee engaged in the active conduct of the business of the insurance company.

In the case of *Long v. Commissioner of Internal Revenue*, 50 Fed. (2) 775, the court, in determining the term "regularly engaged," held in the circumstance of stockholders soliciting business for a tobacco company that they were not regularly engaged in the business. The court said, "To be regularly engaged in the active conduct of its (the company) affairs means something more, it seems to us, than merely asking one's neighbors, as occasion arises or as one's regular business permits, to patronize the company, leaving it to the others to perform the services upon which the success of the business must ultimately depend."

Therefore, a person who is engaged in another business and receives from the insurance company a salary for countersigning policies and performs no other function for the company cannot be considered a regular salaried employee of the company as provided by the statute.

Very truly yours,

ALAN BIBLE, Attorney General

By: George P. Annand, Deputy Attorney General

OPINION NO. 46-384. Bonds—Clark County Hospital.

Carson City, October 22, 1946

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

DEAR MR. GUBLER: This will acknowledge receipt of copies of the resolution adopted by the Board or Hospital Trustees of the Clark County Hospital, the resolution by the Board of County Commissioners, a letter addressed to you by Mr. Frank Gusewelle, chairman of the hospital board, and your telegram to this office dated October 15, 1946, in relation to a proposed bond issue for hospital purposes.

The resolution adopted by the hospital board presents the proposal to purchase the existing hospital from the Federal Government and also to enlarge the present building, construct a storeroom, purchase necessary equipment and for moving and remodeling of present hospital facilities.

The Board of County Commissioners adopted a resolution that the question of issuing bonds for the purposes named in the resolution by the hospital trustees be submitted to the electors of Clark County at the general election to be held November 5, 1946, and directed the Clerk of the Board to publish notice of such bond election in five publications of one week apart in the newspaper.

The question in Mr. Gusewelle's letter is, will the bond issue be legal if it is carried at the election upon the present proceeding, or will it be necessary to secure the signatures of thirty percent of the taxpayers of the county upon a petition requesting the bond issue?

Your telegram presents the questions, is it possible to acquire hospital site, building and equipment pursuant to section 2225, 1929 N.C.L. 1941 Supp., without requiring petition as a prerequisite; would the fact that part of the purposes named in the notice now being published could not be accomplished invalidate the bond election for the purpose of enlargement, maintenance, repair, and reconstruction of existing facilities owned by the county; does the amendment of section 2225, 1929 n. 1941 Supp., make inoperative the provisions of section 2240, 1929 N.C.L. 1941 Supp.?

Answering Mr. Gusewelle's question, we are of the opinion that the proceedings as they now exist do not conform with the statute authorizing such a bond issue.

Answering the first question presented in your telegram, we are of the opinion that it is not possible under the statute to acquire the hospital site and building without a petition by taxpayers as defined in section 225, 1929 N.C.L. 1941 Supp., as amended by chapter 150, Statutes of 1943.

Answering your second question, we are of the opinion that chapter 150, Statutes of 1943, amending section 2225, 1929 N.C.L. 1941 Supp., authorizes the board of hospital trustees when deemed advisable to enlarge, maintain, repair, or reconstruct a public hospital by resolution,

setting forth the purpose and the maximum amount of money to be expended for such purpose; to request the County Commissioners to submit to the electors at the next general election the proposal to issue bonds for such purpose. The resolution and notice in the present proceeding include the text of the proposal to purchase the hospital and also to enlarge and repair the present facilities and do not conform to the provisions which require the text of the *resolution or petition*.

Our opinion in answer to your third question is that section 2240, 1929 N.C.L. 1941 Supp., does not effect the provisions in section 1 (section 2225, 1929 N.C.L. 1941 Supp.) requiring the filing of a petition for the purpose of establishing or purchasing a public hospital.

The amendment of section 1, being the latest expression of the Legislature governing procedure, permits the enlargement, maintenance, repair, or reconstruction of a public hospital to be initiated by resolution of the Board of Hospital Trustees.

The answers are based upon that, which, in our opinion, is the necessary preliminary proceeding to effect the particular purposes named in the statute.

The proceedings already initiated may not produce a transcript of proceedings acceptable to the recognized bonding attorneys who pass on such bond issues for bond buyers. However, a petition signed by thirty percent of the taxpayers of the county as provided in section 2225, 1929 N.C.L. 1941 Supp., as amended by chapter 150, Statutes of 1943, should be secured and filed with the County Commissioners. As the proposal is to be submitted at the general election the present published notice may be deemed a sufficient compliance with the statute in this respect.

Very truly yours,

ALAN BIBLE, Attorney General

By: George P. Annand, Deputy Attorney General

OPINION NO. 46-385. Bonds—Clark County Hospital—Same Official Ballot “A.”

Carson City, October 26, 1946

MRS. GERTRUDE MASSENGALE, *County Clerk, Clark County, Las Vegas, Nevada.*

DEAR MRS. MASSENGALE: We inclose form of ballot to be used at the coming election affecting the proposed county hospital bond issue. The “B” ballot is to be so designated on colored paper.

The election must be conducted as provided in the Act of 1937 (Stats. 1937, p. 141, 160; 1929 N.C.L. 1941 Supp., secs. 2643.01-2643.06). This is required by section 10 f the Act of 1929, as amended (Stats. 1943, p. 213; 1929 N.C.L. 1941 Supp., sec. 2225; 1945 Pocket Part). Ballot boxes “A” and “B” shall be provided and nonproperty owners shall use white “A” ballots and the others shall use the colored “B” ballots (1929 N.C.L. 1941 Supp., sec. 2643.04).

We believe the question presented on the form supplied includes all the elements required by the law (Stats. 1943, p. 213, sec. 1).

We trust this will serve your needs.

OFFICIAL BALLOT “A”

*Bond Election, Clark County, Nevada, on Tuesday,
The 5th Day of November, A.D. 1946*

QUESTION

Shall the Board of County Commissioners of Clark County, Nevada, be authorized and directed to issue the negotiable serial general liability bonds of the County of Clark, State of Nevada, in the total sum of Four Hundred Thousand dollars (\$400,000) bearing interest payable semiannually at a rate not to exceed five per centum per annum, redeemable in twenty years in equal annual installments and to levy a tax according to law for the purpose of paying the principal and interest thereon, for the purpose of the purchase of all right, title, and interest of the United States Government of, in and to the present Clark County General Hospital facilities; for

the purpose of building a new wing on said hospital, to provide approximately fifty (50) additional beds; for the purpose of building a suitable storeroom and warehouse for said hospital and for the purpose of purchasing necessary equipment and for the moving and remodeling of the original Clark County General Hospital building?

Yes	
No	

(The voter will prepare his ballot, indicating his approval or disapproval of the foregoing provisions by placing an "X" opposite the above group of word which express his choice and then deposit his ballot in the ballot box provided for such purposes.)

Very truly yours,

ALAN BIBLE, Attorney General

By: George P. Annand, Deputy Attorney General

OPINION NO. 46-386. Motor Vehicles—Specialized Help for State Department—Regular Clerks—Salaries.

Carson City, November 1, 1946

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

DEAR MR. SCHMIDT: This will acknowledge receipt of your letter dated October 30, 1946, received in this office the same day, inclosing a letter from the Secretary of State in reply to your letter to him concerning the salary claims of the officers certified as recorder of mortgages and file clerk for the Motor Vehicle Department upon which payment is now being withheld.

