

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL - 1947

OPINION NO. 47-405 RAILROADS—State highway board could require change of location of telegraph poles on railroad right-of-way—Company entitled to reimbursement for cost of removal.

Carson City, January 2, 1947

Hon. Robert A. Allen, State Highway Engineer, Carson City, Nevada

Dear Mr. Allen:

This will acknowledge receipt of your recent communication containing a letter addressed to you from Mr. Calvin M. Cory, General Attorney for the Union Pacific Railroad Company, and a statement of facts concerning the responsibility for the payment of costs incurred by the removal from the present location of existing telegraph poles in order to carry out the proposed project for widening Main Street in the City of Las Vegas, such project being designated Nevada U-87(6).

After a careful consideration of the facts submitted, we are of the opinion that the utility involved cannot be required to change the location of its existing telegraph poles without reimbursement for costs incurred in making the required adjustment in its telegraph lines. The utility has acquired an easement to a right of way by reason of open and notorious, uninterrupted, adverse, and exclusive enjoyment of the right since the year 1905.

The facts disclose that the Western Union Telegraph Company entered into a contract with the Los Angeles and Salt Lake Railroad Company in the year 1904 for the construction of a telegraph line paralleling the right of way of the railroad company. The project was carried on simultaneously and completed on January 30, 1905.

The railroad company in the same year acquired land on both sides of its tracks. The telegraph line is located within this land on the west side. During the same year the railroad company turned over to the Las Vegas Land and Water Company, a subsidiary wholly owned by the railroad company, all of this land west of the railroad tracks.

In May, 1905, the Las Vegas Land and Water Company deeded to the Township of Las Vegas a subdivided tract of land on the west side of the railroad for township purposes. The dedication was made by means of a subdivided plat indicating a strip for street purposes. It has not been constructed or operated pursuant to any permit or franchise issued by the city of Las Vegas or any other municipal authority. The city, therefore, acquired the land subject to the public easement and right exercised by the utility.

See Attorney General's Opinion A-58, March 29, 1940. The facts involved were substantially the same as those in the present situation. The Attorney General held that easement to a right of way is valid by reason of open and notorious, uninterrupted, adverse, and exclusive enjoyment for a period of more than five years, and, while the Highway Department could compel the change in location of the poles, the telegraph company involved was entitled to reimbursement for costs incurred in adjusting its lines.

See *Thomas v. Blaisdell*, [25 Nev. 233](#); *The Chollar-Potosi Mining Company v. Kennedy and Keating*, 3 Nev., on page 375, and Attorney General's Opinion No. 147, 1934-1936 Biennium.

Very truly yours,

ALAN BIBLE

Attorney General

By: George P. Annand
Deputy Attorney General

cc: Calvin M. Cory

OPINION NO. 47-406 OLD-AGE ASSISTANCE—No provision in act requiring consent of county board before sale of property.

Carson City, January 3, 1947

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 December 27, 1946, received in this office December 28, 1946, in which you furnish additional information, as requested, in support of your inquiry of October 3, 1946. Your inquiry of that date related to a recipient who died, leaving a home occupied by a surviving spouse who never received old-age assistance. There was no administration of the estate of recipient and no claim was filed by the department as the home was occupied by the surviving husband of deceased. You asked, in the event the property was sold, would the husband be required to obtain consent of the county board, and should a claim be filed in the event of such sale, and what is the procedure for placing such sale.

Your recent letter set out certain transfers of property during the lifetime of the recipient and her husband and you inquire as to the status of the property, whether community or separate property.

As to the status of the property in question, it is community property if acquired by either party by gift, bequest, devise, or descent, as provided in sections 3355 and 3356 N.C.L. 1929.

Your questions as to whether the husband of deceased recipient should obtain consent of the county board before disposing of the home occupied by him, and should a claim be filed by the department in the event of a sale, and if so what is the procedure under the circumstances, or requiring consent of the county board before sale.

You mention a number of transfers of property during the marriage of recipient and her husband, but do not state the period when assistance was granted. Section 3 of the Old-Age Assistance Act, provides that the amount of assistance granted shall be determined with due regard to the resources of the applicant. Section 7 provides for an investigation of the circumstances of the applicant for assistance, provided that no relative of the recipient shall be in anywise required to contribute to the support and maintenance of recipient, it being the intent and purpose of the Act to remove all applicants and recipients from the operation, restrictions and provisions of the pauper laws.

The Act removes the recipient from the pauper laws and, as held in 125 A.L.R. 712, citing 21 R.C.L. 726, "In the absence of a specified statute a poor district cannot ordinarily maintain an action against a pauper for support furnished, for in such case there is no implied contract to compensate, and this holds good as to the pauper's estate as well as to the pauper himself."

Section 12 of the Old-Age Assistance Act, read together with section 3 and section 7 of the Act, cannot be construed to impose upon recipient any present obligation to reimburse the Federal Government, the State and the county for payments made to recipient under the Act. Section 12 provides that upon the death of recipient the total amount of assistance paid under the Act shall be allowed as a preferred claim against any estate of such person, but that the claim

shall not be enforced against any real estate of recipient while it is occupied by a surviving spouse.

Section 9882.120, 1929 N.C.L. 1941 Supp., provides that no holder of a claim against an estate shall maintain an action thereon unless the claim is first filed with the clerk, within the time specified in the section for the filing of claims. Therefore, if the claim is not filed as provided, no action may be had to recover.

The Nevada Act does not specifically provide, as do the statutes in some States, that a person, his executor or administrator, shall be liable for his support, or that the claim is a lien against the real property.

The decisions of the various courts are not in harmony as to the authority of the welfare department to recover from the estate of a recipient the money furnished under the Old-Age Assistance Act, except where payments were made by accident, fraud or mistake. The general rule is stated in 125 A.L.R., page 712, "Annotations on reimbursement of public for old-age assistance," which recites: "It is clear that Congress merely provided for reimbursement from the estate of deceased recipient who had through error or fraud received overpayments during his lifetime."

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-407 TAXATION—Refunds to veterans—Legislative action necessary.

Carson City, January 4, 1947

Hon. Wayne O. Jeppson, District Attorney, Lyon County, Yerington, Nevada

Dear Mr. Jeppson:

Reference is hereby made to your letter of December 17, 1946, relative to the payment of taxes on personal property by ex-servicemen and the thereafter claiming by them of a refund of money upon the ground that such taxes were exempt under the law providing for tax exemptions of ex-servicemen and servicemen.

You inquire whether the County Auditor and County Treasurer are authorized to make a refund to a veteran of the amount of exemption allowed him if the veteran has filed his affidavit prior to December 1, and later makes claim for the refund of the tax paid. You also inquire if it is possible for the county to be reimbursed from the State for its pro rata of exemption allowed after the money has been turned into the State.

In your letter you refer to the opinion of this office (No. 176, Attorney General's Report 1944-1946) given November 27, 1944, to the District Attorney of Clark County. This placed a liberal interpretation of the provision requiring an affidavit for exemption in favor of men remaining in the armed services. At that time the amendment of men remaining in the armed services. At that time the amendment of 1943 (Stats. 1943, p. 5) applied. The amendment of 1945 (stats. 1945, p., 42) does not alter the situation.

We are constrained to answer your inquiry in the negative.

You will not from the opinion that we stated with respect to Inquiry No. 1 therein answered that application must be made for the exemption and this means, of course, prior to the exemption being granted. We think this is important for the reason that the Assessor and the County Treasurer would have no authority to grant an exemption until the affidavit therefor was first filed, thus showing the serviceman's right to an exemption. If such affidavit was not filed by the servicemen or the ex-serviceman prior to the exemption being granted, it is our opinion that the county officials have no power to grant an exemption and accept payment of the tax and then later allow a refund therefore. At the present time there are no Nevada statutes permitting or authorizing the County Auditor and county Treasurer to make such a refund.

If it is deemed equitable to refund money paid by servicemen and ex-servicemen under the conditions mentioned in your letter, we submit it would require legislative action to authorize such refund.

Very truly yours,

ALAN BIBLE
Attorney General

OPINION NO. 47-408 WELFARE, STATE DEPARTMENT—Responsible for planning care of dependent and neglected children—Cannot delegate entire responsibility to county.

Carson City, January 4, 1947

Miss Grace Semenza, Administrative Assistant, Division of Child Welfare Services, 440 Gazette Building, Reno, Nevada

Dear Miss Semenza:

This will acknowledge receipt of your letter dated December 16, 1946, received in this office December 17, 1946, requesting an opinion as to the duties and responsibilities of the State Welfare Board in regard to dependent and neglected children.

Your inquiry is directed to the following particular questions, supplemented by the questions and discussion on the subject entertained at a meeting with your board and interested parties held in your office on January 2, 1947:

Is the State Welfare Department responsible for planning the care of dependent and neglected children in the State of Nevada?

Is there legal authority placed in the County Commissioners to set up a county welfare department which will include all services and assistance to children who are dependent and neglected; children who are in danger of becoming delinquent; and services to children with severe behavior or emotional problems?

Does the State Department have the legal right to delegate its responsibility or authority to a county for carrying out services and assistance to children?

The State Welfare Department under the statutes is charged with the supervision of all welfare activities of the State as specified in section 5154.53, 1929 N.C.L. 1941 Supp., which includes aid to independent children and child welfare services.

Aid to dependent children as defined in Title 4 of the Act, means money payments with respect to a dependent child or children. Under this title in order for a State to receive payments from the Federal Government the State must adopt a plan that shall be in effect in all political subdivisions of the State and, if administered by them, be mandatory upon them; (2) designate a single State agency to supervise the administration of the plan, and other specified requirements

that shall be approved by the Federal Board. The State has designated the single State agency. The State, however, has not adopted a State plan, nor provided a means for raising funds to meet the Federal grant which, together with State funds, shall be used exclusively for carrying out the State plan. Therefore, the plan to care for dependent children must be put into operation by the Legislature before the State department can perform the duties and exercise the authority provided in the present statute.

Child welfare services generally are referred to in subdivision 2 of section 3 of the State Welfare Act which provides as follows: "Supervise all child welfare services as defined in part 3 of title V of the social security act, and cooperate with the federal government in establishing, extending, and strengthening child welfare services."

Part 3 of title V (section 721, title 42 U.S.C.A.) provided an appropriation for allotments to States for the purpose of enabling the United States, through the Children's Bureau, to cooperate with State public welfare agencies in establishing, extending, and strengthening child welfare services. The section uses the term, "especially in predominantly rural areas." The money is allotted by the Secretary of Labor for use by cooperating State public agencies on the basis of plans developed jointly by the State agency and the Children's Bureau. The sum of 410,000 was allotted to each State and the remainder of the appropriation to each State on the basis of the plans developed jointly by the State agency and the Children's Bureau. The apportionment is allotted on the basis that the rural population of such State bears to the rural population of the United States. The amount allotted shall be expended for payment of part of the cost of district, county or other local child welfare services in areas predominantly rural. The purpose of this Federal grant, as expressed in Part 3 of the Title, is for the protection and care of homeless, dependent, and neglected children and children in danger of becoming delinquent.

The Nevada statute gives the State Welfare Department authority to supervise such service and cooperate with the Federal Government. There is no requirement in the Federal Act that the State adopt a plan, but provides for a plan developed jointly by the State agency (the State Welfare Department) and the Children's Bureau.

The amount of the appropriation was \$1,500,000 with an allotment of 410,000 to each State and the remainder apportioned on a basis of rural population. The same is to be expended for payment of part of the cost of district, county, or other local child welfare services.

The State Welfare Department, in cooperation with the Federal Government, is, therefore, responsible for planning the care of dependent and neglected children and children who are in danger of becoming delinquent as provided in Part 3 of Title V.

Your second question is answered by the statutes of the State now in force and do not in any particular prohibit the counties from setting up welfare services to children when the same is paid out of county funds.

Section 5 of the 1937 Act (section 5154.55, 1929 N.C.L. 1941 Supp.) defines the duty of county boards in the following language: "The boards of county commissioners of the several counties shall make necessary provisions to maintain necessary welfare services, including payment of compensation and the traveling expenses of county employees engaged exclusively in the performance of welfare services as provided by law, and for the payment of expenses contingent thereto during the present fiscal year may transfer available funds from any other existing county fund."

The special authority to transfer funds was given for the fiscal year 1937. Thereafter the provisions of the budget law would apply in the creation of and expenditure for such purposes.

Section 9 of the State Welfare Act of 1937 (section 5154.59, 1929 N.C.L. 1941 Supp.) provides that chapter 138, Statutes of 1935, shall remain in full force and effect, but any part in conflict is repealed. Section 4 of the 1935 Act (section 5151.04, 1929 N.C.L. 1941 Supp.) does not appear to be in conflict with the 1937 Act. Section 4 of the 1935 Act provides for a county

board to assist the State Board with the work in the county, to make investigations and report to the county municipal authorities in dealing with questions of dependency and distribution of relief funds, to act as agent for the State Board in distribution and administration of any State or Federal funds for relief purposes as shall be placed at its disposal for expenditure in such county, and to cooperate with the county probation committee as provided in section 1016, N.C.L. 1929. This section provides for the appointment by the judge of the district court of a probation committee and defines the duties of such committee. One of the duties of this committee is to make reports to the judge of its county of the qualifications and management of all societies, associations and corporations, except State institutions, applying for or receiving any child under the Act (the Juvenile Court Law) from the courts of their respective counties, and in such reports make such suggestions as they may deem fit. The committee shall have control and management of the internal affairs of and detention home established by the county commissioners. The committee shall have control and management of the internal affairs of and detention home established by the county commissioners. The employees of the home shall be paid by the county. This section also gives the district courts jurisdiction over dependent or neglected children.

Section 1015, N.C.L. 1929, being section 6 of the same Act, was amended by chapter 114, Statutes of 1946, giving the district judges authority to appoint any number of discreet persons of good moral character to serve as probation officers whenever such appointments shall be deemed necessary to care for dependent and delinquent children of the county. The Superintendent of Public Instruction and the Governor constitute a board to investigate the competency of such persons appointed to act as probation officers. Expenses of paid probation officers are paid by the respective counties.

Section 5100, 1929 N.C.L. 1941 Supp., makes it the duty of each county to provide funds under the Mothers' Pension Act for the partial support of mothers who are dependent upon their own efforts for the maintenance of their child or children.

Chapter 85, Statutes of 1945, authorizes County Commissioners to provide county work houses and a home for the indigent sick or aged within their county.

Clerical, physical, and nondiscretionary acts required of the administrative agency may be subdelegated as the State board could not personally perform the multitude of such duties, but its entire responsibility or authority cannot be delegated to a county.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-409 NEVADA HOSPITAL FOR MENTAL DISEASES—Advertising signs on property.

Carson City, January 7, 1947

Hon. Vail Pittman, Governor of Nevada, Carson City, Nevada

Dear Governor Pittman:

This will acknowledge receipt of your letter dated December 31, 1946, received in this office January 2, 1947, enclosing a copy of a letter from Mr. W.H. Garrett respecting the placing of a sign of the Lions Club on property of the Nevada Hospital for Mental Diseases.

You ask: "Regardless of which institution or department owns the land, I would like to know whether or not it is permissible for a sign, such as the one referred to be placed on State property."

We are of the opinion that the placing of such a sign is under the control of the Board of County Commissioners of the Nevada Hospital, subject to the approval of the State Highway Department, if such sign is placed with respect to any public highway in such manner as to constitute a hazard or prevent the safe use of a highway.

Section 3509, N.C.L. 1929, provides that the Board of Commissioners of the Nevada State Hospital, as named in the Act, shall have full power and exclusive control of and over all the grounds of the hospital.

Section 5348, 1929 N.C.L. 1941 Supp., prohibits advertising signs placed or situated with respect to any public highway or highways or otherwise so situated as to constitute a hazard upon or prevent the safe use of the State highway; *provided*, that counties, towns, or cities may, by permission of the State Highway Department, place at such points as may be designated by the State Highway Engineer suitable sign boards advertising such counties, towns or municipalities.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-410. Public Schools—County Aid to District High Schools.

Carson City, January 8, 1947

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

DEAR MISS BRAY: This will acknowledge receipt of your letter of December 30, 1946, received in this office December 31, 1946, in which you state the following problem

A problem has just arisen in regard to the apportionment of county aid to a district high school, as provided under chapter 183, 1939 Statutes of Nevada, upon which I shall need an opinion from your office.

You will notice that subparagraph 4 of section 4 of the Act provides, as one of the conditions precedent to the levying of county tax for a district high school, "the deputy superintendent of public instruction shall certify to the county board of commissioners that the prospects are that there will be at least eight (8) actual resident students of high school grade in attendance at said district high school for the ensuing school year."

In the case at issue, basing her judgment upon the fact that there were ten students registered last spring in the eighth grade and the first three years of high school, the deputy superintendent certified to the county commissioners of the said county that the prospects were that there would be at least eight actual resident students of high school grade attending the district high school that fall. It so happened that during the summer, however, several of the families of eighth grade students left the community and that, when school opened in September there were not eight students in the high school. This fact has continued and to date the average daily attendance for the district high school has been only 4.578. My problem now is whether the district high school in question is entitled to any

county aid and, if so, whether that aid should be apportioned on the basis of the five resident children in average daily attendance during the preceding school year (It has been established practice in this department to count any major portion of a fraction as an additional student, so 4.578 is counted as 5 for apportionment purposes) or the ten students on which the request for county aid was based.

In its budget filed last spring, the school board of the district involved, provided for a \$0.25 elementary (special) district tax and a \$0.25 special high school district tax (the two districts being identical in are), thus entitling the district to receive \$200 per high school student.

You ask the following question:

Will you be so kind as to advise whether or not the district high school herein mentioned is entitled to receive in 1947, apportionments of county aid on the basis of 5 pupils in average daily attendance during 1945-1946 at \$200 per pupil, in view of the provisions of subparagraph 4 of section 4, chapter 183, 1939 Statutes of Nevada, as amended by chapter 158, 1941 Statutes of Nevada?

Subparagraph 4 of section 4 (section 6078.23, 1929 N.C.L. 1941 Supp.) provides that in order to establish a district high school there shall be at least ten actual residents of high school grade needing or desiring high school training and proposing to attend such district high school when established. The section further provides, where a district high school is already established and in operation and the prospects are that there will be at least eight students in attendance during the ensuing year, and so certified to the County Commissioners by the Deputy Superintendent of Public Instruction, the first provision of the section requiring the County Commissioners to levy the tax provided therein becomes operative. Upon the certificate of the Deputy Superintendent and petition the Board of Trustees of the district high school, it may be presumed that the Commissioners levied the required tax.

The district complied with the conditions set forth in subparagraphs 1, 2, 3, and 4 of section 4, and the amounts when collected were paid into the county treasury in the County Aid to District High School Fund, as provided in section 5. The disbursements to be made on the ratio of students as shown by petition for a newly established district high school (which would be at least ten students) or per student as expressed in the section, “* * * or in average daily attendance for the last preceding school year in the district high school already established, as the case may be * * *.”

It appears, therefore, that notwithstanding the fact that the number of at least eight students was not maintained as anticipated, the district is entitled to county aid on the basis of five resident students in average daily attendance during the preceding school year.

Very truly yours,

ALAN BIBLE, Attorney General

By: George P. Annand, Deputy Attorney General

OPINION NO. 47-411. Counties—County Owned Lots Do Not Pass to City Upon Incorporation—Hawthorne.

Carson City, January 10, 1947

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

DEAR MR. EVANSEN: Reference is hereby made to your letter of January 8, 1947, incorporating your opinion that upon the incorporation of the city of Hawthorne, title to county owned lots did not pass to the city of Hawthorne, and that the same may be sold with the proceeds of the sale to be deposited in the county fund as provided by law. You inquire if we approve your opinion.

Please be advised that we concur in your opinion that the title to the county owned lots did not pass to the city of Hawthorne upon its incorporation.

With respect to the depositing of proceeds of sale of such lots by the county, we are not in agreement that the whole thereof is to be deposited in the county fund. AT the time the taxes were assessed upon such lots undoubtedly certain taxes were assessed for the benefit of the town of Hawthorne. In such case we are of the opinion that upon the sale of such lots, if the proceeds bring in a sufficient amount of money to pay all the delinquent taxes, then we think the portion of the taxes assessed for the benefit of the town of Hawthorne should properly be paid over to the incorporated city. Also, if the proceeds of the sale do not provide sufficient money to pay the delinquent taxes in full, that the same should thereupon be prorated.

We base this opinion upon the opinion of this office, A-30, dated July 13, 1939, and reported in the Report of the Attorney General, July 1, 1938, to June 30, 1940, a copy of which no doubt is in your office, and upon section 1109, N.C.L. 1929, for the reason that the former town of Hawthorne undoubtedly was vested with the rights to whatever taxes were assessed upon the lots for such town's use.

Very truly yours,
ALAN BIBLE, Attorney General

OPINION NO. 47-412 COUNTIES—Power to collect license fees from retail liquor businesses—Within boundaries of incorporated towns doubtful—Justice of peace cannot automatically serve as police judge.

Carson City, January 15, 1947

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

Dear Martin:

Reference is hereby made to your letters of January 8 and 9, 1947, relative to certain questions propounded by you in connection with the incorporation of the town of Hawthorne.

First you inquire whether the county license provide din section 6666, N.C.L. 1929, which provides a county license upon retail liquor dealers within the confines of any city or town, is now required to be collected by the Sheriff of Mineral County on retail liquor business within the boundaries of the incorporated town of Hawthorne. You also refer to the State retail liquor license provided in section 6669, N.C.L. 1929. We not it is your opinion that the license provided in section 6666 may be imposed by Mineral County.

We have given considerable attention to this query. We beg to advise that the matter is shrouded in considerable doubt due to the fact that in 1919 the initiative prohibition law of the State became effective and, being so inconsistent with the revenue law mentioned in your inquiry, we are very, very doubtful of the power of the county at this time to collect such a license fee. We respectively suggest that this particular matter should be submitted to the coming session of the Legislature for clarification.

You also inquire whether the Justice of the Peace of Hawthorne Township can act as city police judge. It is our understanding that the town of Hawthorne was and is incorporated under the general incorporation Act provided for cities and towns, being sections 1100-1212, N.C.L. 1929. We find no provision in this particular law whereby a Justice of the Peace may serve as police judge for an incorporated town. Section 1166, N.C.L. 1929 provides for the election of a police judge and apparently there is no provision whereby a Justice of the Peace elected in the township at large can automatically serve as police judge.

Your inquiry with respect to the ownership of lots by a county in an incorporated town was recently answered in another opinion by us to the effect that the city acquires no title to such lots by reason of its incorporation.

Very truly yours,

ALAN BIBLE
Attorney General

OPINION NO. 47-413 POWER DISTRICTS—Act may be extended to areas other than mining.

Carson City, January 17, 1947

Mrs. Florence B. Bovett, Secretary, Nevada State Farm Bureau, Extension Building, University of Nevada, Reno, Nevada

Dear Mrs. Bovett:

Reference is hereby made to your letter of January 14, 1947, propounding certain queries in connection with the power district law.

First you inquire whether the Act is limited to mining areas in the State by reason of the purposes of the Act set forth in section 2. It is true such section uses the language “for use in the mining areas for the purpose of raising the standard of living in these areas.” If such language stood alone in the Act, a strict interpretation thereof might require the limiting of the use of power to mining areas. However, section 8, paragraph (1), has broadened the use or purpose of the Act to such an extent that we are inclined to the view that the Legislature has departed from the limited use mentioned in section 2. It will be noted in section 8 that the district shall be created for the purpose of constructing and operating a utility and to construct and operate the same within and without the district and to furnish, deliver and sell to the public and to any municipality and to the State and any public institution, heat, light and power service. Having given the power district such broad powers, we think it is clear that the purpose of the Act may be extended to areas other than mining areas. However, there would be no objection to amending section 2 in this respect.

Now with respect to the limiting of power districts within a county—we think the Act is broad enough to permit of districts being created across county lines, as the territorial limitations of the district are to be fixed by the Public Service Commission and we find no language, so far as the limits are concerned, limiting the area to any particular county, with the exception, however, that the government of a power district is vested in a board of three directors to be appointed by the Board of County Commissioners of the county within which the district is situated. It at once becomes apparent that if a power district is created across county lines, great difficulty would be encountered in the appointment of a board of directors. For this reason, if districts are to be created across county lines, then we think it imperative that section 9 be amended so as to facilitate the appointment of a board of directors, perhaps by joint action of two Board of county Commissioners or such like.

Your next inquiry concerns provisions of section 8 relative to operating a utility outside the borders of a district. This is a rather a general and broad provision and, so far as this office is advised, such question has not arisen under the law. It probably means that a power district may acquire a utility plant beyond the confines of its district and operate it. However, this provision in the law is rather ambiguous as it seems to be in conflict to a certain extent with the intent of the Act and we would advise considerable caution with respect to the attempting to operate a utility beyond the boundaries of the district.

You inquire as to the power of eminent domain. The power of eminent domain provided in section 15 is the same power that is granted to States, counties and municipalities to condemn

privately owned property for public use and takes in private property necessary to be acquired for the use of the district.

Trusting this will answer your inquiries, I am,

Very truly yours,

ALAN BIBLE, Attorney General

cc to J.G. Allard.

OPINION NO. 47-414 PUBLIC SCHOOLS—Tax levy—Postwar fund.

Carson City, January 18, 1947

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

Dear Miss Bray:

This will acknowledge receipt of your letter dated January 13, 1947, received in this office January 14, 1947, requesting advise as to whether or not a Nevada school district is given the necessary authority under chapter 234, Statutes of 1945, to augment its present building funds raised by the issue of bonds during the past five or six years, which fund, due to the increased cost of construction, is inadequate. You suggest a budget item and tax levy by the district for the coming three years to provide the cost for its building program.

We are of the opinion that considerable doubt appears when an interpretation of this chapter is sought to meet the conditions outlined in your inquiry. It appears that this matter should be submitted to the Legislature for possible relief.

Chapter 234, Statutes of 1945, authorizes the incorporation in the budget for the ensuing year an amount for a specified purpose and an annual tax levy, not to extend beyond the tax year 1949, to accumulate a fund for such purpose. The fund is not available for any other purpose.

The money raised by a tax levy for the years 1947, 1948, and 1949 could not be issued to augment the high school district building fund unless such was the specified purpose when the postwar fund was initiated.

The amount of the tax levy authorized for the purpose of accumulating the postwar fund is limited by the language in section 2 of the Act, which reads as follows: "No sum shall be budgeted for a postwar reserve fund by any county or school district which shall have the effect of depriving an incorporated city of the benefit of its maximum statutory rate without the consent of the governing board of said city."

The prevailing tax rate in most counties in which are situated incorporated cities does not leave a considerable margin for the city in order to keep the total tax rate within the constitutional limitation.

This is the condition that makes it appear advisable to submit the matter to the Legislature for relief.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-415 PUBLIC SCHOOLS—School board elections—Vacancies filled by appointment.

Carson City, January 18, 1947

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

Dear Miss Bray:

This will acknowledge receipt of your letter dated January 8, 1947, received in this office January 10, 1947, requesting information regarding the appointment of members of the board of education in the Yerington school district; whether the district is governed by chapter 164, Statutes of 1917, or chapter 115, Statutes of 1925, and if members whose terms expired at the expiration of the period fixed by statute hold over until their successors are elected and qualified.

We are of the opinion that the organization of the Yerington school districts into the Yerington Union School District places the district directly under the provisions of chapter 115, Statutes of 1925. The members of the board of education of the district are elected at each general election and not at the school election. The district board should appoint members of the board to hold office until the next general election when members should be elected for the unexpired terms.

Chapter 164, Statutes of 1917, was a special Act creating the Yerington high school districts. Whether the district was created by the special Act or under the general Act the district now organized is governed by the Act providing for the union of school of school districts, chapter 115, Statutes of 1925, as amended.

The members of the board of education of the union district are elected at the general election and vacancies are filled by the district board for the unexpired term. Section 4 (5970, N.C.L. 1929) provides that a member elected shall hold office until his successor is elected and qualified.

42 Am. Jur., page 980, expresses a general rule as follows: “* * * on the expiration of an official term he holds over until his successor is chosen and qualifies. So if a vacancy may be said to occur when an officer’s term expires, the law itself fills the vacancy by providing that the encumbent shall hold over.”

Section 5712, 1929 N.C.L. 1941 Supp., provides for the appointment of school trustees in case no election is held, but this does not apply to boards of education. Such a provision is not contained in the union school district Act.

As stated in 42 Am. Jur., page 980: “Accordingly, in the absence of some positive provision of the law necessitating a different conclusion, the view is generally taken that where the encumbent holds over at the expiration of his term no vacancy results in the sense that the appointing power may proceed to select a successor.”

While this general rule is recognized by the Supreme Court of this *State in Ex rel. Williamson v. Morton*, [50 Nev. 145](#), the court held that although an office was not a constitutional office where the term of office is “fixed, determinate,” by the constitutional provision invoked by the legislation, it is just as much as if the office had been created by the Constitution and could not extend over a longer period than that prescribed, which is four years.

It appears, therefore, that the present members of the district board of education should appoint the necessary members to fill the positions until the next general election when members of the board should be elected to fill the unexpired term of the respective members. Such

appointment should be confirmed by the State Superintendent of Public Instruction to fortify the appointments under the existing conditions.

Such conditions could be eliminated by a provision in the Union School District Act similar to section 5712, 1929 N.C.L. 1941 Supp., giving the State Superintendent authority to appoint members of the board caused by failure of the people to elect such members.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-416 FISH AND GAME COMMISSION—Funds received from license fees do not revert at end of biennium.

Carson City, January 27, 1947

Fish And Game Commission, P.O. Box 678, Reno, Nevada

Attention: S.A. Wheeler, Representative

Gentlemen:

Reference is hereby made to your letter of January 22, 1947, inquiring whether the money collected from the sale of hunting licenses, deer tags, miscellaneous licenses, and fur sales, now held by the State Treasurer and deposited in the State Fish and Game Fund, revert to the General Fund at the end of the biennium.

It is noted that by July 1, 1947, you think there is a possibility that a portion of the above-mentioned moneys will not have been spent.

OPINION

Practically since the inception of Statehood, moneys appropriated by the Legislature for the respective State departments, under an opinion of the Supreme Court, may be reverted by the State Controller at the end of the biennium for which appropriated. This, however, applies to appropriations made by the Legislature and, of course, the reversion of such funds works no hardship because of the fact the Legislature can, and no doubt does in most instances, make the necessary appropriation for the ensuing biennium.

With respect to the fees mentioned in your inquiry a different rule applies. These fees are collected as license fees and not as taxes levied upon the property and they are collected for specific purpose under the Fish and Game Act for the protection, propagation and conservation of the fish and game of the State and as such constitute a continuing fund for the use of the Fish and Game Commission and incidentally the counties also, and we are of the opinion, and so state, that such license fees are not to be reverted by the State Controller at the end of the biennium, but any such fees still remaining in the State Treasury are subject to disposition by the Fish and Game Commission according to law.

Very truly yours,

ALAN BIBLE
Attorney General

OPINION NO. 47-417 COUNTIES—Gasoline tax—Legislature can provide additional gasoline tax to be used for county road work exclusively.

Carson City, January 29, 1947

Mr. W.F. Helmick, Legislative Counsel, Carson City, Nevada

Dear Mr. Helmick:

Reference is hereby made to your letter of January 28, 1947, propounding the following queries upon which you ask the opinion of this office:

1. Would there be any constitutional bar to the imposition by the State of an additional two cent gasoline tax, the proceeds of which would be used exclusively for county road work?
2. Would there be a bar to a county imposing a gasoline tax, the proceeds of which would be used for roads?

Section 5, article IX, Constitution of Nevada, provides as follows:

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

It is axiomatic that the Legislature may legislate upon any subject except as prohibited by the terms of the Constitution. The prohibition contained in the foregoing section is that the proceeds from the imposition of any excise tax on gasoline or other motor vehicle fuel shall, except costs of administration, be used exclusively for the construction, maintenance, and repair of the *public highways* of this State. It becomes clear then that the Legislature, having full legislative powers except as prohibited by the Constitution, so long as it limits the gasoline tax proposed to its use upon the public highways, can constitutionally enact such a tax imposition law for use upon county roads, provided always such county roads are public highways.

Both queries are therefore answered in the negative. With respect to Query No. 2, it would be imperative for the Legislature to enact a law permitting the imposition of a county tax on gasoline for public highway purposes.

Very truly yours,

ALAN BIBLE
Attorney General

OPINION NO. 47-418 HOSPITALS, COUNTY—Election by people to reorganize county hospital where tax is necessary for maintenance.

Carson City, January 30, 1947

Honorable Wm. J. Crowell, District Attorney, Nye County, Tonopah, Nevada

Dear Mr. Crowell:

Reference is hereby made to your letter of January 27, 1947, requesting the opinion of this office as to whether in a special election called by the Board of County Commissioners of Nye County for the purpose of establishing or reorganizing the present Nye County hospitals as public hospitals pursuant to section 2225, N.C.L. 1929, as amended, and accompanying sections, which constitute the county hospital law of this State, it would be necessary to provide in such special election for an issuance of bonds as required under the Act in view of the fact that no bond issue is necessary in the Nye County situation.

We have examined the hospital law very carefully with respect to your problem and we are of the opinion that, under section 2225, as amended, at 1943 Statutes 213, there is no escape from the proposition that the voters have a right to specify in the election the amount of the tax to be collected for the maintenance of the hospital, which tax, as we read the law, shall not exceed two mills on the dollar annually for a period of twenty years.

Section 6 of the Act, being section 2230, N.C.L. 1929, provides that where any county in the State has provided for the appointment and election of hospital trustees and has voted the tax for the term not exceeding twenty years, then the county commissioners shall issue bonds in anticipation of the collection of the tax. We think even if the question of the bond issue could be eliminated from the election contemplated, nevertheless, if the tax was voted, the county commissioners would be required to issue bonds in anticipation of the collection of the tax for the period of twenty years. Undoubtedly, this provision was placed in the law to insure sufficient funds to maintain the hospital after once acquired and placed under hospital trustees. However, the amendment of 1943 seems to make it mandatory to require the voters to fix the total amount of money for tax required to maintain the hospital and requires the vote on a bond issue.

It would seem that it is a matter of policy in which the Legislature could, if it so desired, make a different provision for the management of county public hospitals under boards of trustees where no money is required for the obtaining or building of such hospitals and not require the election for a bond issue in such a case. However, the Legislature has not done so and we suggest that in the Nye County case, if it is thought not desirable to issue bonds, to submit the matter to your legislative representatives with a view toward amending the Hospital Act.

Very truly yours,

ALAN BIBLE
Attorney General

OPINION NO. 47-419 MOTOR VEHICLES—Revocation driver's license invalid where conviction is had under unconstitutional city ordinance.

Carson City, February 3, 1947

Hon. Robert A. Allen, State Highway Engineer, Carson City, Nevada

Dear Mr. Allen:

This will acknowledge receipt of your recent letter in which you state that you are advised that Judge Henderson of Clark County has recently ruled that convictions by the Municipal Court of Las Vegas on charges of drunken driving, or driving while under the influence of intoxicating

liquors, under the provisions of a city ordinance of Las Vegas were invalid since the city ordinance conflicted with the State law and was accordingly unconstitutional.

On January 31, 1947, we received a copy of the Court Minutes in the case of the *City of Las Vegas v. Charles William McDonald*, in which case presiding Judge Henderson held that City Ordinance No. 170 relating to the riding, driving, or propelling of an automobile in a reckless manner while in an intoxicated condition was invalid and inoperative, and since the ordinance was not valid, the Municipal Court had no jurisdiction.

You ask us to advise you what effect this court decision will on those convictions upon which you, as administrator of the Drivers License Divisions, had revoked drivers licenses pursuant to the provisions of the State Drivers Licensing Act.

It is our opinion that in view of the court's decision the convictions upon which you based your revocation order are absolutely inoperative and invalid, and since they are inoperative and invalid and since under the court's ruling the municipal court had no jurisdiction, then it is our opinion that your revocations are likewise inoperative and invalid. This is in accordance with the general proposition of law that an unconstitutional statute or ordinance is in reality no law but is void and in legal contemplation is as inoperative as if it had never been passed. *See* 11 American Jurisprudence, sections 148-151. *Also see* 12 Corpus Juris, sections 228-233.

An examination of the above cited texts concerning the effect of unconstitutional statutes indicates that the great weight of authority is to the effect that an unconstitutional law or ordinance is void from the date of its passage or approval, and acts performed thereunder are likewise invalid.

We do not know whether or not the convictions under the city ordinance have been followed by our convictions under the State law which is clearly constitutional. If so, the record thereof duly certified to you would authorize and require you to revoke the licenses of the drivers concerned.

Very truly yours,

ALAN BIBLE
Attorney General

OPINION NO. 47-420 UNIVERSITY OF NEVADA—Board of Regents may execute lease for period of ten years or longer to United States.

Carson City, February 4, 1947

Hon. C.H. Gorman, Comptroller, University of Nevada, Reno, Nevada

Dear Charles.

Reference is hereby made to your letter of February 1, 1947, inquiring whether there is anything in the law of this State which would prohibit the Regents of the university from entering into a lease with the United States for a parcel of land donated to the University by Clarence H. Mackay for a naval reserve armory site for a period of ten years or longer.

OPINION

The fourteenth subdivision of chapter 229, Statutes of Nevada, 1945, provides the power for the Board of Regents to enter into leases of property, except property granted to the university by the United States of America, provided such lease be not prohibited by or inconsistent with the provisions of the grant of land to the university. This provision of the law confers the power upon

the Board of Regents to lease property under its control subject to the conditions above-mentioned.

We have examined the law of this State very carefully with respect to such a lease and we find no prohibition against entering into a lease of the kind mentioned in your letter, provided, of course, there is no provision in the grant or deed given or executed by Mr. Mackay that would prohibit the leasing of such property.

We have further examined the law with respect to the power of the Board of Regents to enter into contracts beyond the term of office of the members so contracting and we are of the opinion that there is no prohibition in the general law in this respect inasmuch as the law of this State grants the power to lease property to others and for the further reason that it is in the proprietary sense that the contract of leasing would be entered into and not that of a governmental sense. 43 Am. Jur. 101, sec. 292.

Now with respect to the term of the lease. We assume that the land in question is not agricultural or grazing land, or mining land. The law limits the term of lease of agricultural land to ten years, mining land thirty-five years, and in all other cases ninety-nine years. Section 1549 N.C.L. 1929.

It is, therefore, the opinion of this office that the Board of regents may execute a lease for a period of ten years or longer within the said ninety-nine year period to the United States for the purposes mentioned in your letter.

Very truly yours,

ALAN BIBLE
Attorney General

OPINION NO. 47-421 TRADE-MARKS—Registration of “Nevada Quarter Horse Association.”

Carson City, February 6, 1947

Hon. John Koontz, Secretary of State, Carson City, Nevada

Dear Mr. Koontz:

Reference is hereby made to your letter of February 4, 1947, and a copy of a letter to you from George F. Wright, attorney at law, Elko, Nevada, concerning the registration of the name “Nevada Quarter Horse Association.” You inquire whether such name is subject to registration under secs. 3299-3299.07, 1929 N.C.L. 1931-1941 Supp.

We have examined such law and find that it is very comprehensive in including many forms of associations whose names are subject to registration under such law. A reading of sec. 3299 discloses that practically any association of individuals adopting a name for such association may be registered in your office, provided, the principles and activities of such association are not repugnant to the constitution and laws of the United States or of this state. While the designation of associations and kindred societies are very broad in this statute, perhaps too broad, still that is a matter of policy concerning which we have nothing to do and is a matter for the Legislature and the Governor to determine and, having determined such policy, it follows that the law must be complied with.

It seems to us, in making application for the registration of a name of an association, that information and advice concerning the activities and purposes of such association should be furnished your office in order to provide a means of determining, if such is necessary, whether

the purposes and activities of such association would be repugnant to the constitution and laws of the United States or of this State. Until such information is furnished, this office is not in a position to render a blanket decision taking in all forms of registration.

We assume, for the purpose of replying to the letter of Mr. Wright, that the Nevada Quarter Horse Association would not be repugnant to the constitution and laws of the United States or of this State, but we submit that further information than that contained in Mr. Wright's letter should be given you.

Very truly yours,

ALAN BIBLE
Attorney General

OPINION NO. 47-422 WATER LAW—Protestant is plaintiff in protesting application for permit to appropriate water.

Carson City, February 11, 1947

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

Attention: Hugh A. Shamberger, Assistant State Engineer

Dear Mr. Smith:

This will acknowledge receipt of your letter dated February 7, 1947, received in this office February 8, 1947, requesting advise as to the procedure established by the State Engineer at hearings held to determine protests filed under sec. 7947 N.C.L. 1929 against the granting of an application of an applicant to appropriate water. You state that the position taken by the State Engineer is that the person filing the protest is the plaintiff at the hearing and is requested to first present his evidence why the application should not be granted.

We are of the opinion that the procedure established by your office at such hearings is proper and orderly in such matters.

Section 7946 N.C.L. 1929 provides when an application to appropriate water is filed in compliance with the act that the State Engineer shall publish notice of the same giving the details in such application.

Section 7947 N.C.L. 1929 provides that any person interested may file a written protest against the granting of the application setting forth with reasonable certainty the grounds of such protest. After duly considering the protest, the State Engineer may hold hearings and require the filing of such evidence as he may deem necessary to a full understanding of the rights involved. The protestant is the complaining party and in order to put the right of the applicant at issue should first present his evidence why such application should not be granted. The complaining party is in the nature of the plaintiff at the hearing and the applicant is required to defend his right to his application.

The contestant in an action to contest a will is by statute designated the plaintiff and the petitioner to probate a will is designated the defendant. Section 9882.18, 1929 N.C.L. 1941 Supp.

However, the question appears to be within the discretion of the State Engineer as sec. 7947 N.C.L. 1929 contains the following language: "Said hearings shall be conducted under such rules and regulations as the State Engineer may make, which he is hereby empowered to make for the proper and orderly exercise of the powers conferred herein."

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-423. UNIVERSITY OF NEVADA—Power of Legislature to dispose of university farm contrary to objections of Regents.

Carson City, February 18, 1947

Mr. W.F. Helmick, Legislative Counsel, Carson City, Nevada

Dear Mr. Helmick:

Reference is hereby made to your letter of February 13, 1947, propounding the question of whether the Legislature, by legislative Act, can require the Regents of the University of Nevada to dispose of the university farm contrary to the objections of such board.

It is our opinion that the Legislature has full power to dispose of any State-owned real property that it may deem unnecessary for the use of the State. We think this power extends to the disposal of the university farm, provided any deed or other document of title whereby the State obtained title to the property contains no restrictive clause preventing the sale or other disposal of the property by the State.

Very truly yours,

ALAN BIBLE
Attorney General

OPINION NO. 47-424 PUBLIC SCHOOLS—Trustees have no authority to expend funds secured by bond issue for any portion of work less than entire plan—Yerington Union School.

Carson City, February 28, 1947

Hon. Wayne O. Jeppson, District Attorney Lyon County, Yerington, Nevada

Dear Mr. Jeppson:

This will acknowledge receipt of your letter dated February 19, 1947, received in this office February 20, 1947, requesting an opinion as to the authority of the Board of School Trustees of the Yerington Union School to expend the \$200,000 fund, secured by a bond issue authorized at a bond election for the construction and completion of a high school, for the purpose of constructing as much as possible a high school to cost an estimated amount of \$400,000.

We are of the opinion that such authority cannot be found in or implied from the statutes.

The question submitted to the voters was a request for authority to issue bonds in the aggregate principal amount of \$200,000 for the purpose of the construction of a new fire-safe high school building, to include a gymnasium, auditorium, a heating plant, and equipment for said building, and obtaining a site therefor in Yerington, Lyon County, Nevada.

The proposal is a single plan to cost the aggregate amount of \$200,000, which amount is the tax burden the electors and taxpayers agreed to assume and pay off in twenty years. The plan appears to be indivisible. It is plain that the site could not be obtained in any other locality than Yerington. A heating plant must be provided for and the building must be equipped. The gymnasium and auditorium is specifically named. This is the enterprise for which the people by their vote contracted to assume the debt of \$200,000. The school board would have no authority to issue even one additional \$1,00 bond. That which the board cannot do directly it cannot do indirectly. It is certain that the board could not expend the total for a site alone, and it logically follows that the money could not be wholly expended for any portion of the project authorized.

43 Am. Jur. page 306 expresses the rule in such cases as follows: "A municipal corporation has now power, however, after a vote in favor of aid has been taken, to acquiesce in a radical change in the original plan which so far changes the enterprise that the vote does not apply to the new enterprise."

The question submitted to the voters did not recite that the amount was an estimate of the cost, the purpose and the cost was stated definitely.

In the case of *Williams v. City of Stockton*, 235 p. 986, the ordinance authorizing a bond issue recited the estimated cost of construction and completion of a city hall to be \$600,000. The actual cost was greater. The matter was brought before the court in proceeding for mandamus. The court held that the contract for construction of the new city hall calling for expenditure within funds provided by bond issue under the statute was not void, though with other expenditures it would require city to exceed amount provided thereby, where amount provided for the purposes was merely an estimate and authorities in submitting proposition to electors had not confined themselves to be an absolute definite plan of construction and expenditure.

The Yerington School Board in submitting the proposal confined itself to an absolute plan of construction and expenditure, and it appears that *O'Farrell v. Sonoma County*, 208 P. 117, and *Hunter v. Santa Barbara County*, 294 P. 1082, cited in your letter of inquiry, are in point. The plan submitted to the voters was a single and indivisible project and the school board is not authorized to undertake any part or portion of the work less than the entire plan.

Legislative action might be secured to authorize the school board to divert the funds for the particular construction contemplated. See *State ex rel. Bell v. Cummings, et al.* 172 S.W. 290.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-425 CONSTITUTIONAL LAW—Assembly Bill No. 68 re additional fees in divorce actions discriminatory and unconstitutional.

Carson City, February 28, 1947

Hon. E. Frandsen Loomis, Chairman, Judiciary Committee, Senate Chambers, Carson City, Nevada

Dear Senator:

Reference is hereby made to your letter of February 19, 1947, requesting an opinion of this office as to the constitutionality of Assembly Bill No. 68, providing an additional fee to be paid

the respective County Clerks upon the filing of each action for divorce. You propound the following queries:

1. Is Assembly Bill No. 68 discriminatory, in that it applies only to divorce actions, and not to all civil actions?
2. In your opinion, is Assembly Bill No. 68 constitutional?
3. Do the provisions of section 2, of Assembly Bill No. 68, requiring payment monthly to the State Treasurer "all fees, as provide din section 1," require payment of not only a fee of \$25, as set up in the Act as amended, but also "any other fees required by law," as referred to in section 1 of the bill?

OPINION

Section 1 of the bill provides:

On the filing of any action wherein the relief sought is divorce the County Clerk of the county in which the action is filed shall collect, in addition to any other fees required by law, a fee of ten (\$10) dollars for the benefit of the State of Nevada.

We understand the amount of the fee was increased to \$25 by amendment.