You ask two questions: (1) May the Motor Vehicle Department employ specialized help such as an inspector and recorder of mortgages at salaries to be fixed by the commissioner where such employees perform other than clerical work? (2) May a file clerk receive a larger compensation than the regular clerks in other departments?

The answer to your first question is in the affirmative. Referring to Mr. McEachin's letter to you of October 29, 1946, the rate designated there for Mr. Stanley Finch is authorized by law and should be paid.

We are of the opinion that the Secretary of State as ex officio Commissioner of the Motor Vehicle Department has the authority under the statute to employ the necessary officers and clerks for the enforcement of the provisions of the Act and the proper administration of the department. The commissioner may fix and certify the salaries of officers of the department responsible for the enforcement of the Act as inspectors and for the filing of copies of chattel mortgages on motor vehicles required by chapter 240, Statutes of 1945.

The answer to your second question is in the negative. Again referring to Mr. McEachin's letter, the amount of the claim of Arthur McNaught as corrected by Mr. McEachin conforms with the clerical statute.

Employees performing work of a clerical nature must be paid as provided in section 4435.29, N.C.L. 1941 Supp., as amended. As to what constitutes clerical work, see Opinion of Attorney General, B-37 under date of January 30, 1941. It is not the name, but the nature of the work that controls and that is the measure of the Commissioners' authority to designate and compensate employees in his department.

Section 4435.01, 1929 N.C.L. 1941 Supp., designates the Secretary of State ex officio a vehicle commissioner of this State whose authority is defined in the following language: "* * *

and he shall have all the powers and perform such duties as are herein imposed upon the vehicle commissioner.”

Section 4435.02, 1929 N.C.L. 1941 Supp., reads as follows: “(a) It shall be the duty of the department and *all officers thereof* to enforce the provisions of this act.” (Italics added.) “(b) The vehicle commissioner is hereby authorized to adopt and enforce such administrative rules and regulations and to designate such agencies as may be necessary to carry out the provisions of this act. He shall also provide suitable forms for applications, registration cards, license number plates and all other forms requisite for the purpose of this act, and to prepay all transportation charges thereon.”

Chapter 240, Statutes of 1945, under section 15(g), requires the commissioner to prepare and keep in alphabetical order an index of every chattel mortgage filed in accordance with the provisions of the chapter.

These statutes designate the Secretary of State, as ex officio commissioner, the executive officer of the Motor Vehicle Department, and makes the department and the officers thereof responsible for the enforcement of the provisions of the Act. The commissioner is authorized to adopt and enforce such rules and regulations and designate such agencies as may be necessary to carry out its provisions.

Section 4435.29, 1929 N.C.L. 1941 Supp., creates the motor vehicle fund in the following language: “The state treasurer shall deposit all moneys received by him from the department or otherwise under the provisions of this act in such motor vehicle fund.” Subdivision (b) reads as follows: “There is hereby appropriated out of such fund the sum of fifty cents for each motor vehicle registered by the department, and out of such appropriation the department shall pay each and every item of expense which may be properly charged against the department, including the salaries of the clerks employed in said department who shall be paid in accordance with section 7562, Nevada Compiled Laws 1931; all claims for such expenses and salaries shall be certified to the board of examiners and paid as other claims against the state are paid.”

The Legislature set up an administrative authority when it created the Motor Vehicle Department, and the commissioner was made the executive officer thereof. The necessary officers, agencies, and clerks were not specified by the Legislature, but the employment by the commissioner of such assistance is given by fair implication. A recognized rule of construction as stated in Sutherland Statutory Construction, vol. 1, page 73, citing cases, is as follows: “The impossibility of personal performance, impliedly authorizes the delegation of authority to subordinates.”

In *State ex rel. Hinckley v. Court*, [53 Nev. 343](#), on page 352, the court said: “It is a well known rule of construction that, whenever, a power is given by statute, everything lawful and necessary to the effectual execution of the power is given by implication of law.”

42 Am. Jur., page 317: “In determining whether a board or commission has a certain power, the authority is given should be liberally construed in the light of the purpose for which it was created, and that which is incidentally necessary to a full exposition of the legislative intent should be upheld as being germane to the law.”

Within the thirty-seven sections of the Motor Vehicle Act there are provisions which, in order to enforce, will require the service of subordinate officers, and the proper administration of the department will require the services of the clerks.

The questions presented by your inquiry could be easily avoided if the Legislature would specifically provide for the number and classification of the officer to be employed by the department, within the limit of the available fund to be expended.

Very truly yours,

ALAN BIBLE, Attorney General

OPINION NO. 46-387. Public Officers—Same Person May Not Work for and Be Paid out of Appropriations for Two Agencies of Government—Salary Scale.

Carson City, November 4, 1946

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

DEAR MR. McEACHIN: Day before yesterday, Saturday, November 2, 1946, you requested certain advise from us concerning three claims which you had withdrawn from the State Controller's office pending further investigation.

You state that recently you have certified the claim of Miss Blanche Robb for her statutory salary as corporation clerk in your office and at the rate of \$60 per month additional payable out of the motor vehicle fund for services in the Motor Vehicle Department of your office. Also you have taken similar action in the case of Chief Clerk Dondero and in the case of Mrs. Pagni, a clerk in your office, who received additional allowances at the rate of \$50 and \$30 per month, respectively. You inquire:

1. May the same person be compensated for services out of the appropriation for your office and be additionally paid out of the appropriation for the Department of Motor Vehicles in that office?
2. What are the rates of compensation authorized by law for the persons named?

1. It is the opinion of this office that the same person may not work for and be paid out of the appropriations for both agencies of government.

The law fixes the office hours of the Secretary of State's office from 9 a.m. to 4 p.m. (1929 N.C.L. 1941 Supp., sec. 7410). This enlists the time of your employees for that period every day excepting Saturday afternoon, Sundays, and holidays. There remains no time available to serve any other department unless after office hours not mentioned here.

By Statutes of 1945, page 249, the salaries of the Deputy Secretary of State, Corporation Clerk and Chief Clerk were increased 15 percent over the rates in force March 21, 1943. This was an amendment of Statutes of 1943, page 185, which had given a 12 percent increase as an amendment of Statutes of 1937, page 422 (1929 N.C.L. 1941 Supp., sec. 7562).

The original Act of 1929 (Stats. 1929, page 389) is section 7562 N.C.L. 1929. Section 2 of that Act which has not been amended but remains in full force and effect provides:

This shall be in full compensation for all services rendered in the State.

This section 2 is still part of the law. It is clear and unambiguous. Together with the latest version of section 1 it forms a definite expression of the legislative will in the light of the current needs.

2. The rates of compensation for the persons named are reflected in the Appropriation Act of 1941 as \$2,100 per year for the corporation clerk and \$2,000 for the chief clerk. To this by special statute there is added 15 percent.

Mrs. Pagni, as a stenographer in your office, is entitled to a stenographer's pay as designated by 1929 N.C.L. 1941 Supp., sec. 7562, as amended, Stats. 1943, page 99, on a sliding scale based on length of service in that capacity.

Very truly yours,

ALAN BIBLE, Attorney General

OPINION NO. 46-388. Employment Security—Opinion No. 303 Relative to Powers and Duties of Director Still Effective.

Carson City, November 7, 1946

HON. GILBERT C. ROSS, *Executive Director, Employment Security Department, Carson City, Nevada.*

DEAR MR. ROSS: Receipt is hereby acknowledged of your letter of November 6, 1946, requesting a statement of this office as to whether Opinion No. 303, dated March 24, 1941, over the signature of W.T. Mathews, Deputy Attorney General, is still the opinion of this office.

Opinion No. 303 was rendered to Albert L. McGinty, the then Executive Director of the Employment Security Department with respect to the powers and duties of such Director under the Employment Security Department with respect to the powers and duties of such Director

under the Employment Security Department law as then enacted. It is noted that the statement of this office is requested by the United States Employment Service.

An exhaustive examination of Opinion No. 303, together with the State law as enacted by the Legislature with respect to the Unemployment Compensation Department and Employment Security Department discloses that since the rendition of Opinion No. 303 there has been no such change in the State law as will change the opinion of this office from that expressed in Opinion No. 303.

We have not been cited to, nor have we found, any Federal law contrary to the opinion of this office expressed in Opinion No. 303.

It is, therefore, the opinion of this office that Opinion NO. 303 is still effective.

Very truly yours,

ALAN BIBLE, Attorney General

OPINION NO. 46-389. Fish and Game—Property of State Located in California Taxable by California.

Carson City, November 9, 1946

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

DEAR MR. SCHMIDT: This will acknowledge receipt of your letter dated November 6, 1946, received in this office on the same date, enclosing a tax notice from W.D. Johnson, Tax Collector, Downieville, California, for taxes due on property within the State of California assessed to the Nevada Fish and Game Commission of this State.

You inquire as to the right of California to tax property owned by this State located within California.

We are of the opinion that the claim for taxes due is a legal claim against the funds of the Nevada Fish and Game Commission.

The States may exercise their original power of taxation on all property within the State unless exempt by law.

Central Railroad Co. v. Jersey City, 209 U.S. 473, held: "Even where a state has, by agreement, ceded jurisdiction over a portion of its territory to another state, it still retains the exclusive power to tax the real estate within such territory."

Very truly yours,

ALAN BIBLE, Attorney General

By: George P. Annand, Deputy Attorney General

OPINION NO. 46-390. Engineer, State—Car Used by Water Commissioners State Property—Insurance Paid for Loss of Car Property Deposited in State Fire Insurance Fund.

Carson City, November 12, 1946

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

Attention: Edmund Muth, Deputy State Engineer.

DEAR SIR: Reference is hereby made to your letter of November 7, 1946, requesting the opinion of this office upon the following queries:

1. Whether a car purchased by the State Engineer for use in distributing Humboldt River water and paid for from funds derived from the special water distribution tax is state property?
2. Whether the insurance paid for the loss of the above-mentioned car by fire and placed in the State Fire Insurance Fund can be withdrawn from such fund and placed in the Humboldt River distribution fund?

OPINION

Answering Query No. 1. The State Engineer is a State officer and the distribution of Humboldt River water is part of the duties of the State Engineer and, of course, he performs his duties through water commissioners. We think it follows that the care in question was undoubtedly State property and was used for State purposes in the distribution of water pursuant to the water law.

Answering Query No. 2. The car in question being State property and, as stated in your letter, insured under the State Fire Insurance Statute, sections 7379-7380, N.C.L. 1929, we think it follows that the insurance paid by the fire insurance company for loss of the car by fire was properly placed in the State Fire Insurance Fund in the State Treasury.

Section 730, N.C.L. 1929, provides how and in what manner the insurance so paid in can be used. The statute provides that the board or officer having charge of the insured property may replace such property and pay for the same from the State Fire Insurance Fund to the extent of the amount the insurance company pays for the loss of the particular property. This being the law, we are of the opinion that the State Engineer may not cause the money in question to be transferred to the Humboldt River Distribution Fund, but that he may apply the amount paid for the loss of the car on the purchase of another car to replace the one so lost.

Very truly yours,

ALAN BIBLE, Attorney General

**OPINION NO. 46-391. Employment Security—Nevada State Employment Service—
Plan of Operation Approved.**

Carson City, November 13, 1946

MR. GILBERT C. ROSS, *Executive Director, Employment Security Department,* Carson
City, Nevada.

DEAR MR. ROSS: I have examined the constitution and statutes of this State and the documents incorporated in the Plan of Operation for the Nevada State Employment Service of the Nevada Employment Security Department, effective November 16, 1946.

I am of the opinion that the Nevada Employment Security Department is authorized to submit this plan and to administer the Nevada State Employment Service in accordance with the provisions of the Wagner-Peyser Act (Act of June 6, 1933, 48th Statute 113 29 U.S. Code 49) as amended; title IV of the Servicemen's Readjustment Act of 1944 (Act of June 22, 1944, 58th Statute 284, 38 U.S. Code 693) as amended; and the pertinent provisions of the Labor Federal Security Appropriation Act, 1947 (Public Law 549, 79th Congress, 2d Session).

Very truly yours,

ALAN BIBLE, Attorney General

**OPINION NO. 46-392. Legislative Counsel—Books, Papers and Records Made
Available To.**

Carson City, November 14, 1946

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

DEAR MR. ALLEN: Your letter of November 13, 1946, was received here the same day.

You ask the interpretation of section 4 of chapter 91, Statutes of Nevada 1945, reading as follows:

It shall be the duty of all officers, departments, institutions, and agencies of the state government to exhibit or make available for the inspection of the legislative counsel all books, papers, and records of a public nature under their control, necessary or convenient to the proper discharge of his duties under this act, on his request of that officer or any clerk or inspector in his office.

We interpret the language as if the word "his" in the section were omitted.

The section defines the duty of “all officers, departments, institutions, and agencies of state government.” It extends to the exhibition or making available for inspection of “all books, papers and records of a public nature” under control of such officers, etc., “necessary or convenient to the proper discharge” of the Legislative Counsel or any clerk or inspector in his office.

If the duties imposed by this section were intended to be prescribed on persons other than “officers, departments, institutions and agencies of state government,” it would have been easy to say so.

When “books, papers and records of a public nature under their control” are spoken of nothing more need be produced and those only under the control of officers, departments, institutions and agencies of State government. Only such items are included as are “necessary or convenient to the proper discharge of his (Legislative Counsel’s) duties.” This latter limitation is admittedly very elastic.

We construe the words “that officer” to relate to the Legislative Counsel and if the word “his” is not to be disregarded, that it like-wise refers to the Legislative Counsel even though its first use is clumsy and ungrammatical.

Very truly yours,

ALAN BIBLE, Attorney General

By: Homer Mooney, Deputy Attorney General

OPINION NO. 46-393. Elections—General—County Commissioners Have No Authority to Recount Ballots Except When Abstract of Returns Shows a Tie.

Carson City, November 14, 1946

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

DEAR MR. GUBLER: On this date you requested the opinion of this office upon the following question:

When and under what circumstances can a board of county commissioners legally recount ballots cast pursuant to the General Election Laws of this State?