Section 2 provides for the payment of such fees collected each month by the Clerk to the State Treasurer and by such Treasurer deposited to the credit of the general fund of the State.

Answering queries Nos. 1 and 2. Both queries may be considered together as both relate, we think, to the constitutionality of the bill.

It is to be noted that the bill provides, as amended, a fee of \$25 in addition to any other fees provided by law to be paid the County Clerk upon the filing of an action for divorce. This fee, as stated in the bill, is for the benefit of the State of Nevada and is to be covered over into the general fund of the State and no specific mention made as to the use of such money when so deposited. The question then at once arises, what is the purpose of the so-called additional fee? It is apparent that such fee is not intended as a clerk or court fee taxed and collected for necessary services in the filing and trial of the divorce action. Its clearly stated purpose is to provide revenue for the State of Nevada, if so, is such revenue constitutionally exacted?

It is axiomatic, under our scheme of government, that every person, particularly every citizen of this country, has the inalienable right to protect his or her life, property and interest in the courts of this country, Federal or State. It is a right, not a privilege, to which all citizens are entitled, whether expressed in the fundamental law of the State or not. It is a right, we think, inherited from long ago, ever since at least the days of Magna Charta, and that such right is not subject to be purchased, except to the extent the exercise of such right is subject to the right of the State to exact a reasonable fee commensurate with the value of the services of its courts.

Harrison v. Willis, 19 Am. Rpts. 604; *State ex rel Davidson v. Gorman*, 41 N.W. 948.

Such is also one of the purposes of section 1, article I, Constitution of Nevada.

The word "fee" means a charge for official services rendered individuals, and in a distinctive sense it means "compensation for particular acts or services rendered in the line of official duties * * * as a charge fixed by law for the services of a public officer."

36 C.J.S. 628; 1 Cooley, Taxation, 4th Ed. 108, sec. 33; *Stewart v. Verde River Irr. & Power Dist.*, 68 p.2d 329; *Smith v. Carbon County*, 63 P.2d 259.

We think it is fundamental that court fees, including clerk's fees, must bear reasonable relation to the value of the services rendered the litigant exercising his rights in the courts of this State. That such fees must be, so far as possible, commensurate with that value and not so excessive as to act as a deterrent to litigation necessary for the protection and enforcement of individuals' rights in the courts. In fact, we think, the law is that if the fee provided in the law does not bear a reasonable relation to the value of the services rendered, it ceases to be a fee and becomes a tax subject to the law relating to taxation.

51 Am. Jur. 46, secs. 12, 14; 1 Cooley, Taxation, 4th Ed. 109, sec. 33; *Smith v. Carbon County*, 63 P.2d 259; 108 A.L.R. 513 and cases cited in annotation, pages 518-521.

This particular phase of the matter is exhaustively treated in the so-called probate fee cases and without exception the holdings of the courts have been most uniform in that excessive probate fees contained in the fee Acts bear no reasonable relation to the value of the services rendered by the courts. In addition to the cases cited in the annotation to *Smith v. Carbon County*, supra, we cite the following:

Hamilton v. Wilson, 59 P.1069, Pittsburgh, C. & St. L. Ry. Co. v. State, 30 N.E. 435; *Hauser v. Miller*, 94 P. 197; *Berryman v. Bowers*, 250 P.361; *Chapman v. Ada County*, 284 P.259; *Stewart v. Verde River Irr. & Power Dist.*, 68 P.2d 329.

Does the \$25 additional fee fixed in Assembly Bill No. 68 bear a reasonable relation to the value of the services rendered by the courts, court attachés, and the State in action for divorce? It must so bear such relation if it is to be sustained as a fee. We are not advised and from our experience could not well be advised that more or greater services of our courts, judges, and court attachés are required in the proceedings in divorce actions than in other civil actions, proceedings, and probate matters. The volume of divorce actions may be greater, but even so the counties, and indirectly the State are reimbursed for the services furnished in each civil action or proceeding, including divorce actions, by the payment of the filing and court fees now fixed by law in every county for every district court, and which such fees, we think, are so fixed in the law as to bear the reasonably necessary relation to the value of the services rendered, and this is in a uniform manner as to all civil actions and proceedings so that no one litigant is penalized by being required to pay a higher fee to exercise his right to obtain a decree of divorce than the litigant exercising his right to protect or enforce any other valuable civil right.

We think it is most clear that the additional fee provided in the bill bears no reasonable relation to the services performed by our courts and their attachés in divorce actions over and above the services required of them in all other civil actions, proceedings, and probate matters. We submit the law, as stated in all of the cases hereinbefore cited, is that all such fees must be reasonably necessary and stand in that relation in order to constitute a valid fee. The fee in question here does not, in our opinion, stand in such relationship, and as a fee it is discriminatory.

In the foregoing discussion we have treated generally the matter of fees as applied to our courts.

In so doing we are not unmindful of the provisions of sec. 165, article VI, Constitution of Nevada, which mandatorily requires the Legislature to provide by law, upon the institution of each civil action and other proceedings, and also upon the perfecting of an appeal in any civil action or proceedings in the several courts of the State, that "a special court fee or tax shall be advanced to the clerk of said courts respectively, by the party or parties bringing such action or proceeding, and taking such appeal; and the money so paid in shall be accounted for by such clerks, and applied toward the payment of the compensation of the judges of said courts, as shall be directed by law."

This constitutional provision, we submit, is subject to the same interpretation as the legislative fee Acts discussed hereinbefore. The provision itself contemplates a court fee or tax that is reasonably necessary and in relation to the services rendered by the respective judges, and provides that such fee or tax shall be applied toward the payment of the salaries of the judges, which indicates that such court fee or tax was not to assume the whole burden of such compensation. Since 1865 the Legislature, pursuant to the constitutional provision, has provided uniform court fees for the respective courts. See chapter CXXXIX, Statutes 1864-1865, and sections 2961, 2962, 2963 and 2937 Nevada Compiled Laws, 1929, which provide a fee of \$3 for all civil actions or proceedings commenced in the district courts; \$1.50 for probate matters; \$1 on appeals from justice courts in civil actions; and a \$5 fee on appeals lodged in the Supreme Court.

We think it is clear that the \$25 additional fee provided in Assembly Bill No. 68 is not denominated a court fee within the meaning of the above-mentioned section of our Constitution,

and further, that if it was so denominated, nevertheless it would be subject to the same discriminatory defect.

As stated hereinbefore, if a fee bears no reasonable relation to the value of the official services rendered, then it ceases to be a fee and becomes a tax subject to the law of taxation. As a tax will the imposition of the additional fee of \$225 be constitutional and nondiscriminatory? We think not. That it is a tax and not a fee within the meaning of that term is well settled in the cases hereinbefore cited. A uniform fee of \$2.50 collected by the clerks of the courts of New Mexico on each civil action filed in their offices, in addition to the filing fees therefor provided by law, was held to be a tax in *State ex rel. Capitol Addition Bldg. Comm. v. Connelly*, 46 P.2d 1097, 100 A.L.R. 878. In the cases above-cited the courts held such excess fees to be taxes upon property, *i.e.*, the property right to bring suits and litigate them in the courts, and further they held that such so-called fees as taxes violated the constitutional provisions relating to the uniformity of taxation and the levying of taxes therefore.

If the so-called fee in question here is a tax on property, then the bill providing such a tax is discriminatory and unconstitutional for the following reasons:

1. That it violates section 20, article IV, Constitution of Nevada, prohibiting the Legislature from passing a special law for the assessment and collection of taxes for State, county and township purposes. That the bill is special in this respect is clear from the text thereof. It levies the tax for the benefit of the State on a selected class of property or property rights and discriminatory as to all other like property rights exercisable in the same courts.

2. For a similar reason the bill provides a tax, we submit, that is in violation of section 1, article X of the Constitution, requiring a uniform and equal rate of assessment and taxation of all property subject to taxation, and by reason thereof is discriminatory.

But it may be said that the bill in question provides an excise tax that is not controlled by the foregoing constitutional provisions and within the power of the Legislature to provide. Even so, if for the purpose of argument it may be conceded that the so-called fee of \$25 is in the nature of an excise tax and within the power of the Legislature to exact, still it must not be discriminatory. It must fall upon all persons similarly situated and who are substantially in the same category. Hence, in the bill in question, aside from the amount of the additional fee or tax, it would be incumbent upon the Legislature to provide the same fee or tax upon all litigants in civil actions irrespective of whether the litigation concerned a divorce or not. *See* 51 Am. Jur. 212, sec. 159. However, the weight of authority, as we have shown, is that a tax upon the right to litigate in the courts is a tax upon property.

For the foregoing reasons we are of the opinion that Assembly Bill No. 68 is discriminatory and unconstitutional.

We are not unmindful of the effect of this opinion. No doubt the Legislature is seeking constitutional ways and means of augmenting the revenues necessary for the maintenance of State government. We respectfully suggest that if it is necessary to increase the clerks' and courts' fees, such increases must be nondiscriminatory and uniform and applicable to all alike who seek redress in civil actions in the courts. Section 16 of article VI of the Constitution may well serve as a vehicle and a guide in matters of this kind.

Answering Query No. 3. Section 2 of the bill is apparently inartistically drawn the language thereof is susceptible to the construction that all fees collected by the clerk, including the fees now provided by law, shall be paid to the State Treasurer. This section should be amended to make clear that only the additional fee is to be paid to the State Treasurer.

Very truly yours,

ALAN BIBLE
Attorney General

By: W.T. Mathews
Special Assistant Attorney General

OPINION NO. 47-426 FISH AND GAME—County fish and game funds may be legally expended for repair and maintenance of roads directly related to fish and game purposes.

Carson City, February 28, 1947

Honorable C.A. Eddy, District Attorney, Ely, White Pine County, Nevada

Dear Mr. Eddy:

This will acknowledge receipt of your letter of February 6, 1947 in which you enclose a copy of a letter from the White Pine Fish and Game Association to the Board of County Commissioners requesting repairs, rerouting and graveling of various roads in your county, which roads are used by the sportsmen of your county.

You ask whether or not it is possible to use fund sin the Fish and Game Commission for the repair of roads under the facts and circumstances related by you.

It is the opinion of this office that the County Fish and Game Commission funds may be legally and properly used for the repair and maintenance of roads just as long as such repair and maintenance is directly related to fish and game purposes. Under the facts and circumstances presented by you, it is our opinion that the bills incurred may be directly charged to and paid out of the county fish and game funds.

Very truly yours,

ALAN BIBLE
Attorney General

OPINION NO. 47-427 TAXATION—Taxes levied against property perpetual lien until paid—County officers have no authority to waive taxes assessed against any property.

Carson City, March 6, 1947

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

Dear Mr. Evansen:

This will acknowledge receipt of your letter dated February 26, 1947, received in this office February 28, 1947, requesting an opinion relating to delinquent taxes under the following expressed circumstances:

“That if the County Clerk accepts taxes for a year, and there has remained a year which had delinquent taxes, in which the taxes were not paid, that by the acceptance of the taxes of the following year, it acts as a waiver for the previous year’s delinquency, and that the county can not take a deed for the same.” * * * “that when the deed is issued by the County Clerk for properties * * * for delinquent taxes, and since the date of delinquency for a year of delinquency, the property has had its taxes fully paid up to date. That the commissioners by waiver can waive that year of delinquent taxes and have a deed issued from the county to the person without a tax compromise.”

We are of the opinion that the tax levied against the property is a perpetual lien against such property until such taxes, penalties and costs which have accrued shall be paid. That the treasurer

or the tax collector or the county commissioners have no power under the revenue Act to waive the taxes assessed against property seems equally clear.

The fact that the tax collector accepted the additional taxes assessed in the years following the delinquency without collecting the delinquent taxes, penalties, costs and interest, and subsequently issued a deed to the county for the property, may effect the validity of the deed, but cannot release the tax lien. You suggest a remedy by requesting this office to see that a bill is presented to the Legislature to permit the commissioners to waive the taxes in the particular case.

We are of the opinion that relief by legislative action cannot be secured, as the Constitution prohibits the Legislature from passing any local or special law for the assessment or collection of taxes for any county and that the Legislature may not release the indebtedness of any person to the State or any county or city of the State.

Your only remedy is by a tax compromise under chapter 171, Statutes of 1933, while that Act is still in effect.

Section 6416, N.C.L. 1929 provides that every tax levied under the provisions or authority of the revenue Act shall be a perpetual lien against the property assessed until such taxes and all penalty charges and interest which may accrue thereon shall be paid.

State v. Central Pacific R.R. Co., [9 Nev. 79](#). This was an action relative to a tax compromise when there was no provision in the statutes for a compromise of taxes. The court on page 89, said: "The board of county commissioners is an inferior tribunal of special and limited jurisdiction. It must affirmatively appear that the action of the board in compromising with defendant was in conformity to some provision of the statute giving to it that power, else its order was without authority of law and void."

See also State v. Alta S.M. Co., [24 Nev. 230](#).

Attorney General's Opinions No. 191, Oct. 1, 1935, and No. 37, June 4, 1931.

Action by the Legislature in the particular matter is prohibited by article IV, section 20 of the Constitution of Nevada, which provides, quoting that part deemed relevant reads as follows: "The legislature shall not pass local or special laws in any of the following enumerated cases, that is to say: * * * for the assessment and collection of taxes for state, county, and township purposes"; * * * releasing the indebtedness, liability or obligation of any corporation, association, or person to the state, or to any county, town or city of this state;" * * *.

Chapter 171, Statutes of 1933, authorizes the District Attorneys with the consent and approval of the County Commissioners and the Attorney General to compromise and settle claims of the counties and State for delinquent taxes.

From our research of the problem presented by you, we are of the opinion that this is the only statute which can be used to assist you in your problem.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-428 LABOR—Wage law—Person on straight monthly salary discharged in interim entitled only to pro rata pay.

Carson City, March 7, 1947

Hon. R.N. Gibson, Labor Commission, Carson City, Nevada

Dear Mr. Gibson:

Your letter of February 28 was received March 1, 1947.

You ask the specific question:

“If a man is hired on a monthly salary and terminated or fixed before the month is completed, is he entitled to a full month’s pay or the portion of the month actually worked?”

The answer is that he is entitled to pay for the portion of the month actually worked only.

Earlier in your letter you suggest the question whether a man employed on a “monthly basis” is entitled to Sunday wages “even though Sundays do not constitute a working day.”

Under such circumstances payment is made on the ratio of the number of days elapsed from the first of the month to the number of days in the month, applied to the salary. Naturally the computation will cover all days, Sundays included.

You cite the case of an employee of the Mental Hospital whose “salary” was \$110 per month.

The salary rate reported is in itself evidence that this employee was not considered affected by the prevailing wage rate Act of 1937 (1929 N.C.L. 1941 Supp., secs. 6179.51-6179.62) which requires compensation on a daily or monthly basis to be not less than \$5 per day or \$150 per month.

In the opinion of this office given to you November 3, 1944 (opinion No. 171, page 44, Attorney General’s Report, 1944-1946) it was said that: “The distinction between the payment for day labor and payment of a monthly salary basis is not clearly defined in the statute.”

This was said with reference to the problem of distinguishing between wages for so-called manual labor and salary for so-called “white collar” work. The opinion turned on the more fundamental question whether the “workman” was employed by the day “on public works.”

The controlling reason why salaried employees should be paid for the month or fraction of month worked at the monthly rate is that State institutions are limited by their appropriations for support and if an employee receives a salary in all cases to the end of the month notwithstanding he renders no service the last part of the month, there will be no money to pay the man who finishes out the month for him.

By the foregoing we do not pass on the case of a man employed from month to month on a salary who is wrongfully discharged from his position.

Very truly yours,

ALAN BIBLE
Attorney General

By: Homer Mooney
Deputy Attorney General

OPINION NO. 47-429 BONDS—Clark County General Hospital bonds valid and legally binding obligations.

Carson City, March 7, 1947

Honorable D.J. Sullivan, Chairman Nevada Industrial Commission, Carson City, Nevada

Dear Mr. Sullivan:

We have carefully examined a record of the proceedings relating to the issuance of four hundred thousand (\$400,000) dollars of negotiable bonds of Clark County General Hospital submitted to us for approval. The bonds are to be dated February 1, 1947, and mature in the principal amount of \$25,000 on February 1, 1949, and thereafter in the principal sum of \$22,000 on February 1 in each year until the remaining bonds shall be fully paid. The bonds are to bear interest at the rate of two and one-eighth percent payable as to the first installment of interest on the first day of February 1948 and thereafter semiannually on the first day of February and the first day of August in each year.

The bonds, in the denomination of \$1,000 each, are numbered in order of maturity from 1 to 44, inclusive, with coupons attached.

The bonds were issued pursuant to a resolution of the Board of Trustees of the Clark County Hospital, petition of the taxpayers of Clark County, Resolution of the Board of County Commissioners of Clark County and authorized at the general election held November 5, 1946, said bond election being held as provided by Chapter 70, Statutes of Nevada 1937, and the question as to the bond issue was carried by a majority of the ballots of both property owners and non-property owners.

In our opinion the Clark County General Hospital Bonds are valid and legally binding obligations of Clark County, State of Nevada, payable as to both principal and interest from ad valorem special taxes levied upon all the taxable property within Clark county.

We have examined the form of the bond and coupon to be printed, and in our opinion the form and its execution will be regular and proper.

Very truly yours,

ALAN BIBLE, Attorney General

By: George P. Annand, Deputy Attorney General

cc: Honorable Robert E. Jones, District Attorney Clark County, Las Vegas, Nevada.

OPINION NO. 47-430 RAILROADS—Public Service Commission has jurisdiction to require railroad to install industrial track.

Carson City, March 7, 1947

The Public Service Commission Of Nevada, Carson City, Nevada

Attention: Mr. Lee S. Scott, Secretary

Gentlemen:

Reference is hereby made to your letter of January 17, 1947, requesting the opinion of this office relative to the matter of *Reno Chamber of Commerce v. Southern Pacific Co.*, No. 1154, pending in the commission concerning the construction of a spur track for the Bender Warehouse Co., of Reno, Nevada. The furnishing of the opinion has been held in abeyance pending the filing of briefs by the parties with the commission after the foregoing request was made.

You inquire whether the commission has jurisdiction to order the Southern Pacific Co. to construct a necessary spur track leading from its main track to the Bender Company warehouse located a short distance west of the city limits of Reno, and furnish such company necessary switching services.

We are advised that the cost of construction of the spur track is not involved in the proceedings and that the Bender people will bear such cost. We assume that the Bender people have acquired or control the necessary rights of way for the spur track over lands beyond the right of way of the railroad company if such was or is necessary.

It appears that the railroad company, after making surveys for the construction of the spur track and estimating the cost of construction, now object to such construction upon two grounds, 1. That the commission has no jurisdiction to order the company to construct the spur track, and 2, that the switching services thereafter rendered would be unreasonable and confiscatory.

OPINION

It is the contention of the railroad company that by reason of the fact that it is an interstate railroad engaged in interstate commerce, as well as intrastate commerce, that the Interstate Commerce Commission is the commission having jurisdiction of the matter by reason of the Interstate Commerce Act, particularly paragraph 9 of section 1 of such Act, to the exclusion of the Nevada commission. Such paragraph 9 provides, briefly, as applied to the instant matter, that if the Bender people had or should construct the spur track and tender sufficient business to the respondent company to justify the installation of a switch connection from its tracks to the spur track and such company refused to install such connection, the Bender people could complain to the Interstate Commerce Commission and that commission would have jurisdiction to compel the installation of the switch connection.

In support of its contention the respondent company, page 2 of its brief, cites and quotes from *Alabama & Vicksburg Ry. Co. v. Jackson & Eastern Ry. Co.*, 271 U.S. 244, which was a case concerning the construction of a connecting or transfer track between two competing railroads, not the construction of a spur track for the purpose of furnishing car service facilities to an industrial concern. It is to be noted the quotation given contains pertinent language, *i.e.*, "In matters relating to the construction, equipment, adaptation and use of interstate railroad lines, *with the exceptions specifically set forth in paragraph 22*, congress has vested in the commission the authority to find the facts and thereon to exercise the necessary judgment." (Italics ours.)

Said paragraph 9 came into the Interstate Commerce Act by way of amendment, known as the Hepburn Act in 1906, with a minor amendment thereto in 1910. 1 Robt's. Fed. Lia. Car. 2d Ed. 175, sec. 68. It may be that up to 1920 such paragraph operated to estop State commissions from exercising jurisdiction with respect the construction and maintenance of spur and industrial tracks. However, two well considered cases in 1914 and 1916 held that State public service commissions did have the power to require the railroad companies to install switch connections and industrial tracks under State laws. *See State ex rel. Chicago M. & P.S. Ry. Co. v. Public Service Commission* (Wash.) 137 Pac. 1057, and *Chicago R.I. & P. Ry. Co., v. State* (Okla.) 157 Pac. 1039. *See also, Alton R.R. Co. v. Illinois Commerce Comm.*, 305 U.S. 548.

In 1920 Congress enacted the Transportation Act of 1920 thereby amending, in several respects, the Interstate Commerce Act, and inserted therein what is now paragraph 22 of section 1 of the Commerce Act, reading:

The authority of the commission conferred by paragraphs (18) to (21), both inclusive, shall not extend to the construction or abandonment of spur, industrial, team switching, or side tracks, located wholly within one State, or of street, suburban, or interurban electric railways, which are not operated as a part or parts of a general steam railroad system of transportation.

It is interesting to note that the Supreme Court in the above Alabama Railway case, cited by the respondent company, said at page 249 of 271 U.S. Rpt.:

The only limitation set by Transportation Act, 1920, upon the broad powers conferred upon the commission over the construction, extension and abandonment of the lines of carriers in interstate commerce, is that introduced as paragraph 22 of sec. 1, which excludes from its jurisdiction “spur, industrial, team, switching or side tracks, located wholly within one State, or of street, suburban, or interurban electric railways, which are not operated as part or parts of a general steam railroad system of transportation.” It is clear that the connection here in question is not a track of this character. Compare *Texas & Pacific Ry. Co. v. Gulf, Colorado & Santa Fe Ry. Co.*, 270 U.S. 266. The proposed junction is between the main lines of the two railroads. The point of junction is on the main line of the Alabama & Vicksburg, near its entrance into the City of Jackson. In support of the objection that a junction there would be dangerous, it was shown that the conjunction there would be dangerous, it was shown that the connection would be located between two trestles, near a highway crossing, on a curve, on a fill, and within the flood are of Pearl River. The establishment of the junction at that point would, if the objection is well founded, obviously imperil interstate commerce.

A leading case with respect to the application of said paragraph 22, is *Western Atlantic Railroad v. Georgia Public Service Commission*, 267 U.S. 493. In that case the public service commission had ordered the railroad company to maintain service on an industrial track which the railroad company was endeavoring to abandon. The order was resisted by such company; one of the grounds being that the public service commission had no jurisdiction to enter such an order. The court held to the contrary, saying at page 497:

It seems to be the contention of the company that, since 85 per cent of the business done on the side track is interstate commerce, the power to order its establishment or abandonment is vested in the Interstate Commerce Commission, and that the State commission is without authority in the premises. Such a claim is in the teeth of the Transportation Act of 1920, 41 Stat. 456, c. 91, sec. 402, par. 22, which provides that the authority of the commission conferred by sec. 402 over the extension or abandonment of interstate railway lines shall not extend the construction of spur industrial or side tracks. See *Railroad Commission v. Southern Pacific Co.*, 264 U.S. 331, 345.

That the spur track in question here comes within the provisions of paragraph 22 cannot well be questioned. It certainly conforms to the commonly known meaning of such term. It is not such a track as delineated in the Interstate Commerce Act as being an extension of a rail line into a new territory as contemplated in such Act. See *Detroit & M. Ry. Co. v. Boyne City, G. & A.R. Co.*, 286 Fed. at p. 547; 1 Robt's. Fed. Lia. Car. 2d Ed. 239, sec. 87 (14).

In *State of Idaho v. United States*, 10 Fed. Supp., it was held that a nine-mile railroad track to serve a single industry which made financial contribution to original construction, was a spur or industrial track within the provisions of paragraph 22, over which the Interstate Commerce commission lacked jurisdiction to order abandonment. The Supreme Court of the United States in *United States v. Idaho*, 298 U.S. 105, affirmed the judgment of the lower court, saying at page 109:

The District Court concluded that the Talbot branch was constructed and has been maintained for the purpose of serving a single industry; that practically no other industry is served; that this trackage does not invade new territory; that its continued operation or abandonment is of local and not of national concern; that it is therefore a “spur”; and hence, that the order of the Interstate Commerce Commission was in excess of its jurisdiction. The court annulled the order and enjoined its enforcement. 10 F. Supp. 712.

The decree should be affirmed, because on findings amply supported by the evidence the trackage is a spur.

In *Texas & Pacific Ry. Co. v. Gulf, Colorado & S.F. Ry. Co.*, 270 U.S. 266, court held that spur, industrial, team, switching or sidetracks were within the provisions of paragraph 22 and are commonly constructed to improve and supply facilities to shippers, who, being in the same territory and similarly situated are entitled to like services from the carrier; and that the question whether the construction should be allowed depends upon local conditions which the State regulating body is peculiarly fitted to appreciate and pass upon, and further, that the cost thereof was ordinarily small.

In *St. Louis S.W. Ry. v. Mo. Pac. R. Co.*, 289 U.S. 76, the court said, at page 83:

Confining the St. Louis Southwestern to the remedy prescribed by the Transportation Act, 1920, does not abridge the protection of its rights. If the proposed track is a spur, the question of the place and manner of the crossing presents a purely local problem to be decided by the State Commission under the laws of the State * * *.

We think that since the enactment of paragraph 22, the Supreme Court of the United States, as well as many other courts, have exercised a meticulous regard for the rights of the States and their commissions to exercise jurisdiction over and determine the questions surrounding the construction, operation and abandonment of spur and industrial tracks of interstate railroads which are situated wholly within one State, such is the admonition expressed by such court in *Yonkers v. United States*, 320 U.S. at page 690, where it is said:

The exemptions contained in sec. 1 (22) do not necessarily reflect the lack of constitutional power to deal with the excepted phases of railroad enterprise. Underlying sec. 1 (22) is a Congressional policy of reserving exclusively to the States control over that group of essentially local activities. *See* H. Rep. No. 456, 66th Cong., 1st Sess., p. 18. We recently stated that the extension of federal control into these traditional local domains is a "delicate exercise of legislative policy in achieving a wise accommodation between the needs of central control and the lively maintenance of local institutions." *Palmar v. Massachusetts*, 308 U.S. 79, 84.

And at page 691 where it further stated:

Congress has withheld from the Commission any power to authorize abandonment of certain types of railroad lines. It is hardly enough to say that the Commission's orders may be set aside by the court where the Commission exceeds its authority. The Commission has a special competence to deal with the transportation problems which are reflected in these questions. The Congress has entrusted to the Commission the initial responsibility for determining through application of the statutory standards the appropriate line between the Federal and State domains. Proper regard for the rightful concern of local interests in the management of local transportation facilities makes desirable the requirement that Federal power be exercised only where the statutory authority affirmatively appears.

That the respondent company is a public utility serving as a common carrier cannot be doubted. It is such a utility within the meaning of the Public Service Commission Act of this State. Sec. 6106, N.C.L. 1929. As such utility the commission is empowered, in the interest of service to require necessary construction and connection of tracks used and useful in public utility service. Sec. 6117, N.C.L. 1929. And "All railroads shall keep and maintain adequate and suitable freight

depots, wherever needed, buildings, switches and sidetracks for the receiving, handling and delivering of freight transported or to be transported by such railroad.” Sec. 6122, N.C.L. 1929.

The track in question here being a spur or industrial track within the meaning of and governed by the provisions of paragraph 22 of sec. 1 of the Interstate Commerce Act, and the law of this State requiring railroad carriers to provide facilities as above stated, it is the opinion of this office that the Public Service commission has the jurisdiction to entertain the instant proceedings and to enter such orders therein as the commission may deem necessary and as the facts before it may warrant.

With respect to the objection of the respondent company that the switching service to be rendered the Bender people will be unreasonable and confiscatory, this objection goes to the merits of the matter and not to the jurisdiction of the commission.

It may be that the respondent company would not realize a profit from the switching service furnished the Bender people after the construction of the spur track. However, the company would not be out of pocket for the construction of the track. That cost is to be borne by the Bender people, and this opinion is written upon that premise.

The fact remains that the respondent company is a common carrier, that it is a public utility, and that it is required to furnish unreasonable adequate service and facilities to the shippers over its line of railroad. We think the precise question is completely answered by the statement of the court in *Western & Atlantic R.R. v. Georgia Public Service Commission*, 267 U.S. 493, at pages 496, 497, where it is said:

Even if the cost of the switching is more than is received for it, we cannot determine on any showing made by the company that the switching does not work a benefit in the increased business the company gets, or may get, by reason of the added facilities furnished by the switching. *The switch is a small part of the whole railway, and the mere fact that the switching may not be profitable by itself cannot be held to be a confiscation of property, even if it involves a loss.* (Italics ours.)

It will be noted that the amount of traffic over the team track in question in the foregoing case was 85% interstate commerce and that excessive costs were claimed by the railroad company in the operation and maintenance of such track.

Whether the respondent company, if the spur track in question is constructed, will perform switching operations with road crews or switching crews, we think, is of no concern of the commission. Such operations are operating details and practices of such company and so long as the shipper receives reasonably adequate service no complaint can well be forthcoming. No doubt the respondent company is able to and will arrange such service to its best advantage.

Very truly yours,

ALAN BIBLE
Attorney General

By: W.T. Mathews
Special Assistant Attorney General

OPINION NO. 47-431 COUNTIES—Assistance to poor persons—Chapter 62, Statutes of 1943, should control.

Carson City, March 11, 1947

Hon. Wm. J. Crowell, District Attorney Nye County, Tonopah, Nevada

Dear Mr. Crowell:

This will acknowledge receipt of your letter dated March 6, 1947, received in this office March 8, 1947.

You request an opinion from this office as to the legal basis for the payment by the County Commissioners of a monthly allowance to certain persons under the following circumstances.

One of the persons was employed for a long time by the county as under-sheriff and his employment was terminated by reason of a paralytic stroke suffered by him. He has a wife and four children, three of whom are of age and self-supporting, and his wife also has partial employment. The other person was for some time employed by the county as a policeman and later as fire-chief. His employment was terminated as the result of a paralytic stroke. He has numerous children who are of age and self-supporting.

You ask if the payment to these persons is discontinued will they be able to enforce any claim against the county?

We agree with your opinion that such payments would come under an indigent allowance and that there is a question as to their qualifications under the statute.

We are of the opinion that chapter 62, Statutes of 1943, should control in the matter of assistance to poor persons in the county.

There is nothing contained in your statement of facts that would indicate a right of action by which the persons mentioned could enforce a continuance of the payments to them by the County Commissioners.

Chapter 62, Statutes of 1943, sec. 4, amending sec. 5140 N.C.L. 1929, provides as follows:
“When any poor person shall not have relatives of sufficient ability to care for and maintain such poor person, or where such relatives refuse or neglect to care for and maintain such poor person, then said poor person shall receive such relief as the case may require out of the county treasury, and the county commissioners may either make a contract for the necessary maintenance of said poor person, or appoint such agents as they may deem necessary to oversee and provide for the same.”

The Old-Age Assistance Act should be considered, if the persons are eligible.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-432 HOSPITALS, COUNTY—Washoe General—Medical and hospital care for employees—Group insurance.

Carson City, March 11, 1947

Hon. Harold O. Taber, District Attorney Washoe County, Reno, Nevada

Attention: Gordon Thompson, Assistant

Dear Mr. Thomspon:

On your recent visit to this office you outlined the desires of the trustees of Washoe County General Hospital respecting the supplying of medical and hospital care for the employees of that institution. Complying with your request, we give our opinion as to the legal limitations existing.

As we understand the problem, it is proposed to increase the salaries paid the employees so as to cover the cost of group insurance against sickness, including medical and hospital benefits, not covered by the Nevada Industrial Insurance Act.

Whether the benefits should be paid to the employee affected or to the institution (Undertaking to supply all necessary medical and hospital care) is a matter of detail inasmuch as something which cannot be done directly may not be done indirectly.

The question turns on the definition of the word "compensation."

Section 4 of the County Hospital Act of 1929 (1929 N.C.L. 1941 Supp., sec. 2228, as amended Stats. 1943, page 17) provides:

Said board of hospital trustees shall have the power to appoint a suitable superintendent or matron, or both, and necessary assistants, and to fix their compensations * * *.

The first part of sec. 4 reads as follows:

The board of hospital trustees shall make and adopt such bylaws, rules, and regulations for their own guidance and for the government of the hospital as may be deemed expedient for the economic and equitable conduct thereof, not inconsistent with this act or the ordinances of the city or town wherein such hospital is located.

It is our opinion that the particular words first quoted govern the general words last quoted.

It is our opinion that the word "compensations" quoted above cannot be stretched by adding money or money's worth by way of allowances for insurance or like benefits not conferred by law. Of course the board would have power to audit and allow claims for mileage or out-of-pocket expense incurred by an employee on official business in amounts not fixed in advance, but that is not the question here.

It is equally true that the compensations fixed by the board may be increased from time to time and the board is not affected by the disposition made by an employee of his salary and cannot dictate it, but this does not afford a solution of the present problem.

In the matter of amounts paid to members of a legislature to cover mileage, subsistence away from home and the like, and where increases in "compensation" are forbidden during the term of the incumbent, it has been held variously that they do and that they do not constitute increases in "compensation."

See State v. Reeves, 184 N.W. 993; *State ex rel. Todd v. Yelle*, 110 P(2) 162-171 (Wash.); *Jones v. Hoss*, 285 P.205 (Ore.).

See also Taxpayers League v. McPherson, 170 S.W. (2) 722, 106 A.L.R. 767 and notes 779; *State v. West*, 125 P(2) 694 (Wash.).

Words and Phrases, vol. 8, permanent edition, page 199, et seq. generally distinguishes between "compensation for services" and "additional allowances."

It cannot be said in the instant case that an employee procuring insurance for himself or contributing to a pool to obtain service or insurance from his employer or employer's insurance carrier, performs any service for the hospital board, the county or the State.

A.B. 78, pending in the Legislature, seems adequate to solve your problem by authorizing the retent of a portion of salary with which to procure insurance.

Very truly yours,

ALAN BIBLE
Attorney General

By: Homer Mooney
Deputy Attorney General

OPINION NO. 47-433 COUNTIES—No specific statute providing vacations for county employees—Accumulation of vacation periods contrary to legislative intent.

Carson City, March 12, 1947

Hon. James A. Callahan, District Attorney, Winnemucca, Nevada

Dear Mr. Callahan:

This will acknowledge receipt of your letter dated February 27, received in this office February 28, 1947.

Your question involves the authority of the board of hospital trustees which has adopted a rule that the employees of the hospital may have a vacation each year, provided that they have accumulated sufficient overtime to amount to two weeks. The question is directed specifically to the request of the superintendent of the hospital for a two-month vacation with pay, based upon the fact that she has failed to take a vacation in past years and has accumulated this amount of time.

We agree with your opinion on the question of the accumulation of vacation periods. Permitting the accumulation of vacation periods has been decided by this office to be contrary to the legislative intent as expressed in the statute providing vacations for State employees.

There is no statute that specifically provides vacations for county hospital or county employees, and this matter might be presented to the Legislature for appropriate action. Chapter 19, Statutes of 1943, sec. 4 as amended, quoting that part deemed relevant, reads as follows:

“The board of hospital trustees shall make and adopt such bylaws, rules, and regulations for their own guidance and for the government of the hospital as may be deemed expedient for the economic and equitable conduct thereof, not inconsistent with this act * * *. They shall have exclusive control of the expenditures of all moneys collected to the credit of the hospital fund, * * *. Said board of trustees shall have power to appoint a suitable superintendent or matron, or both, and necessary assistants, and to fix their compensations, * * *.”

Rules, regulations and general orders enacted by administrative authorities pursuant to the powers delegated to them have the force and effect of law. *Pierce v. Doolittle*, 106 N.W. 751.

The general rule respecting administrative authority is expressed in 42 Am. Jur. page 428, to the effect that, “Administrative authorities must strictly adhere to the standards, policies, and limitations provided in the statutes vesting power in them. Regulations are valid only as subordinate rules and when found to be within the framework of the policy which the Legislature has sufficiently defined. * * *. Administrative rules are valid if they are not in conflict with, or do not change in any way, the statute conferring the rule-making power.”

The board of hospital trustees are directed to adopt such rules and regulations as may be deemed expedient for the economic and equitable conduct of the hospital. They are authorized to employ necessary assistants and fix their compensation.

Section 2049.10 N.C.L. 1931-1941 Supp. provides a vacation of fifteen days with pay in each year for county elective officers.

Section 7279 N.C.L. 1929 provides a leave of absence with pay in each year for all State employees.

The policy of the Legislature appears to be that vacations are rest periods in each year in order to facilitate more efficient service, and are not cumulative.

This office has several times furnished an opinion respecting the interpretation of the State statute and has held that vacation periods are not cumulative, but must be taken in the particular calendar year after having worked the required time. *See* Opinion No. B-27, December 31, 1940; Opinion No. B-68, December 6, 1941; Opinion No. 336, April 9, 1942.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-434 HIGHWAY DEPARTMENT, STATE—Contracts—Deposit equal to five percent of bid mandatory.

Carson City, March 18, 1947

Hon. Robert A. Allen, State Highway Engineer, Carson City, Nevada

Dear Mr. Allen:

This will acknowledge receipt of your letter of March 11, 1947, relative to the opening of bids on March 10 for the construction of a portion of State highway.

You inquire if, under the law, you can waive the requirement that a certified check equal to five percent of the bid must be furnished at the time the bid is submitted under the following circumstances. In checking the figures in the bid of one contractor, item for item, it was discovered that a mistake had been made in the extension of one item which affected the total amount of the bid. The amount expressed in words did not agree with the amount expressed in numerals and the result was that the correct total of the bid was increased and the certified check submitted with the bid did not equal five percent of the bid submitted as required by statute.

We are of the opinion that the failure of the contractor to comply with the requirement as to the amount of the deposit which should accompany his bid is not merely a technical irregularity which the highway engineer may waive, but a failure to follow a mandatory provision of the statute, and the State Highway Department cannot accept the additional amount to make up the deficiency in the amount of the certified check and consider the bid of the contractor in the letting of the contract.

Section 5337, 1929 N.C.L. 1941 Supp., contains the following provision: "Every bid shall be accompanied by a certified check of the bidder, or equivalent thereof, in an amount equal to five percent of his bid," * * *. This section further provides: "In awarding contract the department of highways shall make the award to the lowest responsible bidder, who has qualified and submitted his proposal in accordance with the procedure in this section provided."

Section 2, subdivision 2.6 of the Standard Specifications of the Department of Highways provides as follows: "No proposal shall be considered unless accompanied by cash or by a certified check or cashier's check, made payable to the department, in an amount equal to not less than five percent of the total amount of the bid."

Subdivision 2.4 of the above section provides that the bidder's proposal shall be on forms furnished by the department, and for each and every item for which a quantity is given the bidder shall state the price, written in ink, both in words and numerals for which it is proposed to do each item of work contemplated. "In case of discrepancy between the prices shown in words and in numerals, the price shown in words shall prevail."

The bid in question contained a discrepancy in one of the items between the numeral extended and the price shown in words which made a difference in the total amount of the bid. The certified check which accompanied the bid did not equal five percent of the actual bid of the contractor.

The case of *Harris v. City of Philadelphia*, 129 Atlantic Reporter, page 460, is directly in point on this question. The case was decided under an ordinance requiring a bid to be accompanied by a certified check or five percent of the total amount thereof and the court held that the city was unauthorized, after the bids were opened on city subway, but before award was made, to accept an additional check to make up a shortage in the amount of deposit required and proceed to consider bid as having been properly submitted.

The ordinance adopted under the statute required "that all bids must be accompanied by a certified check on a responsible bank or trust company in favor of the city to the amount of five per centum of the sum of such bid." The advertisement for bids contained the same provision and the "Informal Proposal" which corresponds to the Standard Specifications of the Nevada Highway Department contained the provision, "No bid will be considered unless accompanied by a certified check on a responsible bank or trust company in favor of the city of Philadelphia, to the amount of five (5) per centum of the sum of such bid, * * *."

The court held that it is only by following the provisions under the statutes and ordinances in awarding public contracts that the city may secure "the benefit and advantage of fair and just competition between bidders, and at the same time close, as far as possible, every avenue to favoritism and fraud in its various forms. Private negotiations between a director and a successful bidder, through which terms and conditions of the competitive bids are modified or changed, resulting either to the advantage or disadvantage of the city, are not within the spirit or purpose of the law." Continuing, the court said: "While recognizing the foregoing principles as settled law in this State, it is argued by appellant that the mere submission of an additional check sufficient to fully cover the amount of their bid was not a violation of these principles, but merely a technical matter, which could not in any way effect either the rights of the city or other bidders, and might have resulted in the saving to the city of the difference between the lowest bid submitted and the next higher one."

Applying the rule of law as held by the supreme court of Pennsylvania to the question submitted to this office, in which the discrepancy in the deposit was small, may seem a harsh rule, but as the court in the Pennsylvania case said, "It is no answer to say that the amount of the deficiency was comparatively small, leaving an ample sum to cover any loss to the city which might result if the bidder should default, the purpose of the deposit being merely to guarantee that the successful bidder would enter into the contract if awarded him, and that, as soon as the contract was signed, the deposit was to be returned. Even though the deficiency in the check was comparatively small, if the amount may be made up later, beyond what point are we to say that the discretion of the director should not extend? * * * The impossibility of thus fixing a definite point beyond which

the discretion of the director should not extend is the strongest argument in favor of the wisdom observing the arbitrary amount fixed by the ordinance.”

Therefore, we must conclude that the answer to the present question is that the requirement of a deposit in an amount equal to five percent of the bid is a mandatory requirement imposed by statute, which must be fully complied with by the bidder as a condition precedent to a consideration of his bid.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-435. Counties—Appointed Officers Entitled to Pay Only for Portion of Month Actually Worked.

Carson City, March 18, 1947

Hon. Wm. J. Crowell, District Attorney Nye County, Tonopah, Nevada

Dear Mr. Crowell:

This will acknowledge receipt of your letter dated March 12, 1947, received in this office March 14, 1947, requesting advice in regard to appointive officers of the town of Tonopah who served in office from January 1 through January 6, 1947, at which time their services were terminated when newly elected officials took office. Their compensation is fixed by month, but the County Commissioners paid them on a per day basis for the six days in January. You ask if they are entitled to full compensation for the whole month of January although their services were terminated on January 6, 1947.

We are of the opinion that the officers are entitled to pay for only the portion of the month actually worked.

This office on March 1, 1947, gave the same opinion in answer to a question, if a man is hired on a monthly salary and his services are terminated before the month is completed, is he entitled to a full month's pay or the portion of the month actually worked.

The compensation of public officers is fixed by statute or by the department authorized to appoint such officers. Their compensation when fixed is for services rendered and paid on a monthly or semimonthly basis. The compensation is not payable until the services have been rendered.

County business is operated under the budget system and a certain sum is designated for the payment of salaries. There is no provision for the payment of two salaries for the same service in the same office. 43 Am. Jur. Sec. 340, page 134, public officers' compensation, holds that any right that a public officer may have to a salary or compensation must generally be found in some provision of the law. The right does not rest on any contract express or implied and does not come within the import of constitutional provisions against the impairment of the obligation of contracts. "But after services have been rendered by a public officer, the compensation thus earned cannot be taken away by a subsequent law. * * * It is necessary to have in view the nature of a public office, and not to lose sight of the fact that an office is usually not regarded as a

contract or as a vested property right, but rather as a public trust to be exercised for the benefit of the public.”

The persons in question were serving under appointment which was terminated when the newly elected officials took office. They were not serving under a contract for a definite period and at a stated amount. The basis of a monthly salary would include Sundays and legal holidays during the time such services were performed, but could not be paid to them after the termination of such services.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-436 PUBLIC SERVICE COMMISSION—Plumas-Sierra Rural Electric Cooperative of California not a public utility—Commission has no jurisdiction.

Carson City, March 26, 1947

Public Service Commission, Carson City, Nevada

Attention: Lee S. Scott, Secretary

Gentlemen:

This will acknowledge receipt of your letter dated March 4, 1947, received in this office March 5, 1947, enclosing a letter from McCluskey & Samuelson, Attorneys at Law, and a copy of the Articles of Incorporation of Plumas-Sierra Rural Electric Cooperative of California.

You request an opinion as to whether or not the Public Service Commission of this State has jurisdiction in the premises.

We are aware of the opinion that the Plumas-Sierra Rural Electric Cooperative, as shown by its Articles of Incorporation, is a nonprofit cooperative that serves only its owner-members, is specifically prohibited from rendering service to the public, and any excess money collected is to be paid to the members as refunds in proportion to the amounts of their respective purchases of electric energy from the corporation during the fiscal year. The cooperative is, therefore, not a public utility under the provisions of the statute.

Section 6106, N.C.L. 1929, quoting only that part deemed relevant, reads:

“Public Utility” shall also embrace every corporation, company, individual, association of individuals * * * that now or hereafter may own, operate or control, * * * charging rates, fares or tolls, directly or indirectly, any plant or equipment, or any part of a plant or equipment within the State for the production, delivery or furnishing for or to other persons, firms, associations, or corporations private or municipal, heat, light, power in any form or by any agency * * * and the public service commission is hereby invested with full power of supervision, regulation and control of all such utilities, subject to the provisions of this act * * *.

The provisions of the Act relate to the regulation of utilities useful for the convenience of the public.

Words & Phrases, vol. 35, in defining a public utility gives the following examples:

The term “public utility” implies a public use carrying with it the duty to serve the public and treat all persons alike, and it precludes the idea of “service” which is private in its nature and is not to be obtained by the public. *People’s Gas Light & Coke Co. v. Ames*, 194 N.E. 260.

Service to public without discrimination is one of distinguishing characteristics of a “public utility.” *Claremont Gas Light Co. v. Monadnock Mills*, 31 A(2) 823.

Emergency Price Control Act providing that nothing in the Act shall be construed to authorize regulation of rates charged by “public utility” uses the phrase “public utility” as comprehending the familiar business which would immediately suggest themselves. *Davis Warehouse Co. v. Brown*, Em. App. 137 F(2) 201.

The Plumas-Sierra Rural Electric Cooperative, Inc., which is the subject of the present opinion, is, as stated in the letter of Mr. Samuelson, financed by the Rural Electrification Administration of the United States pursuant to the Federal Act.

Rural Electrification, title 7, sections 901-904, authorizes the Rural Electrification Administration to make loans in the States for rural electrification and furnishing of electrical energy to persons who are not receiving central station service. It is authorized to make loans to cooperative, nonprofit, or limited-dividend associations organized under the laws of any State for the purpose of financing the construction, operation and distribution lines or systems for the furnishing of electric energy to persons in rural areas who are not receiving central station service. Such loans shall be on such terms and conditions relating to the expenditure of the moneys loaned and the security therefor as the administrator shall determine and may be made payable in whole or in part out of income.