OPINION

The powers and duties of boards of county commissioners with respect to the recounting of ballots cast at a general election are set forth in section 2462. Nevada Compiled Laws 1929. This section provides for the canvass of the election returns by such boards within the time fixed therein after the election has been held. This section of the law is clear and express in its terms and specifically provides that upon the making of the abstracts of the votes for the respective officers, if the board shall find that

a tie exist between two or more persons for the senate or assembly, or any other county, district or township officer, any of said persons shall have the right to demand of the board of county commissioners are count of all the ballots cast for them for the office for which they were candidates.

No other or different or qualifying language with respect to the recount of ballots by boards of county commissioners can be found in the general election law. We are of the opinion that their powers and duties are limited and bound by the above-quoted provision of the statute. Their duties in this respect begin and end with an examination of and the abstracting from the returns made and submitted to them by the various election boards of their counties. *See* sections 2451, 2453, 2454, 2456, 2458, 2460, 2461, and 2462, N.C.L. 1929. Nowhere in the law are boards of county commissioners empowered to examine and county any ballots whatever, save and except, they find from the returns, not the ballots, that a tie exist. If they so find and demand is made by the candidate or candidates affected, then they may proceed to recount the ballots pertaining to the affected candidates.

It has been so often held by our Supreme Court that boards of county commissioners only possess such powers as are expressly granted by statute or necessarily implied therefrom as to now be axiomatic. That the boards of county commissioners now possess no power to recount

election ballots, save in those instances where the return made by the election boards show a tie vote upon the canvass thereof by the commissioners, is established beyond question by statutory law and the decision of the Supreme Court.

Prior to the year 1915 the law providing for boards of county commissioners and stating their powers and duties contained a provision empowering them to act as boards of canvassers of election returns, it was also provided that if it should appear from the canvass that any legislator, county or township officer had received a majority of ten votes or less, the defeated candidate could by petition require a recount of the votes cast by the board of county commissioners and it would be their duty to so recount. *See* section 1513 Rev. Laws 1912.

In the case of *McBride v. Griswold*, [38 Nev. 56](#), section 1513 Rev. Laws 1912, was held to be controlling over the provisions of the 1913 Election Laws with respect to the power of a board of county commissioners to hold a recount of ballots because it was a special provision or Act and not repealed by a general law on the subject. However, in 1915 the Legislature repealed said section 1513. 1915 Stats. 6. Thereafter the case of *Ex rel. Blake v. County Commissioners*, [48 Nev. 299](#), was decided by the Supreme Court upon the same set of facts as appears in the earlier case above-cited. In the latter case the court refused to mandamus the county commissioners and thus force them to recount the ballots where it appeared there was no tie shown by the returns of the election board. Particular stress was placed upon the repeal of section 1513 Rev. Laws 1912 in the concurring opinion of Justice Sanders. No change has been made in the statutory law in this respect since the latter decision of the Supreme Court.

It is, therefore, the opinion of this office that boards of county commissioners have no power to recount any election ballots cast pursuant to the general election laws of this State, save and except, that if the abstract of such ballots made by such boards from the returns submitted to them under the law by the various election boards of their counties shall show a tie in the county, district or township offices, such boards upon proper demand may recount the ballots for the offices affected.

In so holding we are not closing the door to any aggrieved candidate who may have reasons to believe irregularities have occurred in the election. Such candidate has his remedy under the provisions of the law providing for the contest of elections in the district court, with a determination therein by a judicial body of the validity of the election and/or the validity of ballots cast therein.

Very truly yours,
ALAN BIBLE, Attorney General

OPINION NO. 46-394. Nevada Hospital for Mental Diseases—No Authorization for Neuro-Surgery Upon Patients From State Penitentiary.

Carson City, November 16, 1946

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

DEAR DR. TILLIM: This will acknowledge receipt of your letter dated November 8, 1946, received in this office November 12, 1946.

You request an opinion from this office as to the authority of the Commissioners of the Nevada Hospital for Mental Diseases to authorize neuro-surgery upon a patient committed to the hospital from the State penitentiary. The indications for the surgical operation, as stated in your letter, are to reduce the tension of homicidal drive and destructiveness, which would make possible the care of the patient without continuous confinement and restraint.

We are of the opinion that neither the commissioners nor the superintendent of the hospital have any authority under the statutes to authorize such an operation under the circumstances and for the purpose stated in your inquiry.

Chapter 154, Statutes of 1945, section 6, quoting that part deemed pertinent reads as follows:
“* * * He (the superintendent) shall have standard medical histories kept up to date on all patients, and shall administer the accepted and appropriate treatment to all patients under his care

***.” This section contemplates accepted and not controversial therapy such as a radical procedure by surgery to remove delusions.

Surgical Treatment, Warbasse, vol. II, page 104, Surgery of the Insane:

Operations for delusions have been done to remove the locus of an imaginary ill, but these operations are not curative because the mind is diseased and the operation only results in shifting the delusion to some other part. When delusions originate in some part of the cortex, the function of which is known, and the seat of origin can be identified, it is possible that surgery may be of service in exercising this particular area. The matter has not yet passed beyond the realm of theory.

Consent is an element that must be considered in order to avoid the possibility of liability for a technical battery or trespass. Some authorized person must provide the consent for the incompetent. 41 Am. Jur., page 220, “The relation of physician and patient is a consensual one, as has been noted, and it is the settled general rule that in the absence of emergency or unanticipated conditions a physician or surgeon must first obtain the consent of the patient, if he is competent to give it, or some one legally authorized to give it for him, before treating or operating on him.”

We are unable to find authority in the statute for the commissioners or the superintendent of the hospital to give consent to such an operation as indicated.

The Federal Court in *Mickle v. Henrichs*, 262 Fed. 687, held unconstitutional a Nevada statute which provided when a person shall be adjudged guilty of carnal abuse of a female under the age of ten years, or of rape, shall be adjudged an habitual criminal and in addition to confinement an operation should be performed for the prevention of procreation. The ruling of the court that the performance of an operation known as vasectomy is invalid has a definite bearing upon the present question.

We understand that the proposed operation does not anticipate a result such as restoration to functional usefulness, but that it may make the care of the patient much easier. Therefore, we must conclude that the statute cannot be construed to authorize the commissioners or the superintendent of the hospital to undertake to have such an operation performed without consent of kindred.

Very truly yours,

ALAN BIBLE, Attorney General

By: George P. Annand, Deputy Attorney General

OPINION NO. 46-395. Gambling—Licenses Issued for Three-Month Period—License for Each Slot Machine Regardless of Denomination.

Carson City, November 29, 1946

HON. HAROLD O. TABER, *District Attorney, Washoe County, Reno, Nevada.*

DEAR TABE: Reference is hereby made to your letter of November 27, 1946, requesting the opinion of this office upon the following queries:

1. Can the Sheriff legally issue gambling licenses for a part of any three months period and collect therefor an amount which is in the proper proportion to the time issued as compared with the three-months' period provided in the gambling Act?
2. Can the Sheriff issue one single license to owners and operators of slot machines for all machines of each denomination?

OPINION

Answering Query No. 1. Section 2 of the State Gambling Law, being section 3302.01, 1929 N.C.L. 1931-1941 Supp., specifically provides that all gambling licenses provided for in the law shall be paid for three months in advance. An examination of the entire statute discloses that the

specific language of section 2 is not qualified by a proviso relating thereto. In this respect section 2 is materially different from section 6691, N.C.L. 1929, which section is section 27 of the Revenue Licensing Act of 1915. It will be noticed that in this section of the law the statute provides that all licenses, excepting those for theaters, menageries, circus, glove contests, sheep-grazing and state liquor licenses, shall be granted for one, two, three, or four quarters at the option of the person applying therefor. It is further provided that the quarters shall begin with the months of January, April, July, and October. However, in the same section the Sheriff and the County Auditor are specifically given the power to issue such licenses for a less period than a quarter-year and accept payment therefor and then arrange the future licenses by quarters.