The case of *Garkane Power Co., Inc. v. Public Service Commission*, 100 P.(2) 571, a Utah case, was decided upon facts almost identical with those presented in the question under consideration. The court said, on page 572:

The record shows that Garkane was incorporated for the purpose of generating or acquiring electric energy to distribute and sell to its members only. The corporation is nonprofit, and any excess money collected is to be returned or credited to the member consumers pro rata on the basis of the amount of electric energy consumed during the period in which the excess was collected. The corporation is specifically prohibited from rendering service for or to the public.

On page 573 the court said:

In a cooperative all sell to each. The owner is both seller and buyer. So long as a cooperative serves only its owner-members and so long as it has the power to select those who become members ordinarily it matters not that 5 or 1,000 people are members or that a few or all the people in a given area are accorded membership, provided the arrangement is a bona fide cooperative or private service organization and is not a device prepared and operated to evade or circumvent the law. The argument that Garkane may at some future time become an investment business venture and sell power to nonmembers, the answer is: when such change occurs it will be time enough for the commission to take jurisdiction and to regulate its activities * * *.

That it runs its lines along public roads under permission of the county or town is no indication that Garkane is a public utility * * *. And if we accept the test that the loan of public funds to a cooperative means that it must serve the public generally and is therefore a public utility, we must also class as a public utility, bound to serve the public, all the hundreds of thousands of business organizations

which have borrowed from the Federal Government through R.F.D., P.C.B., etc. We hold, therefore, that a nonprofit electric cooperative which serves only its members, and is completely consumer owned with each consumer limited to one membership, is not a public utility within the purview of the statute.

As shown by the Articles of Incorporation of the Plumas-Sierra Rural Electric Cooperative, it is a cooperative organization for the purpose of acquiring electric energy and selling such electric energy to its members only. Only one membership may be held by each person. Provision is made for refunds to its members in proportion to the amounts of the respective purchases of energy or goods from the cooperative during the fiscal year, and shall render no service to or for the public.

The corporation must comply with the statute defining the qualifications of foreign corporations doing business in this State.

The cooperative in question, therefore, is not a public utility and the Public Service Commission has no jurisdiction in the premises.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-437 NEVADA HOSPITAL FOR MENTAL DISEASES—Lease of railroad ground—Demarcation of property lines not required.

Carson City, March 28, 1947

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

Dear Dr. Tillim:

With further reference to your letter of February 10, 1947, concerning the cultivation lease by the Southern Pacific Company to the State of Nevada, dated March 22, 1939, covering parts of the railroad right-of-way on both sides of the tracks between the old easterly limits of Reno and the old west limits of Sparks, we have received a copy of the lease with map annexed from B.S. Sines, Superintendent of the company, with his letter dated March 6, 1947.

From the correspondence you sent us it appears the company under date of July 25, 1946, advised Dr. Wyman of its desire to terminate the lease.

On August 12, 1946, you wrote B.S. Sines outlining acceptable conditions for the surrender of the premises. To quote your letter:

The conditions to be set forth I believe will be acceptable to the commissioners, to wit: (1) permanent demarcation of railroad property from property belonging to the State Hospital along the lines bounding the leased property involved, and (2) safeguard the irrigation needs for the parcel of land belonging to the State Hospital north of the railroad property being released. This involves preserving the present water ditch running approximately parallel with the north side of the railroad tracks. It will require providing a ditch across the railroad property northward, bringing the water to the hospital land at a point most feasible for irrigation purposes.

You also sent us correspondence relating to there retention under lease of a portion of the leased premises lying east of the asylum road and north of the tracks. This was refused by Mr. Sines in letter dated January 15, 1947.

In that letter Mr. Sines refused the condition suggested by you for “demarcation of the railroad property from State property,” but he did make a concession as to the irrigation ditch as follows:

If you so desire we will provide necessary ditch to safeguard irrigation needs for the parcel of land belonging to the State Hospital north of the railroad property being released. We have instructed our representatives at Sparks and Reno to discuss this matter with you with the view of arriving at a satisfactory arrangement.

Now that this office has received a copy of the lease, it is our opinion:

- (1) That you have no right to insist on the “demarcation” referred to in the letter of August 12, 1946, and the reply of January 15, 1947.

It would seem that the plat sent Mr. Epperson, August 28, 1946, by the County Treasurer, and the plat annexed to the enclosed lease, would provide a sufficient record. Demarcation on the ground is not requisite so long as the company complies with the railroad fencing laws. (1929 N.C.L., sec. 6275.) These laws require the railroad to be fenced under certain conditions and not necessarily the exterior boundaries of the railroad company’s property.

- (2) As to steps to protect the irrigation needs of the hospital property, we do not think the railroad company is obliged to grant any easement or sign any paper guaranteeing that your needs will not be interfered with. This may be safely left to the good faith of the company. This matter may well be arranged in conference with the company representatives in Reno and Sparks.

It must be remembered the lease is for cultivation purposes and under-letting or assigning was prohibited except by consent. Provision is made for termination of the lease on five days’ notice.

We enclose the letter, lease, and map referred to, also the County Treasurer’s letter to Mr. Epperson with plat annexed, referred to. We will keep the balance of the correspondence in our file subject to your convenience.

Very truly yours,

ALAN BIBLE
Attorney General

By: Homer Mooney
Deputy Attorney General

OPINION NO. 47-438 MINING—Company retirement plan—Fund not free from taxation.

Carson City, April 1, 1947

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

Dear Mr. Cahill:

Your letter dated March 27, was received here March 28, 1947. You enclosed a letter from Nevada Silica Sands, Inc., questioning your ruling of February 25, 1947, disallowing a deduction claimed by the company as a cost of an “Employees Retirement Plan.”

It is our opinion that your ruling is correct, and your letter of February 25, 1947, adequately covers the ground. The citation of the statute however, should be subdivision 8 of section 3 (not section 8). It is 1929 Nevada Compiled Laws, 1941 Supplement, section 6580 (8).

Taxation of the proceeds of mines is authorized and limited by section 1 of article X of the Constitution. In *Goldfield Con. Mining Co. v. State*, [60 Nev. 241](#) a 245, the Supreme Court, citing authority, declared that this provision required legislation to carry it into effect. Construing the amendment of 1937 the court declined to depart from the plain meaning of the provision respecting royalties merely because such a construction would free royalties from taxation when received by the mine owners. *See also Koyen v. Lincoln Mining Co.* [63 Nev. 325](#), 171 P.(2d) 364.

In *State v. Tonopah Extension Mining Co.*, [49 Nev. 428 at 437, construing](#) section 13 of the Act of 1917 (ch. 177) where the question was whether cost of depreciation of plant and of maintaining general offices outside the State were deductible as "actual costs" the court answering in the negative said: "If the legislature had intended that these items claimed by appellant could be taken into consideration as deductible items, it could have said so."

We cite these cases to show our Supreme Court will neither expand nor diminish the meaning of statutes granting deductions without warrant in the statute itself.

This principle is stated variously on the article on taxation in 51 Am. Jur., sections 526-529, inclusive.

Approaching the statue we find an enumeration as deductible of all moneys paid for certain named purposes. Such a listing crates a presumption that purposes not listed by name or class are excluded. We do not find moneys paid into a private fund under a company retirement plan for its employees listed by name or by class. Certainly they are not paid to the State or Federal Government. They come near to "group insurance" but we cannot say they come near enough.

Differing from the Act of 1917, the present Act does not delegate to the commission the power to formulate rules or to determine what deductions are allowable. That power is reserved by the Legislature. As an administrative board your commission should relegate the taxpayer to the courts in all cases of doubt as to the law.

We return the papers you sent to us.

Very truly yours,

ALAN BIBLE
Attorney General

By: Homer Mooney
Deputy Attorney General

OPINION NO. 47-439 NEVADA TAX COMMISSION—Administrative fund not allocable to purchase Quonset hut.

Carson City, April 2, 1947

Nevada Tax Commission, Carson City, Nevada

Attention: R.E. Cahill, Chief Clerk

Dear Bob:

This will acknowledge receipt of your letter of March 28, 1947.

I have examined the law with respect to the furnishing of office space or building for the Nevada Tax Commission. It is noted that the State Board of Control is of the opinion that the problem could be solved by construction of a quonset hut somewhere on the Capitol grounds. You ask whether the State Board of Control could secure and erect a quonset hut and pay for the same out of the 5 percent of revenues collected by the Tax Commission from gasoline tax, motor fuel tax, and other taxes of like nature.

An examination of the law with respect to the 5 percent revenues above-stated fails to disclose that any such revenues could be expended for the purchase and erection of a quonset hut and I am of the opinion that such revenues could not be used for that purpose. No other appropriation or source of revenue appears in the law for building purposes of the nature of those in question here.

However, the State Board of Control is empowered to lease and equip office rooms outside of State buildings for the use of State officers whenever sufficient provision for such officers cannot be provided in the Capitol building. Section 6974, 1929 N.C.L. 1941 Supp. I think the law is perfectly clear that expenses in the nature of rent are payable from the 5 percent revenues received by Nevada taxes. No doubt suitable arrangements could be made through some agency for a quonset hut on a rental basis.

Very truly yours,

ALAN BIBLE
Attorney General

OPINION NO. 47-440 PUBLIC SCHOOLS—Teachers' contracts—Printed forms may be altered by contracting parties.

Carson City, April 2, 1947

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

Dear Miss Bray:

This will acknowledge receipt of your letter dated March 27, 1947, received in this office March 28, 1947.

You cite section 19, subparagraph 7, and section 274, subparagraph 11, of the 1947 School Code, chapter 63, Statutes of 1947, effective July 1, 1947, and submit the following question:

1. Is the contract provide din the above-mentioned statutes the sole contract which legally can be executed by boards of trustees and county boards of education with teachers?
2. Has any school board the authority, provided your answer to the above question is in the affirmative, to alter that contract in any manner?
3. If your answer to the first answer question is in the affirmative and if a teacher enters into some other form of contract or the State contract with any alterations, is she bound by the terms of such other contract or the altered contract?

The answer to question No. 1 is in the negative.

The answer to question No. 2 is in the affirmative.

Answering your third question, we are of the opinion that the teacher is bound by the contract entered into between herself and the trustees. If the printed form is used, the alterations in writing control if they indicate the terms selected by the parties entering into the contract.

Section 19, subsection 7, 1947 School Code, provides:

To prepare, and to have printed with the approval of the state board of printing control, teachers' contracts, school registers, and other necessary forms and supplies, and to supply the same to school trustees and teachers.

This provision authorizes the printing and furnishing of forms only, and not the making of a contract between the parties to the contract.

Section 274 of the School Code defines the powers and duties of school trustees which are a body corporate under the statutes. Subsection 11, quoting that part deemed relevant, reads:

To employ legally qualified teachers, to determine the salary to be paid and the length of the term of school for which teachers shall be employed, embodying these conditions in a written contract to be signed by the president and the clerk of the board or by a majority of the trustees and the teachers, * * *.

While the printed form, furnished by the Superintendent of Public Instruction, may be used and completed by the parties, the rule in the making of a contract as stated in 12 Am. Jur., page 639 is, "Freedom of will is essential to the validity of an agreement." "The obligation of contracts is, in general, limited to the parties making them." 12 Am. Jur., page 514. And again, "A contract is not the law, nor does it make law. It is the agreement plus the law that makes the ordinary contract an enforceable obligation." 12 Am. Jur., page 497.

Where there is any part of a contract to which both parties have not agreed, the entire instrument is a nullity as to all its clauses. *LaCampania Bilbaina v. Spanish American Light & Power Co.*, 146 U.S. 483.

The statute empowers the board of trustees to enter into contracts with legally qualified teachers; this authority is not given to the Superintendent of Public Instruction.

The rule as to alterations in a printed form of contract is expressed in 12 Am. Jur., page 797, as follows:

It is a well-settled rule of law that where a part of contract is printed, and the other written and printed parts are apparently inconsistent or there is reasonable doubt as to the sense and meaning of the whole, the words in writing will control. The reason greater effect is given to the written than the printed part of an agreement, if they are inconsistent, is that the written worded are the immediate language and terms selected by the parties themselves for the expression of their meaning, while the printed form is intended for general use without particular objects and aims.

The Supreme Court of this State recognized the foregoing rule in *Eager v. Mathewson*, [27 Nev. 220](#). On page 231, the court said:

We do not deny that, when the written and the printed parts of contracts are antagonistic and cannot be reconciled, the written should generally control; but when there is only apparent antagonism, and reconciliation is reasonably easy, we think the rule of reconciliation should govern.

The statutes provide that the trustees shall embody the salary to be paid and the length of the term of employment in a written contract. If there is any alteration in writing of the printed words, and such alteration is the result of the so-called meeting of the minds of the contracting parties, the alterations should control.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-441 NEVADA HOSPITAL FOR MENTAL DISEASES—Voluntary admission for treatment as outpatient.

Carson City, April 11, 1947

Sidney J. Tillim, M.D., Superintendent, Nevada Hospital for Mental Diseases, P.O. Box 2460, Reno, Nevada

Dear Dr. Tillim:

This will acknowledge receipt of your letter dated April 5, 1947, received in this office April 8, 1947.

You request information relative to voluntary admission for treatment under an application received from a person who desires treatment as an outpatient, also as to the form of a binding agreement to include confinement and restraint as deemed proper and necessary according to the dictates for medical care in cases of voluntary admission. You ask, in the case of minors, if the statutes provide for the admission of minors in voluntary status, if the parents, parent, or legal guardian could sign the agreement for the admission to the hospital of such minors.

Assembly Bill No. 206, which now becomes chapter 257, Statutes of Nevada 1947, approved March 31, 1947, is entitled "An Act concerning the mentally ill of the state; defining mentally ill persons and providing for their care and treatment at the Nevada hospital for mental diseases." Section 16 of the Act provides as follows: "Pursuant to rules and regulations established by the board of commissioners, the resident physician of the Nevada hospital for mental diseases may receive and detain in such hospital, as a boarder and patient, any person who is a suitable person for care and treatment in such hospital, upon receipt of a written application for the admission of the person into the hospital for care and treatment made in accordance with the following requirements."

The requirements are that an adult person make the application voluntarily at a time when such person is in a condition of mind as to render the person competent to make it.

The language of the section is plain and the meaning unmistakable and there is no room for construction or interpretation.

The title of the Act provides for care and treatment at the hospital, and the section quoted uses the language "receive and detain in such hospital, as a boarder and patient * * * for care and treatment in such hospital." There is no provision for treatment of a person as an outpatient.

As to the preparation of an agreement form by this office which applicant would sign for voluntary admissions, this office is not familiar with the requirements of the administration of the hospital regarding the dictates for medical care, confinement and restraint deemed necessary. This is the substance of the agreement which should be supplied by the physician or the board. When the form is determined t his office will, if desired, pass on the legal phase of the agreement.

Section 16 referred to above, contains the following language in subdivision (a) as to requirements for admission: "* * * or in the case of a minor person, the application shall be made by his parent, or by the parent, guardian, or the person entitled to the custody."

The persons named in the statute to sign the application would be the persons qualified to sign an agreement.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-442 INSURANCE—Companies may not transact any kind of business other than that enumerated in its respective class.

Carson City, April 14, 1947

Hon. Jerry Donovan, Insurance Commissioner, Carson City, Nevada

Attention: G.C. Osburn, Deputy

Dear Mr. Donovan:

This will acknowledge receipt of your letter dated April 8, 1947, received in this office the same date. You cite article 2, section 10, and article 1, section 6, of the Nevada Insurance Act and request an opinion as to the authority under the Act for an insurance company to be incorporated for the purpose of transacting more than one class of business. The example presented is that of a company which desires to file articles of incorporation to transact both casualty and fire insurance business.

We are of the opinion that the statute defines three classes of insurance business, namely, life, accident, and health; casualty, fidelity and surety; and fire and marine. The functions of each respective class is defined. A company may be incorporated under either one of the three classes and may not transact any kind or kinds of business other than that enumerated in its respective class.

Article 1, section 5 (section 3656.04, 1929 N.C.L. 1941 Supp.) provides as follows:

(1) All companies now or hereafter authorized to transact business in this State shall be classified according to their functions into three (3) classes corresponding to the classes of insurance enumerated in section 5.

(2) No company shall be authorized to transact any kind or kinds of business other than those enumerated in its respective class, except as otherwise specifically provided in this Act; *provided*, that any foreign insurance company which has been licensed to do the business of life insurance in this state prior to the effective date of this act may continue to be licensed, in the discretion of the commissioner, to do the kind or kinds of insurance business which it was authorized to do immediately prior to the taking effect of this act.

Article 2, title "Domestic Companies," section 10, reads as follows:

Companies may be organized under this article either for the purpose of transacting any of the kind or kinds of business enumerated in class 1 of section 5;

or for the purpose of transacting any of the kind or kinds of business enumerated in classes 2 or 3 of said section.

The classes of insurance are designated and identified in section 5, and section 6 does not divide the three classes into two classes by using the language “enumerated in classes 2 or 3 of said section” as suggested in the letter form the insurance company submitted with your inquiry. The adjective “either” refers to one or the other of the three classes as the alternative “or” is used throughout the sentence. It does not read, “either class 1, or classes 2 and 3.”

The definite purpose manifest in section 5, article 1, to which section 10, article 2, makes reference, is that no company shall be authorized to transact any kind or kinds of business other than those enumerated in its respective class.

The rule of construction for such statutes has been established by the Supreme Court of this State in *Nye County v. Schmidt*, [39 Nev. 456](#). On page 464, the court said:

Where the legislative body manifests a definite purpose, it will be presumed that, in furtherance of this definite purpose, the lawmaking power formulated the subsidiary provisions in harmony therewith. * * * It will not be assumed that one part of a legislative act will make inoperative or nullify another part of the same act, if a different and more reasonable construction can be applied.

The construction we adopt is fortified by the other parts of the Insurance Act relative to license fees and minimum capital requirements.

Section 60, article 7 (section 3656.59, 1929 N.C.L. 1941 Supp.) which provides the license fee for insurance companies, provides an annual license to each fire insurance company upon the payment of the fee of \$100; for an annual license to each casualty and surety company a fee of \$20. There is no provision for a license for any combination of the classes.

Section 13, article 2 (section 3656.12, 1929 N.C.L. 1941 Supp.) defining the minimum capital and surplus requirements in each of the three classes and the subdivisions of each class, provides: Life, Accident, and Health, Class 1(a) or (b) \$100,000 Class 1(a) and (b) \$125,000; Casualty Fidelity, and Surety, Class 2, all clauses except (f) and (j) \$100,00 Class 2 (f) or (j) \$100,000, Class 2(c) and (j) \$100,000, Class 2, all clauses, \$200,000; Fire and Marine, any or all clauses, \$100,000.

The requirements for bona fide applications of members differ according to the particular class and the subdivisions of each class.

Therefore, we are of the opinion that the purpose sought to be accomplished, and plainly defined by the Legislature, is to authorize the incorporation of insurance companies in but one of the three classes enumerated, and prohibit the transaction of any insurance business other than that enumerated and specified in the respective class and the clauses under such class.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-443 BANKING—Extent of total liability to bank of any person including cosigner and indorser.

Carson City, April 14, 1947

Mr. Grant L. Robison, Superintendent of Banks, Carson City, Nevada

Dear Mr. Robison:

This will acknowledge receipt of your letter dated April 8, 1947, received in this office April 10, 1947.

You cite section 15 of the Banking Laws of Nevada and request an opinion as to the interpretation which should be placed upon this section in the event an individual should borrow the maximum amount in his own name and in addition become the cosigner or indorser on a note for another party, and would the amount of such note so cosigned or indorsed constitute an excess loan in violation of the statute.

We are of the opinion that a cosigner under the circumstances increases his liability to the bank and an indorser without qualification is something more than a surety, and is liable in the first instance as a drawer.

Section 15 of the Nevada Banking Act (section 747.14, N.C.L. 1931-1941 Supp.) quoting that part deemed relevant, provides: "The total liability to any bank or any person, company, corporation, or firm or money borrowed, including in the liability of any unincorporated company or firm the liability of the several members thereof, shall not at any time exceed twenty-five percent of the capital and surplus of such bank, actually paid in, * * *."

The section comprehends the collective liability to the bank of individuals who are not a part of a legal entity.

Section 4493, N.C.L. 1929, section 4 of the Negotiable Instruments Act, provides: "Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value." A cosigner of a note may be liable to the bank for the entire amount of the note. 8 Am. Jur., page 234, recites: "In the absence of express language specifically controlling the matter, a promissory note made by two or more persons may be joint or several depending upon the term used. A promissory note made by two or more persons which states that 'we promise to pay' is a joint note only. A note which reads 'We or either of us promise to pay' is a joint and several."

Section 4535, N.C.L. 1929, section 66 of the Negotiable Instruments Act, relative to indorsements, provides that every indorser without qualification warrants certain conditions, among which is the following: "And in addition, he agrees that on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder or to any subsequent indorser who may be compelled to pay it."

A person who has borrowed from a bank to the extent of his liability to the bank allowed by law, increases his liability to the bank when he becomes an indorser on another party's note to the bank.

32 American Reports, page 438, citing *Stephens v. Monongahela National Bank*, wherein it was held that: "An indorser is something more than a surety, and is liable in the first instance as a drawer" * * * "a surety may spur the creditor into activity by notice to pursue the principle debtor, on pain, for neglect, that the surety will be no longer bound—not so an indorser. The latter cannot call upon the holder of a protested note to sue the drawer, and if he refuses, thereby relieve himself, for if he wishes instant recourse to the principal, it is his duty to pay the note and sue for himself."

While a bank may not make a loan contrary to the provisions contained in section 15 of the Banking Act, such a loan is not a void obligation. The fact that a bank made a loan of money in

excess of the amount limited by law does not defeat the right of the bank to collect such loans. *Lockwood v. Twitchel*, 146 Mass. 623; *Organ v. Winnemucca State Bank*, [55 Nev. 72](#).

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-444 OLD-AGE ASSISTANCE—No provision requiring recipient to refund any money paid to him as pension.

Carson City, April 16, 1947

Hon. C.A. Eddy, District Attorney, White Pine County, Ely, Nevada

Dear Mr. Eddy:

This will acknowledge receipt of your letter dated April 12, 1947, received in this office April 14, 1947.

You request advice as to whether or not a recipient of old-age assistance, who has acquired property bill will sufficient to maintain him, and who desires to relinquish further payments of assistance, is required under the statute to refund the amount of money received as a pension in the past two and one-half years.

We are of the opinion that there is no provision in the Old-Age Assistance Act which requires a recipient to refund any money paid to him as a pension under the circumstances stated in your inquiry.

Section 12 of the Old-Age Assistance Act (chapter 1, Statutes of 1945) provides for the recovery of money paid as assistance in the event the recipient dies and leaves an estate. This section reads in part as follows:

On the death of any recipient, the total amount of assistance paid under this act shall be allowed as a claim against any estate of such person, after funeral expenses, the expenses of the last illness, and the expense of administering the estate have been paid; * * * No conveyance, transfer, or assignment of real or personal property shall be required of any applicant in order to secure the benefits of the Nevada old-age assistance act; * * *.

The Act takes into consideration the fact that an applicant may be possessed of real and personal property as shown by the language in section 6, reading as follows:

Such application shall contain a statement of the amount of property both personal and real, in which the applicant has an interest and of all income which he may have at the time of the filing of the application, * * *.

These facts determine the amount of assistance to be granted under section 3, which reads in part as follows:

The amount of old-age assistance which any person shall receive under the provisions of this act shall be determined with due regard to the resources and necessary expenditure of the individual and the conditions existing in each case,

and 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.

Section 20 of the Act provides that the person who meet the requirements provided shall be entitled as a matter of right to the assistance as provided in the Act, and section 7 declares it to be the purpose of the Act to remove all recipients from the operation, restrictions, and provisions of the pauper laws.

Section 11 of the Act applies when the circumstances of the recipient have changed so that he is no longer in need of assistance:

All assistance grants made under this act shall be reconsidered by the county board as frequently as may be required by the rules of the state department. After such further investigation as the county board or the state department may deem necessary, the amount of assistance may be changed or assistance may be entirely withdrawn if the state department or the county board finds that the recipient's circumstances have altered sufficiently to warrant such action.

There is nothing in the Act to indicate an intention that the assistance is advanced as a loan to be repaid by the recipient in his lifetime if circumstances warrant it.

The Act relieves relatives of their legal responsibility to contribute to the support of the recipient, but upon his death a claim for the amount of assistance expended shall be allowed from the residue of any estate of deceased recipient, except in the case of real property occupied by a spouse.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-445 HEALTH—Employer at construction camp where five or more persons are employed required to furnish bedsteads or bunks.

Carson City, April 16, 1947

Dr. Fred Loe, State Health Officer, Carson City, Nevada

Dear Dr. Loe:

This will acknowledge receipt of your letter dated April 10, 1947, received in this office April 11, 1947. You request an interpretation of section 2817, N.C.L. 1929, the same being section 2 of an Act regulating the sanitation and ventilation in and at camps where five or more persons are employed.

That part of said section which refers to your particular question reads as follows: "Upon request of an employee he must be supplied with a mattress or some equally comfortable bedding for which a reasonable charge may be made, the same to be deducted from his wages. When straw or other substitute for a mattress is used a container or tick must be provided."

The language in the section referring to beds or bunks is as follows: "Suitable bunks or beds shall be provided for all employees. Such bunks or beds shall be made of steel, canvas or other suitable material, and shall be so constructed as to afford reasonable comfort to the person occupying the same."

Reading these parts of the section together it appears that the furnishing of bunks or beds of steel or other suitable material refers to a bed as an article of furniture, which it is the mandatory duty of the employee to supply. The furnishing of a mattress or equally comfortable bedding is upon request of the employee and is furnished at a reasonable cost to the employee.

The statute does not use the term bedclothes, which, according to Webster's Dictionary, is, "blankets, sheets, coverlets, etc., for a bed." Equally comfortable bedding refers to the word "mattress" and does not include blankets, linen, pillows and towels, as indicated by the language, "when straw or other substitute for a mattress is used a container or tick must be provided."

We are, therefore, of the opinion that an interpretation of the statute requires the employer at a construction camp, where five or more persons are employed, to furnish the employees a bedstead or bunk, and, upon request, at a reasonable charge, to furnish a mattress or the substitute provided by law.

The Act provides for general sanitation at such camps and gives the State Board of Health full power and authority to declare and prescribe such reasonable standards and regulations as will tend to insure the observance of the law.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-446 NEVADA HOSPITAL FOR MENTAL DISEASE—Salary of business manager fixed by statute—Maintenance or subsistence available at hospital.

Carson City, April 17, 1947

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 March 21, 1947 (apparently meant for March 31, 1947), received in this office April 1, 1947, requesting information on A.B. 131, as amended, relative to the authorization of subsistence to the business manager who does not live at the hospital and whether the subsistence may be in the form of a monetary allowance.

We have examined A.B. 131 in the office of the Secretary of State with its final amendments, as it will appear as chapter 277, Statutes of 1947. We are of the opinion that the salary of the business manager is definitely fixed by the statute, and that the Board of Commissioners are not authorized to furnish the maintenance provided for therein in the form of a monetary allowance in addition to said salary. The maintenance or means of subsistence allowed the business manager is that which may be determined by the board to be available at the hospital.

Subdivision (c), section 6, relating to a business manager, reads as follows:

The board shall employ a business manager, which shall be a full-time position, who shall serve at the pleasure of the board and be paid a straight salary not in excess of four thousand two hundred (\$4,200) dollars per year and such maintenance as may be determined by the board. The business manager shall conduct all business pertaining to the hospital under rules and regulations adopted by the board of commissioners. The business manager shall cause to be kept a fair and full account of the entire business of the hospital and submit reports to the board of commissioners when so requested.

The monetary remuneration fixed by the statute cannot exceed the sum of \$4,200 per year. The term “straight salary” implies a complete salary.

In the consideration of the words “straight ticket,” the court in the Application of Simpson, 7 N.Y.S. (2) 416, held as follows:

It is my belief that the legislature by use of those words meant that it should be a complete ticket.

The compensation for services rendered is fixed by statute, but the expenses to operate, sustain, keep going or maintain the office or the officer is to be determined by the board as authorized by the language in the statute—”and such maintenance as may be determined by the board.”

The Legislature has definitely determined the salary to be paid the business manager for services performed, but has delegated to the Board of Commissioners the authority to determine the necessary support to be furnished.

That part of the section which relates to the business manager deals with the provision of maintenance generally. The maintenance or support of the physician and psychiatrist and the resident assistant is treated specifically. The first mentioned shall live at the hospital and, in addition to his salary, shall be entitled to living quarters and household provisions and supplies and such other facilities and accommodations as are available at the hospital. The resident assistant physician, in addition to his salary, shall be entitled to living expenses and supplies and such other facilities and accommodations as may be determined by the board.

The statute requires that the physician and psychiatrist shall live at the hospital in quarters to be furnished. There is no provision for furnishing living quarters for the assistant physician or the business manager.

The language that deals specifically with maintenance for the physician and the psychiatrist, omitting living quarters, is as follows:

* * * household provisions and supplies and such other facilities and accommodations as are available at the hospital.

Additional allowance to the resident assistant is in the following language:

* * * and in addition thereto he shall be entitled to living expenses and supplies and such other facilities and accommodations as may be determined by the board.

The rule of statutory construction is to the effect that where one part of a section or statute makes general reference to the same matter that is treated specifically in another part of a section, that which is specifically treated in another part of a section, that which is specifically treated will prevail or explain the general term.

In *State v. Hamilton*, [33 Nev. 418](#), on page 422, the court said:

Another well-settled rule of construction is that, where one section of a statute treats specifically of a matter, it will prevail over other sections in which incidental or general reference is made to the same matter.

Citing Sutherland on Statutory Construction, the court held:

When the legislator frames a statute in general terms or treats a subject in a general manner, it is not reasonable to suppose that he intends to abrogate particular legislation to the details of which he had previously given his attention, applicable only to a part of the same subject, they will govern in respect to that subject as against general provisions contained in the same act.

The Legislature has delegated to the board of authority to make rules and regulations for the government of the hospital as they may deem proper. The subject of maintenance as indicated by the language in the section is within the discretion of the board.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-447 PUBLIC SCHOOLS—Reestablishment of district high schools.

Carson City, April 19, 1947

Hon. Mildred Bray, Superintendent of Public Instruction, Carson City, Nevada

Dear Miss Bray:

This will acknowledge receipt of your letter dated April 15, 1947, received in this office April 16, 1947. You request an opinion on the subject of district high schools which during the past six or seven years have ceased to function, and now wish to again maintain such school. You request an interpretation of chapter 181, Statutes of 1939, as amended by chapter 183, Statutes of 1939 and chapter 156, Statutes of 1941, presenting the following points:

1. Shall we assume that the districts under discussion are inactive or dormant districts which can be revived when the existence of the requisite eight pupils of a bona-fide residence in the district is definitely established by the deputy superintendent; or did the district automatically become abolished when there were no longer eight children of high school age needing or desiring high school education in the district?

2. If you hold that the district was abolished and that a population of ten resident pupils of high school age needing and desiring a high school education, residing in the district is required for the establishment of the district high school and if such district meets all other requirements save that it is now located within 40 miles from another high school, does such location now serve as a bar to its reestablishment as a district high school?

Answering your first question, we are of the opinion that the statutes do not contemplate the revival of an inactive or dormant district high school as suggested in this question. The provision for the levy of taxes to maintain such school is one of the conditions precedent to support the school and must be made within the prescribed time. The requisite eight pupils is a condition to maintain a school in existence and operation. When this requirement fails the school no longer exists, and the only procedure to reestablish the school is the same as prescribed for a newly established district high school.

The answer to your second question is that the district high school which is again established comes within the provision of the statute which prohibits the establishment of a district high school within forty miles of another high school, with the exception that the County Commissioners and State Board of Education may authorize its establishment when the cost of transportation of pupils to another high school is not practicable.

Section 5, chapter 181, Statutes of 1939 (sec. 6078.04, N.C.L. 1931-1941 Supp.) quoting only the language deemed relevant provides:

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

1. That the said district high school is already established and is complying with the legal requirements of the state for such a high school.

Subdivision 3 names first a newly organized district where there are at least ten actual resident students proposing to attend the district high school when established. The next condition precedent is expressed as follows: “* * * in the case of a district high school already established and *in operation*, * * *.” This subdivision provides a condition for operation in the event the required number of students in attendance cannot be maintained at ten. Such condition is expressed as follows: “* * * the deputy superintendent of public instruction shall certify to the county board of education that the prospects are that there will be at least eight (8) actual resident students of high school grade in attendance at said district high school for the ensuing year.”

Another condition is expressed in subdivision 4 of the section as follows: “That, on or before February 10 of each year, the board of school trustees of said school district (elementary school district) shall have submitted to the county board of education the regular school budgets for said elementary and high schools, together with a supplemental statement showing the amount of money required to be raised by county tax for the district high school.”

The next paragraph in this subdivision indicates that there be a newly established high school in the event the school has not been operating for at least one school year.

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

which the county aid to district high school is requested in the event that said district high school has been operating for at least one year.

Throughout the section the terms used and directed to the school are “shall exist”; “operation for at least one year”; “established in operation”; “ensuing year”; and immediately preceding the calendar year.”

Our interpretation of the statute is that a district high school may be established when the district has the minimum of ten actual resident students with the qualifications named in section 2. When the school is established and this number of students is not maintained, upon the certificate of the deputy superintendent of public instruction that the prospects for the ensuing year at that at least eight actual residents will attend the school, then the school may still exist and its means of operation will be furnished as provided in the Act. Upon failure to maintain ten students and there is no prospect of at least eight students for the ensuing year, no means of support are provided and the school ceases to exist.

The provision for a minimum of eight students only applies when the school is in operation for the preceding year and may be continued for the following year.

When the school ceases to exist because the conditions for maintaining it have not been fulfilled, then it appears that the only procedure for the reestablishment of such school is under section 2 of the Act, requiring a petition by at least three-fifths of the taxpayers of the district and that there are at least ten actual resident students as provided in this section.

To establish again such school it would come within the provisions of subdivision 2 of section 2 of the Act which provides that the school may not be established within forty miles of a county high school or branch high school or other district high school, except that upon recommendation of the State Board of Education the county Commissioners may authorize the establishment of the school within the limits defined when the transportation of students is found not to be feasible to the other high school and the cost thereof is found excessive.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-448 PUBLIC SCHOOLS—Reestablishment of district high schools—
District may not levy tax above the limit fixed by statute.

Carson City, April 21, 1947

Honorable Gordon R. Thompson, Assistant District Attorney, Reno, Nevada

Dear Gordon:

This will acknowledge receipt of your letter dated April 16, 1947, received in this office April 17, 1947, enclosing a letter from Mr. Byron F. Stetler, Deputy Superintendent of Public Instruction of the fourth district.

The first two questions involve the reestablishment of a district high school that has not operated for the past two years.

You refer to the new School Code which was adopted by the Legislature at its last session, which code will not be in effect until July first of this year.

We have just furnished Miss Mildred Bray, Superintendent of Public Instruction with an opinion on the subject embraced in the first two questions, and are enclosing a copy. The new code makes no substantial change in these sections.

The third question "Is there any provision in the law which gives the voters of a school district the power to authorize, by vote, the levying of a tax for school purposes over and above the limit which is set by law for the board of school trustees?"

We assume that this question relates to districts having district high schools, and reply that there is no provision in the present school laws or the new school code which authorizes the voters of such district by election to levy a tax above the limit fixed by the statute.

Section 6078.03, N.C.L. 1931-1941 Supp. (sec. 4, chap. 181, Statutes 1939) defines the tax for district high schools in counties having county high schools.

Section 6078.23, N.C.L. 1931-1941 Supp. (sec. 4, chap. 183, Statutes 1939), defines the tax levy in districts not having county high schools. In each of the above chapters, the only provision for an additional tax authorized by the voters is for the purpose of paying the cost of transportation of pupils.

Section 5789, N.C.L. 1929 (sec. 141 of the Act concerning public schools) provides that the board of trustees of any school district may, when in their judgment it is advisable, call an election and submit to the electors of the district the question whether a tax shall be raised to furnish additional school facilities for the district, or to keep any school open for a longer period than the ordinary funds will allow or for building an additional school house.

This later section applies to the preceding section (140) which provides for a levy by the trustees of a tax of not more than twenty-five cents on the one hundred dollars valuation of the district.

Section 141 providing for an election to furnish additional funds does not appear in the new school code.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-449 CORPORATIONS—Nonprofit corporation—Fees.

Carson City, April 24, 1947

Honorable John Koontz, Secretary of State, Carson City, Nevada

Dear Mr. Koontz:

In your letter of April 3, received April 4, 1947, you ask our opinion as to the fees required to be collected by you from nonprofit corporations. You are particularly desirous of a written opinion as to the effect of legislation enacted in 1941 and after. You refer to written opinions of this office, given prior to 1941, and certain oral advices.

By the Act of March 28, 1941 (chap. 138, Statutes of 1941, p. 329) the Legislature further amended the Act of March 23, 1921, relating to "nonprofit cooperative corporations."

In paragraph 9 of section 3 (1929 N.C.L. 1941 Supp., sec. 1577, subdivision 9), it is provided that such articles of incorporation shall be filed in the office of the Secretary of State

in same manner as other articles of incorporation are filed, and thereupon the secretary of state, *for a fee of five dollars*, shall furnish a certified copy thereof * * * and also the secretary of state shall issue to the corporation over the great seal of the state of a *certificate* that a copy of the articles containing the required statements of facts has been filed in his office * * *.” (Emphasis ours).

This is the same provision found in the original law with one significant addition consisting of the words “for a fee of five dollars.”

Paragraph 4 of section 5 (1929 N.C.L. 1941 Supp., sec. 1579, subdivision 4), remains unchanged from the text of 1921. It provides for dissolution “in the manner and with the effect provided in section 1258 of the Revised Laws of 1912 * * *.”

This section 1258 is now sec. 1593, N.C.L. 1929, and says nothing about fees and requires no filing with the Secretary of State. It is section 10 of the Act of March 16, 1901, to provide for the incorporation, operation and management of the “cooperative associations.”

Paragraph 3 of sec. 5 (1929 N.C.L. 1941 Supp., sec. 1579, subd. 3), is unchanged from the text of 1921. It relates to consolidations and requires that a certified copy of such agreements must be filed in the office of the Secretary of State “and pay the same fees for filing and recording as required for filing and recording of original articles of incorporation * * *.”

So it would appear that the fee in view was the five dollar fee mentioned above (par. 9 of sec. 3). This rule as to a fee, it may be noted, is not applied to dissolutions (par. 4, sec. 5).

Thus it appears that under the existing law relating to nonprofit “cooperative” corporations they are required to pay a fee of five dollars only to the Secretary of State and on consolidation to pay a like fee.

You call attention to the fact that your Uniform Fee Act (sec. 1, Act of March 10, 1933, Stats. 1933, p. 57; 1929 N.C.L. 1941 Supp., sec. 7421.01) contains a proviso in the last paragraph:

Provided that no fees shall be required to be paid by any religious or charitable society, or educational association having no capital stock.

Inasmuch as the “nonprofit corporation” here under discussion is not a “religious or charitable society, or educational association having no capital stock,” the proviso is not germane. The restriction “having no capital stock” applies only to “educational association.”

The proviso neither affirms nor denies the duty of nonprofit cooperative corporations to pay fees.

Apart from the proviso above, the statute governs “matters relating to corporations under this Act.” (Sec. 1). If it is assumed this is a vague reference to the general corporation Act, then it is apparent nonprofit cooperative corporations are not organized under that general Act.

Corporations are not organized under a fee bill. A fee bill may guide you as to what sums to collect. A corporation law more truly guides the company as to what fees it must pay.

Section 77 of the General Corporation Law of March 21, 1925 (N.C.L. 1929, sec. 1676), contains the same proviso quoted above but it is likewise not germane to the case presented here.

Neither section 77 of the corporation law nor the fee law for the Secretary of State makes direct reference to nonprofit cooperative corporations. The laws we have cited do make such direct reference and are controlling. They are definite as to the fee for a certified copy and a certificate, and as to the fee for a consolidation and as to the absence of a fee for dissolution.

The former written opinions of this office must be carefully read as to their subject matter.

Opinion 4 of the Attorney General, dated January 16, 1923, passed on Statutes of 1921, p. 366, and held that a payment of \$10 only was required to file nonprofit corporation articles.

Opinion 67, dated June 8, 1923, held that Statutes 1923, p. 342, did not apply to the license fee of \$10 from associations and corporations of a “charitable” character, they being exempt from both corporation and property taxes.

Opinion 197, dated September 28, 1925, ruled that nonprofit corporations need not file a list of officers nor pay the annual fee required by chapter 180, Statutes 1925, referring also to statutes 1923, p. 342, and rulings thereunder.

When the nonprofit corporation law is considered it would seem the progressive amendments have almost removed the nonprofit character of these associations.

The Act of 1921, p. 366, defined these as “not for profit and having no capital stock.” The amendment of 1931, p. 199, provided they may or may not have capital stock and may be for mutual benefit and that dividends may not exceed 8 percent. The only bond of similarity remaining is that they must be “cooperative” and it seems the word is important as it has a meaning among farmers and ranchers.

The Act of 1923 required “all corporations” to pay an annual license tax and was repealed by statutes 1925, p. 323, which required “all corporations” to file a list of officers and pay a fee of five dollars. *See also* Statutes 1931, p. 408 (1929 N.C.L. 1941 Supp., secs. 1804-1807) which has been declared to be both a police and revenue Act (*Porter v. Tempa M. & M. Co.*, [59 Nev. 332](#)).

Charitable corporations are further regulated by the Act of March 22, 1945 (Statutes 1945, p. 181; 1929 N.C.L. 1941 Supp., 1945 pocket part, secs. 1853-1853.06). The filing fee is one dollar only.

The law is well settled that officers can only demand such fees as the law has fixed and authorized.

Washoe County v. Humboldt County, [14 Nev. 123](#).

Clover Valley Co. v. Lamb, [43 Nev. 375](#).

In view of all the foregoing we do not withdraw but affirm the oral opinion by Deputy Mathews referred to in your letter.

The entire matter of nonprofit and charitable corporations has been in a state of deplorable obscurity for a quarter century. It is regrettable that this subject was not called to the attention of the Legislature over that period. The so-called fee bill of 1933 (7421.01) passed 8 years after the General Corporation Act of 19235 (1676) contributed measurably to the confusion.

Very truly yours,

ALAN BIBLE
Attorney General

OPINION NO. 47-450 ADJUTANT GENERAL—Salary—Qualifications.

Carson City, April 26, 1947

Hon. Vail Pittman, Governor of Nevada, Carson City, Nevada

Dear Governor Pittman:

On April 24, 1947, you made an oral request for my opinion as to the construction of the law relating to the salary and qualifications of the Adjutant General.

Section 127 of the Act of March 27, 1929, relating to the National Guard and enrolled militia, as amended by Statutes of 1935, page 221 (1929 N.C.L. 1941 Supp., sec. 7241), provides that the Adjutant General (except when called into Federal service) “shall receive a salary in such amount

as may be fixed by the governor, as commander-in-chief, but not exceeding that paid to other state officers, payable monthly from the general fund.” It is further declared under a proviso that “the salary of the adjutant general shall be deemed to be then and there appropriated out of any moneys in the state treasury not otherwise set aside by law.”

Beginning with the Statutes of 1939 the Legislature has expressly appropriated \$3,200 for each biennium to date for the salary of the Adjutant General. In 1933, 1935, and 1937, the appropriation bill did not specifically designate the salary of the Adjutant General, but lumped it in the item for “wages and salaries.” \$1,600 was the amount appropriated by the 1947 Legislature, per year, for the 1947-1949 biennium and approved by you. (*See* chapter 278, 1947 Statutes of Nevada.)

In the absence of any history showing that the Adjutant General’s salary has been otherwise designated by the Governor during the time beginning with July 1, 1939, it is to be assumed that the salary is a perquisite that goes with the office, not with the appointee. The fact that the Governor has, since 1939, biennially included the same salary in his budget and has approved the biennial appropriation bill fixes the salary of the office at \$1,600 per year.

As to qualifications, the Governor may appoint one already occupying a salaried State office, but in that case the appointee receives no additional compensation. It seems if he promotes an officer of the National Guard (with the rank of major or higher) to be Adjutant General, the appointee may receive the designated salary, unless he is also occupying some other office under the State government. He may appoint a civilian (not occupying any other State office) who shall receive the full salary designated, but nothing in the law requires the Adjutant General to devote his full time to the office or forbids him to engage in private business or accept private employment.

Very truly yours,

ALAN BIBLE
Attorney General

OPINION NO. 47-451 MINING—Guano deposit—No provision in law for location as mining claim.

Carson City, April 28, 1947

Mr. A.E. Bernard, Inspector of Mines, Carson City, Nevada

Dear Mr. Bernard:

This will acknowledge receipt of your letter dated April 24, 1947, received in this office April 25, 1947, containing an inquiry as to whether or not guano is a mineral, and if a guano deposit may be located as a mining claim.

There is no provision in the mining laws of this State for the location of a guano deposit as a mining claim.

The General Land Office in the case of *Richter v. Utah*, 27 Land Decisions, page 95, decided that an island in the Great Salt Lake was more valuable for the deposit of guano than for agriculture and could be located under the placer mining law of 1895. The land office held that the principal elements of guano were nitrates, including ammonia, phosphates, phosphates and sulphates of lime. In the case of *Phifer v. Heaton*, in the same volume on page 57, the department held that whatever is recognized as a mineral by the standard authorities, whether of metallic or other substance, when found in public lands in quantity and quality sufficient to render the land

more valuable on account thereof than for agricultural purposes, must be treated as coming within the purview of the mining laws.

Congress has enacted special laws relating to the discovery of guano island in the high seas. Revised Statutes U.S. 5570-5578; Compiled Statutes U.S. 1901, 3739-3741.

Under the U.S. Code, title 30, sec. 281, the Secretary of the Interior, under the rules and regulations as the Secretary may prescribe, may lease lands that contain valuable deposits of chlorides, sulphates, carbonates, borates, silicates, or nitrates of sodium in lands belonging to the United States, on a royalty basis not less than two percent of the quantity or gross value of the output of sodium compounds and other related products.

The Mineral Year Book for 1943 of the United States Department of Interior, Bureau of Mines, does not list guano as a mineral. It is listed in earlier reports as a manure salt.

Volume 54, Land Office Decisions, page 325, held that mining claims held for the purpose of mining fossil remains of prehistoric animals were not subject to entry under the mining laws of the United States. The commissioner, citing Lindley on Mines, referred to the following rules for determining the question as to whether the character of the land is mineral or not. That part deemed relevant to the present question reads as follows: "(c) Such a substance (other than the mere surface which may be used for agricultural purposes) as possesses economic value for use in trade manufacture, the sciences, or in the mechanical arts."

The question submitted is one of a highly technical nature and its ultimate conclusion rests with the United States General Land Office to determine if the product is recognized as a mineral by the standard authorities on the subject.

The exact location of the property, with other data respecting the character of the land, should be submitted to the General Land Office before subjecting himself under the mining laws to the probable loss of all benefits from his exploration and development made on the faith of a placer location as to the form and character of the deposit.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-452 PUBLIC SCHOOLS—Consolidated district may join in petition with another district to become consolidated—Pahranagat Consolidated District.

Carson City, April 29, 1947

Honorable Jo G. Martin, District Attorney, Lincoln County, Pioche, Nevada

Dear Mr. Martin:

This will acknowledge receipt of your letter dated April 23, 1947, received in this office April 26, 1947.

You request an opinion as to the authority of the County Commissioners to establish a new boundary embracing additional territory within a consolidated school district, the boundaries of which were originally fixed by an Act of the Legislature. The specific question is based upon a petition signed by a majority of the electors in Pahranagat Consolidated School District No. 1 and Rox Common School District asking that the districts be consolidated.

We are of the opinion that the consolidated district in question, notwithstanding the fact that its boundaries were fixed by the Legislature, could join in a petition with another school district to become a consolidated district under the provisions of section 5947, N.C.L. 1929.

The general law providing for the consolidation of two or more school districts is found in section 5947, N.C.L. 1929, which provides as follows:

The process of uniting two or more school districts into a consolidated district shall be as follows: Upon receipt of a petition signed by a majority of the voters who are entitled to a vote at school elections, from each of the districts to be affected by the consolidation, the county commissioners of the county in which such districts are located shall cause a notice to be published for three consecutive weeks in a newspaper having general circulation throughout the county, which notice shall state fully the names of the districts proposing to consolidate, the boundaries of the proposed consolidated district, and shall set forth a day and hour at the next regular meeting of the board of county commissioners when the said board will canvass the signatures on each petition and hear statements that any of the residents of any of the districts to be affected by the consolidation may wish to make either for or against the proposition of consolidation. At the time set forth in the notice the county commissioners shall proceed to canvass the signatures on each petition, and if a majority of said board are satisfied that the petitions presented represent the will of a majority of the voters of each of the districts affected, they shall unite such districts into a single consolidated district, shall designate the said district as consolidated School District No., and shall designate a place at which the school trustees of the several districts united shall meet to hold an election. If three or more school districts are proposing to consolidate and a majority of the voters of any district shall not be made a part of the consolidated district, but the county commissioners may consolidate such other districts as are affected by the consolidation without requiring new petitions.

The following section which provides for the election of trustees of the consolidated district also provide that the districts which have consolidated shall each be considered disorganized, which constitutes the consolidated district as one district governed by the trustees elected or appointed for such district. A consolidated district would, therefore, be considered as one of the two or more school districts seeking to consolidate and would be considered disorganized under the new consolidation.

The Legislature, under chapter 239, Statutes of 1931, by a special Act, defined the boundaries of Pahrnagat Consolidated School District No. 1, which district is the subject of your question. Rox Common School District, which seeks consolidation with the Pahrnagat district, was evidently created under the statutes which authorizes the county commissioners to create new school districts under certain conditions and to fix the boundaries of such districts. (Section 5727, N.C.L. 1929, as amended by chapter 154, Statutes of 1941.)

The boundaries of the consolidated district were fixed by the Legislature and the boundaries of the Rox district were fixed by the county commissioners. Boundaries of the new consolidation would be established under the general law.

The reason for the special Act to determine the boundaries of the Pahrnagat Consolidated District is not apparent from the provisions of the Act, nor does it indicate what other school districts are included in the boundaries. At the time of the passage of the special Act it must be presumed that the general Act under which boundaries of the districts consolidated did not apply in this particular case. In *Quillici v. Strosnider*, [34 Nev. 9](#), wherein the court held that if a special Act be passed for a particular case, the presumption of the applicability of the general law is overcome by the presumption in favor of the special Act that the general Act was not applicable in that case.

The fixing of the boundaries of the Pahrnagat Consolidated District in the special Act, however, would not determine that the district could never, in the future, join with another

district for the purpose of a new consolidation which would comply with the requirements of the general law.

The new School Code of 1947, under chapter 6, defines a consolidated districts as follows: “A combination of two (2) or more school districts where in the component school districts completely lose their separate identities, except for apportionment purposes and merge into one (1) enlarged district with a single board of trustees.”

Therefore, in the new consolidation the Pahrnagat Consolidated District, as one of the districts petitioning for consolidation, would merge into the consolidated district containing the Rox School District.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-453 LABOR—Female—Meal period and rest periods must be included in daily eight-hour limitation.

Carson City, May 1, 1947

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

Dear Mr. Gibson:

This will acknowledge receipt of your letter dated April 22, received in this office April 24, 1947, requesting an interpretation of Assembly Bill No. 47, approved March 15, 1947. You call attention to the ten-minute rest periods and the one-half hour meal period provided for in the statute and present the following question: “This office has been asked for an interpretation of this, as to whether or not these rest periods must be included in the eight hours daily limitation set by the Act, or whether the employees have to take this time off exclusive of the eight hours; or in plain words, does she take time off on her own time or on the company’s time?”

We are of the opinion that these periods must be included in the eight hours daily limitations, or in other words, she takes time off on the company’s time.

The Act of 1937 regulating the hours of service and fixing the compensation therefore of females employed in private employment in this State, explains in the first section of the Act, as amended by chapter 88, Statutes of 1943, the intent of the Legislature in the enactment of the statute. That intent is expressed in the following language:

“* * * it is the sense of the legislature that the health and welfare of female persons required to earn their living by their own endeavors require certain safeguards as to hours of service and compensation therefor. The health and welfare of the female workers of this state are of concern to the state and the wisdom of the ages dictates that reasonable hours, not to exceed eight in any one day * * * are necessary to maintain that health and welfare * * *.”

Section 7 of the Act (section 2825.47, N.C.L. 1931-1941 Supp.), as amended by Assembly Bill No. 47, approved March 15, 1947, is the section of the act that requires interpretation. This section before amendment, quoting that part deemed relevant, provided as follows:

No employer shall employ a female for a period of more than eight hours of continuous labor unless such period is broken by a meal period of at least one-half hour, and for the purpose of this section no period of less than thirty minutes shall be deemed to interrupt a continuous period of work.

Eight hours labor in any twenty-four hour period is the full day for which the minimum pay is provided. The statute does not contemplate that in order to earn such pay the female employee shall work the straight eight hours to complete the day. The section above prohibits an employer to work such employees continuously "unless such period is broken by a meal period of at least one-half hour * * *." The word unless unites the idea of eight hours with the meal period, and must be interpreted to mean provided for, or to make allowance for, a meal period. Under the provisions of the section before amendment, the meal period could be allowed at any time within the eight hours.

The amendment in Assembly Bill No. 47, provides that the meal period shall be "between the third and fifth hours of work," thus providing that no such employee should work longer than four hours without a meal period.

The same section, as amended, contains the language: "Two ten-minutes rest periods shall be allowed employees, the first rest period within the first four hours of work and the second rest period within the last four hours of work."

The paramount purpose of this Act is to provide minimum hours and minimum pay consistent with the health and welfare of female workers required to earn their living, and it is evident from the last amendment of the Act that the two ten-minutes rest period, and the one-half hour meal period is to be allowed by the employer as part of the continuous eight-hour day, and such time cannot be deducted by the employer from the days pay of the female employee.

The rule of construction applicable is expressed in *Ex Parte* Douglass, [53 Nev. 188](#), which held that a statute should be given a fair and reasonable construction with a view to effecting its purpose and object, and a statute designed to furnish protection to employees should be liberally construed.

We therefore conclude that the meal period and rest periods must be included in the daily limitation set by the act.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-454 COUNTY COMMISSIONERS—Power to convey county owned land as consideration in exchange for land desired for county use.

Carson City, May 2, 1947

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

Attention: J.W. Johnson, Jr., Deputy

Dear Judge Winters:

This will acknowledge receipt of your letter dated April 29, 1947, received in this office April 30, 1947.

Your question directed to a problem which has arisen in Churchill county with respect to the acquisition of a site for the county hospital. It appears that the county owns a plot of ground within the city limits which is not considered to be of sufficient size or a suitable location. The commissioners have a plan whereby certain land, considered desirable, can be secured by the county in exchange for the first-mentioned plot of ground. You ask may the commissioners dispose of county property in such a manner, that is, exchange for other property?

We are of the opinion that the county commissioners may acquire the proposed site by conveyance of the county owned land in consideration of the purchase or exchange of the land desired for the site by following the procedure for appraisal required in the ninth subdivision of section 1942, 1929 N.C.L. 1941 Supp.

Section 1942, 1929 N.C.L. 1941 Supp., defines the powers of the board of county commissioners. Subdivision eight of this section empowers the commissioners to control and manage the property belonging to the county. The ninth subdivision reads as follows: "Lease or purchase any real or personal property, necessary for the use of the county; *provided*, no purchase of real property shall be made unless the value of the same be previously appraised and fixed by three disinterested persons, to be appointed for that purpose by the district judge, who shall be sworn to make a true appraisal thereof, according to the best of their knowledge and ability."

The commissioners under this subdivision may purchase any real property necessary for the use of the county.

As held by the Supreme Court in *Gibson v. Mason*, [5 Nev. 285](#), it is a rule of construction that when anything is required to be done the usual means may be adopted for performing it.

Bouvier's Law Dictionary defines the term purchase of lands, in its more limited sense, as lands obtained by way of bargain and sale for money or other valuable consideration. Webster's definition of purchase: "To acquire (real estate) by any means other than by decent or inheritance."

The Federal Court in the case of *Hadley Falls Trust Co. v. United States*, 110 Fed. (2) 887, interpreting the words purchase and exchange held as follows on page 892: "This might conceivably be classified as a transaction of 'exchange' or as a transaction of 'purchase'; we see nothing intricate in its nature which would compel one classification rather than the other.

Indeed, the distinction between a 'purchase' and an 'exchange' is largely verbal."

The land desired by Churchill County for the purpose of a site for the county hospital could be acquired for a consideration other than money. The valuable consideration would be the transfer of the county property for the property sought to be acquired. However, in division of section 1942, *supra*, must be performed. The value of the property desired must be appraised as in this subdivision provided. Such appraisal is to be directed to the value of the county property offered as consideration in the exchange.

The statute gives the county commissioners the right to control and manage the property of the county and there is nothing in the section which compels the conclusion that the commissioners cannot convey county owned land as a consideration in exchange for land desired for county use by following the provision for proper appraisal.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-455 PUBLIC SCHOOLS—Trustees have no power to employ teachers, principals, or superintendents for any term of service commencing after the term for which any member of board was elected.

Carson City, May 6, 1947

Hon. Mildred Bray, Superintendent of Public Instruction, Carson City, Nevada

Dear Miss Bray:

This will acknowledge receipt of your letter dated April 30, received in this office May 1, 1947.

You request an opinion as to the authority of the trustees of a school district of the first class to offer a contract for a period of three years in view of the fact that the term of one member of the board expires in three years and the term of the other two members expires next year. You cite section 5726 N.C.L. 1929 and section 5715 N.C.L. 1929.

We are of the opinion that in the event the term of service of the city superintendent commences after the term of any member of the board of trustees expires, there is no authority under the statutes to make the contract. The statutes do not prohibit any member of the board of trustees from voting on a contract which extends beyond his term, but forbids a contract to employ teachers, principals, and superintendents for any term of service commencing after the term for which any member of the board of trustees was elected.

Section 5715 N.C.L. 1929, paragraph 11, empowers the board of school trustees to contract for the employment of teachers. Such power is limited, however, by the following language: “* * * *provided*, that the trustees shall not have the power to employ teachers for any term of service commencing after the term for which any member of the board of trustees was elected.”

Section 5753 N.C.L. 1929 contains the following language: “The term ‘teacher’ as used in this Act, shall be understood to mean teachers, principals, and superintendents of the elementary and secondary schools of this State.”

Section 5726 N.C.L. 1929 as amended by chapter 61, Statutes of 1943, provides, omitting parts not deemed relevant, as follows: “* * * The board of school trustees of any district of the first class is hereby authorized to create the office of city superintendent of schools for such district, * * * *provided*, that no city superintendent * * * shall have first served two years acceptably in the district * * * whereupon said board of trustees * * * may elect said superintendent for a term of not to exceed four years; * * *.”

This section provides for the creation of the office of city superintendent, but does not remove the officer, the superintendent, from the definition in section 5753 supra, which classifies a superintendent within the term teacher.

Sutherland Statutory Construction, vol. 2, page 358, “When a legislature defines the language it uses, its definition is binding upon the court and this is so even though the definition does not coincide with the ordinary meaning of the words used.”

Therefore, the trustees would have not have the power to employ a city superintendent of schools for any term of service commencing after the term for which any member of the board of trustees was elected.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-456 MOTOR VEHICLES—Motor bikes must be registered and licensed—
Minor cannot be granted license to operate.

Carson City, May 8, 1947

Hon. Robert A. Allen, State Highway Engineer, Carson City, Nevada

Dear Mr. Allen:

This will acknowledge receipt of your letter dated May 1, 1947, received in this office the same date, enclosing a letter setting forth circumstances wherein a minor of the age of fourteen years owns and operates a Whizzer Motor Bike, and is in the business of manufacturing and selling motor bicycles.

You request an opinion that a bicycle driven by a motor comes within the provisions of the Act to regulate the licensing and registration of motor vehicles, and that the youth in question, by reason of his age, cannot be granted a license to operate a motor vehicle. A manufacturer or dealer in motorcycles, when the same is operated on the highway for testing, demonstrating, or selling, must comply with the provisions of section 4435.15, N.C.L. 1931-1941 Supp., requiring dealer's license plates.

Section 4435, N.C.L. 1931-1941 Supp., defines words and phrases used in the Act to license and register motor vehicles. A motorcycle is defined as follows: "Every motor vehicle designed to travel on not more than three wheels in contact with the ground, except any such vehicle as may be included within the term 'tractor' as herein defined."

Section 4435.24, N.C.L. 1931-1941 Supp., provides the amount of the fee for registration of motorcycles.

Section 4435.25, N.C.L. 1931-1941 Supp., defines the fee for the registration of vehicles under a distinguishing number assigned to dealers in motor vehicles.

Chapter 190, Statutes of 1941, relates to the licensing of persons operating motor vehicles upon the highways. Section 10 of the Act, as amended by chapter 187, Statutes of 1943, provides the department shall not issue any license hereunder "To any person, as an operator, who is under the age of sixteen years, except that the department may issue a restricted license to any person who is at least fourteen years of age; *provided*, the licensing of such person is necessary to permit them to comply with other laws of this state."

The other laws of the State which relate to this section are chapter 31, Statutes of 1943, section 1, which provides for the licensing of persons under 18 years of age as a chauffeur for the operation of a school bus under certain conditions; and subdivision (b) of section 11 of the Act of 1943, which provides that no person who is under the age of 18 years shall drive any motor vehicle while in use as a school bus, except as provided in section 1 of the Act of 1945, *supra*.

It appears therefore that the department has no authority to issue an operator's license to the minor who is fourteen years of age.

The Whizzer Motor Bike must be licensed as a motorcycle to operate on the highway, and a manufacturer or dealer in such vehicles, notwithstanding the age of the person involved, would come within sec. 4435.15, N.C.L. 1931-1941 Supp., which provides for dealer's license plates.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-457 TAXATION—Assessor can legally fix and determine assessment as of the present—Basic Magnesium, Inc.

Carson City, May 9, 1947

Hon. Martin Evansen, District Attorney, Hawthorne, Nevada

Dear Mr. Evansen:

Your letter dated April 21 reached this office April 24, 1947.

You state that you doubt the power of the Sheriff and Assessor to cut the "actual assessment value" of Basic Magnesium, Inc. "comparatively to the rest of the people in Mineral County." The difficulty is that the assessment value is what the assessors sets down on his roll, until it is changed according to law.

The Tax Commission informs us that despite early agreements concerning similar property in Clark and Nye Counties, the authorities there have scaled down the assessments in consideration of the falling off in utility value and therefore price. This element of value is well known to the law.

It is our opinion that the assessor can legally fix and determine the assessment as of the present, free from any past practices.

Very truly yours,

ALAN BIBLE, Attorney General

cc: Nevada Tax Commission, Carson City, Nevada.

Calvin W. Rawlings, Esq., Rawlings, Wallace & Black, Suite 530 Judge Building, Salt Lake City, Utah.

OPINION NO. 47-458 INSURANCE—Company engaged in the exchanging of reciprocal or interinsurance contracts may not be licensed.

Carson City, May 14, 1947

Hon. J.P. Donovan, Insurance Commissioner, Carson City, Nevada

Attention: G.C. Osburn, Deputy

Dear Sir:

This will acknowledge receipt of your letter dated May 8, 1947, received in this office May 9, 1947, requesting an opinion as to whether or not, under the Nevada Insurance Act, a company engaged in the exchanging of reciprocal or interinsurance contracts could be licensed to do business in this State.

We are of the opinion that there is no provision in the Nevada Insurance Act under which the commissioner would be authorized to license a company engaged in the exchanging of reciprocal or interinsurance contracts.

Section 3656.02, 1929 N.C.L. 1941 Supp., under subsection (3) includes in the definition of the word "company" the exchanging of reciprocal or interinsurance contracts.

Section 3656.05, 1929 N.C.L. 1941 Supp., provides in subsection (2), "No company shall be authorized to transact any kind or kinds of business other than those enumerated in its respective class, except as otherwise specifically provided in this act; * * *."

Section 3656.04, 1929 N.C.L. 1941 Supp., defines the classification of insurance and insurance business.

Section 3656.12, 1929 N.C.L. 1941 Supp., fixes the minimum capital requirements applicable to the classes defined under section 5 of article 1 (sec. 3656.04).

The insurance Act, although it defines a reciprocal as a company, it does not provide who shall be liable or define its required assets.

Section 3656.25, 1929 N.C.L. 1941 Supp., requires that a company must meet certain conditions before a license is issued to transact business in the State. Subsection (d): "In the judgment of the commissioner the investments of such company are so made as to make available within a reasonable time sufficient moneys to meet promptly any demands which might in the ordinary course of events be properly made against the company." Subsection (3): "It is qualified under the provision of section 23."

Section 23 (3656.22, 1929 N.C.L. 1941 Supp.) reads in part as follows: "Upon complying with the provisions of this article, a foreign or alien company domiciled in any other State shall be admitted to enter this State; *provided*, that the qualifications for their admittance to do business in this State shall be equal to the present existing capital and/or surplus qualifications for a similar company entering the State in which such company is domiciled; *and provided further*, that the capital and/or surplus requirements of such company desiring to enter this State shall be at least equal to the capital and/or surplus requirements, if any, for similar organized domestic companies under this act; * * *."

Although the section provides for the admittance of a company from a State which permits the admittance of company with the same qualifications as that of a company domiciled in that State, the further provisions establishes a minimum qualification for a foreign company which must be at least equal to the qualifications demanded from a similarly organized domestic company under the Act.

The Insurance Act of the State of Nevada makes no provision for a reciprocal company as defined in the statutes of a number of other States. Such statutes specifically authorize reciprocal insurance and impose various conditions which when complied with entitle the association to a certificate from the insurance commissioner showing that the law has been complied with and that the association is authorized to carry on its business in the State, and the regulation for agents through whom such contracts of insurance are exchanged.

Therefore, a reciprocal or interinsurance business cannot be authorized in this State as such business is not enumerated in the classes of insurance defined in the statute, and is not otherwise specifically designated in the Act.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-459 PUBLIC SCHOOLS—Governing board of any school district is responsible for preparation and filing of budget, also publication when required.

Carson City, May 15, 1947

Hon. Mildred Bray, State Superintendent of Public Instruction, Carson City, Nevada

Dear Miss Bray:

This will acknowledge receipt of your letter dated May 9, 1947, received in this office May 10, 1947.

You request an opinion as to “who is responsible for having the school budget published” under section 3018, N.C.L. 1929, and further, if there is any ambiguity in the language of section 243, 1947 School Code of Nevada.

We are of the opinion that the governing board of any school district, county high school, district high school, or other educational district is responsible for the preparation and filing of the budget and shall see to the publication of the same when the conditions under section 3018, 1929 N.C.L. 1941 Supp., requires such publication.

Section 243 of the 1947 School Code contains the following language, quoting only the part deemed relevant: “It shall be the duty of the governing board of every * * * school district, county high school, or high school district or educational district in this state, between the first Monday of January and the first Monday of each year to prepare a budget * * * and if of a town, school district, county high school, or high school district or educational district, it shall be filed with the auditor and recorder of the county wherein such town, school district, high school or high school district or educational district is situated * * * shall then be published once * * * in the official newspaper of the city, town, municipality, or county, if there be one, or, if there be no official newspaper, then in a newspaper to be designated by the governing board of such city, town or municipality, or by the governing board of the county wherein such school district, county high school, or high school district or educational district is situated * * *.”

This part of the section makes it the duty of the governing board of the educational districts enumerated to prepare, file and publish its budget, but does not specifically provide who shall bear the expense of publication.

The latter part of the section contains this provision: “*provided*, that when the estimated receipts and expenditures of a county high school are included in the budget of the county wherein such high school is situated, no publication of such receipt and expenditures shall be required other

than in section 3 of this act * * *.” Section 3 provides that the county commissioners shall publish the budget.

The section further provides an exception to the publishing of a budget by a school district in the following language: “that whenever the budget filed by a board of school trustees shows that the estimated receipts from the semiannual school apportionments, without any special district tax upon the property of the school district, will be sufficient to provide the funds necessary to maintain properly the work in said school district for the current year and for the next following year, as required by law, the publication of the budget of such school district shall not be required.”

Chapter 30, section 236 of the 1947 School Code, relating to school budgets and emergency loans, follows the language used in section 3018, supra, having a relation to school districts.

Section 243 provides: “The cost of publication of any budget or notice required by any school district, county high school, or district high school, or other educational area shall be a proper charge against the general fund of the county in which the same is situated.”

The language of the section is plain and the meaning unmistakable.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-460 MOTOR VEHICLES—Revocation of driver’s license—First offense under amendatory act—Revocation of license within jurisdiction of drivers division.

Carson City, May 28, 1947

Hon. W.T. Holcomb, State Highway Engineer, Carson City, Nevada

Dear Mr. Holcomb:

This will acknowledge receipt of your letter dated May 1, 1947, received in this office the same date. You present the facts in a certain case wherein a person was convicted in September 1944 of the offense of driving a motor vehicle while under the influence of intoxicating liquor, and on April 3, 1947, was again convicted of such an offense.

You desire an opinion as to whether or not the last conviction should be considered a subsequent offense under the 1947 amendment to the Act to regulate traffic on the highways, notwithstanding the fact that the first conviction was had before the enactment of the amendment.

You also inquire if the driver’s license division should revoke the license for the three months as recommended by the court or should the department revoke the license for one year for a second offense.

The answer to your first question is, in our opinion, that the conviction on April 3, 1947, is a first offense under the amendatory Act which became effective March 27, 1947.

In answer to your second question, we are of the opinion that the suspension or revocation of an operator’s license is entirely within the jurisdiction of the drivers’ license division of the

highway department under the provisions of the Act relating to the licensing of persons operating motor vehicles. Undoubtedly, the department should give great weight to the recommendation of the court, but it does not appear from the statute that the department is bound by such recommendation.

Chapter 110, Statutes of 1947 (A.B. 159), which amends section 4351, 1929 N.C.L. 1941 Supp., was approved March 27, 1947. The language respecting a subsequent conviction under the provisions of the section was not changed in the amendment, but there is nothing in the amendment to indicate retroactive operation. The term subsequent conviction is used and not second conviction. The word subsequent must therefore be interpreted to mean following in time, later or succeeding the date when the amendment became effective. The section is a penal statute and must be strictly construed.

As held by the supreme court in the case of *Ex Parte Smith*, 33 Nevada 466, on page 482, where the court said: "Hence every provision affecting any element of a criminal offense involving life or liberty is subject to the strictest interpretation; and every provision intended for the benefit of the accused, for the same humane reason, receives the most favorable construction. * * * A penal statute cannot be extended by implication or construction. It cannot be made to embrace cases not within the letter, though within the reason and policy, of the law."

Therefore, a conviction for driving a motor vehicle while under the influence of intoxicating liquor cannot be considered a subsequent conviction under the statute if a prior conviction was had before the effective date of the 1947 amendment.

REVOCATION OR SUSPENSION OF LICENSE

Section 4442.32, 1929 N.C.L. 1941 Supp., as amended by chapter 187, Statutes of 1943, the same being an Act to regulate the licensing of persons operating motor vehicles, contained in the following provision:

The department shall forthwith revoke the license of any operator or chauffeur upon receiving a record of such operator's or chauffeur's conviction of any of the following offenses, * * *.

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

Chapter 122, Statutes of 1947, amended subsection 2 by adding the following language:

provided, however, the revocation provided for in this subsection shall in no event exceed the time fixed as provided in sec. 4351 Nevada Compiled Laws 1929, as amended, as the same now is or may hereafter be amended;

The section to which reference is made is section 2 of the Act to Regulate Traffic on the Highways, as amended by chapter 161, Statutes of 1939. This section made it unlawful for any person, while either intoxicated or under the influence of intoxicating liquor or stupefying drugs, to drive a motor vehicle on the highway and fixed the punishment in the following language:

Any person who shall violate the provisions of this section shall be guilty of a misdemeanor and upon a conviction thereof shall be punished by imprisonment in the county jail for not less than 30 days nor more than 90 days, or the person so convicted shall be deprived of his license to operate a car in this state for a period of not less than 30 days nor more than one year * * *.

Chapter 110, Statutes of 1947, amended this section to read in part as follows:

Any person who shall violate the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished either by fine of not more than five hundred (\$500) dollars or by imprisonment in the county jail for not more than six months, and the person so convicted shall be deprived of his license to operate a car in this state for a period of not less than 10 days nor more than one year * * *.

The amendment to the Act to provide for the licensing of operators refers to the amendment of the Act to regulate traffic, and while it is clear that the court in which the conviction is had shall punish by fine or imprisonment, it is not clearly expressed where the authority vests to suspend the operator's license and the statutes are subject to construction to determine the intent of the Legislature.

The Act providing for the licensing of operators of motor vehicles was approved March 31, 1941. This Act created the department to carry out the provisions of the act, giving it the power to determine under what conditions a person should be licensed and also the power to revoke or suspend such license.

Section 32 (section 4442.31, 1929 N.C.L. 1941 Supp.) of the drivers' license Act provides:

(a) Whenever any person is convicted of any offense for which this act makes mandatory the revocation of the operator's or chauffeur's license of such person by the department, the court in which such conviction is had shall require the surrender to it of all operator's and chauffeur's license then held by the person so convicted, and the court shall thereupon, within ten days, forward the same, together with a record of such conviction to the department.

This section precedes section 4442.32, supra, and was not amended in 1947. In the subdivision (a) quoted above, which refers to specific offenses, there is no provision for recommendation by the court as to suspension of the license. The provision for recommendation is found in subsection (b) and relates to violations of the Act generally.

The Driver's License Act which was adopted later than the Traffic Regulation Act of 1925, indicates a shift from criminal sanctions to administrative sanctions, giving the department the power to determine under what conditions a person may operate a motor vehicle and when such license shall be revoked or suspended for certain violations of the traffic Act.

The 1947 amendment to section 33 of the license Act (section 4442.32, 1929 N.C.L. 1941 Supp.) changes the mandator provision for revocation of license for a first offense of driving while intoxicated to a suspension of such license for the time fixed in section 4351 N.C.L. 1929, as amended. This section provides as follows:

* * * and the person so convicted shall be deprived of his license to operate a car in this state for a period of not less than 10 days nor more than one year.

The word revoke, therefore, must be construed to mean recall or take back for a period within the time specified in the statute to which reference is made and modifies the previous mandatory provision.

The department is not bound by the recommendation of the court which imposed the fine or imprisonment. Upon receipt by the department of the record of a conviction, in the first instance, of the offense of driving a motor vehicle while under the influence of intoxicating liquor, it must recall the license of the operator for a period of not less than 10 days nor more than one year, and may follow the recommendation of the court if within such period of suspension.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-461 HEALTH—State Board Administers crippled children's aid program in conjunction with Federal government.

Carson City, May 29, 1947

Mrs. Christie T. Corbett, Acting Division Director Maternal and Child Health and Crippled Children Services, Room, 12, Fordonia Building, Reno, Nevada

Dear Mrs. Corbett:

This will acknowledge receipt of your letter dated May 26, 1947, received in this office May 27, 1947, requesting an opinion from this office interpreting the State crippled children law, particularly as it authorizes State or local agencies to establish and administer a program of services for crippled children; affecting State agency's responsibility and authority to administer or supervise the administration of such programs and affecting appropriations, budgets and expenditures for crippled children services.

An Act making the State Board of Health the State agency to administer crippled children's aid program in conjunction with the Federal government and providing State participation therein was approved March 23, 1937, the same being chapter 119, Statutes of Nevada 1937, and sections 5316.01 to 5316.06, inclusive in 1929 Nevada Compiled Laws 1941 Supplement. The Act designates the State Board of Health as the agency of the State to administer a program of service for children who are crippled or who are suffering from conditions which lead to crippling, and to supervise the administration of those services included in the program which are not administered directly by it. The purpose of such programs shall be to develop, extend, and improve services for locating such children, and for providing for medical, surgical, corrective, and other services and care, and providing facilities for diagnosis, hospitalization and after care.

The State board is authorized to formulate, adopt and administer a detailed plan or plans for these purposes. Such plans, rules and regulations, when formulated, shall be submitted to the Chief of Crippled Children's Division of the Children's Bureau of the United States Department of Labor for approval, and when approved shall be made effective. Eight specific provisions are named which shall be included in such plans.

The Secretary of the State Board of Health is named the administrative officer who shall from time to time, as directed by the Secretary of Labor of the United States Department of Labor, make such reports in such form and containing such information as the secretary shall require.

Provision is made for a crippled children's fund and for the manner of deposit and expenditure from such fund.

The language of the statute is plain and the meaning unmistakable and there is no apparent occasion for interpretation or construction.

Your second question relative to the classification of local health officers under the merit system is a subject that should be submitted by the supervisor of the merit system or the State health officer, if an occasion arises requiring the interpretation of the statute.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand

Deputy Attorney General

OPINION NO. 47-462 TAXATION—124 gasoline tax—Application and administration of provisions of chapter 276, Statutes of 1947.

Carson City, May 29, 1947

Nevada Tax Commission, Carson City, Nevada

Attention: R.E. Cahill, Chief Clerk

Gentlemen:

Reference is hereby made to your letter of May 27, 1947, containing certain inquiries concerning the application and administration of the provisions of chapter 276, Statutes of 1947, which provides for the levying and collection of an excise tax of 12 cents per gallon on motor vehicle fuel for the use of counties and cities for the construction and maintenance of county roads and city streets in such counties as have not rejected the terms of the Act.

You first inquire as to how the levy of the tax is determined with respect to the counties entitled thereto. That is to say, who shall pay the tax in the first instance and your authority for the enforcement of the collection thereof?

The amendment provided in said chapter 276 became part and parcel of the motor vehicle fuel Act of 1935, the same being sections 6570.01-6570.16 N.C.L. Supp. 1931-1941, and as a part of such statute it is to be construed with respect to the whole thereof. Section 6570.01 contains the definition of a dealer, which definition is very broad in its provisions and covers practically every situation whereby motor vehicle fuel is purchased, stored, and disposed of. The 1947 amendment refers to the term "dealer" and, of course, means the dealer defined as stated above. This being the status of the law, it is the opinion of this office that your commission is empowered to promulgate such rules and regulations as may be necessary looking toward the effective levying and collection of the excise tax for such counties as are entitled thereto. The law, we think, is clear that licensed dealers may pay the tax upon all motor vehicle fuel delivered into the proper counties. We think the law is also clear that your commission may enforce the collection of the tax from any other dealer or person who may sell and deliver into such counties any motor vehicle fuel.

You further inquire as to whether the 5% administrative cost allowance provided in section 6570.09 is applicable to the costs of administration of the tax provided in the 1947 amendment. We think that the proper application of this provision of the law is that all of the revenue derived under the 1947 amendment shall simply augment the amount derived under other provisions of the law and the 5% administrative costs be computed thereon.

You also inquire whether the 2% allowance to dealers to cover their cost of collection of tax as provided in section 6570.02 applies to the tax provided in the 1947 amendment. We think that such section is applicable provided the dealer simply augments his costs of collection of tax on motor vehicle fuel under other provisions of the law by that collected for county purposes and computes his 2% therefrom.

Very truly yours,

ALAN BIBLE
Attorney General

OPINION NO. 47-463 PUBLIC OFFICERS—Appointment of third judge for second judicial district.

Carson City, June 3, 1947

Hon. Vail Pittman, Governor of Nevada, Carson City, Nevada

Dear Governor Pittman:

You recently requested advice concerning the appointment of a third judge for the Second Judicial District of this State pursuant to chap. 209, Statutes of 1947, which said statute provides an additional district judge for the Second Judicial District. You inquire whether chap. 209, 1947 Statutes of Nevada, is constitutional and, secondly, whether an appointment by you of a third judge can be made under such statute at this time.

Section 1 of chap. 209 of the 1947 Statutes, insofar as it is pertinent here, provides an additional judge for the Second Judicial District, such district now being filled by two judges as provided in the law several years ago. Section 2 of the Act provides as follows: “Until the first Monday in January 1951, the judicial districts shall be and remain as heretofore provided by law unless there shall occur a vacancy in the judge’s office of any judicial district as now provided by law, in which event the provisions of this act shall take immediate effect and apply to such judicial districts where a vacancy occurs as aforesaid.”

Your first question is answered in the affirmative. Section 5, article VI, of our Constitution, provides, among other things, that the Legislature may provide by law for an alteration in the boundaries or divisions of districts and for increasing and diminishing the number of judicial districts and judges therein. This provision of our Constitution has not been changed since 1864. The Supreme Court of this State in the case of *State v. Kinkead*, [14 Nev. 117](#), held that this provision of our Constitution granted full power to the Legislature to increase or diminish the judicial districts and the judges therein so, as a purely constitutional proposition, the Legislature in 1947 possessed the constitutional power to enact into the law an increase in the judges of the Second Judicial District. The enactment itself is clearly constitutional.

The second question as to whether a third judge may at this time be appointed to take office as a district judge in the Second Judicial District is more difficult. However, after exhaustive research and study, we conclude that unless and until there is a vacancy in one of the presently occupied offices of district judge of the Second Judicial District prior to the first Monday in January of 1951, there is no power in any officer to make an appointment of the third judge.

Particular attention is directed to the case of *State v. Atherton*, [19 Nev. 332](#). This is a case upon the question of the power of the Legislature to diminish the number of district judges. The Supreme Court held that it had full power to so do and then said, at page 338, as follows:

The only limitation upon the legislative power in this respect is found in the clause that no “change shall take effect except in case of a vacancy, or the expiration of the term of an incumbent of the office.” The change made by the act in question does not take effect until the expiration of the term of the present judges. It does not, therefore, violate this clause of the constitution.

We, therefore, have a pertinent expression of our Supreme Court as to the limitation upon the power of the Legislature to decrease district judges during the interim and in view of the fact that the power to decrease is coupled directly with the power to increase the number of district

judges, and that no such change shall take effect until the expiration of the term of the present judges or in case of a vacancy, we must give effect to section 2 of chap. 209, Statutes of 1947, reading as follows:

Until the first Monday in January 1951, the judicial districts shall be and remain as heretofore provided by law unless there shall occur a vacancy in the judge's office of any judicial district as now provided by law, in which event the provisions of this act shall take immediate effect and apply to such judicial district where a vacancy occurs as aforesaid.

Thus, we have the legislative interpretation placed on the language of section 5, article VI, of our Constitution, which in the absence of any other expression must be given full effect. The Legislature provided in section 2 that, unless there shall occur a vacancy in the judge's office in the Second Judicial District between the present time and the first Monday in January 1951, the Second Judicial District shall remain, with respect to the number of judges, as it now exists.

An examination of the respective constitutions of the various States of the Union discloses that not a single State possesses a constitutional provision comparable to section 5, article VI, of the Nevada Constitution, so that in the final analysis cases decided by the appellate courts of practically all of such States cannot be cited as final authority in the interpretation of our own constitutional provision. There is annexed hereto a list of the authorities examined upon this important question and we feel that we have exhausted the authorities that are in anywise applicable, with the result that we conclude that it is incumbent upon this office to construe our constitutional provision and arrive at an interpretation thereof based upon the language contained therein and as applied by our Supreme Court. In doing so we are not unmindful that such interpretation may result in the nonappointment of the third judge for the Second Judicial District until such time as the people of that district may elect a third judge at the expiration of the term of office of the present judges. A purely common-sense view of the situation would seem to require, at least, that the Governor now be empowered to make such an appointment, but we cannot fly in face of the actual language used by the framers of our Constitution even though such language would seem to stifle modern-day progress, particularly in judicial affairs.

All of the authorities cited in the annexed list of citations, with the exception of the cases in 14 Nevada and 19 Nevada, hold that when a new office is created that a vacancy is ipso facto created at the same time, and, unless the constitution or the legislative Act provides a different method of filling such vacancy that the appointing power has the power and jurisdiction to immediately make an appointment to fill such vacancy until at least the next following election by the people. We call particular attention to the case of *People v. Hylan*, reported in Annotated Cases 1915D 122, decided by the New York Court of Appeals, in which case additional judges were provided for the Supreme Court of New York under a constitutional amendment which provided for election by the people at a certain specified time. The Governor made appointments to fill the vacancies created by the Legislature and which were held good by the court upon the theory as well expressed in *State v. Clark*, [5 Nev. 111](#), that a new house is as vacant as an old one. However, the constitution of New York does not contain the language found in section 5, article VI, of our Constitution, which provision reads as follows:

The legislature may, however, provide by law for an alteration in the boundaries or divisions of the districts herein prescribed, and also for increasing or diminishing the number of the judicial districts *and judges therein*. But no such change shall take effect, except in case of a vacancy, or the expiration of the term of an incumbent of the office. (Italics ours.)

In every case examined, except the Nevada cases, no constitutional provision contains the language appears in the last sentence above-quoted. We have come to the conclusion that such sentence provides a strict limitation upon the power of the Legislature to provide an appointment by the Governor of a district judge to a position in a district and for a term of office when such

change or appointment takes place prior to the expiration of the term of office of district judges, unless and except that there is a vacancy in the office of district judge in the particular district affected prior to the expiration of the term of office of the district judge. This particular question has not received the consideration of our Supreme Court.

In only one case has the number of district judges been increased during the interim of the term. That is the case of *Walcott v. Wells*, [21 Nev. 47](#). IN that case prior to the enactment of the statute by the Legislature increasing the number of district judges the State constituted one judicial district with three district judges. Several years after the creation of the one judicial district with three judges the Legislature increased the number of judges to four to take effect during the interim of the term. The Governor appointed the fourth district judge. After serving about one year his appointment was questioned in the Supreme Court upon an application for Writ of Prohibition to prevent his acting in a particular case upon the ground that he was unconstitutionally appointed. The Supreme Court declined to pass upon the constitutional question upon the ground that his right to act as district judge could be questioned in prohibition but that the proper remedy was quo warranto brought by the attorney general upon behalf of the sovereign State. A reading of the opinion in the case would seem to imply that the Supreme Court might sanction the increase of the number of district judges in a district even after quo warranto were brought, particularly where no other judge was injured nor any diminishing of the number of judges was had.

To give proper effect to the constitutional provision and to the plain requirements of section 2 of the 1947 Act, we believe that no appointment can be made until there is a vacancy in one of the two offices of district judge of the Second Judicial District.

MEMORANDUM OF CASES EXAMINED

Stocking v. State, 7 Indiana 326; *Cline v. Greenwood*, 10 Ore. 230; *State v. Buys* (Kans.), 111 P.189; *Henderson v. County Court* (Mo.), 11 Am. Rep. 415; *Meredith v. Gratt*, 36 Am. Rep. 771; *Walsh v. Com.*, 33 Am. Rep. 771; *Eberle v. Clark*, 89 A. 172; *People v. Hylan* (N.Y.), Ann. Cas. 1915D 122; *Schaffner v. Shaw* (Iowa), 180 N.W. 853; *Bush v. Nye* (Calif.), 92 P.109; Annotation, L.R.A. 1915E 846; *Knight v. Trigg* (Idaho), 100 P. 1606; *State v. Kinkhead*, [14 Nev. 117](#); *State v. Blossom*, [19 Nev. 312](#); *State v. Atherton*, [19 Nev. 332](#); *Walcott v. Wells*, [21 Nev. 47](#); *State v. Clark*, [5 Nev. 111-5](#), 6, [7 Nev. 92](#); Articles concerning public officers and judges in Corpus Juris—Corpus Juris Secundum—American Jurisprudence; Constitutions of 48 States of the Union and Constitution of Nevada.

Very truly yours,

ALAN BIBLE
Attorney General

OPINION NO. 47-464 COURTS—District—Payment of jurors in civil cases.

Carson City, June 4, 1947

Hon. Robert E. Jones, District Attorney Clark County, Las Vegas, Nevada

Dear Mr. Jones:

Reference is hereby made to your recent letter and also copy of letter of Hon. A.S. Henderson, District Judge, dated April 16, 1947, and your reply thereto of April 30, 1947, relative to the payment of jurors in civil cases in the District Court pursuant to section 8491, 1929 N.C.L. 1931-1941 Supp. You request the opinion of this office as to whether jurors summoned to serve in civil cases are to receive payment from the county for the first day's attendance in court or up

until the impanelment of the jury and thereafter receive the per diem from the party calling the jury.

We note the opinion expressed by you to Judge Henderson to the effect that it is your opinion the county is liable for jurors' fees, that is to say the payment made to the venire, up to the time of impanelment of the jury to try the case. We also note the opinion expressed by Judge Henderson to the effect that the Legislature intended that in civil cases the party demanding the jury should pay all fees in advance due the jury.

An examination of the statute in question discloses, as stated in Judge Henderson's letter, that most pertinent language was stricken from the statute, such language being the following:

Provided, however, the fees for the first day's attendance and each additional day to and including the day the jury is impaneled shall be charge against and paid by the county.

This, we think, was and is a most pertinent showing of legislative intent that all fees should be paid by the party calling the jury. Particularly is this true when an examination of section 8491, as amended at page 153, Statutes 1933, discloses that at that time the Legislature provided that the court might make an order providing the county shall pay the first day's attendance of the jury panel in civil cases. This particular language was stricken from the statute in the 1937 amendment, which is now section 8491 of the 1931-1941 Supplement.

The Legislature, by eliminating most pertinent language whereby a strong inference could be drawn that the county would pay the jurors for the first day's attendance in civil actions, has, we think, signified its intention that the county was not bound to pay for such attendance. By reason of the amendments above stated we are inclined to the view that Judge Henderson is correct and that it is now incumbent on parties calling for a jury in civil cases to be prepared to pay for the attendance of such jurors.

We might suggest that if there is any doubt as to the meaning of the law as it now exists, at the first opportunity a test case be made in your district court for the purpose of a judicial ruling thereon.

I had hoped to be able to personally contact each of the district judges throughout the State to find exactly how this provision of the law is being construed by the other judges, but actually have not had the opportunity of talking with anyone other than Judge Guild of our local district court. Rather than delay further until I have personally talked to each of the district judges, I am sending you this opinion at this time. Judge Guild construes the section the same as you do, but states that at the first opportunity he would like to see some final court determination made of the controversy. I join in this view, since it occurs to me that the problem is one completely within the province of the district judges and a test case would seem desirable.

Very truly yours,

ALAN BIBLE, Attorney General

OPINION NO. 47-465 PUBLIC OFFICERS—City officials not required to reside within city.

Carson City, June 5, 1947

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

Dear Mr. Evansen:

Your letter dated May 31, 1947, was received here on June 2, 1947.

You ask three questions relating to the city of Hawthorne, lately incorporated under the general Act for the incorporation of cities and towns.

As you know, this office is not required to give official opinions for the use of incorporated cities or their officers. This is a matter for the study and decision of your city attorney. However, as your function as District Attorney may conceivably extend to the qualification and compensation of those serving in cities, I will give my views on the questions you present.

1. Must the chief of police and the city clerk reside within the city?

We find nothing in the law making this requirement. (*See* N.C.L. 1929, secs. 1115, 1137, 1138, 1153, 1174.) A valid ordinance on the subject could doubtless be enacted, if not contrary to the Act.

Speaking of the special charter of Las Vegas, the Supreme Court in *Gilbert v. Briethaupt*, [60 Nev. 162, at 165](#), declared that the exercise of the right to hold public office should not be declared prohibited or curtailed except by plain provisions of law.

2. Is there a penalty for employing a person not a “qualified elector?”

We are unable to find any such provision of law.

3. If one employed by the month by a city be discharged after working part of a month, would he be paid for the part month worked or to the end of the month?

This is a question so complicated by the law concerning employer and employee applying to public as well as private employments, that an answer suitable to all circumstances is not practical. A person “discharged” for cause would be entitled to pay for the work he had done. If hired at a monthly rate, he might, if without fault, properly expect notice of termination of his employment before the end of the month. Questions of this sort are proper for the determination of the Labor Commissioner and District Attorney in the light of special circumstances surrounding each case.

Very truly yours,

ALAN BIBLE
Attorney General

By: Homer Mooney
Deputy Attorney General

OPINION NO. 47-466 Taxation—124 GASOLINE TAX—Effective date—County commissioners may decline to accept provisions of act.

Carson City, June 5, 1947

Hon. Harold O. Taber, District Attorney, Washoe County, Reno, Nevada

Dear Mr. Taber:

Today you requested, by telephone, our official opinion as to the effective date of chapter 276, Statutes of Nevada 1947, adding section 2.1 to the Motor Vehicle Fuel Tax Act of 1935 (1929 N.C.L. 1941 Supp., secs. 6570.01-6570.16, inc.).

It is our opinion that the Act will become effective as to the levy of the tax on July 1, 1947, subject, however, to certain exemptions from its application as set forth in the added section 2.1

The last sentence in the newly added section of the law reads:

The county commissioners of any county may decline to accept the tax provided in this section by adoption of a resolution passed prior to the effective date of this act and which shall be reconsidered and passed once each year within sixty (60) days prior to July 1 of each year as long as the county commissioners desire so to act, and upon the adoption of such a resolution no tax shall be collected as in this section provided within the boundaries of such a county.

You are specifically concerned to know when, if desirable, the county commissioners may avoid the tax levy which otherwise will automatically be made July 1, 1947, in each county in Nevada.

The answer is at any time between April 1, 1847, the date of approval and July 1, 1947, the "effective date of the (amendatory) Act."

Very truly yours,

ALAN BIBLE
Attorney General

By: Homer Mooney
Deputy Attorney General

OPINION NO. 47-467 NEVADA HOSPITAL FOR MENTAL DISEASES—Superintendent and business manager—Respective responsibilities.