In section 3 of the State Gambling Act, being section 3302.02, such Act does provide that the gambling licenses shall be prepared by the County Auditor and shall be issued and accounted for as is by law provided in respect to other county licenses. However, we think this language must be construed in *pari materia* with the specific language contained in section 2 requiring all licenses to be paid for three months in advance, that section 3 does not authorize the issuance of gambling licenses for a less period than three months and that it relates only to the method of issuing the licenses by the County Auditor and turning them over to the Sheriff. It seems that the gambling law contemplates that each licensee shall pay for each license issued for a period of three months in advance. It is also to be noted that no license money paid under the provisions of the Act shall be refunded for any cause.

We are inclined to the view that the Legislature did not intend that licenses should be issued for a less period than three months in any event. If it will facilitate the sale of licenses and lessen the bookkeeping imposed upon the county officers that gambling licenses should be issued quarterly at a certain time and that pro rata licenses could be issued, we think that this is a matter requiring legislative action.

Answering Query No. 2. We are of the opinion that this query must be answered in the negative. Section 2 of the Gambling Act is clear and expressed in its language, that is, that each slot machine must be separately licensed. Such, we think, is the import of the language contained in such section. Witness the following language:

Said license shall entitle the holder or holders, or his or their employee or employees, to carry on, conduct, and operate the specific slot machine, game, or device for which said license is issued in the particular room and premises described therein, but not for any other slot machine, game, or device than that specified therein, or the specified slot machine, game or device in any other place than the room and premises so described, for a period of three (3) months next succeeding the date of issuance of said license.

Substantially the same language is contained in section 3 of the Act reading as follows:

Each license issued or delivered by the sheriff under this Act to any person, firm, association or corporation shall contain the name of the licensee, and a particular description of the particular room and premises in which the licensee intends to carry on, conduct, or operate any one slot machine, game or device mentioned in section one of this Act, and shall specify the particular type of slot machine, * * * and shall be valid only for * * * the specified slot machine * * * for which it is issued.

We think the foregoing language is so clear and express that the Sheriff must issue a license for each particular slot machine regardless of denomination.

Very truly yours,

ALAN BIBLE, Attorney General

**OPINION NO. 46-396. Nevada National Guard—Lease of Premises and Facilities
Reno Army Air Base—Obligation of State.**

Carson City, December 4, 1946

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

DEAR GENERAL WHITE: This will acknowledge receipt of your letter dated November 12, 1946, received in this office November 13, 1946, enclosing a copy of a form of lease between the Secretary of War and the Nevada National Guard for the premises and facilities of the Reno Army Air Base.

You ask our opinion as to the obligation the State of Nevada will assume by executing such a lease, and ask if the State of Nevada has authority to enter into such lease in advance in legislative appropriation providing the necessary funds. You say that at the present time the Adjutant General's Department has no funds allotted for the purpose of leasing property.

The lease provides that the State shall pay all costs of maintenance and operation in certain cases to the producing company covering certain utilities and services, and shall pay to the United States, upon bills rendered, the licensee's proportionate share of the cost and maintenance of the plants, this share to be determined by the Division Engineer.

There is nothing in the lease submitted to us to indicate to what extent the United States will participate in the cost of operation and maintenance. As shown by the lease, this is to be determined by the Division Engineer and is accordingly very definite.

If the State has authority to enter into such a contract, such authority must be found under chapter 43, Statutes of 1945. This Act provides that the State or any department may enter into any contract for the purchase of any equipment, supplies, materials or other property, real or personal, without regard to any provision of law which would, if observed, defeat the purpose of the Act. The Act deals with the purchase of property. It is doubtful if it could be construed to authorize the lease of property under the conditions proposed in the form of lease submitted, and to suspend the operation of the statutes mentioned above, which if observed would defeat the purpose of the 1945 Act.

See Attorney General's Opinion No. 259, 1944-1946 Biennial Report, in which this office held that cities, counties, and municipalities are given authority to acquire and maintain airports under the provisions of sections 289-293, N.C.L. 1929, but this authority does not extend to the State, and if desired, would require legislative action.

The matter of the necessary expense to be assumed by the State should be determined. The subject could then be submitted to the Legislature, which will convene in a few months, for appropriate action.

Very truly yours,
ALAN BIBLE, Attorney General
By: George P. Annand, Deputy Attorney General

cc to Governor Pittman.

OPINION NO. 46-397. Counties—State Lands—Contract—Sale of Land by County for Delinquent Taxes Void Where Sale Was Consummated After Forfeiture of State Land Contract.

Carson City, December 4, 1946

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

DEAR MR. GREGORY: Reference is hereby made to your letter of December 2, 1946, requesting the opinion of this office relative to the validity of a tax deed, issued by Ormsby County, whereby title was conveyed to a certain parcel of land in Ormsby County sold at the September, 1944, delinquent tax sale. It appears from your letter that the land in question was contracted State land, the contract price of which had not been paid by the original contractor and the taxes due had not been paid.

It further appears that subsequent to issuance of the certificate of sale by the county, the original contract was declared forfeited by the Surveyor General and a new contract issued to a

different party, and the contract price being paid a patent was issued thereon as of August 25, 1945. In September of 1946, Ormsby County issued its deed to the company purchasing the land at the delinquent tax sale of September, 1944.

Your query presents the question as to whether the tax deed issued by the county, or rather the County Treasurer, is a valid deed? It is also noted you inquire whether the county may be liable in damages in the matter?

OPINION

At the threshold of the discussion we desire to point out that the land in question could not legally be taxed as the title still remained in the State subject to the conditions of the contract sale. The county did not have the right to assess the possessory right to the land and, frankly, the possessory right was the only right that could have been disposed of by the county at the delinquent tax sale. Such was the opinion of this office in Opinion No. 225, dated February 16, 1926, reported in Report of Attorney General 1925-1926. Such is well established in the law of this State. It is further pointed out in the cited opinion that where a party holding a contract to State land fails to pay the taxes, the possessory right of such party may be sold and, by virtue of such sale, the buyer would acquire such possessory right. The opinion further pointed out, however, that in order for such to be effectual some evidence of such sale should be filed in the office of the Surveyor General and payments due to the State under contract of purchase must be made until the contract is paid in full. Inquiry at the Surveyor General's office discloses that no payments of overdue interest on the original contract was made by any person and we assume not made by the county.

We have examined the records of the Surveyor General's office and we are of the opinion that the original contract was legally forfeited on or about the 11th day of August, 1945, and that thereafter a new contract was executed by Mr. Barton and payment of the contract made in full, for which he received a patent to the land.

We direct attention to sections 5552 and 5553, N.C.L. 1929, which provide that where a State land contract becomes forfeited, all deeds, assignments and other instruments issued thereon for the possessory claim to the land become null and void and the State Land Register shall certify to the Recorder of the county wherein the land is situated that such contract has become forfeited, whereupon the Recorder shall search his records for deeds, assignments or other instruments pertaining to the land and endorse thereon that such instruments are null and void, signing his name thereto. Such notice was furnished the Recorder of Ormsby County and filed by her August 14, 1945, which was prior to the date of the issuance of the deed to the land to the purchaser at the tax sale.