Carson City, June 6, 1947

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 May 28, 1947, received in this office May 29, 1947, containing an inquiry as to the respective responsibilities of the Superintendent of the Nevada Hospital for Mental Diseases and the business manager of the hospital. You request a detailed clarification of the legislative intention in the new law respecting these officers.

Subdivision (d), section 6, chapter 277, Statutes of Nevada 1947 authorizes the board of hospital trustees to appoint as superintendent either the resident physician, resident assistant physician, or the business manager.

The resident physician was appointed superintendent and under the provisions of this subdivision the board shall designate by the regulations the duties and authority of the superintendent. The duties imposed by the section are that he shall live at the hospital, that he shall keep a fair and full account of all medical affairs, and submit monthly reports to the board under rules and regulations by the board. He shall perform neurological and psychiatric examinations at the State Prison, State Orphans' Home, and State Industrial School, when requested by the superintendents of these institutions. He 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, and he shall devote his full time to his position. Those are the specific duties imposed by the statute.

The business manager shall cause to be kept a fair and full account of the entire business operations of the hospital and submit reports to the board. He shall conduct all business pertaining to the hospital under rules and regulations adopted by the board of commissioners.

The Legislature has delegated to the board of commissioners the authority to adopt rules and regulations, which regulations, if consistent with the provisions of the section, have the same force and effect as the statute.

An adequate standard for the guide of administrative action is provided in the section and the board of commissioners is given extensive authority in the government of the hospital.

The authority and responsibility of the respective officers, other than that specifically provided in the statute, is for the determination of the board of commissioners.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

cc: Mrs. Robert Z. Hawkins, Secretary, Board of Commissioners

OPINION NO. 47-468 NEVADA HOSPITAL FOR MENTAL DISEASES—Commissioners have authority to place feeble-minded minors in Nevada Childrens' Foundation, Inc.—Expenses for care and education charge against county.

Carson City, June 6, 1947

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 May 29, 1947, received in this office June 2, 1947.

You request an opinion as to the authority for the placement of feeble-minded minors committed to the Nevada Hospital for Mental Diseases into the Nevada Childrens' Foundation, Inc., under the provisions of section 3524, 1929 N.C.L. 1941 Supp., and if the conditions for payment for the care of such minors by the counties apply in the circumstances.

We are of the opinion that the board of hospital commissioners may select the Nevada Childrens' Foundation, Inc., for the placement of feeble-minded minors who have been properly committed to the Nevada hospital, and that the expenses for the care and education of such minor was committed.

Section 3524, 1929 N.C.L. 1941 Supp., authorizes the board of commissioners and the superintendent of the Nevada Hospital for Mental Diseases to receive and care for, temporarily at State expense, the indigent feeble-minded minors of the State and to hold them subject to an arrangement as may be made for their proper care in an institution in a neighboring State to be selected by the board. The section makes it the duty of the superintendent to investigate and ascertain the names and locations of such institutional as may be available at all times, that it may not be necessary to keep such feeble-minded minors in the hospital an unreasonable time, and that the education of such minors may not be unnecessarily hindered or delayed.

The section before amendment was adopted in 1913 and the amendment was made in 1937. During all of this time there was no recognized institution within the State for the care and education of feeble-minded minors. This fact was known to the Legislature and on that account provision was made for the placement of such minors outside of the State.

The manifest purpose of the Legislature was that feeble-minded minors should not be committed to the hospital for a longer period than was necessary to find some suitable institution that would accept them for care and education, and as there were no such institutions in the State, authority was given to place them in a suitable institution in a neighboring State. The superintendent was instructed to keep such information "up-to-date" in order that the education of such minors may not be unreasonable hindered or delayed. The actual purpose of the Legislature cannot be construed to be the placing in a neighboring State, but the placing in a suitable institution that was available for such purposes.

The rule of construction applicable here is as stated in *Gibson v. Mason*, 5 Nevada 283, and *State v. Eggers*, 36 Nevada 373, that courts in interpreting statutes will so construe them as to carry out the manifest purpose of the Legislature.

The section provides that the temporary care of such feeble-minded minors shall be at the expense of the State. When the minors are placed in a suitable institution, their care and education then becomes a charge against the county from which they were committed. The fact that such charges are paid to a suitable institution within the State instead of an institution in a neighboring State does not alter the intention of the Legislature that such charges shall be paid by the county.

As stated in *Roney v. Buckland*, 5 Nevada 45, in the interpretation of any phrase, section or sentence of a statute, the first thing to be ascertained is the ultimate and general purpose of the Legislature in the enactment of the law; and when that is known or ascertained, every sentence and section of the entire Act should be interpreted with reference to such general object, and with the view to giving it full and complete effect, extending to it all its logical and legitimate results.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-469 GRAZING—District No. 1—Funds may be used in construction of truck and stock trail.

Carson City, June 7, 1947

Mr. Hayden Henderson, Jr., Secretary, Nevada Grazing Board of District No. 1, Elko, Nevada

Dear Hayden:

his will acknowledge receipt of your letter of May 31, received in this office on June 3, 1947. Your letter reads as follows:

About a year ago this board appropriated in the proper manner a total of \$3,000 to be used in cooperation with Elko County and private donors in the construction of a projected road known as the Buck Creek Road. The county did not provide funds at that time and has now indicated that it will be impossible for it to do so for a minimum of two years.

The Nevada Grazing Board of District No. 1 would like to have an opinion as to the legality of appropriating the same amount of money for direct use in

construction of a truck and stock trail in place of the projected road. These funds would be supplemented by the same private donations amounting to \$1,500 and it is expected that a contract for the construction would be let to a contracting firm.

The next meeting of the board is scheduled for June 9, 1947 in Elko, and if possible we would appreciate an informal opinion by that date in order that some action may be taken. We are also informed that there is some construction machinery in the area at present and that if quick action can be taken it may be possible to save the cost of moving machinery in at a later date.

Section 5581.16 N.C.L. 1931-1941 Supp., authorizes the grazing boards in each district to direct and guide the disposition of the range improvement of that grazing district. Each such board shall record its decisions as to the disposition of such funds in the form of a resolution properly adopted by such board.

Section 5581.17, authorizes the use of such funds for the construction and maintenance of range improvements or any other purpose beneficial to the stock raising and ranching industries. This section prohibits the use of such funds unless some legally constituted and authorized Federal or State governmental department, division, bureau, service, board or commission is available for and willing to undertake direct management and supervision of the project concerned.

Section 5581.19 provides that any project involving construction and maintenance of range improvements shall be undertaken only under cooperative agreements entered into on the part of the State grazing boards, or the boards of county commissioners, as the case may be, and the Federal officials in charge of the grazing district concerned.

The same section provides that the cooperative agreements shall prescribe the manner, term, and conditions of such cooperation and the amounts to be contributed from the range improvement fund. The section does not specify the proportional amount that may be contributed and it appears that a contribution for direct use would not be prohibited.

The funds could not be so used, however, unless under cooperative agreement between the grazing board and the Federal official in charge of the grazing district, if the project is considered a range improvement, and if considered a project beneficial to the stock raising and ranching industry, the agreement must provide that direct management and supervision must be exercised by the Federal or State department having jurisdiction over the kind of project concerned.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-470 REAL ESTATE, STATE BOARD—1947 Real Estate Act construed.

Carson City, June 10, 1947

Hon. J.P. Donovan, State Controller, Carson City, Nevada

Dear Mr. Donovan:

This will acknowledge receipt of your letter of May 20, 1947. This will also acknowledge receipt of a letter from Mr. Ray P. Smith, Secretary-Treasurer of the Nevada State Real Estate Board on May 29, 1947, concerning the Karl D. Breckenridge, real estate broker, case.

You ask an opinion on the interpretation of chapter 150, Statutes of Nevada 1947, approved March 27, 1947, creating the Real Estate Board and prescribing its duties.

You ask: 1. The effective date of the Act.

On April 30, 1947, we advised Mr. Ray P. Smith, Secretary-Treasurer of the Nevada State Real Estate Board, that in our opinion the real estate Act went into effect April 26, 1947, when the Governor, in obedience to section 6 thereof, appointed four members of the board "within 30 days after the passage and approval of the Act." This will confirm that opinion.

Section 35 of the new law repeals the preexisting law of March 10, 1923, Nevada Compiled Laws 1929, sections 6380-6396, as amended by Statutes of 1937, page 167 (*See* sections 6380, 6382, 6386, 6395, 1929 N.C.L. 1941 Supp.). Section 1 of the 1947 law made it unlawful after June 1, 1947, to act as a real estate broker or salesman without a license. The new law did not contain the usual section setting forth the effective date of the Act.

The Act of January 10, 1865, provided that laws should take effect upon passage unless otherwise prescribed therein. By amendment, Statutes of 1925, page 1 (N.C.L. 1929, sec. 7301), it was provided that such laws should take effect on July 1 following unless such law "shall specifically prescribe a different effective date." Thus the amendment makes immediate effect the exception rather than the rule. An effective date different from July first after passage must be specifically prescribed.

In addition to the requirement that the Governor make the appointment within 30 days after the passage of the Act, it should likewise be noted that the fixing of June 1, 1947, as the date when operations without a license shall become unlawful, likewise gives evidence of the legislative intent that machinery to issue licenses should be set up prior thereto.

You ask: 2. Whether or not people now holding licenses must pay another fee.

The new 1947 Act nowhere sets forth a provision blanketing in all former licensees, without payment of the annual fee, and accordingly it appears to be the legislative intent to exact an additional fee under the new Act. The Act specifically repeals the preexisting Act of 1923, but it is an independent Act and not an amendatory Act.

If a broker or salesman holds a license issued and paid for under the former Act expiring December 31, 1947, we doubt if you could secure a conviction during 1947 for operating without a license expiring December 31, 1947, under the new Act. To do so might well be held to impair the obligation of a contract. If inequity did not exist in 1948 or later, then we doubt if the entire Act would be declared unconstitutional because of the situation outlined.

You ask: 3. May the board retain an attorney other than the Attorney General

[unreadable] Attorney General be the adviser for the Real Estate Board, and that the District Attorney of the county prosecute the violations thereunder. The Attorney General's office certainly has no objection whatever to the hiring of additional counsel by the Real Estate Board if the same can be legally done.

The only authority to do so, and that is certainly very vague, may be found in section 6 of the Act which authorizes the board to use money "to meet the expenses of the board for stationery, books of record, blanks, and other supplies, clerical and stenographic charges, office rent, the actual expenses of the members of the board in attendance upon meetings, and such other expenses as shall be reasonably necessary for carrying out the provisions of this Act."

Section 7 of the law imposes upon the Attorney General the following duties:

The attorney general shall render to the board opinions upon all questions of law relating to the construction or interpretation of this Act, or arising in the administration thereof that may be submitted to him by the board. The attorney

general shall act as the attorney for the board in all actions and proceedings brought against the board under or pursuant to any of the provisions of this Act.

This section is very broad and seems to cover most of the apparent need for legal service. If the Legislature intended that the Real Estate Board have the authority to secure private counsel, they could have very easily said so in so many words, and they certainly should have done so in order to avoid the very confusion which now arises.

The Real Estate Board is charged with the duties imposed upon it by law and is of course held accountable for the money received by it.

In repetition, we certainly have no object to the hiring of private counsel; and, if the occasion arises where the problems involved are not those set out and specified in section 7 noted above, then we believe that the board could, by proper board action, rule that the hiring of private counsel was "reasonably necessary for carrying out the provisions of the Act." The need, of course, for the expenditure of such money most of necessity be clear and unequivocal.

We are not unmindful of the very understandable confusion that has arisen as to whether or not the old Real Estate Board or the new Real Estate Board has jurisdiction, and also as to whether or not the old Real Estate Board law or the new Real Estate Board law was in effect. Two particular problems have been called to our attention, and, in view of the claimed representations made by various members of the boards, both old and new, we deem it advisable to call these problems to your attention with our thoughts in the matter.

In the first case Mr. Breckenridge was reportedly informed that since he was governed by the old Act, it would be necessary for him to have had a year's experience as a prerequisite to qualification for examination and licensing as a real estate broker. Even if it were assumed that the old Act was in effect on the date on which your examinations were given on May 15, 1947, we are still unable to find any provision in the law requiring such experience as a prerequisite to qualification. If this representation is true, then it would appear that the board is justified in making some correction in its action.

The second case which has been called to our attention is that involving Mr. and Mrs. Coffey, who reportedly made application prior to the effective date of the new Act; were advised that the old Act was still in effect, took the Nevada examinations, passed the same, and were thereafter advised that they could not be licensed because the new law required a six months' residence in Nevada as a prerequisite to qualification. It is true that neither of the Coffeys had the requisite six months' residence required under the new law. It is also reported that because of the representations made to them, the Coffeys disposed of their California holdings and purchased new holding in Nevada, in the belief and with the assurance that they had met all the requirements of the Nevada law.

It is most unfortunate for the Coffeys that this confusion has arisen from the representations made to them on which they relied. Because the error was not theirs but that of official agencies acting mistakenly, although in good faith, it would seem the board might now proceed to take some corrective action.

Very truly yours,

ALAN BIBLE
Attorney General

By: Homer Mooney
Deputy Attorney General

cc: Mr. Ray Smith, Member, Nevada State Real Estate Board, Arcade Building, Reno, Nevada.

OPINION NO. 47-471 LABOR—Employment agencies—Transfer or assignment of license not permissible—No authority to prorate annual license fee for half-year period.

Carson City, June 13, 1947

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

Dear Mr. Gibson:

This will acknowledge receipt of your letter dated June 10, 1947, received in this office June 11, 1947, requesting an opinion on the following questions:

1. Is it permissible to transfer this license from the original owners to the new owner without collecting another \$50 as a license fee from the new operator?
2. Is it permissible to pro-rate the fee allowing the new owner to pay \$25 for a half year's license fee, inasmuch as the original owners had paid the full \$50?

Answering your first question, we are of the opinion that there is no authority in the statute for the labor commissioner to permit the transfer or assignment of a license issued to operate an employment agency.

Your second question is answered in the negative. As the license is not transferrable, there is no authority to pro-rate the annual license fee for a half-year period.

Section 2837 N.C.L. 1929, which defines how a license to conduct an employment agency is secured, contains the following language; "Such application shall be in written form and shall state the name and address of the applicant; the street and number of the building or place where the business is to be conducted, and the business or occupation engaged in by the applicant for at least two years immediately preceding the date of application. Such application shall be accompanied by the affidavit of at least two reputable residents of the city to the effect that the applicant is a person of good moral character."

Section 2838, 1929 N.C.L. 1941 Supp., contains the same language relative to name, designation of place of business, and also requires the number and date of such license, and reads in addition as follows: "Such license shall not be valid to protect any other than the person to whom it is issued or place other than designated in the license."

Section 2836 N.C.L. 1929 provides that no person shall open, keep, or operate an employment agency in this State without first obtaining a license therefore as provided in the Act.

Section 2839 N.C.L. 1929 provides that every person licensed under the provisions of the Act shall pay to the labor commissioner a fee of \$50 before such license is issued and thereafter an annual fee of \$50 on or before the first day of each calendar year.

There is no provision in the Act for the transfer of a license and no authority for the labor commissioner to receive less than the fee of \$50 for each license issued.

The specific provision of the statute as to the good moral character of the applicant classifies the license as a personal privilege.

33 Am. Jur. page 330 expresses the rule as to the assignment and transfer of licenses as follows: "A license, being a personal privilege, cannot, as a general rule, be communicated or assigned to another. This rule is subject, however, to modification under circumstances which may render a transfer equitable, as, for example, where the licensee dies or one member of a licensed firm transfers his interest to the other during the period for which the license fee or tax is paid, and the legal representative or remaining partner carries on the trade or business in the same place."

The language in the statute that no person shall open, keep or operate an employment agency without first obtaining a license therefor, and the further provision that such license shall not be valid to protect any other person than the person to whom it is issued or place other than

designated in the license, prohibits the labor commissioner from assigning a license, once issued, to another person and forbids transfer of such license.

The fee of \$50 pays the license privilege until the first day of the following year, when the annual fee of \$50 is due in advance for the ensuing year.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-472 NEVADA NATIONAL GUARD—No authority to sell or transfer surplus property.

Carson City, June 17, 1947

Jay H. White, Brigadier General, Adjutant General of Nevada, Carson City, Nevada

Dear General White:

This will acknowledge receipt of your letter dated June 12, 1947, received in this office June 13, 1937, requesting an opinion as to the authority of the National Guard of this State to transfer or sell surplus property transferred to it under the provisions of Public Law 26, the same being an Act to establish an Office of Selective Service Records and to liquidate the Selective Service System.

We are of the opinion that there is no authority under the Act for the Adjutant General of Nevada or the Nevada National Guard to transfer or sell any of the surplus property until such time as the Nevada Guard of the State may be reorganized should be secured from the War Assets Administration.

Section 4 of the Act, quoting that part deemed relevant, reads as follows: “* * * and authority is hereby granted to the Director of the Office of Selective Service Records to transfer, without reimbursement, and with the approval of the War Assets Administration, to the National Guard in the Several States, the District of Columbia, and Territories and possessions of the United States, or to the Organized Reserves of the armed forces, surplus property of the Selective Service System.”

The War Assets Administration must approve the transfer, which indicates the intention of the Act to be that any sale of such property would be under jurisdiction of that department. The Act contemplates the need by the National Guard or the Organized Reserves for the surplus property and not the assets resulting from a sale or transfer by either of the organizations.

The senate report on the bill under section 4 reads as follows: “Transfer all property, records and personnel of the Selective Service System to said Office (Selective Service Records) and grant authority to said office to transfer without reimbursement, and with the approval of the War Assets Administration, to the National Guard, to the Organized Reserves of the armed forces, all surplus property of the Selective Service System after July 1, 1947.”

The report recommended the transfer to both organizations, but the Act named the National Guard or Organized Reserves in the alternative, which indicates the intention of the Act to be that if the National Guard had no use for the property, then the transfer would be to the

Organized Reserves, and if not required for use by either organization, then the War Assets Administration would have jurisdiction over its disposal.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

cc: Governor Vail Pittman

OPINION NO. 47-473 FISH AND GAME—Appointment county game management board—
Qualification new state commission.

Carson City, June 17, 1947

Mr. S.S. Wheeler, Representative, Fish and Game Commission, Post Office Box 678, Reno,
Nevada

Dear Buck:

Answering your letter dated June 12, received here June 13, 1947.

1. Appointment of members of county game management boards is required by section 13 to be made after the effective date of the Act, which is July 1, 1947. An earlier appointment or designation calculated to take effect July 1 would be premature and without sanction of any law. Nothing, however, would prevent the adoption of a resolution expressing the intention of appointing certain members on the county management board. The duties of that board indicated in section 47 relating to funds and section 63 relating to closed seasons, are too important to be the subject for uncertainty.

2. The new State Fish and Game Commission must “qualify” after the effective date of the Act as appears from section 10. To qualify for State office one must take the oath of office and give bond if bond be required by law. *See Nevada Compiled Laws 1929, section 4925. See Constitution, Nevada Compiled Laws 1929, section 163.*

Very truly yours,

ALAN BIBLE
Attorney General

By: Homer Mooney
Deputy Attorney General

OPINION NO. 47-474 TAXATION—Cigarette tax—Interpretation of law.

Carson City, June 19, 1947

Mr. H.S. Coleman, Supervisor Liquor Tax Department, Nevada Tax
City, Nevada

Commission, Carson

Dear Mr. Coleman:

On June 14, 1947, you submitted to us four letters of inquiry regarding the Cigarette License Tax Law of 1947 (Stats. 1947, p. 658) and we set forth here statements as to the meaning of the law which will enable you to make specific answer to these inquiries.

1. The tax is levied on the retail sale of cigarettes to the ultimate consumer. A gift is not a sale.

2. The State law does not require a retail dealer's license, but does not prohibit such a requirement by cities, towns or counties.

3. Wholesale dealers' licenses cost \$150 per calendar year prorated after January first, but not less than \$37.50. They authorize the sale in Nevada to retailers or other wholesalers only. All licenses must maintain a place of business in Nevada.

4. No wholesaler or retailer shall sell unstamped cigarettes in Nevada, whether as a wholesaler or as a retailer. Stocks on hand July 1, 1947, shall bear the requisite stamp obtained from the Sheriff by the retailer. thereafter only licensed wholesalers may buy stamps.

5. Wholesale dealers duly licensed and having a place of business in Nevada may sell and deliver cigarettes to retailers or qualified wholesalers anywhere in Nevada. The situs of a sale is the place of delivery in the absence of agreement to the contrary. It is immaterial if a licensed wholesaler makes delivery from his warehouse in Nevada or takes title to cigarettes outside of the State and delivers them to retailers at various points in Nevada designated by him.

6. The Tax Commission sells stamps to wholesalers in Nevada having a Nevada wholesaler's license. No express authority is conferred to sell stamps otherwise and none can be presumed. Sheriffs of the respective counties acts as agents in making such stamp sales. For the labor of affixing stamps at time of sale to retailers or other wholesalers, the purchasers of stamps are allowed a 10% discount when they buy the stamps. The stamp may be affixed by an adhesive sticker or by a metered stamp machine.

Taking up some of the inquiries in the light of the foregoing, we suggest as follows:

INQUIRY OF THATCHER, WOODBURN AND FORMAN RE SAFEWAY STORES

1. A cigarette retailer may be licensed as a wholesaler having the same address. The wholesaler should keep his wholesale (unstamped) stock separate from the retail (stamped) stock, even if in the same building. The stamps should be affixed on delivery for retail sale.

2. Nothing forbids a licensed wholesaler (qualified by having a place of business in Nevada) from affixing stamps on cigarettes to which he has title—at any place in our out of the State. He may then deliver the cigarettes or order their delivery anywhere in Nevada. Only a licensed wholesaler can buy stamps.

INQUIRY OF THE AMERICAN TOBACCO COMPANY

Only a licensed wholesaler can purchase stamps. Cigarettes given away at retail do not require stamps.

INQUIRY OF JOHN SCOWCROFT AND SONS CO.

A licensed wholesaler, qualified by keeping one place of business in Nevada, may purchase stamps without limit. He can take title to cigarettes, see that the stamps are affixed, import them to his own Nevada headquarters or order them delivered direct to retailers anywhere in Nevada.

INQUIRY OF L.K. FALCK

Cigarettes given away do not require stamps. Retailers can obtain cigarettes for sale, only from licensed wholesalers who must see that stamps are affixed. Retailers cannot buy stamps nor sell cigarettes not stamped. No retailer will buy unstamped cigarettes from anyone because he will not be allowed to sell them.

In conclusion, your attention is invited to a careful scrutiny of sections 2, 4, 8, 9 and 12 of the Act.

Very truly yours,

ALAN BIBLE, Attorney General

By: Homer Mooney, Deputy Attorney General

cc: Thatcher, Woodburn and Forman, Reno, Nevada; The American Tobacco Company, 111 Fifth Avenue, New York 3; John Scowcroft & Sons Co., Ogden, Utah; L.K. Falck, 415 Ness Bldg., Salt Lake City.

OPINION NO. 47-475 INSURANCE—Forms of insurance policies approved.

Carson City, June 19, 1947

Hon. J.P. Donovan, Insurance Commissioner, Carson City, Nevada

Attention: Mr. G. S. Osburn, Insurance Deputy

Dear Mr. Donovan:

Your letter dated June 12, 1947, was received here on June 13, 1947, and was the subject of a conference in this office June 16, 1947, attended by Mr. John P. Thatcher, Secretary and Counsel for Western American Life Insurance Company, other officers of the company, Mr. Osburn, your deputy, and myself.

It was tentatively agreed that the five-dollar fee mentioned in the premium clause of the policy form should be denominated "Pioneer Policy Fee" instead of "Membership Fee" as printed.

We find no objection to the matter at the bottom of page 1 respecting the protection to policyholders affected by the deposits with the State and State supervision.

It was agreed that the designation "Participating 20 Payment Life Policy" appearing on the back of the policy form must also appear at the foot of page 1 of the printed policy.

It was agreed that the heading and two lines thereunder entitled "No Personal Liability" should be deleted from page 4 of the printed form.

Mr. Osburn's comments on paragraph 1 on page 3 referring to "Guaranteed 10% Annual Coupon Return"; also paragraph 2, "Guaranteed Persistency Bonus"; and also paragraph 3, "Policyholders \$1.00 Per \$1,000 Bonus Fund," were carefully considered, but we cannot say these features do not comply with the requirements of the laws of this State.

Section 80, Nevada Insurance Law (1929 N.C.L. 1941 Supp., sec. 3656.80) prohibits the issuance of a policy of life insurance until the form of the same has been filed with you, nor if within 30 days thereafter you notify the company "showing wherein the form of the policy does not conform to generally accepted standard insurance practice or does not comply with the requirements of the laws of this State * * *."

It is our opinion that the form of policy, when amended as herein noted, will "comply with the requirements of the laws of this State." If you feel, as indicated, that it also "conforms to generally accepted standard insurance practice," you should place your file mark on the amended form, whereupon the company will be authorized to sell insurance under that form.

A specific "approval" is not required to be endorsed on the policy form, but if it is not endorsed on the form, an applicant would have to wait 30 days after filing a form to learn whether objection to it existed. In the meantime, he could not safely sell insurance under the form.

Very truly yours,

ALAN BIBLE
Attorney General

By: Homer Mooney
Deputy Attorney General

OPINION NO. 47-476 INSURANCE—Agents under classes 2 and 3 must qualify as to residence and examination—Class 3 not required to meet residence qualifications.

Carson City, June 19, 1947

Hon. J.P. Donovan, Insurance Commissioner, Carson City, Nevada

Attention: Mr. G.S. Osburn, Insurance Deputy

Dear Mr. Donovan:

This will acknowledge receipt of your letter dated June 7, 1947, received in this office June 9, 1947.

You request an opinion as to the construction of paragraph (a) section 2 of chapter 152 Statutes of Nevada 1947, and inquire if the provision for the issuance of a nonresident insurance agent's license applies to agents writing all classes of insurance, or only life, health and bodily accident insurance companies. You also inquire if the fees provided for in this act may be used for the administration of its provisions.

We are of the opinion that agents for insurance companies under Class 2: casualty, fidelity and surety; and Class 3, fire and marine, must qualify as to residence as well as examination, but agents of companies under Class 1, life, accident and health, are not required to meet the residence qualifications but must qualify as to examinations.

The fees received as provided in the Act may be used for the administration thereof.

Section 3656.141 N.C.L., 1931-1941 Supp., defines the term agent, as used in the Act to mean any person, partnership, association or corporations who or which solicits, negotiates or effects in this State, on behalf of any company, contracts for insurance of any of the classifications listed in section 5, article 1.

Section 5, article 1, classifies insurance business and insurance as, Class 1, life, accident, and health; Class 2, casualty, fidelity, and surety; Class 3, fire and marine.

Section 3656.147 N.C.L. 1931-1941 Supp., being section 147 of the insurance Act as amended by chapter 152 Statutes of 1947, quoting that part deemed relevant, reads as follows:

The commissioner shall issue an agent's license to an applicant when he has satisfied himself upon evidence presented and recorded as to the integrity of the applicant and that said applicant has qualified in the following respects to hold a license. (a) That the applicant has been a bona fide resident of the State of Nevada for three (3) months prior to the filling of the application; *provided*, that any nonresident applicant who is otherwise qualified under, may obtain a nonresident, agent's license upon payment of the fee specified in section 60 of this

act; *provided*, that life, health and bodily accident companies and their agents need not qualify in this respect.

This paragraph before amendment provided as follows:

That the applicant has been a bona fide resident of the State of Nevada for three (3) months immediately prior to the filing of the application; *provided*, that life, health and bodily accident companies and their agents need not qualify in this respect.

Under this provision every agent was required to be a bona fide resident of the State for the three-months' period, except agents for life, health and bodily accident companies. It did not, however, refer to the license or the fee to be paid for such agents. This was determined by section 143 (sec. 3656.143 Supp.) which provides:

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.

Section 60 (sec. 3656.59 Supp.) defines the fees to be paid. Subdivision (h) provides "For issuing agent's license two (\$2) dollars."

An agent for a life, health and accident company under the section before amendment could obtain a license without meeting the residence requirement, upon the payment of the required fee.

Such an agent would be a nonresident agent, although he was not so classed in the section. The only language added to the section by the amendment as the following: "provided, that any nonresident applicant who is otherwise qualified under, may obtain a nonresident agent's license upon payment of the fee specified in section 60 of this act."

The intent of the Legislature as shown by the section before amendment was that every agent for an insurance company should be a bona fide resident of the State, except agents for life, health and accident companies. The language added by the amendment cannot be construed to change this policy and grant a nonresident agent's license to agents of all classes of insurance companies if they qualify upon examination. This would make the exception relative to the agents for life, health and accident companies meaningless.

Considering the section before amendment, the language added by the amendment must be construed as continuing the legislative policy, but specifically requiring agents of life, health and accident companies when making application for a license to submit to the examination which is specifically provided for in the amended section, and to pay the fee required for the issuance of an agent's license.

As held by the Supreme Court in *State v. Brodigan*, 37 Nevada, on page 249, "Under the rules of statutory construction the court may consider prior existing law upon the subject under consideration and may consider the purpose of the changes sought to be effected, as the same may be deduced from a consideration of the whole subject matter."

State v. Brodigan, 34 Nevada 486 page 492, "It is a fundamental rule of construction that courts should harmonize, wherever possible, inconsistent parts of acts bearing upon the same question when it is possible to arrive at the true legislative intent by so doing, and to avoid a construction which creates inconsistent positions wherever it is possible to do so without doing violence to the legislative intent."

Nye County v. Schmidt, 39 Nevada 456, citing Sutherland Statutory Construction, held, "It will not be assumed that one part of a legislative act will make inoperative or nullify another part of the same act, if a different and more reasonable construction can be applied."

Subsection (i) provides for the payment of an examination fee in the sum of \$10, and that such fee shall not be returned for any reason.

As there was no appropriation for the administration of the examinations, and no provisions for placing the examination fee in the general fund of the State, it must be assumed that such fees could be used for the purpose mentioned in the section.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-477 INSURANCE—School athletes—Contract submitted sufficient in form and substance.

Carson City, June 20, 1947

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

Dear Miss Bray:

Your letter of June 12, 1947, concerning the policy form for the insurance of school athletes for the period July 1, 1947, including June 30, 1948, was received here June 13, 1947.

Since that time a conference was held with Mr. John P. Thathcer, Secretary-Treasurer of Western American Life Insurance Company, and we find the policy contract submitted to be sufficient in form and substance.

We are satisfied from your statement that the policy is the best and, in fact, the only proposal you may expect under the law.

It will be in order to prepare a claim for audit and allowance for the premium payment of \$7,500 so that it may be paid July 1, 1947.

We return your inclosures.

Very truly yours,

ALAN BIBLE
Attorney General

By: Homer Mooney
Deputy Attorney General

OPINION NO. 47-478 NURSES—Effective date of professional nursing Act—Interpretation of.

Carson City, June 21, 1947

Mrs. Margaret F. Carroll, R.N., President, Nevada State Board of Nurse Examiners, Steptoe Valley Hospital, East Ely, Nevada

Dear Mrs. Carroll:

This will acknowledge receipt of your letter dated June 12, 1947, received in this office June 16, 1947. You request an opinion as to the date when the professional nursing Act becomes effective, and if the board appointed by the Governor should now assume the powers of the board as outlined in the Act. Your other questions may be condensed as follows:

Under the authority granted the board to establish disciplinary proceedings, hold hearings and other activities, is the board authorized to employ legal counsel?

May the board under its authority to pay its members a per diem and actual and necessary expenses, allow for loss of salary from her nursing position by a member for the time spent in the discharge of her official duties?

May the board open a bank account into which all fees are deposited until required to deposit with the State Treasurer at the end of each quarter?

Should the board consult the Attorney General to determine what shall be deemed an expenditure for the elevation of the standards of nursing care in this State?

Who is responsible or held accountable for the professional standing of the person they employ to supervise the nursing services in State and county hospitals?

Your various questions will be answered as the Act and the sections involved are analyzed.

The Professional Nursing Act is chapter 256, Statutes of 1947, which Act was approved March 31, 1947. Section 3 of the Act provides that the Governor, on or before May 1, 1947, shall appoint to membership of the board, five persons for different periods of time. The term of each member shall commence May 1, 1947. There is no section at the conclusion of the Act specifying when it shall take effect.

Section 7301 N.C.L. 1929 provides as follows: "Every law and joint resolution hereafter passed by the Legislature of the State of Nevada shall take effect and be in force on July first following its passage, unless such law or joint resolution shall specifically prescribe a different effective date." The section does not specify how the effective date shall be prescribed or in what part of the Act it shall appear.

Section 3 of the Act specifies a mandatory duty on the part of the Governor to appoint, on or before May 1, 1947, five members to the State board created by the Act, and specifically provides that their term shall commence on May 1, 1947.

The Act was approved March 31, 1947. If the Legislature intended the Act to become effective under the rule prescribed by statute, it would not have required the Governor to perform a useless act in making the appointments before the Act under which such action was authorized became effective. Such an interpretation would result in absurd consequences. A statute will never be interpreted so as to attribute an absurdity to legislation, if such interpretation is avoidable, is the rule of construction expressed by the Supreme Court in *Las Vegas ex rel. v. Clark County*, 58 Nevada 469.

We are of the opinion the Act became effective on the date the Governor made the appointments, and the members of the board assumed the duties of the office May 1, 1947.

Section 14 of the Act provides that the State board of nurse examiners fund shall be made up of the fees received by the board. All moneys are subject to withdrawal on order of the board for the purpose of meeting expenses necessarily incurred in the performance of the special duties imposed by the Act.

Section 16 gives to the board the power to take disciplinary proceedings. Proceedings at a hearing require the filing of a verified complaint and the accused shall have the right to appear by counsel. Although the board is not bound by strict rules of procedure, its findings and decisions shall be based upon competent legal evidence.

We are of the opinion that if the board deems it necessary to employ legal counsel, there is nothing in the statute to deny his authority.

Section 5 provides that each member of the board shall be paid the sum of ten dollars per diem for each day actually spent in the discharge of her duties, and shall be further entitled to be reimbursed for her actual and necessary expenses incurred in the performance of such duties. The secretary-treasurer shall receive in addition to actual and necessary expenses a monthly salary to be fixed by the board. The language expresses an intention to fully compensate the members of the board for their services and fixes the compensation in a definite amount. The fixing of the compensation on a monthly basis to the secretary-treasurer is delegated to the board. Loss of salary of a nursing position by the secretary-treasurer would not be considered a necessary expenditure and the same rule will apply to members of the board. Actual and necessary expense is the money expended by the officers in travel and for subsistence while engaged in their official duties, and for which they shall be reimbursed. Loss of salary is, therefore, not a necessary expense as contemplated by the section.

Section 14 provides that all fees shall be paid to the treasurer who shall deposit the same at the end of each quarter with the State Treasurer. Under the authority granted the board to make rules and regulations, the board could require a bond of the treasurer and could direct how the money should be deposited while in the custody of the treasurer.

Section 14 authorizes the expenditure of the funds for the elevation of the standards of nursing care in this State. The phrase has no technical or legal meaning and an interpretation is not required from the Attorney General. The language, "as the board may in its discretion direct," places this subject entirely within the discretion of the board.

Section 17 provides as follows: "The nursing service of all State and county institutions providing medical, surgical, or obstetrical service shall be under the supervision of a person licensed as a registered nurse in Nevada. This section shall not apply to those institutions which serve only as homes for the indigent or aged."

The language of the section is plain and the meaning unmistakable. There is no room for construction.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-479 LABOR—Apprenticeship Council—Procedure for payment of travel and living expenses—Printing of bills.

Carson City, June 23, 1947

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

Dear Mr. Gibson:

Reference is hereby made to your letter of June 20, 1947, requesting an opinion of this office as to what procedure must be followed in the payment of travel and living expenses of members of the Apprenticeship council while attending meetings away from their places of residence; and also the payments of printing bills.

It is the opinion of this office that the authority for the payment of travel and living expenses and necessary printing bills is contained in chapter 243, Statutes of Nevada 1947, wherein an

appropriation of \$3,00 was made for the purposes stated. It is to be noted that so far as travel and living expenses are concerned, they shall be paid at the same rate and in the same manner as other State officers' like expenses are paid. We think the proper procedure would be for each member of the Apprenticeship Council to make out a verified claim covering his or her expenses at a particular meeting and submit the same to the State Board of Examiners for the board's approval. This is the procedure followed by all State officers in filing claims for travel expenses. The travel expenses of such members will, of course, be governed by the law relating to such expenses, the same being chapter 116, Statutes of Nevada 1945.

With respect to claims for necessary printing, we think the proper procedure would be for the State Printer to present to you his bill for a particular amount of printing and that you, as State Director of Apprenticeship, would then present a claim to the State board of Examiners in favor of the State Printer for payment out of the appropriation of \$3,000 above-mentioned. We make the Statement that the claim be presented by you as State Director of Apprenticeship for the reason that the Director of Apprenticeship is authorized to administer the provisions of the apprenticeship law in cooperation with the Apprenticeship Council. Section 506.03, 1929 N.C.L. 1931-1941 Supp.

Very truly yours,

ALAN BIBLE
Attorney General

OPINION NO. 47-480 CORPORATIONS—Municipal—Boundaries of disincorporated town of Austin remain same as previously established.

Carson City, June 24, 1947

Hon. Arthur A. Platz, District Attorney, Austin, Nevada

Dear Mr. Platz:

This will acknowledge receipt of your letter dated June 12, 1947, received in this office June 16, 1947.

You refer to the incorporation of the city of Austin by Act of the Legislature, and its subsequent disincorporation by legislative action and submit the following question:

When the city of Austin, a corporate body politic with boundaries fixed by the Legislature, was disincorporated and ceased to exist by Act of the Legislature on May 2, 1881, did its boundaries as then existing, become the boundaries of the unincorporated town of Austin (called disincorporated town) without any affirmative action taken by the county commissioners at that time, pursuant to section 1231 as therein provided.

You state that you have been unable to ascertain from the records that the commissioners ever took action to designate such boundaries.

You request an interpretation of that part of said section which reads "provided, that in case of any disincorporated town or city the boundaries shall be fixed at the time of such disincorporation, but any change of such boundaries may be made by the board upon petition of a majority of taxpayers thereof."

It is our opinion that the boundaries of the city of Austin which existed at the time of its disincorporation, and recognized by long-standing custom, are the present boundaries of the

town, and in order to change the same it will require a petition, to the board of county commissioners, of a majority of the taxpayers within the limits of such boundaries.

Our answer is based upon the construction apparently given the section in question by the officers whose duty it was at the time of disincorporation to execute the provisions of the section. That part of section 1231 N.C.L. 1929 quoted is in the same language used in the original Act providing for the government of towns and cities adopted by the Legislature in the year 1881.

Chapter LXXVII, Statutes of 1865, approved March 8, 1865, under section 1, established the boundaries of the city of Austin.

The Act of 1881, chapter XLVI, Statutes of 1881, repealed the Act and its amendments which incorporated the city of Austin, and abolished all offices under the incorporation. This Act was approved February 26, 1881, and provided it should take effect on the second day of May 1881. The Act providing for the government of the towns and cities of the State was approved February 26, 1881, and no effective date was expressed in the Act.

The original Act fixing the time when laws and joint resolutions shall take effect, approved January 10, 1865, provided: "Every law and joint resolution hereafter passed by the Legislature of the State of Nevada shall take effect and be in force from and after its passage, unless such law or joint resolution shall prescribe a different time."

When the city of Austin was disincorporated on May 2, 1881, the Act providing for the government of towns and cities was in effect. Section 1 provided as follows: "In addition to the powers and jurisdiction conferred by other laws, the boards of county commissioners of the counties of this State shall have the following with regard to the management of the affairs and business of any town or city in their respective counties: First—To fix and define the boundaries of such town or city within which the jurisdiction herein conferred shall be exercised; *provided*, that in case of any disincorporated town or city the boundaries shall be fixed at the time of such disincorporation, but any change of such boundaries may be made by the board upon petition of a majority of the taxpayers thereof."

The city of Austin was disincorporated on May 2, 1881, and remained a disincorporated town. The third paragraph of the section provided for the levy of a special tax on property situated in such town or city. Such taxes were evidently levied within the boundaries of the disincorporated city as they existed at the time of such disincorporation and probably have so continued to be levied.

Reading together the two Acts adopted by the Legislature at the same session and approved at the same time, the boundaries of the disincorporated city of Austin were deemed fixed at the time of such disincorporation, and unless changed by the board of commissioners upon petition of a majority of the taxpayers thereof remain the same.

The city was not disincorporated under the Act to provide for the disincorporation of cities and towns incorporated under the laws of the Territory of Nevada, approved February 7, 1865, which gave the county commissioners the power to disincorporate any city upon petition of a majority of the voters residing within the corporate limits, but was disincorporated by Act of the legislature effective on a certain date.

If the county commissioners considered the boundaries of the city of Austin to have been fixed at the time of its disincorporation, without definite action by such board, it is not likely that such construction placed on the statute will be disturbed.

Seaborn v. Wingfield, 56 Nevada 260, on page 270, the court said: "Where a doubt may exist as to the proper construction to be placed on a constitutional or statutory provision, courts will give weight to the construction placed thereon by other coordinate branches of the government and by officers whose duty it is to execute its provisions."

In Re MacDonald's Estate, 56 Nevada 346, the court held: "The order of the lower court is in accord with a long-standing interpretation of the law. No principal is more widely recognized

than that a rule of law established and repeatedly sanctioned will be adhered to by the courts when to change the rule might lead to confusion and widespread harm.”

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-481 TAXATION—Member of Nevada Tax Commission may not serve without compensation.

Carson City, June 27, 1947

Nevada Tax Commission, Carson City, Nevada

Attention: R.E. Cahill, Chief Clerk

Gentlemen:

This will acknowledge receipt of your letter dated June 14, 1947, received in this office June 18, 1947. You request advice as to whether or not one of the members recently appointed to the Tax Commission may, at his request, serve on such board without receiving the statutory salary of \$600 per year, and if he could be left off the pay roll.

We can find no statutory authority under which such member could be left off the pay roll.

The principal of law expressed in such cases, as found under citations in 70 A.L.R. 976 and 118 A.L.R. 1474, is generally expressed in that “Public policy as a rule forbids agreements for the acceptance by public officers of less than the amount provided for them by statute.” Section 6557 N.C.L. 1929, quoting that part relating to compensation, reads as follows: “Each of the five commissioners mentioned in section 1 of this act shall receive a salary of six hundred dollars (\$600) per annum, payable in monthly installments as other state officers are paid.”

We are of the opinion that the State could not make an agreement with the officer to serve without compensation. When the compensation is earned by the officer he could dispose of it as he wished.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-482 COUNTIES—Ten dollar fee provided for civil cases in district court not to be collected on probate matters.

Carson City, July 1, 1947

Hon. James W. Johnson, Jr., District Attorney, Churchill County, Fallon, Nevada

Dear Mr. Johnson:

This will acknowledge receipt of your letter dated June 24, 1947, received in this office June 26, 1947.

You request an interpretation of chapter 151, Statutes of 1947 relative to the fee of ten dollars for State purposes collected by the county clerk and if such fee should be collected in probate matters commenced in the district court as well as for civil actions commenced therein.

We are of the opinion that the fee of ten dollars, as provided by the Act, to be collected by the county clerk on civil cases commenced in the district court is not to be charged and collected on probate matters commenced in such court.

Section 1, chapter 151, Statutes of 1947 reads as follows:

In addition to any other fees now provided by law, the county clerk of each county in the State of Nevada shall charge and collect the following fee; *provided, however,* that said clerk shall neither charge nor collect any fees for services by him rendered to the State of Nevada or the county, or any city or town within said county, or any officer thereof in his official capacity:

On the commencement of any civil action or proceeding in the district court, to be paid by the party commencing such action or proceeding, ten (\$10) dollars, which shall be paid over to the State Treasurer of the State of Nevada, as hereinafter provided.

Section 2:

On or before the tenth day of each month, the county clerk shall pay over to the State Treasurer an amount equal to ten (\$10) dollars per civil case commenced as provided in section 1, for the preceding calendar month, and the State Treasurer shall issue his receipt therefor. Fees so collected and paid shall be placed to the credit of the general fund of the State.

Section 1 uses the language "of any civil action or proceeding in the district court," while section 2 provides that an amount equal to ten dollars "per civil case commenced as provided in section 1" shall be paid over to the State Treasurer each month.

In one section the term "any civil action or proceeding" is used and in the next section the term "civil case" is named, and the intention of the Legislature must be determined from the language of the entire Act. To collect the fee on all proceedings commenced in the district court and pay over to the State Treasurer an amount equal only to the fees collected for civil cases would result in directing the collection of revenue with no provision for its entire disposition. The section does not use the language civil action or other proceeding in the district court, but "civil action or proceeding in the district court," and in order to harmonize the two sections the conjunction "or" must be interpreted as expressing the same thing or idea, rather than to join unlike or different terms.

The purpose of the Act is to secure revenue for the State and the whole Act should be construed together to remove or explain any ambiguity. *See State v. Eggers*, 36 Nevada 364.

There is no specific language in the Act to warrant the collection of the tax or fee on other or all proceedings in the district court.

Section 3 of the Act repeals the provisions of any Act in conflict with the provisions of the Act, but provides “that provisions for charging and collecting fees other than those specifically referred to in this Act shall remain in full force and effect.”

Civil cases are specifically named in section 2 and the rule of construction followed in *Ex Parte Smith*, 33 Nevada on page 480, is applicable here: “The rule is, as between conflicting sections of the same Act, the last in order of arrangement will control.”

Civil cases were distinguished from probate matters in the case of *Stevens v. Myers*, 126 P.29, citing *State ex rel. v. Manse*, 45 N.W. 526, in which the question was the meaning of a clause in the constitution of that State to the effect that the Legislature shall impose a tax on all civil suits commenced or prosecuted in the municipal, inferior or circuit courts. The court in construing this clause employed this language: “But another and conclusive reason why the tax here imposed cannot be justified under the section of the constitution quoted is that the settlement of estates in courts having probate jurisdiction is essentially proceedings in rem, and not ‘civil suits commenced and prosecuted,’ within the meaning of the constitution. It is upon this theory that the federal courts have uniformly disclaimed jurisdiction in probate matters, since such jurisdiction is not conferred by the words, ‘the judicial power shall extend to all cases in law and equity arising,’ etc., section 2, art. 3, Const. U.S.”

The case of *Lucich v. Medin*, 3 Nevada 93, which was cited *In re Alfstad’s Estate*, 67 P.593, and to which you call attention, supports the construction that the language “civil action or proceedings” does not include probate matters, as the court in that case said, “Although the district court has jurisdiction in common law, chancery and probate cases, yet the proceedings in each are separate and distinct.”

Fees in the several counties are collected under the provisions of special Acts, and the fees designated in probate matters are separate from civil cases.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-483 PUBLIC SCHOOLS—Age of child for appointment purposes governed by section 1 of 1947 school code.

Carson City, July 2, 1947

Miss Mildred Bray, State Superintendent of Public Instruction, Carson city, Nevada

Dear Miss Bray:

This will acknowledge receipt of your letter dated June 23, 1947, received in this office June 24, 1947.

You request an interpretation of section 1, chapter 63, Statutes of 1947, which is section 1, chapter 1, of the new school code, relating to the admission of children under the age of seven years to the public schools and particularly if the average daily attendance of such children shall

be taken into consideration for apportionment purposes and for epidemic relief in the apportionment made by your office in July 1947.

The interpretation comprehend in your question is whether or not the section in question can be considered retrospective as the apportionment is made after July 1, 1947, the date upon which the new school code becomes effective.

We are of the opinion that the new provision in section 1, chapter 63, Statutes of 1947, section 1, chapter 1, of the 1947 school code, relative to the admission of children in the first grade of school, if such child will arrive at the age of six years by December 31, and in schools granting midterm promotions, if such child reaches the age of six years by February first, and such attendance shall be counted for apportionment purposes as if it were already six years of age, is not in effect until July 1, 1948. The attendance of such children cannot be counted for apportionment purposes of July 1, 1947, based on the average daily attendance of such children for the school year 1946-1947.

Section 203, chapter 16 of the former school code (section 5849 N.C.L. 1929), quoting that part relating to children required to attend school reads as follows: "Each parent, guardian, or other person in the State of Nevada, having control or charge of any child between the ages of seven and eighteen years, shall be required to send such child to a public school during the time in which a public school shall be in session in the school district in which such child resides; * * *."

Section 1, chapter 1, of the 1947 school code (chapter 63, Statutes of 1947) includes the foregoing language and adds the following provision immediately thereafter: "and, if such child will arrive at the age of six (6) years by December 31, it shall be admitted to the first grade of such school at the beginning of said school year, and its attendance shall be counted for apportionment purposes as if it were already (6) years of age, otherwise, such child shall not be admitted until the beginning of the immediately following school term; *provided*, that in schools granting midterm promotions, any child who reaches the age of six (6) years by February first of the same year shall be admitted to the first grade of that school at the beginning of the second semester, and its attendance shall be counted for apportionment purposes as if it were already six years of age; *provided*, that the foregoing restriction relative to the admission of children six (6) years of age and under such age to the first grade shall not be effective until July 1, 1948."

The school code became effective, by operation of law, on July 1, 1947. There is nothing in the Act to indicate that the Legislature intended its provisions to have retroactive operation.

As stated in *Virden v. Smith*, 46 Nevada 208, "Every reasonable doubt is resolved against a retroactive operation of a statute. If all the language of a statute can be satisfied by giving it prospective action only, that construction will be given it."

The Act when approved became valid legislation of a prospective character.

In the past years apportionments have been based on the average daily attendance of children enrolled in school and have included the attendance only of such children after they reach the age of six years.

The language in section 1 makes provision for a child to enter school in September if such child shall be six years of age the following December, and in schools granting midterm promotions a child shall be admitted if it will reach the age of six years by February first of that year. The restriction, "otherwise, such child shall not be admitted until the beginning of the immediately following school term," applies to the admission of children who will become six years of age during the school term as defined in the section. This restriction as set forth in the proviso will not become effective until July 1, 1948. Therefore, after July 1, 1948, all children who do not comply with the provisions of the section cannot be admitted to the first grade of school. For apportionment purposes until July 1, 1948, the attendance of only those children six years of age and over shall be counted in accord with the practice before the effective date of the section.

Thereafter, children admitted to school in accordance with section 1, chapter 1, of the school code shall be counted for apportionment purposes.

Very truly yours,

ALAN BIBLE
Attorney General

OPINION NO. 47-484 TAXATION—Cigarette tax—stamps must be affixed by wholesalers—Dispenser on work train classed as retailer.

Carson City, July 2, 1947

Mr. Henry Coleman, Nevada Tax Commission, Carson City, Nevada

Dear Mr. Coleman:

Today you delivered to this office the letter of Calvin M. Cory, General Attorney of the Union Pacific Railroad Company, dated June 30, 1947, asking the view of your department as to the meaning of the new cigarette tax law, chapter 192, page 658, Statutes of Nevada 1947, approved March 27, 1947, and now in effect.

This law requires wholesalers to maintain a place of business in Nevada and to pay an annual license fee. Before selling cigarettes in Nevada they must purchase stamps and affix them to the packages to be sold by retailers. No retailer may purchase stamps, nor sell cigarettes which are not stamped.

Section 17 of the law reads:

This Act shall not apply to common carriers while engaged in interstate commerce which sell or furnish cigarettes on their trains, buses, or airplanes.

The letter recites that the railroad company regularly sends crews back and forth across State lines and lodges the crews while engaged on construction work in cars with equipment to suitably lodge and board them. It is assumed someone in charge obtains a supply of cigarettes and supplies the men, making charge for the same. Conceivably he might sell to casual patrons along the way.

It is not clear that the language of the Legislature contemplates exemption from the Act when a common carrier, engaged in interstate commerce, operates a work train or work car of the character described.

The rule is that where an exemption is debatable doubts will be resolved against it. In other words, the exemption must be "clearly and unequivocally expressed." 51 Am. Jur. "Taxation," secs. 512, 524, note 15, page 526.

It is evident that the Legislature in imposing an excise tax for revenue (see section 33) and a license tax for police purposes (section 37) desired to avoid placing a forbidden burden on interstate commerce. We do not believe the burden that might be inferred in the case described is direct and tangible enough to force a construction that the exemption was intended to extend to the practice presented here for consideration. We do not consider that the supplying of cigarettes to workmen is an essential part of the work of constructing or repairing railroad tracks. A contrary construction would impair the police visitatorial power designed to prevent the illicit sale of unstamped cigarettes on the work train would be a retailer and the general rule is that a retailer cannot sell unstamped cigarettes in Nevada.

We inclose an extra copy of this letter for your convenience.

Very truly yours,

ALAN BIBLE
Attorney General

By: Homer Mooney
Deputy Attorney General

OPINION NO. 47-485 TAXATION—Delinquent property—Tax compromise statute of 1933 repealed in 1947—County commissioners have no power to re deed property.

Carson City, July 3, 1947

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

Dear Mr. Evansen:

This will acknowledge receipt of your letter dated June 28, 1947, received in this office June 30, 1947.

You state that it appears from the records of Mineral County that numerous properties have been heretofore sold to the county for nonpayment of delinquent taxes. It appearing that the old owners of the property would miss one year's taxes and thereafter pay the taxes for the remaining years. In the case of one particular piece of property you state a person has expended approximately \$3,000 in improvements and now it is discovered that the property in 1942 was deeded to the county for the sum of \$2 in taxes.

You request an opinion from this office which will permit the county commissioners to order property in this condition to be re deeded tot he parties.

On March 6, 1947, this office furnished you an opinion on this subject and advised that the only remedy at that time was by compromise under chapter 171, Statutes of 1933, which statute has now been repealed by chapter 49, Statutes of 1947, approved March 15, 1947.

We can find no authority in the statutes that will permit the county commissioners to convey or reconvey this property as suggested in your letter, and apparently the matter is of such nature that the owners of the property must seek an adjustment through the court.

Very truly yours,

ALAN BIBLE
Attorney General

By George P. Annand
Deputy Attorney General

OPINION NO. 47-486 HIGHWAY DEPARTMENT, STATE—Nevada hospital for mental diseases—Hospital board possesses power to execute agreement with highway department to construct highway over hospital grounds.

Carson City, July 8, 1947

Hon. W.T. Holcomb, State Highway Engineer, Carson City, Nevada

Attention: George R. Egan, Engineer of Surveys and Design

Dear Sir:

This will acknowledge receipt of your letter of July 2, 1947, reading as follows:

Early construction of a portion of the Federal Aid Secondary System on Glendale Road in Washoe county (the extension of East Second Street, Reno) is contemplated by this Department. This construction will require an additional narrow strip of right-of-way through lands used by the Nevada State Hospital for Mental Disease. Does the board for that institution have the power to execute an agreement which would give the Department of Highways a valid right to enter upon the property to construct and maintain a highway? If the board has not such right, what agency of the State of Nevada can execute a valid agreement of this type?

Section 3509 N.C.L. 1929, which deals with the administration of the Nevada Hospital for Mental Disease, contains the following language: "The board of commissioners as named in this act shall have full power and exclusive control of and over all the grounds, * * *." "Theoretically an easement must rest upon a grant thereof. * * * The legal capacity of the grantor to make a grant is, of course, essential in the creation of an easement has been unanimously adopted. Moreover, a person holding an estate smaller than the fee simple cannot create an easement beyond the term of his estate." 17 American Jurisprudence, pages 936-938.

The board of hospital trustees is a perpetual body. In our opinion it could execute an agreement which would give the Department of Highways a valid right to enter upon the property to construct and maintain a highway, but it would not be granted easement until the Legislature authorized the grant in the name of the State of Nevada.

Very truly yours,

ALAN BIBLE
Attorney General

By George P. Annand
Deputy Attorney General

OPINION NO. 47-487 FISH AND GAME—Game refuges—governor may revoke proclamations establishing—Commission may proclaim new ones not exceeding twenty-five.

Carson City, July 17, 1947

Mr. Shirl Coleman, Game Biologist, P.O. Box 678, Reno, Nevada

Dear Mr. Coleman:

In your letter dated July 5, 1947, received here July 7, 1947, you inquire concerning State recreation grounds and game refuges authorized by section 81 of the Fish and Game Law of 1929

as amended. Pursuant to that law the Governor established nineteen such refuges by proclamation.

The Legislature of 1947 repealed the Act of 1929 including section 81 thereof (sec. 3115 N.C.L. 1929). This repeal did not, however, disestablish the refuges already created, numbering nineteen. It did end the Governor's powers to establish six additional refuges so that the total would not exceed twenty-five.

The Act of 1947 (secs. 77, 78, 79, of chap. 101, Stats. 1947) gives the power formerly delegated to the Governor to the State Fish and Game commission, preserving the limitation of twenty-five refuges.

We see no reason why the Governor, if shown the desirability of the action, cannot revoke the proclamations heretofore made by him. In such case the Fish and Game Commission might simultaneously or later proclaim and describe a new set of refuges not exceeding twenty-five in number.

Very truly yours,

ALAN BIBLE
Attorney General

By Homer Mooney
Deputy Attorney General

OPINION NO. 47-488 FISH AND GAME—Permits to take surplus game—Charge for.

Carson City, July 17, 1947

Mr. S.S. Wheeler, Director Nevada Fish and Game Commission, P.O. Box 678, Reno, Nevada

Dear Buck:

In your letter dated July 3, 1947, received here July 7, 1947, you inquire as to the legal charge for permits to take surplus game under section 62 of the new Fish and Game Law (chapter 101, Statutes of 1947).

This section is a very general grant of discretion and power to the State commission as advised by the committee set up by the county game management board. The State commission may conceivably be limited by the recommendation of the committee as to the area covered, the fees to be paid and the proper conduct of the hunt. It is apparent the commission could not act in this respect to the contrary to the recommendation of the local committee.

If it were proposed to limit the number of permits, or to fix a ratio of domestic to foreign permittees, or to charge nonresidents more than residents, we do not see that complaint could properly lie. The problem in view is the prevention of an accumulation of surplus game (with consequent injury to ranch, forest and farming industries) and no one can claim a vested right to participate in this remedial action.

As a matter of policy, we feel, and so declared before the 1947 session, that such matters ought to be specifically fixed by legislation and not delegated. However, as the law stands, we believe any rules based on reasonable classifications, applicable to all alike in each class, would be upheld as valid, provided they reasonably followed the recommendations of the local committee.

Very truly yours,

ALAN BIBLE

Attorney General

By Homer Mooney
Deputy Attorney General

OPINION NO. 47-489 FISH AND GAME—Frogs—Hunting of.

Carson City, July 18, 1947

S.S. Wheeler, Director Nevada Fish and Game Commission, P.O. Box 678, Reno, Nevada

Dear Buck:

Your letter dated July 9, 1947, was received here July 11, 1947.

You inquire as to the power of the commission over the hunting of frogs, lately included in the category of "game animals" (chapter 101, Statutes of 1947, sec. 1a).

There is no specific provision establishing a closed season on frogs. Section 63 provides for districts and closed season on game—and, as noted, frogs are game.

Section 8 of the law sets out the general principle that game animals shall not be hunted, trapped or fished for at such times or places or by such means or in such manner as will impair the supply thereof, nor during any closed season.

In the absence of an overriding or limiting State provision, we believe, under section 63, the county management boards might well adopt regulations on the subject, which, if violated, would be punishable as misdemeanors under the general blanket penalty provision of the law (sec. 90).

Section 2 as to methods of hunting may have some bearing, but we believe the State commission might well issue directives on the subject of frogs—the method of taking, limit, etc.—that would standardize the practice and guide the wardens.

Very truly yours,

ALAN BIBLE
Attorney General

By Homer Mooney
Deputy Attorney General

OPINION NO. 47-490 MERIT BOARD—Examinations—Preference for veterans.

Carson City, July 18, 1947

Mr. C.C. Smith, Merit System Supervisor, State Merit Board, Armanko Building, Reno, Nevada

Dear Mr. Smith:

This will acknowledge receipt of your letter dated July 9, 1947, received in this office the same date.

You refer to chapter 212, Statutes of 1945, which creates a state merit system of personnel administration of several State departments, and specifically to the provision which allows a ten-

point preference in examinations for disabled veterans who have received discharges other than dishonorable from the armed forces of the United States.

You ask if it would be a fair interpretation of the intent of the law to grant a preference to candidates who are able to show that they are drawing allowances for service-connected injuries and to disallow the ten points for those who have no means of supporting claims except by their discharge paper. You ask if this office can furnish you with some sort of a criterion which is defensible under the law.

Section 4, chapter 212, Statutes of 1945, provides that the state merit board shall hold examinations to determine the qualifications of applicants for positions classified by the agencies included within the Act. The examinations are for the purpose of establishing lists of candidates eligible for the positions in order of their ratings as determined by the examinations. All applicants must submit to the examinations. Preference for persons who have served in the armed forces is defined in the following language: "In establishing such lists of eligible candidates the board shall establish a preference for persons who have served in the armed forces of the United States and received discharges, other than dishonorable, from such service, and for their widows, on the basis of points, and shall allow such discharged veteran or the widow of such a veteran a preference of five points; provided, that if the veteran be disabled, he shall receive a preference of ten points. Such points shall be added to the passing grade achieved by the candidate upon examination, and the grade so established shall be used in determining the position of the candidate upon the list."

If the candidate is a person, or the widow of a person, who has served in the armed forces, the five points shall be added to his upgrade in determining his position upon the list. The same condition applies to a disabled veteran, but he is entitled to a preference of ten points. The condition upon which the preference is based is the fact that the person has received a discharge, other than a dishonorable discharge.

The word "disabled" as used in the section has no technical meaning and is not limited. The statute does not authorize the board to determine the extent of the disability, or to require proof of present disability.

The rule as to the interpretation of such statutes is expressed in *Tobin v. Gartiez*, 44 Nevada 179, in that a term which is not technical in its meaning should, especially when used in a remedial statute, be liberally construed in favor of those entitled to its protection.

If the discharge certificate shows that at the time the service was terminated the veteran was disabled, this is sufficient to warrant the board in allowing the ten points as provided in the section.

If the disability is not noted in the discharge papers, the question of disability becomes one of fact to be ascertained upon such visible or certified evidence as may be available.

Very truly yours,

ALAN BIBLE
Attorney General

By George P. Annand
Deputy Attorney General

OPINION NO. 47-491 FISH AND GAME—Ducks—Bag limits set by federal migratory game law may not be changed by any state agency.

Carson City, July 23, 1947

S.S. Wheeler, Director Nevada Fish and Game Commission, P.O. Box 678, Reno, Nevada

Dear Buck:

Last week Dan Evans, Jr., a member of the State Fish and Game Commission, made inquiry as to the power of the State Fish and Game Commission or the County game Management Board to make regulations respecting the bag limits for ducks.

Authority is to be found, if at all, in the new and independent State Fish and Game Law (chapter 101, Statutes of Nevada 1947, pages 349-385, inclusive) effective July 1, 1947, which repealed all per-existing State laws.

It is our opinion that no power is given to any State agency to alter the bag limits set by the present Federal migratory game law, either in the direction of greater or less stringency.

Section 65 of the new acts provides: "It shall be unlawful for any person to hunt or have in his or her possession during any one calendar day, on open season, a greater number than five sagehen or sagecock, three grouse, three pheasants, ten valley quail, five prairie chicken, five mountain quail, three partridge, five cottontail rabbits, or two mountain hare, or one day's limit of any other game bird or game animal killed during the open season; *provided, however*, that before any such action shall be effective, notice thereof shall have been published by order of the board at least once each week for two consecutive weeks in a newspaper published and of general circulation in the county or counties affected; *provided further*, that in the event of any change in the Federal migratory game law wherein the bag limit may be increased or diminished, the fish and game commission may, by proclamation through the press, increase or decrease the limits herein provided within the limitations of the federal law."

It will be observed this section relates to hunting or having in possession on any one calendar day the game mentioned. Under section 2 of the Act "hunting" includes killing.

After special enumeration respecting certain game animals and birds the limit is set as "one day's limit" of any other game birds or game animal killed during the open season. The difficulty is that nowhere in the Act is there a provision defining what is "one day's limit" for these game birds other than those specifically named. The remainder of section 65 makes provisos, but migratory birds are expressly excluded from these provisos.

In the event the Federal law is changed by increasing or diminishing the Federal limits the State commission may by proclamation do likewise by increasing or diminishing the limits "herein provided" within the limitations of the Federal law. The Federal law has not been changed (Title 16 USCA 704; Regulation 5). This allows 7 birds killed daily and 14 in possession any one day (except opening day).

Notwithstanding silence of section 65 on the subject, "one day's limit" for killing is 7 under controlling Federal law and one day's possession limit is 14 (except opening day).

Under Title 16, section 708, the States may require greater protection than the Act of Congress requires. *See* Attorney General's Opinion 117, dated September 18, 1933, construing section 9 of the 1933 Act. States may not allow less protection than the Federal Act. Under the 1933 Act the State could decrease the Federal maximum bag. Under the 1947 Act the State is given no present power to increase or diminish the Federal maximum and has not done so. It follows that the Federal maximum still controls. The law does not give the commission power to change that. The supremacy of Federal treaties is declared in section 2 of article VI, Constitution of the United States.

The limit on ducks is 7 and the possession limit on ducks is 14 in any one day (both being one day's limits) and the commission cannot change them.

Very truly yours,

ALAN BIBLE
Attorney General

By Homer Mooney
Deputy Attorney General

cc: Dan Evans, Jr., Fallon, Nevada.

OPINION NO. 47-492 FIRE PROTECTION—Equipment and assistance may be commandeered in fighting timber or brush fires.

Carson City, July 25, 1947

Hon. Wayne McLeod, State Forester Firewarden, Carson City, Nevada

Dear Mr. McLeod:

This will acknowledge receipt of your letter dated July 16, 1947, received in this office July 18, 1947. You call attention to the recent range land fire in Elko County which presented a problem relative to the procuring of mobile equipment for the transportation of personnel for fire-fighting purposes and the construction of fire lines. As you say, the law is clear regarding recruitment of personnel for fire-fighting purposes, but it is indefinite regarding mechanized equipment of any type. You request an opinion regarding commandeering of equipment.

We are of the opinion that the equipment necessary to expedite the fighting of fire in the timber or brush land may be commandeered by the State Forester Firewarden, the Assistant State Firewarden, or firewardens of the Forest Service, Grazing Service and officers designated by law to draft able-bodied male persons for assistance in extinguishing fires in timber or brush.

Chapter 149, Statutes of 1945, creates the position of State Forester Firewarden and names the Surveyor General as such warden. An Assistant State Forester Firewarden is also provided for in the Act.

Section 6 of the Act provides that any fire district or boards of county commissioners are authorized to enter into cooperative agreements with the State Forester Firewarden, acting for the State, and are further authorized to appropriate and expend funds for the payment of wages and expenses incurred in fire prevention and fire suppression and for paying for other expenses incidental to the protection of forest and other lands from fire. The State Fireward under the provisions of section 7 may place any or all portions of the fire protection work under the direction of the forest service or the grazing service.

Section 4 of the Act which defines the duties of the State firewarden contains the following language: "He shall administer all fire control laws in Nevada outside of townsite boundaries

* * *."

Section 1982, N.C.L. 1929, provides: "All sheriffs, their deputies, firewardens, other peace officers, or any national forest officer shall have authority to call upon able-bodied male persons within the State of Nevada who are between the ages of sixteen and fifty years for assistance in extinguishing fires in timber or in brush, and those who refuse to obey such summons, or who refuse to assist in fighting fire for the period of time hereinafter stated, unless they present good and sufficient reasons, shall be guilty of a misdemeanor, and shall be fined in a sum not less than fifteen (\$15) nor more than fifty (\$50) dollars, or imprisonment in a county jail of the county in which such conviction shall be had, not less than ten days nor more than thirty days, or both fine

and imprisonment; *provided*, that no male person shall be required to fight fire for a total of more than five days during any one year; that male persons drafted to fight fires shall, for the purpose of obtaining the benefits of the Nevada industrial insurance act, be considered employees of the county demanding their services, and they shall be entitled to receive, for disability incurred by reason thereof, the benefits under the act. It shall be the duty of the county to report and pay premiums to the Nevada industrial commission for persons so engaged.”

The following section authorizes the county commissioners to compensate persons drafted to fight fires.

The statute provides for compensation for services and fixes punishment for those who refuse to assist in fighting fire.

Although the statute does not specifically provide that the firewarden may commandeer equipment, when such equipment is needed, not as a mere utility but as a necessity in an emergency, it appears that it becomes a legal duty of the person in control of such equipment to permit the use of such equipage or vehicle to assist in fighting forest or brush fires.

There is no foundation for a person to claim a violation of his constitutional right, that he cannot be deprived of property without due process of law, or the taking of property without compensation. A principle that is applicable is stated in *Santell v. New Orleans and Carrollton Railroad Company*, 166 U.S. 698, on page 705, the court said: “The emergency may be such as not to admit of the delay essential to judicial inquiry and consideration, or the subject of such action and process may be of such nature, or the conditions and circumstances in which the act must be performed to effect the protection and give effect to the law may be such as to render judicial inquiry and consideration impracticable.”

The policy of the Legislature is to extinguish and prevent the spread of forest and brush fires, and authority is given the officers to command assistance.

A man who obeys the law does his full duty and where that is not done which ought to have been done, if within his power, is not obedience of the law. As stated in *Surocco v. Geary*, 3 California 69, “The right to destroy property to prevent the spread of a conflagration has been traced to the highest law of necessity and the natural rights of man, independent of society or civil government.”

This principle is expressed in 52 Am. Jur., page 434: “It is referred by moralists and jurists to the same great principle that justifies the exclusive appropriation of a plan in a shipwreck, although the life of another is sacrificed, with the throwing overboard of goods in a tempest for the safety of a vessel * * *.”

The principle rests upon the maxims: “Necessity is the law of time and place.” “Necessity invokes privilege.” “Public necessity is greater than private.” “Necessity is not restrained by law because that which is not otherwise lawful necessity makes lawful.”

It is not the intention of the Legislature in the adoption of the fire control statutes to shackle the authorities in the matter of needed assistance when the conditions surrounding a forest or brush fire are vehicles or equipage. The equipment drafted is not destroyed, it is used and the owner is compensated for its use.

Very truly yours,

ALAN BIBLE
Attorney General

By George P. Annand
Deputy Attorney General

OPINION NO. 47-493 PHARMACY—Examinations—Qualifications for—Fees.

Carson City, July 25, 1947

W.E. Pettis, President Nevada Pharmaceutical Association, 25 South Virginia Street, Reno, Nevada

Dear Mr. Pettis:

This will acknowledge receipt of your letter dated July 15, 1947, received in this office July 18, 1947, containing the following question relative to the interpretation of sections 3 and 4, chapter 198, Statutes of 1947, being an amendment to the Act to regulate the practice of pharmacy:

1. If an applicant shall write the secretary of the board of pharmacy, prior to Jan. 1, 1948, stating that he intends to take the pharmacy examination, does that person have 7 years from Jan. 1, 1947, to present himself before the board for examination, without complying with the graduate in pharmacy Act as required by the amendment of 1947?
2. If a person filed for examination with the board in November 1947 and paid the required fee of \$10, and did not take the examination, or did take it and failed to pass (and not being a graduate in pharmacy) would that person be entitled to take each and every examination until January 1, 1954, without filing further intentions?
3. If a person files intentions before December 31, 1947, with the secretary of the board of pharmacy stating that he desires to take the examination after January 1, 1948, if he takes the examination after January 1, 1948, and fails, is he entitled to take each and every examination until January 1, 1954, or until he does pass?
4. What would constitute filing intention to take the examination with the board of pharmacy, would a post card, letter, or name and address be sufficient, should it be accompanied by the fee of \$10, or would a complete application be necessary?

The answer to question one is that a person who before January 1, 1948, files his intention to take advantage of the exemption from graduate in pharmacy requirements for entry to examination, as provided in section 3 of the Act as amended, may within seven years from January 1, 1947, make application for examination on the qualifications defined in sections 5041 and 5042 N.C.L. 1929.

The answer to your second question is the person who filed for examination in November 1947 and paid the fee accompanying such application and did not take the examination, or did take it and failed to pass, if such person desires to take his examination after January 1, 1948, he must before that date file with the board his intention to take advantage of the exemption from the qualification of a graduate in pharmacy. If he took the examination on his first application and did not pass, he could make application for a second examination after six months and pay the required fee. If the second examination was to be taken after January 1, 1947, he must before that date file his intention to take advantage of the exemption provided in the 1947 amendment.

Answering your third question, a person who files his intention to take advantage of the graduate in pharmacy qualification before December 31, 1947, has filed such intention before January 1, 1948, and may make application for examination submitting the qualifications required by the law before amendment. His application for examination must be accompanied by the fee of \$10. If he fails he may make application, after six months, for a second examination upon payment of a fee of \$5. Section 5047 N.C.L. 1929 providing for examinations and the fee to be paid for each has not been amended.

The answer to your fourth question is that the notice of intention should state that the person intends to take advantage of the exemption from the graduate in pharmacy requirements for examination as provided in section 4, chapter 198, Statutes of 1947. There is no fee required for the filing of such intention, and such intention is not an application for examination for a certificate. When application for examination is made section 5047 N.C.L. 1929, which was not amended, is applicable.

Section 3, chapter 198, Statutes of 1947, amends section 5041 N.C.L. 1929 to read as follows:

“Any person in order to be a registered pharmacist must be a licentiate in pharmacy.”

Section 4 amends section 5042 N.C.L. 1929 to read as follows: “A licentiate in pharmacy shall be a registered pharmacist and is defined to be: 1. A person registered in this State as such upon the passage of this Act. 2. Any citizen of the United States of good moral character, who has graduated from a school or college of pharmacy recognized by the national association boards of pharmacy or approved by the State board of pharmacy, and who has passed a satisfactory examination before the board; * * *.” The language of the section down to this point is clear.

The exemption from the graduate in pharmacy for entry to examination is contained in the following proviso: “*provided*, that any person who within seven years after January 1, 1947, file satisfactory evidence of qualifications required under the laws theretofore existing for examination as registered pharmacists, and who shall file before January 1, 1948, intention to take advantage of this provision, shall be exempt from the graduate in pharmacy requirements for entry to examination for registered pharmacists as required by this Act; * * *.” The proviso refers to qualifications for entry to examination and not to examinations.

Qualifications for entry to examination under the law before amendment is found in section 5041 N.C.L. 1929, quoting that part deemed relevant reads: “Any person in order to be a registered pharmacist must be a licentiate in pharmacy, or a practicing pharmacist.”

Section 5042 N.C.L. 1929 which defines the qualifications to license, provides licentiates in pharmacy must be such persons as possess the fundamentals of a high school education and who have had at least five consecutive years actual experience in drug stores where the prescriptions of medical practitioners have been compounded, and who have passed a satisfactory examination before the State board of pharmacy.

Under the provisions of the amendment a person who has the qualifications under the old law may for a period of seven years after January 1, 1947, submit satisfactory evidence of such qualifications to the board for entry to examination, but in order to take advantage of this before January 1, 1948, file with the board his notice of intention to take advantage of the exemption from the graduate in pharmacy requirements.

It appears, therefore, if a person who is not a graduate in pharmacy, but desires to take the examination in the future on the qualifications of a high school education and five consecutive years experience in a drug store, must file with the board a notice of intention to rely on such qualifications when he appears for examination, and such intention must be filed before January 1, 1948. The notice of intention should state that the person making the same intends to take advantage of the exemption from the graduate in pharmacy requirements for entry to examination for registered pharmacists. When such intention is filed in time it becomes matter of record with the board and any time within seven years from January 1, 1947, such person may apply for examination upon an application showing the qualifications required under the statute before the amendment.

The statute providing the fee for examination has not been changed. Section 5047 N.C.L. 1929 provides for a fee of \$10 before a certificate be granted. If the applicant fails to pass the examination he is eligible to reexamination after six months upon payment of a fee of \$5.

Very truly yours,

ALAN BIBLE
Attorney General

By George P. Annand
Deputy Attorney General

OPINION NO. 47-494 FISH AND GAME—Volunteer game wardens not covered by industrial insurance—Paid employees may not collect money from commission in addition to that provided by industrial insurance act.

Carson City, July 28, 1947

Mr. S.S. Wheeler, Director, State Fish and Game Commission, Box 678, Reno, Nevada

Dear Buck:

Your letter of July 17 was received here July 18, 1947.

You inquire:

(1) Whether volunteer game wardens or their dependents have any action against the commission for disability or death arising out of their activities in enforcing the game laws.

The answer is “no.”

The State and its agencies are immune from suit unless the right is specifically conferred by law. There is no pertinent law. Relief might be had in a deserving case through a special relief bill enacted by the Legislature after the event.

Although beyond the scope of your inquiry, unpaid and casual workers are not covered by the Workmen’s Compensation Law. They do not fit the definition of employee as they are not “hired.” Secs. 11 and 12, Industrial Insurance Act, Statutes 1947, page 569. They differ from volunteer firemen. Sec. 17.

(2) You ask whether your paid employees can collect money from your commission, for injuries, in addition to that awarded under the provisions of the Industrial Insurance Act.

The answer is “no.”

Section 27 of the Act makes the Act exclusive, compulsory and obligatory as to rights and compensations on both employers and employee coming under the Act. By section 28 when the State or its agencies or political subdivisions i the employer acceptance of the Act is exclusive, compulsory, and obligatory.

Care should be taken to report currently to the commission the paid workers and workers under your control and to make sure proper premiums are paid for compensation and accident benefits.

Very truly yours,

ALAN BIBLE
Attorney General

By Homer Mooney
Deputy Attorney General

OPINION NO. 47-495 TAXATION—1 1/2¢ Gasoline tax—An additional tax.

Carson City, July 29, 1947

Hon. James W. Johnson, Jr., District Attorney, Churchill County, Fallon, Nevada

Dear Jim:

In your letter of July 25, received July 28, 1947, you inquire concerning sec. 2.1 of the Motor Vehicle Fuel Tax Act of 1935, added by chap. 276, Statutes 1947, p. 850. This new section will follow 1929 N.C.L. 1941 Supp., sec. 6570.02

The section in question makes no additional provisions as to the collection of and accounting for the tax. It merely provides for an additional tax.

Under the Act the dealer does not pass on claims for exemptions. He collects the full tax from all customers and remits the same less his dealer's expense of 2 percent. This is true of State and county purchases. Applications for refunds are made to the State Tax Commission. If the sums received from the dealers in one county under the Act are apportioned back to the county from which collected and a subsequent refund is necessary, and adjustment is made on the books.

The Tax Commission advises us that heretofore since 1935 the State and counties have paid the dealer for gasoline plus the full tax and have made no claim for any refund.

Very truly yours,

ALAN BIBLE
Attorney General

By Homer Mooney
Deputy Attorney General

OPINION NO. 47-496 INSURANCE—Commercial Life Insurance Company—Plan inadmissible under Nevada insurance law—Company has not qualified as old line legal reserve company.

Carson City, July 31, 1947

Hon. J.P. Donovan, Insurance Commissioner, Carson City, Nevada

Attention: Mr. G.S. Osburn, Insurance Deputy

Dear Mr. Donovan:

We have your letter of July 3, 1947, signed by G.S. Osburn, Deputy, respecting the plan outlined by Commercial Benefit Insurance Company for the sale of policies originated by Commercial Life Insurance Company which the latter company is not qualified to sell in Nevada at present.

The foregoing is our way of describing the situation, in a few words.

The situation is more fully outlined by the facts which you have supplied, but it remains our judgment that the plan is inadmissible under the insurance law of Nevada if you find as a fact, which we assume you do, that the plan is directed to the object here summarized and that it is at variance with "generally accepted standard insurance practice" (sec. 80, Insurance Law, 1929 N.C.L. 1941 Supp., sec. 3656.80).

From your letter and the enclosures sent with it we note the following:

1. Commercial Benefit Insurance Company is selling and offering a block of 10,000 "Expansion Commercial Dollar-Maker Policies" and when that block is sold will go out of the life insurance business. Annexed to the policy is a purchaser's acceptance of a plan.
2. The purchasers look to the Commercial Benefit Insurance Company to continue the protection and privileges afforded by the Commercial Life policies theretofore possessed by the purchaser. The purchaser also consents that the funds of Commercial Life theretofore held by that company to guarantee its obligations, may be transferred to Commercial Benefit Company. The purchaser releases Commercial Life from its liability.

These alterations, releases and waivers are not to become effective until Commercial Life Insurance Company "qualifies as an old line legal reserve company." It has not so qualified in Nevada as yet.

In other words, anticipating the time Commercial Life Insurance policies can be sold in Nevada, the plan is to sell the same thing as the policy of another company under another name on a sales talk that is "something just as good" and that the financial back-log that will be transferred to the company finances in Nevada will save the original purchaser harmless from the loss that might arise from "changing horses while crossing a stream." As we view the plan it seeks to do indirectly and in the present that which cannot be done now in any event and which if contemplated to be done only after Commercial Life is qualified as an old line reserve company *in Nevada* is too uncertain a contingency to be countenanced by your department.

The form enclosed is the commercial Dollar-Maker Policy of Commercial Life Insurance Company. You cannot well give this your approval in any event when that company is not presently qualified to do business here. Neither can you approve the proposed transfer of accumulated funds nor be a party to the surrender by the purchaser of any pre-existing rights in exchange for promised protection.

Pending the qualification of the Commercial Life in Nevada, policy holders claiming against Commercial Life could be met by a declaration of nonliability by Commercial Benefit in Nevada and, as you say, find it difficult to enjoy recourse to Commercial Life in an action begun in Nevada. Doubtless some remedy might be available (for when there is a right there is a remedy) but it would be predicated on a theory of trust and would be vexatious to the purchaser who exchanged a direct for a contingent liability.

Very truly yours,

ALAN BIBLE
Attorney General

By Homer Mooney
Deputy Attorney General

OPINION NO. 47-497 STATE FAIR—Churchill County—Board required to expend appropriation made in chapter 155, Statutes of 1947, according to the terms thereof.

Carson City, August 1, 1947

Hon. Jerry Donovan, State Controller, Carson City, Nevada

Dear Mr. Donovan:

Answering your inquiry of July 25, 1947, received here the same day and signed by Mr. Riddell, deputy, our opinion is as follows:

Chapter 155, Statutes of 1947, page 512, further amends the Act of 1885 respecting the State Agricultural Society in section 5 thereof (section 319 N.C.L. 1929) by providing for and appropriating \$2,500 for the calendar year 1947 and \$2,500 for the calendar year 1948 for an annual fair at Fallon. By proviso the people of Churchill County must contribute \$3,000 for the two years. If the said sum of \$3,000 is not contributed, no part of the \$5,000 appropriated will be expended. If no fair is held in 1947 or 1948, the \$2,500 appropriated for that year shall revert to the State general fund. This chapter went into effect March 27, 1947. A calendar year is from January 1 to December 31, inclusive. A fiscal year is from July 1 of the first year to June 30 of the next year, inclusive. The fiscal year 1949 ends June 30, 1949.

This amendment follows the scheme of the amendment of 1941, page 162, but differs from that of 1945, page 252.

We find in the latest amendment (chapter 155, Stats. 1947) an appropriation of \$2,500 for the calendar year 1947 and a like appropriation for the calendar year 1948 carrying to December 31, 1948. but, the spending of this money is conditioned on the subscription of \$3,000 by the people of Churchill County.

The general appropriation Act for the fiscal years 1948-1949, chap. 278, Statutes 1947, sec. 45, sets aside \$5,000 for the State fair at Fallon for the fiscal year ending June 30, 1948, and a like sum for the fiscal year ending June 30, 1949. The general fiscal year appropriation lasts six months longer than the calendar year appropriation for the calendar year 1948.

If the State board desires to spend the \$2,500 per year provided in chapter 155, Statutes 1947, it must first find the \$3,000 popular contribution has been made. In addition it may spend the \$5,000 appropriated for each year by the general appropriation Act (chapter 278, Stats. 1947, sec. 5).

We do not consider that the absence of the popular subscription of \$3,000 will prevent the expenditure of the \$5,000 set aside in the general appropriation Act for the fiscal years 1948-1949 (ending June 30, 1949), but it would prevent the expenditure of the \$2,500 per year under chapter 155, Statutes 1947.

Very truly yours,

ALAN BIBLE
Attorney General

By Homer Mooney
Deputy Attorney General

OPINION NO. 47-498 FISH AND GAME—State game wardens' liability as individuals or public officers construed.

Carson City, August 1, 1947

Mr. S.S. Wheeler, Director Fish and Game Commission, Box 678, Reno, Nevada

Dear Buck:

Answering your letter of July 29, received July 31, 1947.

State game wardens as individuals are not immune from damage for their acts or omissions beyond the scope of their duties. But if their acts are reasonably within the scope of their duties

or are done by “color of office,” while they may be sued individually they may set up such facts and if established they are an adequate defense. If they are sued as public officers rather than as individuals, they are as immune from suit as the State, county or other political subdivision. An indemnity bond only protects the commission from any “legal liability incurred.” If no legal liability is incurred, no protection is afforded and no protection is needed.

Official bonds generally seem to protect the agencies to whom given from loss by embezzlement and the like—not from public liability.

The State Bonding Act does not protect the officers bonded but his employer or principal.

If the wardens handle money or property, the State is protected from loss. If not, there is no need for a bond.

Very truly yours,

ALAN BIBLE
Attorney General

By Homer Mooney
Deputy Attorney General

OPINION NO. 47-499 TAXATION—Veterans exemption.

Carson City, August 1, 1947

Hon. Richard L. Waters, Jr., District Attorney Ormsby County, Carson City, Nevada

Dear Dick:

In your letter of July 30, 1947, received July 31, 1947, you ask as to the exemption from taxation of the property of veterans under section 5 of the revenue law as amended in 1947 (chapter 200, Stats. 1947). The section was section 6418 N.C.L. 1929 as amended by chapter 32, Statutes of 1945.

Your questions and our answers are as follows:

1. In making his assessment is the County Assessor bound by the name or names described on a deed in the Recorder’s office as to the person or persons who should be assessed for that property, or should he recognize extrinsic evidence of ownership such as the taxpayer’s statement?

Answer: No.

2. an a veteran claim tax exemption on property assessed to his wife if he accompanies his claim of exemption with a statement that he has a community interest in such property?

Answer: Yes.

3. Is the difficulty as to the \$4,000 limitation on veteran’s exemption overcome by provisions of the 1947 amendment to the exemption statute. In other words, is the statute clear that a veteran can claim a \$1,000 exemption on a maximum of 44,000 of separate property, or \$8,000 of community property.

Answer: Yes.

The provision in question is subdivision seventh of section 5. In order to clear up doubts respecting the veterans’ exemption, the Legislature specifically defined the property of the veteran on which the exemption applied, and it also defined the property of the veteran which if of a value of \$4,000 or more would disqualify him from receiving any exemption whatever.

In computing the value of the property so defined the Legislature referred to the veteran’s own property—including all separate property but only his (2) share in any community property.

Taxes are in rem, that is, they constitute a lien on the property itself. Assessors rarely attempt to solve questions of separate property or community property as between husband and wife. Property acquired after marriage is presumed to be a community property. (*In re Wilson's Estate*, 56 Nevada 353 at 364 and 365, par. 4, 5). The record title whether in the name of husband or wife is not determinative. (Same, p. 365 par. 7.)

When the affidavit is filed by the veteran stating that all his property including separate and his share of community property is not worth \$4,000, he is automatically entitled to an exemption and the exemption, spread as far as it will go on such property, will be automatically required in amount not exceeding \$1,000. If the veteran does not own property (including separate property and his share in any given community property) worth so much as \$1,000, then he will be given an exemption on whatever the value is.

The mechanics of the matter ought to be simple. If the total on the roll is \$8,000 or more, there is no exemption. If it is \$8,000 or less, the Assessor subtracts \$1,000 from that claimed by the veteran only and levies the tax on the remainder. This, of course, applies when the veteran has a spouse.

When the presumption above mentioned is added to the claimant's affidavit, it does not seem to us that any assessor would be justified in disregarding it.

Very truly yours,

ALAN BIBLE
Attorney General

By Homer Mooney
Deputy Attorney General

OPINION NO. 47-500 COUNTY COMMISSIONERS—Mineral County—Cannot negotiate loan from funds of Mineral County power system for county indigent fund.

Carson City, August 4, 1947

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

Dear Mr. Evansen:

Your letter of July 29 was received here July 31, 1947.

You ask us if we agree with you respecting the proposed obtaining of a loan of funds of Mineral County Power System by Mineral County.

You state your own opinion in the premises as follows:

The Mineral County Indigent Fund is in need of an emergency loan which has been approved by the Nevada Tax Commission. The Mineral County Power System has approximately \$71,000.00 in cash to its credit. It is my opinion that the Board of Mineral County Commissioners, acting as the Board of Managers of the said Mineral County Power System, could authorize the negotiation of the loan from the funds of the Mineral County Power System.

We are unable to agree with the foregoing opinion. Assuming that when an emergency loan is authorized the money may be borrowed from any willing lender, we are unable to find authority for the lending of any funds of Mineral Power System for the lending of any funds of Mineral

Power System for the purpose. Section 19 of the Mineral County Power System Act, as amended in 1945 (Stats. 1945, p. 332), provides that the revenues of the system derived from operation shall be kept by the County Treasurer in the "Light and Power Fund" in the county treasury and used "exclusively" for the maintenance and operation of the system.

Eighty percent (80 percent) of the fund on hand in 1945 already accumulated, and ten percent (10 percent) of the net operating revenues monthly thereafter shall be ear-marked "exclusively for repairs, replacement and depreciation of the system until the total shall be \$75,000 and the sum shall be maintained at that figure.

A surplus of over that figure to an amount of not exceeding \$15,000 shall be used as a revolving fund for "maintenance, operation, and expansion." Whenever this surplus reaches \$15,000 steps shall be taken to reduce rates charged for service to the public.

It will be observed that \$75,000 plus \$15,000 or \$90,000 must be kept and maintained intact in the county treasury for the purposes set forth in the section. If depleted by proper disbursements it must be currently replenished. There is no authority to invest the same in the obligations of the county, State or other borrowing agency.

We find no statute properly applicable to the existing situation.

Chapter 121, p. 442, Statutes of 1947, authorizes the transfer of funds of a county from any balance that is dormant, to the general fund, but this is on condition that the so-called "dormant" fund "is no longer required for the purpose for which it was established." Furthermore, approval must be had from the State Board of Finance.

Even assuming that the "Power and Light" fund in the county treasury to be a "county fund" (which is improbably because it is a trust fund) you could not qualify under this Act because it could not be shown that the fund is no longer required for the purpose for which it was established. In fact it is frozen to serve certain needs only.

Furthermore the Act pertains to a transfer of funds, not their investment.

We observe chapter 176, Statutes of 1947, found that there was a surplus of at least \$7,691.98 in the General Fund of Mineral County and authority was granted to use it to retire two outstanding emergency loans and dispense with the need to repay them by taxation. If that money had not been paid out, it could now be used to replenish the indigent fund and the emergency loans could be retired by taxation in the normal way.

We do not understand why the indigent fund could be deficient in the face of a surplus in the general fund. Presumably it was included in the budget.

Section 5 of the Act concerning fiscal management also authorizes transfers in certain cases from the general funds of counties to "meet the emergency" ordinarily requiring the borrowing of money and the levy of taxes to repay the same. However, it is not indicated that a trust fund such as the "Power and Light" fund meets the classifications as a part of the "General Fund" (1929 N.C.L. 1941 Supp., secs. 3014-3016.)

Very truly yours,

ALAN BIBLE
Attorney General

By Homer Mooney
Deputy Attorney General

Carson City, August 8, 1947

Hon. Jerry Donovan, State Controller, Carson City, Nevada

Attention: Mr. D.H. Riddell, Deputy

Dear Mr. Donovan:

This will acknowledge receipt of your recent letter concerning the Nevada law relating to the payment of judges' salaries.

The law which you refer to, insofar as it deals with district Judges' salaries, is found at section 8433, Nevada Compiled Laws 1929, and reads as follows:

Each district judge shall, before receiving any monthly salary, file with the clerk of each county within his district and with the State Controller, an affidavit, in which shall be set forth the number of cases, motions or other matters submitted to him as such district judge in and for each county embraced within his district which remain undecided and that no such case, motion or matter remains undecided which was been submitted for a period of more than ninety days.

The Nevada law, insofar as it deals with Justices of the Supreme Court, is found at section 8430, Nevada Compiled Laws 1929, and reads as follows:

Each justice of the supreme court shall, before receiving any monthly salary, file with the clerk of the supreme court and with the state controller an affidavit in which shall be stated the number of cases submitted to the supreme court and which remain undetermined; the number of cases assigned to such justice to prepare an opinion for the court, and in which no such opinion has been prepared; that no case has been assigned to him for preparation of an opinion for a period of more than ninety days in which he has not prepared an opinion for submission to his associate members of the court.

In our opinion these sections are very clear and unambiguous. The language used by the Legislature is specific and it seems to us requires compliance by the Justices of the Supreme Court and the District Judges in filing the affidavit set forth in the respective sections before receiving any monthly salary.

The section dealing with the District Judges has been passed upon by our Supreme Court and, although the Supreme Court did not decide its case on the particular question asked by you, the language used by the Supreme Court is very important and in our opinion should be your guide as to the purpose and meaning of the section in question.

The Supreme Court of this State in the case of *Ratliff v. Sadlier et al.*, 53 Nevada, page 292, in construing section 8433 set forth above, held as follows:

The purpose of this statute is to prevent the rendering of decisions from being deferred longer than ninety days without the consent of counsel. It is sought to effect this purpose by withholding, after the time and until a decision is rendered, the salary of the judge to whom a case has been submitted. It is doubtful if the statute serves its purpose, as it is rarely that counsel does not readily consent to a resubmission. It is clear that the statue only affects the right of a judge to draw his salary. Counsel for defendant admits that this may be the only effect. We feel quite certain of it. * * *

It is noted that the Supreme Court said in unmistakable language that it was clear that the statute only affects the right of a judge to draw his salary.