Section 5519, N.C.L. 1929, as amended, 1933 Stats. 73, being now section 5519, 1929 N.C.L. 1931-1941 Supp., provides without qualification the power of the State Land Register or Surveyor General to declare land contracts forfeited and authorize the sale thereof to other applicants.

We have gone into this matter somewhat at length due to its importance. We think, under the law, that the deed executed on behalf of Ormsby County to the purchaser at the sale is invalid as it purports to convey title to land, the title of which undoubtedly was in the State even though the tax on the possessory right was delinquent. There is no doubt but what the original purchaser of the land under the contract was and is liable for the delinquent tax. Whether the same can be collected from her is a doubtful question. In view of the facts, as shown by the record in the Surveyor General's office, we are inclined to the view that no sale of the land itself could have been made at the delinquent tax sale and it necessarily follows that no valid deed for the land itself could have been executed.

Your inquiry as to whether the county would be liable in damages, we think, is necessarily answered in the negative unless there is some statute, and we know of no such statute, as would make the county liable in such a case. In all probability, it will be incumbent upon Ormsby County to refund the purchaser of the land in question all moneys received from such purchaser of and concerning such sale.

Very truly yours,

ALAN BIBLE, Attorney General

OPINION NO. 46-398. Planning Board, State-Chapters 156 and 241, Statutes of 1945, Construed—Preliminary Plan—Final Plans and Specifications.

Carson City, December 5, 1946

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

DEAR MR. ALLEN: This will acknowledge receipt of your recent letter concerning the construction of certain Nevada statutes.

You request an opinion on how the State Planning Board can utilize the provisions of chapter 241, Statutes of 1945, in conjunction with chapter 156 of the same statutes, to the extent that the expenses of the preliminary planning and designing for prospective State buildings may be paid out of the appropriation of \$25,000 authorized in chapter 241, as well as out of the appropriation of \$10,000, made in chapter 156.

We have taken considerable time in which to analyze these statutes and our conclusion is that, notwithstanding the fact that the two legislative bills were introduced as companion measures, as stated in your letter, the chapters in question express distinct subjects and the appropriations made therein are expressly limited to each particular subject.

The appropriation of \$10,000 in chapter 156 was made available immediately for preliminary plans and estimates. The appropriation of \$25,000 in chapter 241 was earmarked in the Postwar Fund for the final plans and specifications of buildings subsequently authorized.

Chapter 156 amends parts of the Act creating a board to be known as the State Planning Board, the functions of which were defined in the original Act to make a comprehensive State plan for the economic and social development of the State; to submit reports and make recommendations relative to its findings to the Governor and Legislature and to cooperate with other departments and agencies of the State in their planning efforts. An appropriation of \$1,000 was made for this purpose.

Chapter 156 amended subdivision (b) of section 5 of the Act by extending the functions of the board to the furnishing of preliminary planning, designing and estimating of costs for the State departments to submit to qualified architects for preparation of detail plans and specifications. The amendment then appropriated \$10,000 out of the general fund to enable the board to carry out the provisions of the amendment. A definite purpose is manifest in the amending Act and provision is made in the furtherance of such purpose.

Chapter 241, Statutes of 1945, is an independent Act and, as defined in its title, is "An Act to earmark and set aside out of the State Postwar Reserve Fund, money for plans and specifications for buildings and improvements authorized by the Board of Finance and the Board of Control."

The Act provides that \$25,000 is appropriated out of the State Postwar Fund, which sum of money shall be earmarked to remain intact in such fund for the preparation of plans and specifications for postwar buildings authorized by the Board of Finance. Payments from the fund for such plans and specifications shall be prorated against each building authorized by the Legislature on an agreed percentage of the contract. The Act is complete within itself and it is not necessary to refer to chapter 156 to understand its scope and meaning.

Chapter 156 makes provision for preliminary plans and estimates to be submitted to qualified architects for preparation of detail plans and specifications. on a percentage basis against each building authorized. The later Act cannot be construed as providing a supplemental appropriation to enable the Planning Board to pay for any plans and specifications preliminary in nature.

If it is thought desirable and is found necessary to provide the State Planning Board with more funds for architectural and planning service, such problem should be submitted to the Legislature.

Very truly yours,

ALAN BIBLE, Attorney General

By: George P. Annand, Deputy Attorney General

OPINION NO. 46-399. Bonds—Clark County Hospital—Acceleration Clause Permissible—Trustees Have no Duty to Perform in Issuance and Sale.

Carson City, December 5, 1946

HON. PAUL RALLI, Deputy *District Attorney, Clark County, Las Vegas, Nevada.*

DEAR MR. RALLI: This will acknowledge receipt of your letter dated November 27, 1946, received in this office November 29, 1946, requesting information concerning the issue of bonds for the Clark County Hospital, approved at the last general election, and the employment of counsel to assist in the preparation and sale of the bonds.

You ask if it is possible to have an acceleration clause included in the bonds to permit their redemption prior to their maturity date and if such provision should be included in the notice to bidders. You also inquire if the board of hospital trustees has authority to incur legal expense in connection with the employment of Mr. Cope in preparing the procedure for the issuance and sale of the bonds.

Your first question is answered in the affirmative with a proviso as to sufficiency of notice.

Answering your second question, we are of the opinion that the hospital trustees have no duty to perform in the issuance and sale of the bonds. This is the duty of the county commissioners who may employ counsel for such purpose.

We deem it necessary to first answer the question presented orally by Mr. Cope who has been retained by the authorities to assist in concluding the bond issue. When Mr. Cope was in this office discussing the matter of the bond issue he suggested that the assessed value of the taxable property of the county would permit the redemption of \$40,000 of the bonds annually by levying the maximum tax rate authorized by statute of two mills on the dollar. We will answer this question separately as it presents a different situation from that of issuing call bonds by incorporation an acceleration clause in the bonds.

We are of the opinion that the redemption of \$40,000 of the bonds annually is substantially different from the redemption provided in the question submitted to the voters, and the officers responsible for the issuance of the bonds have no authority to make the change.

The question submitted to the electors and approved by their votes contained the following language: "Shall the Board of County Commissioners of Clark County, Nevada, be authorized and directed to issue negotiable serial general liability bonds of the County of Clark, State of Nevada, in the total sum of Four Hundred Thousand dollars (\$400,000) bearing interest payable semiannually at a rate not to exceed five per centum per annum, redeemable in twenty years in equal annual installments and to levy a tax according to law for the purpose of paying the principal and interest thereon * * *."

The electors by their vote authorized a bond issue of \$400,000 payable in twenty years in equal annual installments which is authority to pay \$20,000 principal annually with interest payable semiannually, and to levy a tax to meet this obligation.

The essence of the bond issue authorized is the tax burden that the voters assume.

Neal v. County Ct., 27 S.E. 370, held: "The terms and conditions as to the issuance of bonds under a public subscription to works of internal improvement contained in the proposition of subscription approved by the popular vote cannot be changed or departed from, and the issuance of bonds contrary to such terms and conditions may be enjoined by the taxpayers."

Aurora v. Kraus, 59 P.(2) 79, held: "Bonds issued by a municipality for a water improvement district and made to mature in six years were void upon their face because not in compliance with the act authorizing the incurrence of the indebtedness and stipulating that the date of maturity must not be less than ten years no more than fifteen years." *See also Geneva v. Fenwick*, 145 N.Y.S. 884.

Adams v. Allen, [55 Nev. 346](#), is pertinent inasmuch as the holding by the court that the bonds proposed to be issued provided redemption in installments in substantial difference in amounts. The court said in commenting: "It would be impossible to say to what extent the favorable vote was influenced by the maturities as provided in resolution 174 noticed to the voters."

The incorporation of an acceleration clause in the bonds permitting their retirement prior to maturity, although not specifically authorized by statute for hospital bonds, as is provided for the redemption of school district bonds, may be contained in the bonds. However, it should be pointed out that the optional feature tends to decrease the desirability of the bonds as an investment.

Stewart v. Henry County, 66 Fed. 127, held: "Although a statute authorizing a municipality to issue bonds, setting out the maximum and minimum periods within which such bonds may be made payable, does not in terms provide for their payment before their maturity date, it is within the power of the municipality in issuing such bonds to make express reservation on their face for payment before their maturity and after expiration of a specified number of years (beyond the minimum) at the option of the municipality; and when such express reservation is made in the bonds they may be called for payment before maturity, upon giving of sufficient notice of such call, and upon proper tender, which will have the effect of stopping the running of interest thereon."

The authorities are not in accord as to the character and sufficiency of notice when the bonds are negotiable and the statutes do not provide redemption at any time after date.

Fales v. Multnomah Co., 248 P. 151, recites: "Term bonds which may be called for payment before their maturity * * * do not sell at the same price as they would for the term without the optional feature, for the purpose of computing the selling price or basis, the bond is treated as running only to the optional date and not to maturity."

Does the Board of Hospital Trustees have authority to incur legal expenses in connection with the issuance of the bonds authorized?

Legal expenses incurred in connection with the issuance of the bonds cannot be paid out of the proceeds of the bond sale.

Chapter 150, Statutes of 1943, contain this provision: "All moneys received as a result thereof shall be credited to the hospital fund and shall be paid out on the order of the board of county hospital trustees for the purposes for which realized or collected and not otherwise."

The same section provides: "If the result of the election shall be in favor of the proposition submitted, the board of county commissioners shall issue such bonds."

When the hospital trustees have presented to the County Commissioners the request to issue the bonds, then it becomes the duty of the commissioners to order the bond election and take all of the necessary steps for perfecting the bond issue. *See* Attorney General's Opinion No. 327, Biennial Report 1940-1942.

The Court in the case of *Ellis v. Washoe County*, 7 Nevada, deciding the power of County Commissioners to employ attorneys, held, on page 293: "This particular power is not given in express terms, but the power 'to control the prosecution or defense of all suits to which the county is a party,' which is given in subdivision twelve of section 3ight, Laws of 1871 (now section 1942, 1929 N.C.L. 1941 Supp.), clearly embraces the power to employ counsel to protect the interest of the county. * * * Nor is it any answer to say that the law designates and provides an attorney for that purpose—the district attorney; * * *."

Therefore, the County Commissioners, and not the hospital trustees, may incur legal expense in connection with the bond issue.

Very truly yours,

ALAN BIBLE, Attorney General

By: George P. Annand, Deputy Attorney General

cc to John G. Cope, Esq.

OPINION NO. 46-400. County Commissioners—Not Required to Obtain Bids for Professional Services of an Architect.

Carson City, December 10, 1946

HON. SANFORD A. BUNCE, *District Attorney, Pershing County, Lovelock, Nevada.*

DEAR MR. BUNCE: This will acknowledge receipt of your letter dated December 5, 1946, received in this office December 7, 1946, enclosing a copy of your opinion given the Board of County Commissioners and a claim of DeLongchamps and O'Brien for architectural services rendered the county for the construction of jail addition to the courthouse in Pershing county.

Your opinion advises the County Commissioners that the claim for architectural services in the amount of \$750 is contrary to section 1963, N.C.L. 1929, which prohibits the letting of contracts by the commissioners without advertising for bids, where such contract exceeds the sum of \$500.

We are of the opinion that section 1963, N.C.L. 1929, does not apply to contracts for professional services requiring training and skill, such as contracts for the services of architects. See Attorney General's Opinion No. 145, 1943-1944 Biennial Report, and Opinion No. 289, 1944-1946 Biennial Report.

Section 1942, 1929 N.C.L. 1941 Supp., subdivision 11, empowers the Boards of County Commissioners to cause to be erected a courthouse, jail, and such other public buildings.

Section 1963, N.C.L. 1929, which provides for the advertisement for bids when contracts are to be let, also provides when plans and specifications are to constitute part of such contract the notice shall state where the same may be seen, which assumes that the commissioners have adopted such plans and specifications before advertising for bids for construction.

As held by the Court in *Hunter v. Whiteaker*, 230 S.W. 1096, 44 A.L.R. 1151, in construing a statute requiring bids for the expenditure of money more than the amount specified in the statute: "To hold that the act would require that the services belonging to a profession such as that of the law, of medicine, of teaching, civil engineering, or architecture, should be obtained by the county only through competitive bidding, would give a ridiculous meaning to the act and require an absurdity. Such at least would be the best that could be conceived for obtaining the services of the least competent man, and would be the most disastrous to the material interests of a county."

In *Nye County v. Schmidt*, [39 Nev. 456](#), the court, on page 463, held: "A common rule of statutory construction requires the court to avoid interpretation that will result in absurd consequences."

Very truly yours,

ALAN BIBLE, Attorney General

By: George P. Annand, Deputy Attorney General

OPINION NO. 46-401. Gambling—Petition to Initiate Legislation—Number of Signatures—Verification.

Carson City, December 19, 1946

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

DEAR MR. McEACHIN: Answering your letter of December 18, 1946, handed us the same, concerning the petition to initiate legislation respecting gambling, we have the following comment:

You ask how many signatures are required. The answer is 4,256, that being 10 percent of the number of votes cast for Justice of the Supreme Court, November 5, 1946. See N.C.L. 1929, secs. 2570 and 2580. See your published official returns. Three Justices were chosen at that election, but there was a contest in one case only, which produced the greatest vote, 42,555, and this should be the basis.

You suggest that this office has made rulings indicating that the initiative petition may be filed not later than noon of Saturday, December 21, 1946. This is correct.

Section 2 of the Initiative Law of 1921 (Stats. 1921, page 108) N.C.L. 1929, sec. 2571, requires initiative petitions to be filed not less than 30 days before any regular session of the Legislature. The method of computation is to exclude the first day and include the last (Opinion

272, February 28, 1946, Attorney General's Report 1944-1946, page 189). The days are counted whether or not they be holidays, Saturdays, Sundays, or nonjudicial days.

The Supreme Court in *Culverwell v. Ross*, [58 Nev. 439](#), ruled that because of the express exception in N.C.L. 1929, sec. 20451, governing the office hours of County Clerks, a primary nomination declaration should be filed Saturday afternoon, that being the last day to file under N.C.L. 1929, sec. 2409. The law governing your office hours (1929 N.C.L., 1941 Supp., sec. 7410; Stats. 1937, page 423) contains no such exception and we believe, therefore, that the petition must be filed in office hours.