In addition, and as noted by the Supreme Court, the statute can cause no hardship because of the fact that the judges may and frequently do ask counsel to resubmit cases if it is impossible to complete them within the statutory time set forth in the Nevada statute.

Very truly yours,

ALAN BIBLE
Attorney General

OPINION NO. 47-502 FISH AND GAME—Prosecution of violations initiated before justice of peace nearest to the place of offense—Bail fixed when warrant issued.

Carson City, August 9, 1947

Mr. S.S. Wheeler, Director, Fish and Game Commission, Box 678, Reno, Nevada

Dear Buck:

Your letter of August 6 was received in this office on August 7, 1947.

You inquire for the instruction of game wardens whether they should take a game law violation case before a justice of the peace in the county of the offense, and, if so, in the court of the nearest justice of the peace.

Because your question might be taken to involve one of (1) venue or one of (2) procedure on arrest, we answer it in both aspects. There are no applicable special provisions in the Fish and Game Law of 1947 (ch. 101, O. 349, Stats. 1947).

Jurisdiction over public offenses is in the county wherein the offense was committed (sec. 10706) or in either county where partly in two counties (secs. 10709-10710).

Prosecution is initiated by complaint before a magistrate alleging a public offense “triable within the county” (sec. 10728).

The warrant of arrest generally specifies that bail is allowable and directs the person serving the warrant to take the prisoner before any magistrate in the county of arrest or “any adjoining county” that he may “give” bail. The proper amount of bail permissible is also endorsed on the warrant (sec. 10732). “If the defendant requires” the officer must take him before “the most convenient magistrate in that or any adjoining county” (sec. 10738). When the defendant is admitted to bail he is released and the bail bond is sent to the magistrate who issued the warrant, reciting that fact (sec. 10741).

When an arrest is made without a warrant the prisoner must be brought before “the nearest and most accessible magistrate in the county in which the arrest is made” (sec. 10764).

Answering your questions:

1. The prosecution should be initiated before the justice of the peace nearest to the place of the offense in the county. This is not obligatory but it facilitates the fixing and taking of bail. However, a prosecution may be initiated anywhere in the county of the offense.

2. Bail is fixed when the warrant is issued. Bail is given before the magistrate who issued the warrant or before any magistrate in the same county; but (on demand of the prisoner) shall be given before “the most convenient magistrate.” When arrest is made without warrant, the prisoner (whether he demands it or not) must be brought before the “nearest and most accessible magistrate in the county” of arrest.

A game warden should read the warrant issued by the magistrate and observe its directions carefully.

We trust this will serve your needs.

Very truly yours,

ALAN BIBLE
Attorney General

By Homer Mooney
Deputy Attorney General

OPINION NO. 47-503 FISH AND GAME—Deer—Special licenses to hunt surplus limited to residents only.

Carson City, August 15, 1947

Mr. S.S. Wheeler, Director, Fish and Game Commission, Box 678, Reno, Nevada

Dear Buck:

Your letter of July 29 was received in this office on August 6, 1947.

You inquire whether it is permitted under section 62 of the Fish and Game Law of 1947 (chap. 101, p. 349 at 369, Stats. 1947) to limit the issuance of special licenses to participate in hunts for surplus deer, to residents only.

The answer is in the affirmative.

It will be observed that section 86 respecting the issuance of duplicate license tags for the normal hunting of deer, expressly contemplates their issuance to residents, and nonresidents. These are treated as additional or supplemental licenses.

Section 62 makes no such specific reference.

Section 50 of the Act relating to the issue of basic hunting licenses expressly commands the issuance of license to resident and nonresident citizens of the United States, and to aliens, on the payment of the fees enumerated in each class of cases.

The special licenses contemplated by section 62 are in addition to those required in proper cases by section 50 and section 86. If the added privilege contemplated by that section were to be restricted in the manner provided in sections 50 and 86, appropriate words might be expected in said section 62. But the law does not promise every normally licensed hunter an opportunity to procure a special license to participate in hunts for surplus deer. No resident or nonresident nor alien may be said to have a vested right to such a special license. Even in the case of normally licensed residents, hunters (who may be entitled of right to share the natural wildlife resources of the State wherein they reside) are not promised a special license for such surplus deer hunts.

These matters, out of necessity, are subject to special regulation. Each county knows its problem—the number of surplus deer to be eliminated; the probable number of hunters at a normal kill required over a given time to achieve the objective.

The county management board appoints a committee. The committee makes “appropriate recommendations” to the State Commission. The State Commission “determines” the area; the kill for each licensee; the special license fee to be paid; the season and such “other rules and regulations as may be necessary to properly conduct the hunt.”

The decisions definitely establish the right of a State by reasonable classification to exclude nonresidents from hunting privileges, either absolutely or by demanding a higher license fee than

from residents. 22 Am. Jur. "Fish and Fisheries," sec. 35, p. 693, note 19; sec. 36 p. 693, note 1. 39 A.L.R., notes 346-350; 61 A.L.R., notes 337-338. See discussion in *State v. Gallop* (N. Car.) 35 SE 180 at 182.

Very truly yours,

ALAN BIBLE
Attorney General

By Homer Mooney
Deputy Attorney General

OPINION NO. 47-504 NEVADA NATIONAL GUARD—Industrial insurance.

Carson City, August 19, 1947

Colonel James A. May, Assistant Adjutant General, Carson City, Nevada

Dear Colonel May:

This will acknowledge receipt of your letter dated August 5, received in this office August 6, 1947.

You request an opinion on whether or not it would be possible to blanket in the members of the Nevada National Guard, under the provisions of the General Appropriation Act, chapter 278, Statutes of 1947, and particularly under section 56 for the support of miscellaneous expenses not otherwise classified which includes Industrial Insurance \$15,000 for the fiscal years 1948-1949, to cover the members under the Industrial Insurance Act. You call attention to section 88 of the Act relating to the National Guard, the same being section 7202 N.C.L. 1931-1941 Supp., which provides that the State shall pay premiums to the Nevada Industrial commission for members of the National Guard and that such officers or enlisted men shall be deemed to be an employee of the State of Nevada.

You state that there will be approximately seven hundred men, two hundred flying personnel and five hundred ground force personnel, and that the premiums for all ground force personnel, and that the premiums for all ground forces will be \$2 per year per man for all ground troops and \$3.20 per man per month for all troops engaged in flying.

We are of the opinion that such premiums can only be paid out of the appropriation for the support of the National Guard, section 13, chapter 278, Statutes of 1947, and cannot be paid out of the appropriation for miscellaneous State expenses.

Section 7202 N.C.L. 1931-1941 Supp. (sec. 88 of the National Guard Act) quoting that part deemed relevant, provides:

* * * That there shall be paid to the Nevada Industrial commission quarterly, from the appropriation for the support of the national guard, such sum for premium as may be fixed and agreed upon by the commander-in-chief and the Nevada industrial commission, based upon the number of officers and enlisted men in regular attendance during the said month as shown by the reports filed with the adjutant general, who shall certify the same to said commission.

In all such cases such officer or enlisted man shall be held and deemed to be an employee of the State of Nevada * * *.

The section specifically provides that the premiums shall be paid from the appropriation for the support of the National Guard.

Section 13, chap. 278, Statutes of 1947, makes the appropriation for the Adjutant General and Nevada National Guard.

Section 56 of the same chapter provides an appropriation for the support of miscellaneous expenses, not otherwise classified.

The allotment or classification for the payment of the premiums for members of the National Guard is specifically designated as payable out of the appropriation for the support of the National Guard.

Section 81 of the Military Act, sec. 7196, N.C.L. 1929, provides:

The controller of the state must draw his warrant for any amount approved and allowed as provided in this title, and the treasurer of the state must pay the same out of the appropriation for military purposes, if not otherwise provided.

Section 7351, N.C.L. 1929, relating to the duties of the State controller, provides in part as follows:

He shall draw all warrants upon the treasury for money, and each warrant shall express, in the body thereof, the particular fund out of which the same is to be paid, the appropriation under which the same is drawn, and the nature of the service to be paid, and no warrant shall be drawn on the treasury except there be an unexhausted specific appropriation, by law, to meet he same * * *.

Very truly yours,

ALAN BIBLE
Attorney General

By George P. Annand
Deputy Attorney General

OPINION NO. 47-505 NEVADA HOSPITAL FOR MENTAL DISEASES—Liability for cost of subsistence and care of patients.

Carson City, August 20, 1947

Sidney J. Tillim, M.D., Superintendent, Nevada Hospital for Mental Diseases, P.O. Box 2460, Reno, Nevada

Dear Dr. Tillim:

This will acknowledge receipt of your letter dated August 4, received in this office August 7, 1947, requesting an opinion on the applicability of chapter 257, Statutes of Nevada 1947, and the following specific inquiry:

Please advise us whether the portion of the statute concerning liability for the cost of subsistence and care at the Nevada State Hospital applies to all types of mentally ill persons admitted tot his institution irrespective of the form of admission from the date of enactment of the law, March 31, 1947. Is it proper for the Hospital to enter into negotiations with relatives or guardians of patients and receive money directly for the cost of subsistence and care, or should the matter of

payment in all cases be dealt with through the County commissioners of the counties from which the patient is a resident at the time of admission to the Hospital irrespective of financial standing?

The applicability of chapter 257, Statutes of 1947, is defined in our analysis of the two Acts, one concerning the insane of the State and the Act concerning the mentally ill of the State under the above-mentioned chapter. The answers to your specific questions are as follows:

1. If a person is committed to the hospital as insane under the provisions of the Act concerning the insane, section 3511, N.C.L. 1931-1941 Supp., the liability for the cost of subsistence and care at the hospital is defined in that and other sections of the Act.

If a person is admitted to the hospital on an order for detention under the provisions of chapter 257, Statutes of 1947, the mentally ill Act, the liability for cost of subsistence and care is defined in the provisions of the Act.

2. There is nothing in either Act to indicate an intention that the matter of payment for pay patients should be dealt with through the county commissioners. Each Act provides the reasonable cost of maintenance shall be paid out of the estate of the patient, or by kindred legally responsible for such payment. Care and maintenance of patient is measured by the service which has been performed as well as the money expended by the State, and the State should be reimbursed by those able to pay by payment directly to the hospital authorities for the benefit of the State.

Chapter 231, Statutes of 1913, was a new Act concerning the insane of the State. Section 7 of the Act provided the procedure before a district judge for the commitment of a person who, "by reason of insanity, is unsafe to be at large, because of his homicidal, suicidal, or incendiary disposition * * *."

Section 7 was amended by chapter 3, Statutes of 1923, changing the requirements as to the application to read: "* * * setting forth that any person is insane, and so far disordered in his or her mind as to endanger health, person, or property * * *," was reenacted.

Chapter 277, Statutes of 1947, approved April 1, 1947, amended the title of the Act to read: "An Act concerning the insane of the state, creating a board of commissioners for the Nevada hospital for mental disease, and providing for the care of the insane."

The Act of 1913 and its amendments relate specifically to the insane. When a person is adjudged insane and so far disordered in mind as to endanger person or property and is committed to the Nevada Hospital for Mental Diseases, the provisions of the sections of the Act concerning the insane shall apply.

It is apparent from the action of the Legislature in 1947 that the Legislature viewed the fact that insanity differs in kind and character as well as degree, and that provision should be made to care for persons who were mentally ill, without the necessity of committing such persons under the Act providing for the insane.

Chapter 257, Statutes of 1947, approved March 31, 1947, is an Act concerning the mentally ill of the State; defining mentally ill persons and providing for their care and treatment at the Nevada Hospital for Mental Diseases.

Section 1 of the Act provides: "Mentally ill persons" means persons who are of such mental condition that without supervision, treatment, care or restraint they would be or might be dangerous to themselves or to the person or property of others.

The procedure to bring such a matter before the court is on petition setting forth that the person is mentally ill and in need of care and treatment and that provision be made for the welfare of such person.

The procedure under the Act concerning the insane, and so far disordered in mind as to endanger person or property, while the later Act only requires an allegation that the person is in need of supervision, care, or treatment.

Section 14 of the later Act provides that the Act shall be liberally construed so that persons who are mentally disordered and bordering on mental illness, but not dangerously mentally ill, may, without being committed as an insane person, be by order of the court placed in the care and custody of the Nevada Hospital for Mental Diseases to receive humane care and be restored to normal mental condition as rapidly as possible.

This Act provides for the commitment of the person to the hospital for psychopathic treatment, and the order for detention is not a determination of the issue as to insanity.

The mentally ill Act of 1947 is not in conflict with the Act concerning the insane, and is not an amendment of that Act. It is in the nature of a supplemental Act, as it does not purport to amend, but makes an addition to the prior Act without impairing any existing provision thereof.

A supplementary Act as expressed in Sutherland Statutory Construction, 3d Edition, vol. 1, sec. 1924: "It is that which supplies a deficiency, adds to, or completes, or extends that which is already in existence without changing or modifying the original. It need not state that it is supplementary."

The rule as declared in *State v. LaGrave*, [23 Nev. 373](#), is: "The rule that courts are bound to uphold the prior law if it and a subsequent one may subsist together, or if it be possible to reconcile the two together, is well settled. Unless the latter statute is manifestly inconsistent with and repugnant to the former, both remain in force."

The mentally ill Act does not purport to revise the whole subject matter of insanity, it merely provides a method whereby a person who is not mentally ill to a dangerous degree, may receive treatment without being committed as an insane person. Under the Act concerning the insane, there is only one degree of mental illness and that is the person is adjudged to be insane.

Very truly yours,

ALAN BIBLE
Attorney General

By George P. Annand
Deputy Attorney General

OPINION NO. 47-506 FOOD AND DRUGS—Weight of bread shipped into state from California.

Carson City, August 20, 1947

Mr. Wayne B. Adams, State Sealer, Department of Weights and Measures, P.O. Box 719, Reno, Nevada

Dear Mr. Adams:

This will acknowledge receipt of your letter dated August 1, received in this office August 2, 1947.

You call attention to the new law of California which regulates the weight of bread, providing for a standard loaf which must not weigh less than 15 ounces nor more than 17 ounces and a standard large loaf which shall weight not less than 222 ounces and not more than 252 ounces. The purpose of the law is to provide a reasonable tolerance from the one pound and one and one-half pound loaves which were the so-called standard sizes in the industry under the law before amendment.

You also state that approximately seventy-five percent of the bread sold in Nevada is manufactured and shipped into the State from California, and it is doubtful if local bakers would be able to supply the local demand.

You request an opinion as to the authority of the State Sealer, under the provisions of sec. 7, chap. 160, Statutes of 1945 to permit the bread sizes of 15 and 222 ounces to be sold within this State.

We are of the opinion, as the California law requires that each loaf of bread must bear a label containing a statement of the minimum weight of such loaves, that the State Sealer, under the authority granted to allow a reasonable variation in excess or deficiency in weight, may permit the sale of such loaves within the State.

Section 7, chap. 169, Statutes of 1945, provides as follows:

The standard loaf of bread shall weigh one pound avoirdupois weight. All bread manufactured, sold or offered for sale, in the form of loaves, shall be one of the following standard weight and no other, namely, one pound, one-half pound, one and one-half pounds, or multiples of one pound, avoirdupois weight; *provided, however*, that a reasonable variation in excess and deficiency, as determined by the state sealer, be allowed; *and provided further*, that the provisions of this section shall not apply to biscuits, buns, crackers, rolls, or what is commonly known as "stale bread."

Section 14 provides that any commodity put up in a package or container shall bear a label with a correct statement of the net weight of its contents.

The intent of the Legislature as shown by the foregoing sections was to fix a standard weight for loaves of bread, but at the same time giving the State Sealer the power to exercise a reasonable free decision as to the excess or deficiency in weight, and to provide for the safeguarding of the public against short weight.

As stated in 11 Am. Jur., page 302: "A court should not, in otherwise proper cases, refuse to apply the law of a foreign State, however unlike its own, unless it is contrary to pure moral or abstract justice or unless the enforcement would be of evil example and harmful to its own people."

The purpose of the Nevada statute and that of California is to provide a reasonable tolerance from the fixed weight and to protect the public by informing it of the true weight purchased.

Very truly yours,

ALAN BIBLE
Attorney General

By George P. Annand
Deputy Attorney General

OPINION NO. 47-507 TAXATION—Veterans exemption—Community property.

Carson City, September 6, 1947

R.E. Cahill, Secretary, Nevada Tax Commission, Carson City, Nevada

Dear Mr. Cahill:

Your letter dated August 25, 1947, was received here August 26, 1947.

You ask two specific questions designed to call forth a practical application of the law respecting the exemption from taxation of the property of veterans, the questions being as follows:

1. Assuming that a veteran has community property assessed at one thousand, six hundred (\$1,600) dollars, should his right or interest therein be taken as one half (or \$800) and he be allowed an exemption of \$800, or should he be allowed the minimum amount of \$1,000 exemption irregardless?
2. Assuming that a veteran owns community property assessed at six thousand (\$6,000) dollars, should he be allowed an exemption of \$1,000 because his right or interest therein is only three thousand dollars, or should be denied exemption because the total value of the property exceeds four thousand dollars?

As to the first question, the veteran's own property, being worth \$800, would be free from taxation.

As to the second question, if the veteran's own property was worth \$3,000, one thousand dollars of that value would be free from taxation.

It is only when the assessed value of the entire property is \$8,000 or more that the veteran is ineligible to claim exemption from taxation.

The confusion about this law, as amended, arises by failing to realize that the property of the veteran intended to be free from taxation is his half of any community property. Not more than \$1,000 is freed from taxation and it may be less if the said property is less.

Chapter 200, Statutes of 1947, amends sec. 5 of the Revenue Law (sec. 6418, N.C.L. 1929, as amended by chap. 32, Statutes of 1945).

Subdivision seventh of sec. 5 of the Revenue Law as is not in effect, provides first that the "property" of a veteran is exempt from taxation but not to exceed \$1,000 in value thereof. This "property" is specifically defined so as to include the interest (or half) that the veteran has in any community property. Of course it also includes any separate property the veteran owns. In like manner the later provision prevents a veteran from claiming any exemption whatever if his "property" is worth \$4,000 or more. But here again the "property" is defined as the half interest in any community property (plus all of any separate property subject to taxation). It should be borne in mind that taxes are laid on property, not persons, and the burden is lifted off the property, not the person. If the veteran's property is worth \$4,000 or more, it is all taxed. If it is worth less than \$4,000, a tax is computed on it and taxes on an amount not exceeding \$1,000 are remitted or deducted from the total tax. The exemption is for the benefit of the veteran alone and it must not "exceed" \$1,000.

Very truly yours,

ALAN BIBLE
Attorney General

By Homer Mooney
Deputy Attorney General

OPINION NO. 47-508 NEVADA NATIONAL GUARD—May not be called into active service in the event of labor troubles or strikes within this state.

Carson City, September 11, 1947

Hon. Vail Pittman, Governor of Nevada, Carson City, Nevada

Dear Governor Pittman:

Complying with your oral request of this date for an opinion as to whether or not the National Guard can be called out in the event of labor troubles, I beg to advise that the National Guard cannot be called into service by the commander in Chief in the event of disturbances arising from any labor trouble, strike or lockout within this State.

This is declared by sec. 26 of the Act of March 27, 1929, Statutes of 1929, page 201, which is found at sec. 7140, Nevada Compiled Laws 1929, and reads as follows:

Nothing in the preceding section shall authorize or permit the national guard of Nevada to be called into active service by the commander in chief in the event of disturbances arising from any labor trouble, strike or lockout within this state, but public peace shall be preserved by the Nevada State police.

This section has not been amended.

Very truly yours,

ALAN BIBLE
Attorney General

By Homer Mooney
Deputy Attorney General

OPINION NO. 47-509 FISH AND GAME—Doves—Proclamations respecting seasons and bag limits on migratory birds—Annual proclamations not necessary.

Carson City, September 11, 1947

S.S. Wheeler, Director, Fish and Game Commission, P.O. Box 678, Reno, Nevada

Dear Buck:

We have your letter of September 5, 1947, asking as to the law relating to proclamations respecting seasons and bag limits on migratory birds, notably doves.

By the former law, migratory birds include waterfowl, doves, etc. Upland game birds include pheasants, sagehen, etc. (Sec. 2 former Act; sec. 1 Act of 1947.)

By section 64 of the former Act the commission was required to annually proclaim the seasons, bag limits and other regulations concerning migratory game birds.

By section 69 of the former Act, if the bag limit should be increased in the Federal game law, the commission might by proclamation through the press make an increase within the limits of the Federal law. It was plainly intended that the migratory game birds should be protected by the Federal law, subject to a stricture rule by the proclamation of the commission.

By section 60 of the new law the annual proclamation of the commission is limited to “upland game birds.”

By section 65 of the new law it is assumed that the limits “herein provided” are those of the dominating Federal law. If the Federal game law is changed after the new law went into effect (as it was in the case of the bag and possession limit on ducks) the commission shall by

proclamation announce the change, but so as to conform to the Federal regulations, neither more nor less.

There being no change in the Federal regulations on doves "annual" proclamation is not necessary nor is an "annual" proclamation necessary on any migratory game birds. However, a proclamation on ducks should be published (since the Federal regulations have been changed). The latter proclamation should adopt the Federal regulation avoiding both greater strictness and greater liberality.

The publication of the proclamations, whether annual or after a change in the Federal regulations, will be sufficient in any paper of general circulation throughout the State of Nevada (such as either Reno paper). No period of publication is prescribed so that one insertion would be enough. Nothing prevents placing the proclamation in other papers in the State also. The requirement is such that even if publication should be omitted, a violation of law would not be excused.

We are of the opinion that possession of a bag of doves greater than fixed by Federal regulations is likewise a violation of State law and can be prosecuted either in the State or Federal courts.

As requested, we are sending a copy of this letter to District Attorney Jones of Clark County.

Very truly yours,

ALAN BIBLE
Attorney General

By: Homer Mooney
Deputy Attorney General

cc: Robert E. Jones.

OPINION NO. 47-510 NEVADA HOSPITAL FOR MENTAL DISEASES—Board has no authority to enter into reciprocal agreements with other states for the exchange of persons suffering from mental disease.

Carson City, September 20, 1947

Hon. Vail Pittman, Governor of Nevada, Carson City, Nevada

Dear Governor Pittman:

This will acknowledge receipt of your letter dated September 11, 1947, received in this office September 15, 1947, inclosing a copy of a proposed reciprocal agreement for the exchange of persons suffering from mental diseases, mental defects or epilepsy, to be entered into between the State of Nevada and the State of Washington, with a request that we review the agreement and advise if the same is in line with the laws of Nevada. The residence requirement is defined in the agreement which also provides that all insane, feeble-minded, or epileptics, who have been legally adjudged as such, and who are residents as defined in the agreement shall be promptly accepted by the duly constituted authorities of such State.

We are of the opinion that there is no statutory authority under which the Board of Commissioners of the Nevada Hospital for Mental Disease may enter into such an agreement on behalf of the State.

Section 3511, 1929 N.C.L. 1941 Supp., which is sec. 7 of the Act concerning the insane of the State, provides for the commitment by the district court of persons who are insane and so far disordered in mind as to endanger health, person or property. Such commitment appears to be the only procedure under which a patient may be received at the hospital.

Section 19 of the Act, sec. 3523, 1929 N.C.L. 1941 Supp., as amended by chap. 98, Statutes of 1943, provides the method and under what circumstances a patient may be discharged by the superintendent. The Act makes no provision for the transfer from the Nevada hospital of such patients to the State where such person has a legal residence.

The only statutory provision relating to a nonresident patient is found in sec. 15 of chap. 257, Statutes of 1947, the Act concerning and defining the mentally ill of the State. This section provides if the indigent patient is a nonresident of the county, the court may release the patient to the custody of a relative or friend who is willing to assume the expense of the proper care of the patient, and the expense of transporting the patient to the State where such patient has a legal residence shall be a charge upon the county in which the court has jurisdiction.

The provision in this Act cannot be construed to apply to the Act concerning the insane as the procedure for the order for detention under the mentally ill Act and the Act concerning the insane are different, and the purpose of the later Act is expressed in sec. 14, which provides that the Act shall be liberally construed so that persons who are mentally disordered, but not dangerously mentally ill, may without being committed as an insane person, be by order of the court laced in the care and custody of the Nevada Hospital for Mental Diseases and be restored to normal mental condition as rapidly as possible.

Therefore, we cannot find authority in the statutes of this State which empowers and directs the board of commissioners of the mental hospital to enter into reciprocal arrangements with other States for the exchange of persons suffering from mental diseases, mental defect or epilepsy.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-511 TAXATION—Tax exemption deduction for tax falling due after close of calendar year not permitted—Marriage of tax exempt person before taxes due does not change status of person.

Carson City, September 20, 1947

Hon. Robert E. Jones, District Attorney, Las Vegas, Nevada

Dear Mr. Jones:

Your letter dated August 28 was received here August 30, 1947.

You ask respecting the administration of the revenue law concerning exemptions, with specific attention to the time for claiming exemption and the tax burden which is to be lifted by the authority of the tax exemption laws (1929 N.C.L. 1941 Supp., sec. 6418, amended Stats. 1947, p. 672).

1. You ask whether a practice whereby the assessor who receives application for exemption during the current calendar year makes the deduction from the tax falling due after the close of the calendar year, is in harmony with the law.

The answer is in the negative.

Respecting personal property, the assessor makes his valuations between the first day of January and second Monday in July in each year (sec. 6421, N.C.L. 1929). These valuations are to be completed by the third Monday in July (sec. 6431, N.C.L. 1929).

By the first Monday in August the tax collector is in possession of the tax roll and the assessor has no further control over it. (Sec. 6444, N.C.L. 1929).

It is to be assumed that all steps to obtain and grant exemptions for the current calendar year have been completed by the first Monday in August of that year. Obviously steps taken in the preceding calendar year can have no effect on the tax burden falling in the succeeding year, and this is especially true in the case of personal property. The law even permits the assessment and collection of personal property taxes the first half of each year where the property may be assumed to be transient, and the applicant of the tax rate for the preceding year if the rate for the current year has not been fixed. (Secs. 6472, 6636, N.C.L. 1929).

2. When an exemption has been regularly granted in the proper year, the fact that the status of the person exempted has changed before the time the taxes actually fall due, will not deprive the taxpayer of the exemption.

In your illustrating case a widow qualified for exemption one day who marries the next, is nevertheless entitled to the reduction.

The reason is that there is nothing in the law to the contrary (sec. 6418, N.C.L. 1929, amended chap. 200, Stats. 1947). All property is "subject to taxation" except as specified in sec. 5 of the

Act. While the result may seem overgenerous the Legislature was confronted with a practical problem. To extend an exemption in one tax year, subject to withdrawal for later causes, would leave the tax collector's books in a state of uncertainty until the first Monday in the succeeding September. To deny an exemption because it might later be lost would be to fly in the face of the Act. The discrepancy would be corrected after one year.

We are in accord with your views as expressed in your letter. We are not advised to the custom of assessors in other counties in this matter.

Very truly yours,

ALAN BIBLE
Attorney General

By: Homer Mooney
Deputy Attorney General

OPINION NO. 47-512 FISH AND GAME—Agent's 5 percent license commission applicable to resident deer tags—Money for unpaid bill may be included in next annual budget of County Game Management Board.

Carson City, September 22, 1947

S.S. Wheeler, Director, State Fish and Game Commission, P.O. Box 678, Reno, Nevada

Dear Buck:

You inquire in your letter of September 18, 1947, received September 19, 1947, whether the 5 percent commission allowed to agents selling licenses applies to the sale of resident deer tags.

The answer is in the affirmative.

Section 56 regards all licenses under the Act as including deer tags because deer tags are excepted from that section by express words. This shows that but for that lone exclusion deer tags would be regarded as licenses.

Section 86 calls the tags "duplicate license tags," thus indicating they represent a special kind of license.

You also inquire how the Lyon County Game Management Board may pay a bill of \$116.89 contracted before July 1, 1947, inasmuch as all funds were turned over to the State at the end of the fiscal year. It seems that secs. 10, 11, and 12 of the new Act provide the solution.

If the county by inadvertence transferred the needed money to the State Commission, there seems no legal reason why the county cannot include a statement of "outstanding indebtedness" of \$116.89 in the budget for the current budget year expiring December 31, 1947. That first budget could not be prepared before July 1, 1947, the effective date of the Act, and a delay (comparable to the two months allowable delay to February in the annual budget) would not be considered unreasonable.

On receipt of the amended budget the State Commission would be authorized to allow the sum to the county, or to pay the bill direct as a charge on State enforcement. These matters must be regarded more as directory than mandatory, especially so far as they relate to the shift of administration in the first year of the Act.

Very truly yours,

ALAN BIBLE
Attorney General

By: HOMER MOONEY
Deputy Attorney General

OPINION NO. 47-513 NURSES—Unlawful for person to nurse sick as registered nurse unless licensed as such.

Carson City, September 22, 1947

Mrs. Margaret F. Carroll, R.N., President, Nevada State Board of Nurse Examiners, Steptoe Valley Hospital, East Ely, Nevada

Dear Mrs. Carroll:

This will acknowledge receipt of your letter dated September 8, 1947, received in this office September 10, 1947. You request an interpretation of the professional nursing Act, calling attention to the duty of the State Board of Nurse Examiners to cause the prosecution of all persons violating the provisions of the Act, and request this office to define "practicing nursing as a registered nurse."

The professional nursing Act clearly defines the qualifications, method of examination and procedure for the licensing of persons to practice as registered nurses in the State. The practice of nursing as a registered nurse means a person who for compensation practices nursing under the provisions of the Act. There is no violation of the provisions of the Act if a person practices nursing for compensation, but does not represent or hold out to be, or indicate in any manner that she is a registered nurse.

Section 1, chap. 256, Statutes of 1947, defines the purpose of the Act in the following language:

For the purpose of safeguarding life and health and for the purpose of maintaining high professional standards among registered nurses in this state, any person who for compensation practices or offers to practice nursing as a registered nurse in this state shall, hereafter, be required to submit evidence that he or she is qualified so to practice, and shall be licensed as hereinafter provided, and any institution desiring to conduct a school of nursing shall be accredited as hereinafter provided. After the effective date of this act, it shall be unlawful for any person to practice or to offer to practice nursing as a registered nurse in this state or to offer to practice nursing as a registered nurse in this state or to use any title, abbreviation, sign, card, or device to indicate that such person is practicing nursing as a registered nurse in this state unless such person has been duly licensed and registered under the provisions of this act.

The other sections of the Act provide for the appointment of a State Board of Nurse Examiners; define the duties and powers of the board; define the qualifications of applicants for license to practice as registered nurses and the fees to be paid. Nursing schools may be accredited by the board. Provision is made for disciplinary proceedings related to registered nurses.

Exceptions to the provisions of the Act are made to legally qualified nurses of another State whose engagement requires the care of a patient temporarily residing in the State for a period not to exceed six months, and for legally qualified nurses employed in the discharge of official duties for the United States Government.

Violation of the provisions of the Act is punishable as a misdemeanor.

There is nothing in the Act which defines the term nursing, or the caring for the sick. The entire Act deals with the practice of nursing as a registered nurse, and makes it unlawful for any person to practice nursing as a registered nurse unless such person is duly licensed and registered under the provisions of the Act.

Therefore, any person who engages in the practice of nursing for compensation, but does not indicate or hold out to be a registered nurse, is not subject to prosecution for violating the provisions of the Act.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-514 NEVADA HOSPITAL FOR MENTAL DISEASES—Patient discharged as dotard—Unconditional release—Charge upon county.

Carson City, September 25, 1947

Joseph L. Daly, M.D., Acting Superintendent, Nevada Hospital for Mental Disease, P.O. Box 2460, Reno, Nevada

Dear Dr. Daly:

This will acknowledge receipt of your letter dated September 23, 1947, received in this office September 25, 1947, requesting an opinion on the following question:

Will you kindly advise if it is legally proper to discharge patients outright at the time they are returned from this hospital to the county from which they have been committed, to be accepted as dotards (under chap. 98 of the Nevada Laws 1943, as eligible and suitable for transfer to a county institution for the care of the aged), or are they placed on the usual one-year period of parole before discharge, as is the procedure with regularly paroled patients?

We are of the opinion that a patient discharged as a dotard, under the provisions of chapter 98, Statutes of 1943, is an unconditional release from the mental hospital.

Chapter 98, Statutes of 1943, amends section 3523, 1929 N.C.L. 1941 Supp., the same being section 19 of the Act concerning the insane of the State, and is the latest expression of the Legislature on the subject of discharging patients committed by a court under the provisions of that Act.

Chapter 98, Statutes of 1943, reads as follows:

The superintendent of the state hospital may with the approval of the board having supervision over said hospital, discharge any patient at any time; *provided, however,* said superintendent shall, at the end of each quarter period of the year, submit to the board of commissioners a list of all persons committed to his care as insane, who in his opinion have recovered their sanity, or are dotards and not insane, or are persons who in the judgment of the superintendent will not be detrimental to the public welfare or injurious to themselves. The board of commissions being satisfied with the recommendations of the superintendent, it shall direct that such patient or patients shall be discharged. No patient shall be discharged except upon ten days' written notice being first given to the county clerk of the county from which such patient or patients were committed: *provided, however,* that nothing herein contained shall authorize the release of any person held upon an order of a court or judge having criminal jurisdiction arising out of a criminal offense.

A poor and indigent patient discharged by the superintendent because he is a dotard, not insane, shall be received by the authorities of the county having charge of the poor in the county from which he was committed if the discharge of such patient is approved by the board of commissioners for the care of the indigent insane, and the cost of returning him to the county shall be a charge upon that county.

The above section authorizes the superintendent under the conditions named, to discharge "any patient at any time," and there is no language in the section to indicate that a parole period is mandatory. An indigent patient discharged as a dotard and not insane would be governed by the second paragraph in the section.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-515 BANKING—Trust company business may be operated separate and apart from banking business—Superintendent of banks charged with enforcement of the act.

Carson City, September 25, 1947

Grant L. Robison, Superintendent of Banks, Carson City, Nevada

Dear Mr. Robison:

This will acknowledge receipt of your letter dated September 10, 1947, received in this office September 11, 1947, requesting an opinion as to whether or not it is possible under the statutes of the State to operate a trust business separate and apart from a banking business and if so, whether or not the State Bank Examiner would have the right of supervision over such company.

We are of the opinion that a corporation may organize to carry on a trust company business exclusive of a banking business. However, the superintendent of banks is charged with the enforcement of the provisions of the Act whether such trust company business is carried on exclusively or in connection with the banking business.

The title of the Bank Act, chap. 190, Statutes of 1933, reads as follows: “an Act to provide a means of incorporating banks and trust companies; to authorize banks and trust companies to conduct certain business; to provide for the appointment of a superintendent of banks; to prescribe the power and duties of the state board of finance relative to the business of banking; to conform the charters of banks and trust companies now operating under the laws of the State of Nevada to the provisions of this act; to incorporate herein the provisions of the general corporation law, as amended; to provide for the reorganization, incorporation of assets, and the liquidation of banks and trust companies in certain cases; to make the violation of the provisions hereof criminal offenses, and to prescribe the punishment therefor; to repeal certain acts and all acts or parts of acts in conflict herewith; and other matters relating to banks and trust companies.”

Section 5 of the Act (sec. 747.04, 1929 N.C.L. 1941 Supp.), quoting only that part deemed relevant, reads as follows: “Any corporation organized under this act may state in its articles of incorporation that it will carry on a trust company business, either exclusively or in connection with the banking business, and such corporation shall thereupon have power * * * to act as trustee under any mortgage or bond of any person, firm or corporation, or of any municipal or body politic; and accept and execute any municipal or corporate or individual trust not inconsistent with the laws of this state; to act under the order or appointment of any court as guardian, administrator, receiver or trustee; to act as executor or trustee under any will * * *.” Chapter 63, Statutes of 1943, sec. 1, reads as follows: “No banking, or other corporation, unless it is organized under the laws of and has its principal place of business in this state, or is a national banking association, the principle place of business of which is located within this state, nor any officer, employee, or agent of such corporation acting in its behalf, shall hereafter be appointed to act as executor, administrator, guardian of infants or estates, receiver, depository, or trustee under appointment of any court or by authority of any law of this state.”

The Bank Act provides that the Superintendent of Banks shall provide the necessary forms for all examinations and reports required by the Act, and sec. 51 of the Act provides that the superintendent of banks shall be charged with the enforcement of the provisions of the Act.

The organization and operation of a trust company is, therefore, controlled by the applicable provisions of the Bank Act.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-516 PUBLIC SCHOOLS—Budgets—Publication quarterly of list of expenditures—Expense of publication charge against school district.

Carson City, September 25, 1947

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

Dear Miss Bray:

This will acknowledge receipt of your letter dated September 8, 1947, received in this office September 10, 1947, requesting advice on the following questions:

1. Are boards of trustees or county boards of education required to publish each individual expenditure made during each quarter of the school year or may the list of expenditures required by chap. 264, 1947 Statutes of Nevada, be compiled by publishing only the total expenditures for each of the eight headings shown on the official school budget authorized by the Nevada State Tax Commission and of which a copy is hereto attached. The “total expenditures” just referred to would be, of course, the actual expenditures for each quarter of the school year?
2. Are the school districts and the State Department of Education correct in their interpretation of sec. 243, chap. 63, 1947 Statutes of Nevada, and that it provides that the expense of publishing quarterly statements provided in chap. 264, above, is against the county and not against the school district?

Our opinion in answer to your first question is that publication of the total expenditures under each of the headings shown on the official school budget would not be in compliance with the specific requirement of chap. 264, Statutes of 1947, which specifies the publication, quarterly, of the list of expenditures of the schools defined in the Act.

We are of the opinion, in answer to your second question, that the expense of the publication required in chap. 264, Statutes of 1947, is a charge against the school district, and not against the general fund of the county in which the school district is situated.

Chapter 264, Statutes of 1947, is an Act approved April 1, 1947, and entitled: “An Act requiring boards of trustees or boards of education of school districts, county boards of education, and governing boards of district high schools, to publish expenditures.” Section 1 of the Act reads as follows: “Starting with the quarter beginning July 1, 1947, it shall be mandatory for boards of trustees or boards of education of school districts, regular, joint, union, or consolidated, and for county boards of education and the governing boards of district high schools, to publish quarterly the list of expenditures of such school; *provided, however*, that this act shall not apply to schools employing two or less teachers.”

Section 2 prescribes the qualification, as provided by statute, of the newspaper in which the publication shall be printed.

Section 3 provides that the Act shall become effective after its passage and approval. Language is used in the statute is “to publish quarterly the list of expenditures of such school.”

According to Webster’s Dictionary the noun “list” has many definitions. The following definition, when the noun list is used with the word expenditure, would apply: “A roll or catalogue, as of names or items, a register, inventory, or classified record or memorandum; as, a list of books, voters or real estate; a tax or price list.”

The eight headings shown on the official school budget under estimated expenditures are Administration, Instruction, Auxiliary Services, Operation of Plant, Maintenance of Plant, Fixed Charges, Capital Outlay, and Transportation. The foregoing are general titles used in bookkeeping and have been approved by the Nevada Tax Commission, which has the statutory authority to determine the detail as to the aggregate sums and the items in the budget. Publication of these items would not accomplish the purpose and intent of the Legislature expressed in the language, “the list of expenditures.” Expenditures of the school are claims which are filed, allowed and paid, and a list of such expenditures should be published.

SCHOOL RESPONSIBLE FOR EXPENSE OF PUBLICATION

Chapter 63, Statutes of 1947, consists of the various chapters and sections of the School Code. Chapter 30 of this code deals with school budgets and emergency loans. Provision is made for the preparation of the budget in such detail as prescribed by the Tax Commission. The chapter also defines the action to be taken in cases of emergency loans, and provides for the publication of the budget and certain notices relative to emergency loans.

Section 243 of the code, which is the seventh section under chap. 30, reads as follows: “The cost of publication of any budget or notice required of any school district, county high school, or district high school, or other educational area shall be a proper charge against the general fund of the county in which the same is situated.”

The foregoing section is a special provision which applies exclusively to the subject of budgets and emergency loans. There is no such provision contained in the Act requiring the school boards to publish the list of expenditures (chap. 264, Statutes of 1947).

We cannot find a rule of construction which will permit the application of a special provision contained in one statute, respecting a certain subject, to another and different subject in a separate Act, even though both statutes relate to public schools.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-517 HIGHWAY DEPARTMENT, STATE—Erection of signs on the state highways and within the highway right-of-way—Prohibition of private advertising signs.

Carson City, September 25, 1947

Hon. W.T. Holcomb, State Highway Engineer, Carson City, Nevada

Dear Mr. Holcomb:

Your letter dated August 29, 1947, delivered to this office the same day, has been the subject of several interviews and informal discussions. We now present our official opinion on the questions propounded.

You inquire as to the duty of the highway department respecting the erection of signs on the State highways and within the highway right-of-way.

The prohibition of the placing of advertising signs outside the right-of-way when they obstruct clear vision and constitute a traffic hazard is not included in your inquiry as, presumably, you have no difficulty in abating such nuisances.

We are of the opinion that the highway department has the duty to set up and keep up all nonadvertising route, traffic and directional signs on the State highways and within the rights-of-way thereof and to allow, permit and supervise the erection and maintenance by counties, towns and cities of Nevada, of signboards advertising such bodies politic only. No private individual has such a duty or right.

Any question will be met easily enough as to what constitutes private advertising. The problem before you lies in selecting proper and adequate route, traffic and directional signs. If there is too much liberality, the highways will be converted into general directories marking a path to the door of each man who lives by the side of the road. If there is too much strictness, the genuine needs of the wayfarer will suffer. Your only recourse is to a "rule of reason" so as to insure that the highways and other utilities are devoted to public rather than private uses.

Section 5348, 1929 N.C.L. 1941 Supp., as amended Stats. 1935, page 68, reads as follows:

No advertising signs, signboards, or boards or other materials containing advertising matter shall be placed upon or over any State highway, nor within the highway right-of-way; nor upon any bridge or other structure thereon; nor so situated with respect to any public highway as to obstruct clear vision of an intersecting highway or highways or otherwise so situated as to constitute a hazard upon, and/or prevent the safe use of the State highway; *provided*, that counties, towns or cities of the State of Nevada may, by permission of the State highway department, place at such points as may be designated by the State highway engineer suitable signboards advertising such counties, towns, or municipalities. If any such sign is placed in violation of this act it is thereby declared a public nuisance and may be forthwith removed by the department of highways or its employees. Any person placing any such sign in violation of the provisions of this section shall be guilty of a misdemeanor and shall be fined not less than ten dollars nor more than fifty dollars, and shall also be liable in damages for injury or injuries incurred and/or for injury to or loss of property sustained by any person by reason of a violation of the provisions of this section.

This section is negative in form except that the highway department is charged with the duty of removing signboards placed in violation of the section.

The last paragraph of section 5347 N.C.L. 1929 (not amended since 1921) reads as follows:

As a part of every plan and of all specifications and contracts for the construction of the said highways herein provided for, provision shall be made for the erection of permanent guide-posts and signboards at every point where another road cross or diverges such State highway and at all places requiring warning to the traveling public as to the condition of the road, such as dangerous turns, steep grades, condition of the road, such as dangerous turns, steep grades, etc., which guide-posts and signboards shall contain plain and accurate information as to the

distances of towns and other points, such as is usually contained on signboards for the information of the traveling public.

Section 5443, 1929 N.C.L. 1941 Supp., as amended Stats. 1935, page 30, reads as follows:

It shall be the duty of the Nevada state highway department, from and after the passage of this act, to cause to be put up, and to be thereafter kept up, on and along the state highways of Nevada, all such usual and necessary road markers and highways signs as have been adopted or shall hereafter, from time to time, be adopted by the American association of state highway officials. It shall further be the duty of the Nevada state highway department to cause to be put up, and to be thereafter kept up, informative signs, distinctive in color and design, pointing out, call attention to, and descriptive of nearby points, location, and distance to water, and objects of natural, scenic, geographical, geological, paleogeographical, and historical interest to the traveler within or passing through the State of Nevada.

This is positive in form. The reference to road markers and highway signs doubtless includes warnings as to curves, grades, etc. The "informative" signs referred to present a problem, but it seems clear that the points to which attention shall be drawn outside of natural or historical interest would not embrace listing every resident or group of residents along or adjacent to the road or his home.

Taking section 5347, 5348, and 5443 together, the guiding rule for signs is "such as is usually contained on signboards for the information of the traveling public."

As to the specific problems you cite, we agree with your action as to "Tahoe Village" and "Walley Hot Springs" and your distinction as to "Zephyr Cove." Conceivably Walley Hot Springs might be classed as a natural point of interest, but we cannot say your action was arbitrary. As to the McCormack ranch, no advertising would be permissible at all. Even the word "guest" in "Rafter R Guest Ranch" is plain advertising. But even if the name were "Rafter R Ranch," it would not seem deserving of a directory sign. We understand the "Break-A-Heart Ranch" sign is now on the highway right-of-way.

Very truly yours,

ALAN BIBLE
Attorney General

By: Homer Mooney
Deputy Attorney General

OPINION NO. 47-518 INSURANCE—Fire insurance protection for school busses in mutual association doubtful.

Carson City, September 25, 1947

Hon. Jerry Donovan, Insurance Commissioner, Carson City, Nevada

Dear Mr. Donovan:

Your letter dated September 12, 1947, was delivered to this office the same day.

You enclosed a letter from A.H. Bachelor, Superintendent of Lovelock consolidated Schools inquiring whether fire insurance protection for school busses may be purchased from a mutual company, belonging to the Farmers Insurance Group.

While there is no specific prohibition in the constitution or statutes against paying public funds for fire insurance protection into a mutual association, there are general inhibitions in the constitution which make the question of one grave doubt, and difficult of proper answer in specific cases without an examination of the facts in each such case.

Section 9 of article VIII of our constitution, provides that "The state shall not donate or loan money or its credit, subscribe to or be interested in the stock of any company, association, or corporation, except corporations formed for educational or charitable purposes."

Section 4 of article IX, provides that "That state shall never assume the debts of any county, town, city, or other corporation or whatever * * *."

In addition the courts have declares under varying circumstances that public money cannot be raised by taxation or disbursed except for public purposes. (*See State v. Churchill County*, [43 Nev. 290 at 295.](#)) In the case of group life insurance the rule seems to be different. (Op. of Justices (Ala.), 30 So.(2) 14 at 16.)

See also 42 Am. Jur. "Public Funds," sec. 69, p. 770; Opinion of Justices (Mass.) 195 N.E. 897;

"A mutual insurance association is one in which members are both insurers and insured."

Rosenbraugh v. Tigard (Ore.) 252 P.75, 120.

By reason of their charters, articles of incorporation and the laws of the State where chartered, there have arisen questions as to the responsibility of persons insured in mutual association even if the result would wipe out their insurance protection.