You state that you have thus far declined to file documents purporting to be initiative petitions because obviously they did not carry the requisite number of signatures. We suggest that on the morning of December 21, 1946, you assemble all petitions offered (being otherwise sufficient so as to set out the proposed bill in full) and if the number of signatures is 4,256 or more, that you bind them together and file the bound document. You could act earlier in a like manner, if the number of signatures were sufficient but no good reason appears for acting earlier.

The initiative as a legislative agency is authorized by the Constitution, art. XIX, secs. 1, 2, and 3. Section 3 declares the provisions shall be self-executing but permits legislation to facilitate operations (Opinion of Attorney General Thatcher, December 17, 1920). The following year the Legislature enacted such legislation, but said nothing about the filing of more than one petition nor the verification of the signatures or the status of the signers as qualified electors.

Under the opinion cited the absence of such provision may be regarded as an omission made advisedly and in contrast to the law relating to referendums (N.C.L. 1929, sec. 2532). However, the failure to affirmatively declare in the Initiative Law that the names of the electors petitioning may be contained in one or more petitions does not necessarily mean they must be contained in one petition only. A liberal view would be that more than one petition may be bound together to constitute a single petition provided the sum total of names equals the requisite 10 percent of qualified electors. However, now, as in 1920, the petitions need not be verified.

Very truly yours,

ALAN BIBLE, Attorney General

By: Homer Mooney, Deputy Attorney General

OPINION NO. 46-402. Old-Age Assistance—Transfer of Property—Execution and Delivery of Deed Fixes Date of Transfer.

Carson City, December 23, 1946

MRS. HERMINE G. FRANKE, *Supervisor, Division of Old-Age Assistance, P.O. Box 1331, Reno, Nevada.*

DEAR MRS. FRANKE: This will acknowledge receipt of your letter dated December 18, 1946, received in this office December 21, 1946, requesting an opinion upon the following question:

In administering section 2(f), section 12 and section 19 of the Old-Age Assistance Act, this agency has encountered situations which make it necessary to determine at what point property is considered transferred—*i.e.*, the date when the deed is recorded or the date when the deed is drawn up and signed.

To illustrate this you cite a case example.

We are of the opinion that a complete, unconditional and delivered deed has the effect of transferring the grantor's title, or so much thereof as the deed purports to convey, to the grantee and of divesting the grantor thereof at the time of delivery.

The recording of a deed operates as notice to third parties, but the deed is valid and binding between the parties thereto without such record.

Section 1475, N.C.L. 1929, provides: "Conveyance of lands, or of any estate or interests therein, may be by deed, signed by the person from whom the estate or interest is intended to pass, being of lawful age, or by his lawful agent or attorney, acknowledged or proved, and recorded, as hereinafter directed."

Section 1496, N.C.L. 1929, provides for the recording of conveyances of real estate to operate as notice to third persons, but such conveyance shall in the language of the section "be valid and binding between the parties thereto without such record."

Ruhling et al. v. Hackett et al., 1 Nev. on page 366, held: "A deed of conveyance, executed and delivered, carries the absolute legal title to the grantee, * * *."

The execution and delivery of the deed fixes the date of the transfer and not the date when the instrument is recorded.

Very truly yours,
ALAN BIBLE, Attorney General
By: George P. Annand, Deputy Attorney General

OPINION NO. 46-403. Old-Age Assistance—Legislature Cannot Change Initiative Measure Until Expiration of Full Three-Year Period.

Carson City, December 24, 1946
MRS. HERMINE G. FRANKE, *Supervisor, Division of Old-Age Assistance, P.O.*
Box 1331, Reno, Nevada.

DEAR MRS. FRANKE: This will acknowledge receipt your letter dated December 16, 1946, received in this office December 17, 1946.

You state that it is your understanding that the Initiative Measure providing for old-age assistance cannot be amended until after November 7, 1947, and request our opinion as to whether it would be possible to enact legislation, at the coming session of the Legislature, in the nature of an amendment which would become effective after November 7, 1947.

We are of the opinion that the Legislature, under the constitutional prohibition, cannot take any action to change the Initiative Measure until the expiration of the full three-year period from the date the said measure became effective.

Section 2, article XIX, of the Constitution of the State of Nevada, contains the following language: "When the majority of the electors voting at a State election shall by their votes signify approval of a law or resolution, such law or resolution shall stand as the law of the State, and shall not be overruled, annulled, set aside, suspended, or in any way made inoperative except by the direct vote of the people."

Section 3, article XIX, also contains the following language: "* * * an initiative measure so approved by the qualified electors shall not be annulled, set aside or repealed by the legislature within three (3) years from the date said act takes effect * * *."

The first section declares that such an Act shall stand as the law of the land. The next section places a limitation upon the Legislature when it may act to annul, suspend, set aside, or in any way make the Act inoperative. It is action by the Legislature which is prohibited within the three-year period from the date the Act takes effect, and not the date when the prohibited act of the Legislature becomes effective.

Ex parte Ah Pah, [34 Nev. 283](#), the court held: "The legislature, in the absence of constitutional restrictions, is free to fix in each act the time it is to take effect, * * *."

Moore v. Humboldt County, [46 Nev. 220](#), construing a constitutional restriction said, on pages 226-227: "Are the courts to be circumvented by a plain subterfuge? * * *" Speaking of the action by the Legislature, the court said: "* * * and it is contended that, since the office cannot be abolished by an act, the clear import of which would be to abolish it, the same end cannot be accomplished indirectly. This court has repeatedly held that what cannot be done directly cannot be done by indirection."

The Legislature which convenes in January, 1947, cannot directly, in any way make the Act inoperative, therefore, to amend the Act and make the amendment effective after the expiration of the period fixed in the Constitution, as held in *Gibson v. Mason*, 5 Nev. on page 300, "would simply be an indirect means of permitting the very act which it is claimed was intended to be denied."

The Initiative Act approved by the electors, under the provisions of the constitution shall stand as a law of the State, except by the direct vote of the people, or by an Act of the Legislature

in session after the full period of three years from the date of the declaration of the result of the canvass of the vote on the question by the Supreme Court.

Very truly yours,

ALAN BIBLE, Attorney General

By: George P. Annand, Deputy Attorney General

OPINION NO. 46-404. Fish and Game—Deer—Commission May Declare Open Seasons on Either or Both Sex in Areas Set Apart By It.

Carson City, December 28, 1946

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

Attention: Shirl Coleman, State Game Warden.

GENTLEMEN: Reference is hereby made to your letter of December 26, 1946, propounding the following query:

Does section 66 of the Game Laws authorize the Commission to declare an open season in which one deer of either sex may be taken, when such is the recommendation of the investigating committee?

It is my opinion that your query was answered by this office in Opinion No. 72, dated September 16, 1943, and addressed to your Commission. There has been no change in the law since that opinion was rendered.

Suffice it to say, at this time, that the State Fish and Game Commission, upon strict compliance in all respects with section 66 of the Fish and Game Law, as amended at page 52, Statutes of Nevada 1943, may permit the taking of deer of either or both sex in areas set apart by it in accordance with the rules and regulations provided therefore and the necessary licenses provided and issued to those hunters taking the deer.

Very truly yours,

ALAN BIBLE, Attorney General