Because of their diversities it is desirable to have all details as to the nature of the mutual association, the liability of policy-holders and the means of enforcing such liability, in each case before an opinion could be of any value.

Very truly yours,

ALAN BIBLE
Attorney General

By: Homer Mooney
Deputy Attorney General

OPINION NO. 47-519 GAMBLING—Duties of sheriff—Act construed.

Carson City, September 27, 1947

Hon. A.J. Park, County Clerk, Hawthorne, Nevada

Dear Mr. Park:

This will acknowledge receipt of a copy of Ordinance No. 15 for the City of Hawthorne, which you submitted to this office for comment due to the absence of the District Attorney.

We are of the opinion that the State statutes set up the procedure for the issuance of gambling licenses and designate the officers who shall receive and distribute the money received from such licenses, and therefore Ordinance No. 15 is repugnant to the statute and cannot be enforced.

Section 10ee, chapter 223, Statutes of 1947, provides that the sheriff of any county shall not issue a gambling license as provided in sections 1 through 15 of the gambling Act unless the applicant shall first have obtained a State gambling license.

Section 3302.01, 1929 N.C.L. 1941 Supp., provides that the fees for the various gambling licenses shall be paid to the sheriff in advance.

Section 3302.02, 1929 N.C.L. 1941 Supp., requires the sheriff on the first Monday of each month to pay over to the county treasurer all moneys received by him for gambling licenses.

Chapter 248, Statutes of 1945, which amends section 3302.04 of the supplement, provides how all moneys received under sections 1 to 4, inclusive, of the Act shall be distributed. The provision relating to licenses collected by the sheriff within the boundaries of an incorporated city reads as follows: “* * * where the license is collected within the boundaries of any incorporated city or town the county shall retain twenty-five (25%) percent of said moneys, and the incorporated city or town shall receive fifty (50%) of said money so collected, and the same shall be paid into the treasury of such city or town for general purposes; * * *.”

Under the statutes the sheriff is required to collect the fees for such license and all money so collected shall be turned over to the county treasurer. The county treasurer is responsible for all the moneys until the distribution of the same to State, county and city.

This is the procedure provided by the statutes and the same cannot be changed by city ordinance.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-520 PUBLIC SERVICE COMMISSION—Commission empowered to employ such inspectors and clerks as specified in section 22 of Motor Vehicle Carrier Act.

Carson City, September 27, 1947

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

Dear Mr. Allard:

This will acknowledge receipt of your letter of September 17, received in this office on September 18, 1947, in which you ask whether or not your commission is authorized to employ others than a chief inspector, an assistant inspector, inspectors, and one clerk-stenographer under the provisions of section 22 of the Motor Vehicle Carrier Regulation and Licensing Act, being sections 4437-4437.27, N.C.L. 1931-1941 Supplement.

Section 22 of the Act reads as follows:

The public service commission of Nevada is authorized to employ one chief official inspector, and an assistant inspector and other such inspectors as it may deem necessary for the efficient administration of this act and such other duties as may be assigned to them by said commission; and one clerk, who shall also be a stenographer, for the purpose of expediting the administration of this act, and may fix their compensation and provide for their necessary expenses; *provided*, however, that no expenditure shall be made, or obligation incurred, under this act in excess of fifteen percent (15%) of the amount collected under this act.

It is our opinion that under this Act you are limited to employing those designated within this section.

Under the law it is clear that broad power is given to the Public Service Commission to assign such duties to the inspector as the commission sees fit. There is nothing in the law that would prevent you from assigning an inspector to the office with duties assigned in accordance with the efficient and ordinary enforcement of the Act. If as a matter of fact the majority of the duties performed by the inspector are those ordinarily performed by a clerk-stenographer, then the mere naming of such person as an inspector does not as a matter of fact take that person out of the clerk-stenographer classification.

Your attention is directed to the opinion of this office, No. B-37, 1940-1942 biennial report.

If on the other hand the duties assigned by your commission to the employee are not clerical or stenographic in nature, but embrace duties dealing with the administration of the Motor Vehicle Carrier Regulation and Licensing Act, inspection duties, office managing duties, and the official reporting of hearings, then in our opinion your commission might well classify the employee as an inspector. In any event, the determination of whether the employee is an inspector or a clerk-stenographer depends upon all of the facts, and the final answer must rest upon the duties and the nature of the work assigned to an employee.

Very truly yours,

ALAN BIBLE
Attorney General

OPINION NO. 47-521 PUBLIC SCHOOLS—Students enrolled in manual training not within Nevada Industrial Insurance Act.

Carson City, October 4, 1947

Mr. Donald C. Cameron, State Director, Vocational Education, Carson City, Nevada

Dear Mr. Cameron:

This will acknowledge receipt of your letter dated September 26, 1947, received in this office September 27, 1947, in which you submit the following questions:

1. While the work outlines and study courses in school shops contain much material on safety, and safety instruction is copiously given, accidents of greater or less severity sometimes happen. Do present State laws provide any relief in the way of damages or hospitalization for the student?
2. If there exists liability under *I*, against whom does it lie, the school district, the school board members personally, the teacher, or the Nevada Industrial Commission?
3. Is the teacher automatically protected under the State Industrial Compensation Law for personal injuries in school shops?
4. In the case of students who are employed part-time in a cooperative training arrangement involving a learner's pay scale of a definite hourly wage, are these fully covered under the employer's contract with the State Industrial Commission?

The answer to your first question is that there is no State statute which specifically provides any relief in the way of damages or hospitalization for the student.

The answer to your second question is found in the opinion of the Attorney General under Opinion No. 345, September 9, 1929, Biennial Report 1929-1930, and Opinion I, March 1, 1938, Biennial Report 1936-1938. The first opinion holds:

Under the laws of this state school districts are considered agencies of the state and would not be liable for a tort. As to whether or not the individuals constituting the school board or the teachers would be liable depends upon whether or not they were guilty of negligence.

Answering the question as to students in public school shops being subject to insurance within the meaning of the Industrial Insurance Act, the opinion held that the school boards could not take out such insurance for the reason that the relation of employer and employee does not exist.

The other opinion is to the same effect and also answers in the negative a question as to premiums for accident insurance for pupils in shop work being a proper charge against school funds.

The answer to your third question depends upon whether or not the teacher is employed in a school district and comes within the provision of section 181 of the 1947 School Code, Statutes of 1947, pages 169, 170, which sets aside the school insurance fund.

The fourth question may be answered by the provisions of the employers' contract with the State Industrial Commission.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-522 INSURANCE—License fees paid by rating organization cannot be used for administration purposes without appropriation by the legislature.

Carson City, October 4, 1947

Hon. Jerry Donovan, Insurance Commissioner, Carson City, Nevada

Dear Mr. Donovan:

This will acknowledge receipt of your letter dated September 29, 1947, received in this office September 30, 1947.

You request an interpretation of chap. 100, Statutes of 1947, in connection with sec. 3656.138 N.C.L. 1931-1941 Supplement, each of which are part of the Nevada Insurance Act, and inquire if the money received as license fees paid by rating organizations may be used for administration of the provisions of article 15a which was added to the Insurance Act by chap. 100 of the 1947 Statutes. You state that no appropriation was made by the Legislature for the administration of the added article.

We are of the opinion that the money received from licenses issued to rating organizations under chap. 100, Statutes of 1947, must be paid into the General Fund of the State Treasury, and cannot be used for administration purposes without appropriation by the Legislature.

Chapter 100, Statutes of 1947, amends the Nevada Insurance Act by adding a new article to be known as article 15a relative to the regulation of rates of certain insurance companies and to rating organizations.

Section 121e provides for the licensing of rating organizations for such kinds of insurance or subdivision or class of risk or a part or combination thereof as are specified in its application. The license fee shall be twenty-five dollars, and the license issued shall remain in effect for three years.

Section 138 of the Insurance Act, sec. 3656.138, N.C.L. 1931-1941 Supplement, provides as follows:

The state insurance commissioner is hereby empowered to direct all insurance transactions between the state and the insurance companies, and all moneys collected for licenses, penalties and moneys paid by insurance companies or solicitors to the state to enable them to transact business in the state shall be paid into the general fund of the state treasury. The support of the ex officio state insurance commissioner's department shall be from the general fund in the state treasury, subject to appropriation out of said fund by the Legislature.

The license provided in the amendment is paid by the rating organization to enable them to transact business in the State and comes within the language of sec. 138, which requires the same to be paid into the general fund subject to appropriation by the Legislature.

Although the Legislature did not make an appropriation for the administration of the added article to the Insurance Act which the commissioner is required to administer, the rule of construction that "The argument of inconvenience can have no weight in the construction of a law; or at most, only in the case of a very doubtful point," as held in *O'Neale v. McClinton*, [5 Nev. 329](#), is applicable to the statutes under consideration.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-523 WELFARE, STATE DEPARTMENT—Board members, etc.

Carson City, October 6, 1947

Hon. Vail Pittman, Governor of Nevada, Carson City, Nevada

Dear Governor Pittman:

This will acknowledge receipt of your letter dated October 3, 1947, received in this office the same date.

You submit the following inquiries relative to the present status of the members of the State Welfare Board who are holding over and exercising the duties of office after the term of their appointment has expired:

1. On the basis of the constitution and statutes of this State do the members of the so-called "State Welfare Board" continue to be "officers" after the termination of the express term of their appointment, and until such time as they may be reappointed or others appointed in their place?

2. In continuing to occupy office as members of said board after the termination of their express terms of appointment is their status that of “de jure” or “de facto” officers?
3. If “Query No. 2” is answered to the effect that such persons are “de facto” officers, are their official acts, assuming them to be in all respects pursuant to and in conformity with law, legal and valid?

The answer to your first and second questions is that the members of the board whose term has expired are, on the basis of the constitution and statutes of this State, officers de facto and not officers de jure.

Your third question is answered that the rule of law is that the official acts of de facto officers, performed in good faith, are made valid from motives of public policy to preserve the rights of third persons and the general public.

Section 5151.01, 1929 N.C.L. 1941 Supp., provides for the appointment by the Governor of seven persons who shall be styled “The State Board of Relief, Work Planning and Pension Control.” The Act was approved in 1935, fixed the term of office of the first board appointed, and provided that all appointments hereafter made to fill any vacancies caused by death, resignation, removal, or the expiration of the term of office from any other cause shall be made for a term of four years.

Section 5154.51, 1929 N.C.L. 1941 Supp., provides: “As used in this Act ‘State Department’ means the state welfare department; ‘State Board’ means the State board of relief, work planning and pension control, which shall serve as the board of said department; * * *.” Chapter 30, Statutes of 1945, defines the “State Department” as the State welfare department created by the State Welfare Act.

Section 5154.52, 1929 N.C.L. 1941 Supp., creates a State welfare department which shall consist of the State board of relief, work planning and pension control.

The members of the State Welfare Board who were appointed to fill any vacancy in the original board were appointed for a term of four years. There is no provision in section 5151.01, *supra*, that such officers shall hold the office until their successors are appointed and qualified.

The question of an officer holding over after his term has expired under a provision in a statute and the conflict with the constitutional prohibition, section 11, article XV, that the Legislature shall not create any office the tenure of which shall be longer than four years, except as in the constitution otherwise provided, does not require consideration, as there is no hold-over provisions in the section.

When the terms of the officers expired there were vacancies in such offices to be filled by appointment made by the Governor. The officers remaining in office after the expiration of their term do not hold office under lawful appointment and qualification and are not officers de jure.

In *State v. Wells*, * Nevada on page 110, the court said: “Even if not in the office de jure, Wells having gone lawfully into possession in the first instance was no usurper or mere intruder, but held de facto, claiming to discharge the duties of the office. * * *.”

A person discharging the duties of a public officer under color of right, is an officer de facto and not a mere intruder. *State of Nevada v. Rhoades*, [6 Nev. 353](#).

See *State v. Arrington*, [18 Nev. 412](#); *Williamson v. Morton*, [50 Nev. 145](#).

Therefore, the members of the board whose terms have expired and are now discharging the duties of their office are officers de facto.

ACTS OF DE FACTO OFFICERS

A general rule as to the acts of de facto officers is stated in 43 Am. Jur., page 241, paragraph 495, as follows: “The general rule is that the acts of a de facto officer are valid as to third persons and the public until his title to office is adjudged insufficient, and such officer’s authority may not be

collaterally attacked or inquired into by third persons affected.” This rule is interpreted in *State ex rel. Corey v. Curtis*, 9 Nevada on page 339, in the following language: “The principal of sustaining the acts of persons as officers de facto is designed as a shield for the protection of the public and of third persons, who are not cognizant of the true state of the facts and are not required by the law to inquire into the title of one who is found exercising the duties of a public office. In order to protect third persons transacting business with such officers under such circumstances as to induce them to believe that they were dealing with legal officers, the law has reached out its strong arm to a dangerous extent, upon the principal that although not officers de jure, they were officers in fact whose acts public policy required should be considered valid. Such a principle certainly ought not to be extended to a case where the rights of the public are not affected, nor where all the parties interested have knowledge that the person pretending to be an officer is not an officer de jure; for in such a case the reason of the rule no longer exists and the law should not be invoked for protection. * * * As an officer de facto is a notional creature only, erected by the law in order to answer the ends of justice and equity under particular circumstances, his power ought not to be extended further than what is absolutely necessary for that purpose.”

See also Ridout v. State, 30 S.W. (2) 255; 71 A.L.R. annotations page 848; *Oliver v. Jersey City*, 48 L.R.A. 412; *Healy v. City of Covington*, 202 S.W.(2) 725, decided May 27, 1947, in which the court held: “The rule is that official acts of de facto officers performed in good faith are made valid from motives of public policy to preserve the rights of third persons and the general public.”

We can find no authority which recognizes the right to collaterally attack the holding over, in good faith and with general acquiescence, beyond a term limit.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-524 PUBLIC SCHOOLS—Transfer of pupils between school districts in this state and districts in another state not authorized—Davis Dam.

Carson City, October 7, 1947

Hon. Clifford A. Jones, Lieutenant Governor of Nevada, Las Vegas, Nevada

Dear Mr. Jones:

This will acknowledge receipt of your letter dated September 30, 1947, received in this office October 2, 1947.

You request an opinion from this office as to the legality of a school district in Clark County paying the tuition of students residing in such district to enable them to attend school in Arizona and pay part of the transportation to the Arizona school.

You state, because of the location of Davis Dam, it is necessary for high school students to attend school in Kingman, Arizona, such school being the nearest school by many miles. You

further state that the Utah Construction Company has been furnishing transportation and paying the tuition for some eighteen students to enable them to attend school, and at the same time paying school taxes in Clark County.

The Legislature has enumerated the purposes for which the school moneys may be spent, and we have been unable to find that any authority has been given for the transfer of pupils between school districts in this State and a district in another State.

In the case of *People ex rel. Goodell County Collector v. Chicago & N.W. Ry. Co.*, 121 N.E. 731, a statute creating nonhigh school districts and allowing pupils therein to attend high schools in surrounding districts, was attacked as invalid on the ground it would allow nonhigh school pupils to attend schools in other States and require their tuition to be paid from the nonhigh school district tax. The court said: "It is also objected that nonhigh schools are privileged by section 96 to attend schools in other states and that their tuition must be paid from nonhigh school tax. We do not think so. As we have seen, our school law is for the purpose of providing a general system for free schools throughout the state. The right to the transfer of pupils from one district to another is a right of transfer within such system and consequently within the territory covered by that system. It follows that section 96 does not give the right to a pupil from a nonhigh school district to choose a high school without the state."

Sections 87 and 152 of the Nevada School Code, relating to the transfer of pupils and payment of tuition, are comparable with the section of the school law considered in the above decision.

As to the establishment of a high school at Davis Dam, this is a problem which falls within the jurisdiction of the Superintendent of Public Instruction, and we suggest that you contact Miss Bray and her deputy assigned to Clark County for their assistance and aid.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-525 CONTRACTS—Invalid if let on basis of anything else than advertised plans and specifications.

Carson City, October 10, 1947

Hon. Robert E. Jones, District Attorney, Clark County, Las Vegas, Nevada

Dear Mr. Jones:

This will acknowledge receipt of your letter dated October 2, 1947, received in this office October 4, 1947.

You request our views upon the matter of the right of the county commissioners to negotiate with the low bidder, under the circumstance as stated in your letter, to make substantial changes in the plans and specifications upon which bids were received after advertising, and enter into a contract with such bidder for the construction of the building on the basis of new plans and specifications without readvertising for bids.

We are of the opinion that a contract let upon the basis of anything else than the advertised plans and specifications would be one let without the competitive bidding which is necessary to give it validity.

Section 1963, N.C.L. 1929, as amended by chapter 241, Statutes of 1947, provides that the county commissioners shall advertise such contract or contracts to be let, stating the nature and character thereof and when plans and specifications are to constitute part of such contract, it shall be stated in the notice where the same may be seen.

See *Iowa-Nebraska Light & Power Co. v. City of Villisca et al.* 261 N.W. 423. Under a statute similar to the section quoted, the court held on page 430:

Thereupon on June 6, 1943, by a computation of the city engineer, and negotiations with the Electric Equipment Company, the amount of that company's bid was by an elimination of a substantial amount of material reduced to \$139, 545 being a reduction of more than \$11,000; and the contract was then let to that company for that amount, without publishing a new notice for additional bids. The final letting was never in fact advertised. The adoption of the amendment to the proposed plans and specifications, with the large amount of material omitted, was in effect the adoption of new plans and specifications, upon which no notice to bidders had ever been published, as required by statute.

The contract suggested in your letter would not be made in accord with any bid submitted and would be in disregard of the statute.

In our opinion, you must make a new call for bids on the altered plans and specifications.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-526 UNIVERSITY OF NEVADA—Act creating advisory Board of Regents is constitutional—Advisory board has no power to vote in affairs of elected board.

Carson City, October 10, 1947

Hon. C.H. Gorman, Comptroller, University of Nevada, Reno, Nevada

Dear Mr. Gorman:

This will acknowledge receipt of your letter dated October 1, 1947, received in this office October 2, 1947. You request, for the Board of Regents of the University of Nevada, an interpretation of chapter 268, Statutes of Nevada 1947, and submit the following specific questions:

1. Is the Act constitutional?
2. If the Act is constitutional does it make it mandatory for the Regents to make nominations to the Governor?
3. Does the advisory board have a vote in the elected Board of Regents?

1. In view of our opinion that the duties imposed upon the appointed board are entirely advisory, we hold that the Act is constitutional.

2. or the reasons hereinafter set forth, and viewing the Act to be constitutional, we believe the nominations to be mandatory.

3. In holding the Act constitutional, we are of the opinion that the advisory board has no power whatever to vote in the affairs of the elected Board of Regents.

The only purpose of the Act, as we view it, is to create an advisory board, giving it certain dignity, but conferring no authority to act in any matter properly under the control of the elected Board of Regents.

Chapter 268, Statutes of 1947, beginning with the preamble reads as follows:

WHEREAS, There are residents of the State of Nevada who have distinguished themselves in the business, professional, and cultural life of the state and nation, and whose counsel may be sought by the elected regents of the University of Nevada in the interest of the university; now, therefore,

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. There is hereby created a board to be known as the board of advisory regents of the University of Nevada. Said board shall consist of not more than seven members. The term of office of said board shall be four years from the date of appointment, and until their successors are appointed.

SEC. 2. The advisory board of regents so appointed shall be bona fide residents of the State of Nevada and shall be appointed by the governor after nomination of such persons to the governor by the elected board of regents. The appointment of such persons shall not be valid unless they shall have been nominated by an official act of the elected board of regents.

SEC. 3. The advisory board of regents so appointed shall act in an advisory capacity to the elected board of regents and shall be entitled to all the rights and privileges, including travel and incidental expenses, of the elected regents, shall not have a determining vote on any matter properly under the control of the elected board of regents.

SEC. 4. No provision of this act shall be construed to be in derogation of the constitutional authority of the elected board of regents to administer the affairs of the university.

SEC. 5. This act shall become effective from and after its passage and approval.

The preamble recognizes that there are residents of the State who have distinguished themselves in the business, professional, and cultural life of the State whose counsel, in the interest of the University, may be sought by the elected regents.

While the preamble can neither restrain nor extend the meaning of an unambiguous statute as stated in Sutherland Statutory Construction, 3d Edition, vol. 2, page 353, "In the first case the preamble may by the recitation of facts disclose compliance with the constitutional requirements, and where it does it is available not only for the purpose of interpreting the act itself, but also for the purpose of establishing the constitutional basis for the legislative action."

The facts disclosed in the preamble show there is no intention on the part of the Legislature to increase the board of regents already in existence by the appointment of additional members. If the intention was otherwise the Act would be unconstitutional under the decision of the Supreme Court of this State in *State v. Torreyson*, 21 Nevada 517. The action was proceeding in quo warranto to try the validity of the Attorney General's claim to act as a member of the regents of the State University, under and by virtue of an Act of the Legislature which provided that the Governor and Attorney General shall be ex officio members of the Board of Regents.

The court held that under sec. 7 of article XI of the Constitution the office of regent must be filled by an election by the people. The court said: "The word 'elected' in its ordinary

signification, carries with it the idea of a vote, generally popular, sometimes more restricted, and cannot be held the synonym of any other mode of filling a position.”
Judge Bigelow in the concurring opinion said:

To hold otherwise would be to make the university the football of the legislature. If this appointment, extending over nearly four years, is valid, there is nothing to prevent the next legislature, if the composition of the board does not suit them, from making all the other state officers ex officio regents. There is no reason to suppose that the power once admitted would stop with them, but might extend to county officers and to others. But if, in accordance with the requirements of the constitution, we hold that the regents must be elected by the people, this places the institution upon a sure and safe foundation that should eventually lead to the careful scanning of candidates and the election of best men for the positions.

Thus, if chapter 268 is intended to increase the membership of the board of regents by appointment, the Act is unconstitutional. The statute however admits of another construction, and the rule expressed in *Virginia and Truckee R.R. Co. v. Henry*, 8 Nevada 165, as follows should be applied:

It requires neither argument nor reference to authorities to show that when the language of a statute admits of two constructions, one of which would render it constitutional and valid and the other unconstitutional and void, that construction should be adopted which will save the statute.

In Sutherland, *supra*, on page 343 is found the following rule: “The ‘whole act’ rule, of course, does not apply that some portion of the act will not be given greater weight than others, but rather, that after a study of the entire Act a particular portion may be deemed as controlling.”

Throughout the entire Act the created board is designated the advisory board and the regents the elected board.

Section 4 of the Act is the final expression of the Legislature and controls the interpretation of the entire Act. The language: “No provision of this act shall be construed to be in derogation of the constitutional authority of the elected board of regents to administer the affairs of the university.”

The meaning of the language in sec. 3, which reads, “* * * and shall be entitled to all the rights and privileges, including travel and incidental expense of the elected regents,” must, therefore, be reconciled to meet the positive injunction in sec. 4.

The Act authorizes the appointment of a maximum of seven members. The vote of any such member could be the determining or deciding vote in the administration of the affairs of the University.

This was not the intention of the Legislature, as the same section contains the language, “* * * but shall not have a determining vote on any matter properly under the control of the elected board of regents.”

The conclusion is that the newly created board is entirely an advisory board from which the regents may seek counsel, but such board cannot exercise a vote on the board of regents. The Act is similar to the Act of 1895 which created a board of visitors whose duty it is to advise the Governor. The new Act creates a board to advise the regents.

The mandatory or directory character of the Act should be determined in the light of the construction of the entire Act heretofore adopted.

As stated in Sutherland Statutory Construction, vol. 3, on page 79, “It can be stated as a general proposition that, as regards the question of mandatory and directory operation, the court will

apply that construction which best carries into effect the purpose of the statute under consideration.” * * * “It is always presumed that the legislature was motivated by some purpose in the enactment of a statute, so that if one construction would render it ineffectual, the other should manifestly be adopted.”

This rule is followed in *State v. Martin*, 31 Nevada 493. “If the meaning were doubtful a similar construction would be placed upon the statute, under the rule that courts will so construe the language as to give effect to, rather than nullify, an act of the legislature.”

The Act should therefore be construed to make it a consistent whole. The construction that produces the greatest harmony is that the regents, in order to carry out the purpose of the Act should not neglect to make the nominations to the Governor.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-527 PUBLIC SCHOOLS—Textbook commission—Appointment of five members recommended.

Carson City, October 10, 1947

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

Dear Miss Bray:

This will acknowledge receipt of your letter dated October 3, 1947, received in this office October 4, 1947. You request advice in now recommending to the Governor qualified educators to serve on the Textbook Commission, and whether to recommend the names of four or five persons. You state that the terms of the present members of the board have expired.

We advise that you recommend five persons for appointment to the board under the provisions of sec. 398, chap. 63, Statutes of 1947.

The section provides that the appointment of four members to the board be made on or before January 15, 1951, and that the fifth member shall be appointed within sixty days after the passage and approval of the School code of which this section is a part.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-528 GAMBLING—State license necessary requisite to obtain county license—Tax commission may exercise discretion in issuing licenses.

Carson City, October 14, 1947

Nevada Tax Commission, Carson City, Nevada

Attention: R.E. Cahill, Secretary

Gentlemen:

Your letter of September 27, 1947, was received September 29, 1947, asking us to comment on the three propositions you submit in construing the Nevada Gambling Law.

We desire to make it clear that nothing in the law effective July 1, 1947, impairs the right or power granted municipalities to deny gambling licenses within their respective political subdivisions.

You state your three propositions as follows:

1. The Sheriff or county authorities cannot issue a temporary or permanent gambling license unless the applicant has first obtained a State gambling license, based on the last paragraph of sec. 10ee and notwithstanding provisions in earlier sec. 10d. This is correct.

The preparation, issuance and accounting for county gambling licenses is prescribed in sec. 3 of the Act (sec. 3302.02 N.C.L. 1929) as amended by chap. 196, Statutes of 1941.

The issuance of state gambling licenses is prescribed by sec. 10d of the Act (1929 N.C.L. 1941 Supp., sec. 3302.20, added Stats. 1945, page 492).

Section 10ee is the pertinent provision of the Act (following 1929 N.C.L. 1941 Supp., sec. 3302.21, added Stats. 1947, page 734). This contemplates additional imposts on gambling over those theretofore prescribed in the case of county and State licenses. That is to say, the amendment affects secs. 1 to 5 and 10 to 10e of the Act as they existed before the amendment was made. The added section provides that

The sheriff of any county shall not issue the licenses provided for in sections 1 to 5 of this act unless the applicant for such license shall first have obtained from the Nevada Tax Commission the licenses as provided in this section.

2. That the Nevada Tax Commission, under section 10b has the power to make rules and regulations necessary for the administration of the Gambling Act, even to the extent of refusing a license to an applicant if, in the commission's opinion, applicant is not entitled to a license for just cause, such as unsavory character or other reasons of public interest.

Under section 10b of the law the provisions of the law "respecting State gambling licenses shall be administered by the Nevada Tax Commission which is hereby empowered to make rules and regulations necessary for the administration of this Act and not inconsistent with the provisions hereof."

We find it desirable to expound this provision in our own language rather than in that of your proposition. The power is a broad one, including the grant and refusal of State licenses. It is, however, not without limitation and its exercise may be tested in the courts.

Clearly an alien cannot be licensed. This appears from section 1 of the Act and is supported by section 10ee under which no State license would be issued to authorize the issuance of a county license to an alien. The same may be said in case any alien directly or indirectly owns, operates or controls any game or device so licensed.

These are the only express requirements of the statute, but under the decisions of a wider discretion to grant or refuse a license exists.

Gaming is licensed under the police power of the State. Our Supreme Court in the case of *State ex rel. Grimes v. Board*, [53 Nev. 364](#); 1 P.(2) 570, quoted with approval the following from *Perry v. City Council*, 7 Utah 143; 25 P.739.

The question now comes, has the council any further discretion with respect to granting such licenses? (Licenses to sell intoxicating liquors.) Under its power to regulate, has it any discretion as to the person to whom licenses shall be granted, as to the place of business, or as to the number of licenses to be granted? * * *

It is apparent from the act under consideration that the intention of the legislature in conferring on the council the power to regulate the sale of liquor was to enable that body to protect society from the evils attending it. * * *

The authority is delegated to the councilmen as reasonable men, and with the expectation that they will employ reasonable means. To intrust the privilege of selling intoxicating liquors to persons whose antecedents, habits, and characters are such as to inspire confidence in them, and warrant the belief that they would not violate the law by selling to minors, habitual drunkards, or intoxicated persons, and would be likely to conduct their business in other respects with due regard to good morals and the peace and happiness of society, would appear to be within that discretion included in the right to regulate. * * *

Before making that quotation, Justice Ducker, in the Grimes case, said:

On account of the nature of the business of gambling, which is capable of being so conducted as to be a source of evil, a very wide discretion is thus conferred, not only to restrict the number of licenses in the city, but to pass all reasonable rules and regulations concerning it which the city authorities may deem necessary for the police government of the municipality.

Justice Ducker further commented:

We think the distinction drawn between a business of the latter character (dealing in intoxicating liquor) and useful trades, occupations, or business is substantial and necessary for the proper exercise of the police power of the state. Gaming as a calling or business is in the same class as the selling of intoxicating liquors in respect to deleterious tendency. The state may regulate or suppress it without interfering with any of those inherent rights of citizenship which it is the object of government to protect and secure. *See Norman v. City of Las Vegas*, 177 P.(2) 442 at 448.

Specifically, we are of the opinion that your commission may adopt and administer rules and regulations concerning the issuance and continued possession of a gaming license, requiring, among other things:

Evidence of citizenship of the applicant and associates and of all persons who plan to “own, operate or control any game licensed.”

Inquiry into the “antecedents, habits and characters” of applicants in order to satisfy the commission that they will not violate the gambling law in respect of section 6 thereof prohibiting thieving and cheating games and in respect of “bunco-steering,” sec. 10147 N.C.L. 1929, or “swindling,” sec. 10146 N.C.L. 1929, which are felonies.

If on such inquiry your board finds reasonable ground to apprehend that the grant of a license would be against the public interest, you would be within the powers delegated to you to refuse a license.

3. That the Nevada Tax Commission has the power of revocation of license when on investigation it is found that licensee is of unsavory character or in the commission’s opinion licensee is acting against the public’s interests.

We refer to the comment on proposition 2.

If after granting a license the commission finds under section 10ff of the law that the Act has been violated with special reference to section 6 (which involves an automatic revocation under section 7) or in respect of the reasonable rules and regulations promulgated under section 10b of the Act (which take the force of law) as to the continued possession of such a license, you will be empowered to take the action specified in section 10ff revoking the license summarily.

Very truly yours,

ALAN BIBLE
Attorney General

By: Homer Mooney
Deputy Attorney General

OPINION NO. 47-529 GAMBLING—City by ordinance may require additional license.

Carson City, October 15, 1947

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

Dear Mr. Evansen:

This will acknowledge receipt of your letter dated September 29, 1947, but not received in this office until October 10, 1947.

You call attention to the opinion from this office respecting city ordinance No. 15 and ask if the city of Hawthorne would have nay right to place any additional license on gambling games.

There was nothing in our former opinion relative to the licensing power of cities.

In answer to your inquiry on this point, you are referred to section 13b of the Gambling Act, being section 3302.14, N.C.L. 1931-1941 Supplement, which reads as follows:

Nothing contained in this act shall be deemed to affect the powers conferred by the provisions of the charter or organic law of any county or incorporated city in the State of Nevada to fix, impose and collect a license tax and in all such counties or incorporated cities having such powers the sheriff shall not issue any such license for the operation of any such slot machine, game or device within the boundaries of such county or incorporated city until the applicant shall have first exhibited to him a valid and subsisting license obtained from such county or incorporated city, located within his county, permitting the operation of such slot machine, game or device at the location applied for within the boundaries of such county or incorporated city.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-530 RACING COMMISSION, STATE—Control does not extend to the exclusion of all dog racing—Law authorizes granting of licenses.

Carson City, October 15, 1947

Hon. Vail Pittman, Governor of Nevada, Carson City, Nevada

Dear Governor Pittman:

Your letter of September 26, 1947 was received September 30, 1947. We also received the letter from Mr. Vargas and accompanying correspondence to which you refer.

There is presented for our comment a conflict of view between Mr. Vargas and Mr. Houssels of the State Racing Commission respecting the law in question.

The State Racing Law was first enacted to cover horse racing only February 20, 1915 (sec. 6215-6224 N.C.L. 1929). It was amended in title and in secs. 1, 6, 9, and 10 to cover dog racing equally with horsing racing.

Mr. Vargas seems to contend in his letter to you and his letter to Mr. Houssels that an association has a pre-emptive right to hold one or more race meetings a year aggregating at least 60 days of racing.

Mr. Houssels, in addition to declaring that he does not favor dog racing under any condition, seems to feel that the amendments of 1943 including dog racing under the law were intended to give the State Racing Commission plenary control over the subject matter.

It is our opinion that, once licensed, an association is entitled to be assigned a racing season within the limits assured by the law. A license is always a necessary prerequisite. Furthermore, the State Racing Commission's control does not extend to the exclusion of all dog racing. The fundamental law cannot be made either more strict or more liberal than it stands as written.

The practical point in issue seems to be that one side contends and the other side denies that dog racing with its attendant seasons should be permitted by license under the existing law. On this point it is clear that the law authorizes the granting of licenses for dog racing and places this licensing power in a State commission.

At the present time, there is no application for a license before the commission. It would, therefore, appear to us that the first step is for Mr. Vargas to apply to the State Racing commission for a license. Thereafter the commission might be well advised to hold a hearing on the application for the purpose of determining whether or not a license should be granted. Although the commission is granted discretion, it cannot exercise this discretion arbitrarily or capriciously. The refusal of the commission to grant a license, or to assign at least sixty days each year for racing, is specifically made subject to review of the courts of this State. See Statutes of Nevada 1943, page 105, sec. 6220 N.C.L., 1945 Pocket Parts.

We are inclosing herewith extra copies of this opinion for your use.

Very truly yours,

ALAN BIBLE
Attorney General

By: Homer Mooney
Deputy Attorney General

OPINION NO. 47-531 PUBLIC SCHOOLS—Election required to authorize building of school house where expense is greater than \$5,000.

Carson City, October 16, 1947

Gordon R. Thompson, Assistant District Attorney, Washoe County, Reno, Nevada

Dear Mr. Thompson:

This will acknowledge receipt of your letter dated October 7, 1947, received in this office October 9, 1947.

The Browns and Washoe School Districts in Washoe county have consolidated, and such consolidated district has been designated "Consolidated School District No. 2." The Board of Trustees of the consolidated district, pursuant to sec. 206 of the 1947 School Code, desire to call a special election to submit to the registered electors of said district the quest of a bonded indebtedness of \$20,000 for the purpose of erecting a new school building.

The question has arisen whether such a special election is premature in view of sec. 285 of 1947 School Code which states: * * * "no school site shall be purchased or any school house erected or repaired at a greater expense than \$5,000 unless the same is first authorized by a majority vote of the school district cast at a school election called and held as provided by the law governing school elections." The proposed erection of a school house for Consolidated School District No. 2 has not been authorized pursuant to sec. 285.

Would you please give me the opinion of your office as to whether the school district must proceed on sec. 285 prior to calling such bond election pursuant to sec. 206.

While the bond election might be apt and suitable to the end in view, we are of the opinion that the safe course to follow is that the trustees proceed under section 285 prior to the calling of a bond election pursuant to section 206, in order to safeguard the validity of the bonds.

Chapter 31 of the 1947 creates the boards of trustees for the school districts, provides for the election of such trustees and defines their powers.

Section 285 under the same chapter provides that no school site shall be purchased nor any school house erected or repaired at a greater expense than five thousand dollars unless the same is first authorized by a majority vote of the school district cast at a school election called and held as provided by the law governing school elections.

The above provision is expressed in negative words. The rule of construction in such case is expressed in *Walser v. Moran*, 42 Nevada at page 120, wherein the court said: "Where an existing right or privilege is subject to regulation by a statute in negative words, the mode so prescribed is imperative."

The mode prescribed for the erection of a school house at a greater expense than five thousand dollars is contained in the language, "unless the same is first authorized by a majority vote of the school district cast at a school election called and held as provided by the law governing school elections."

Section 274 of the same chapter, defining the powers of school trustees, contains the following language: "To buy or sell any school house or school house site directed to be bought or sold by a vote of the registered electors of the school district * * * to build, purchase, or rent school houses when directed to do so by a vote of the registered electors * * *."

The first question to be determined is, have the electors of the district, by their vote, directed the trustees to erect a school house? In the event the expense is in excess of five thousand dollars the statute specifically provides that the construction is first authorized by a majority vote of the electors of the district. When this is determined, as in the section provided, and there is not

sufficient money in the school district fund for such purpose, the statute provides the method of securing the necessary funds.

Section 206 of chap. 28 authorizes school districts to borrow money for the purpose of erecting and furnishing school houses. This chapter defines the procedure for the holding of an election for the purpose of issuing bonds.

While the proposition as to the erection of a school house and the amount of the bond issue could be submitted as a single question to the voters at a bond election, it appears that the provision in sec. 285, which requires that the school house to be erected is first authorized by a majority vote of the district, is a condition precedent, the performance of which is essential to the validity of the bonds.

In *McCulloch et al. v. Bianchini et al.*, 53 Nevada on page 105, the court states the rule which appears applicable here, as follows: "The principle that district school trustees have such powers, and such powers only, as are conferred upon them by the legislature, either expressly or necessary implication, to issue bonds for school purposes, and that a compliance with all the requirements of the provisions of the law is essential to the validity of such bonds, is settled by so many decisions of the courts of last resort as that the principle may be considered to be elementary."

Considering the plain and imperative language of section 285, it does not appear by necessary implication that the trustees could submit the question of a bonded indebtedness of \$20,000 for the purpose of erecting a school house before the electors of the district had determined, by their vote, that a school house should be erected in the district.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-532 INSURANCE—Multiple line underwriting not permitted.

Carson City, October 18, 1947

Hon. Jerry Donovan, Insurance Commissioner, Carson City, Nevada

Attention: G.C. Osburn, Deputy

Dear Sir:

This will acknowledge receipt of your letter dated October 3, 1947, received in this office the same date.

You state that the domicile of insurance companies that are now doing business in this State have passed legislation permitting multiple line underwriting, which permits fire and casualty insurance companies to amend their charters to write all classes of insurance companies to amend their charters to write all classes of insurance business except life. You now have requests from casualty companies wanting to write fire and inland marine insurance; and from fire insurance companies wanting to write casualty and surety insurance. You request an opinion as to whether or not a foreign company licensed as a casualty company under the Nevada Insurance Act could write insurance under the fire company classification, or a fire company so licensed could write

insurance under the casualty and surety classification, and if so should their licenses be amended to cover both fire and casualty, and the license fee be charged for both classes. It is assumed that the capital and surplus requirements would have to equal the combined requirements for companies in both classifications.

We are of the opinion that a foreign insurance company licensed as a casualty company under the Nevada Insurance Act cannot write insurance under the fire company classification, or a fire company write insurance under the casualty and surety classification.

Section 3656.04, 1929 N.C.L., 1941 Supp., being sec. 5 of the Nevada Insurance Act, classifies insurance and insurance business into three classes, namely, life, accident and health, casualty, fidelity and surety, and fire and marine.

Section 3656.05, 1929 N.C.L. 1941 Supp. (sec. 6 of the Insurance Act), provides as follows:

(1) All companies now or hereafter authorized to transact business in this state shall be classified according to their functions into three (3) class corresponding to the classes of insurance enumerated in section 5.

(2) No company shall be authorized to transact any kind or kinds of business other than those enumerated in its respective class, except as otherwise specifically provided in this act; provided, that any foreign insurance company which has been licensed to do the business of life insurance in this state prior to the effective date of this act may continue to be licensed, in the discretion of the commissioner, to do the kind or kinds of insurance business which it was authorized to do immediately prior to the taking effect of this act.

(3) All insurance in this state is governed by the provisions of this act.

Section 3656.23, 1929 N.C.L. 1941 Supp. (section 24 of the insurance Act), provides for the application for license for a foreign company to transact business in this State. Subdivision (c) of this section provides:

The class or classes of insurance business, as provided in section 5, in which it proposes to engage in this state, and the kinds of insurance in each class it proposes to write in this state.

Section 3656.25, 1929 N.C.L. 1941 Supp., defines the conditions of issuance of license, and shall satisfy the commissioner that, quoting subdivision (a):

The company is duly organized under the laws of the state or country under whose laws it professes to be organized and authorized to do the business it is transacting or proposes to transact.

Considering the language of section 6 of the Act, that no company shall be authorized to transact any kind or kinds of business other than those enumerated in its respective class, the provision in subdivision (a) cannot be construed to mean that foreign companies could impose upon them, and here do whatever they were authorized to do in the respective States where they were organized.

The Insurance Act of this State is very similar to the present Insurance Code of Illinois. The Illinois Insurance Act of 1879 authorized the auditor of public accounts to establish a classification of risks into any number of classes, not less than four, and required that every company organized under the laws of any State must comply with the general insurance laws of Illinois. Under this Act the Supreme Court of Illinois, in *People v. Fidelity & Casualty Ins. Co.*, 38 N.E. 752, held that in the absence of an express prohibitory statute, a corporation legally organized under the laws of another State to do a multiform insurance business may do such business in Illinois, although such a corporation could not be organized under the laws of Illinois.

Subsequently this Act was repealed and the Illinois Insurance Act of 1937 classifies insurance business into three classes—Life, Accident and Health—Casualty, Fidelity and Surety—and Fire

and Marine, the same classes as are found in the Nevada Insurance Act. The Illinois Act contains in section 617 the following provision:

(1) All companies now or hereafter authorized to transact business in this state shall be classified according to their functions into three classes corresponding to the classes of insurance enumerated in section 4.

(2) No company shall be authorized to transact any kind or kinds of business other than those enumerated in its respective class, except as otherwise specifically provided in this code.

Section 720 of this code also contains the following:

No foreign or alien company shall transact in this state any insurance business not classified under section 4.

It appears that the late Illinois Act was adopted to supply the prohibitory provision which was lacking in the old Insurance Act.

The Nevada Insurance Act contains such a prohibitory provision in section 6 and section 24, which is almost identical with section 617 of the Illinois Act.

It is evident that the State's policy is that no insurance company shall be authorized to transact any kind or kinds of business other than those enumerated in the respective classes and until the Legislature makes regulations for multiple line underwriting, such business is not permitted within the State under the present Insurance Act.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-533 WATER LAW—State water right surveyor governed by provisions of Registered Professional Engineer Act.

Carson City, November 3, 1947

Hon. A.M. Smith, State Engineer, Carson City, Nevada

Dear Tom:

Reference is hereby made to your inquiry of October 20, 1947, as to whether an applicant for appointment as State Water Right Surveyor, under the provisions of Statutes of 1921, section 91, the same being section 7978 N.C.L. 1929, may be appointed by the State Engineer upon appropriate examination and investigation of his qualifications by the State Engineer alone, or must the applicant first qualify as a registered professional land surveyor under the provisions of chap. 254 of the 1947 Statutes?

In answer to your inquiry we beg to advise that an examination of the 1947 act, which contains several amendments to the Registered Professional Engineer Act of 1919 which was materially amended in 1937 Statutes, page 491, discloses that sections 13 and 14 of the 1947 Act particularly relate to land surveyors and, in our opinion, definitely relate to a State Water Right Surveyor in view of the qualifications imposed upon a land surveyor which in many respects

follows the language of section 7978 N.C.L. 1929. This in itself would not perhaps require the applicant to proceed under the Registered Professional Engineer Act, but it is to be noted that in section 14 of the 1947 Act a proviso was included in such section reading:

provided, that the provisions of this paragraph shall not apply to state water right surveyors who have been *heretofore* licensed by the state engineer under provisions of Nevada Stats. 1921, sec. 91.

This proviso, we think, evidences the intent of the Legislature that from and after the approval of the 1947 Act, State Water Right Surveyors were and are to be governed by the provisions of the Registered Professional Engineer Act.

Very truly yours,

ALAN BIBLE
Attorney General

OPINION NO. 47-534 INSURANCE—Insurance of school buses in Farmers Insurance Exchange found contrary to section 9, article viii, Constitution of Nevada.

Carson City, November 6, 1947

Hon. Jerry Donovan, Insurance Commissioner, Carson City, Nevada

Attention: Mr. G.C. Osburn, Deputy

Dear Mr. Donovan:

We have given further consideration to your letter of October 23, 1947, enclosing communication with enclosures from *Maurice v. Pew, Secretary, Farmers Insurance Group, Los Angeles, California*. This bears on the inquiry of A.H. Bachelor, School Superintendent of Lovelock, as to the legality of taking insurance on school buses with that group.

We note Mr. Pew declares that the policies of this group are nonassessable and he supplies a certificate of surplus issued October 24, 1941 by the Insurance Commissioner of California. We note it is stated that the Farmers Automobile Inter-Insurance Exchange as known in 1941 is now the Farmers Insurance Exchange. The certificate issued pursuant to art. 4, ch. 3, part 2, div. 1 (sec. 1401 California Insurance Code). We do not find any showing that this 6-year-old certificate has not been revoked thus restoring the legal liability to assessments. It would seem that to be entirely safe a subscriber would be advised to pay a double annual premium, one-half of which would be classed as a "surplus deposit." (Sec. 1400.) It is quite evident that an exchange may have sufficient assets to discharge all liabilities and the required surplus besides in one year, and not necessarily the next year.

We note the copy of the Rules and Regulations of Farmers Insurance Exchange amended March 17, 1947. Section 1 of Article II requires all persons insured to be members of the Exchange.

In the application form for membership and insurance the subscriber agrees that the membership fee and twenty percent of all premium deposits and premiums paid by him shall be paid to the association or exchange. This indicates that the subscriber is not alone an insured but also a member of an association and a definite part of his initial and current payments is allocated to membership and insurance costs, respectively.

The form of policy, section 23, provides that the policy is nonassessable. Similar provision appears in the application form. Section 23 also declares that the policy does not create a “partnership, or mutual insurance association, or give rise to or create any joint liability.” Notwithstanding the foregoing under sections 1398 to 1402, inclusive, the contingent liability of the subscriber, for assessment, may not be less than an amount “equal to and in addition to the amount of the premium deposit” provided in the policy. (Sec. 1398.) The premium deposit is specified on the annex to the policy.

On the showing presented we are of the opinion that insurance of school buses for fire, theft, comprehensive and public liability offered by this company would be contrary to section 9 of article VIII of the Constitution of Nevada.

We enclose a copy of this opinion for Mr. Bachelor. We return the documents you sent us.

Very truly yours,

ALAN BIBLE
Attorney General

By: Homer Mooney
Deputy Attorney General

OPINION NO. 47-535 BONDS—Clark County Airport Bonds in conformity with statutes and laws of Nevada.

Carson City, November 7, 1947

Nevada Industrial Commission, Carson City, Nevada

Attention: D.J. Sullivan, Chairman

Gentlemen:

This will acknowledge receipt of your letter dated October 29, 1947, requesting an opinion from this office as to the validity of the proceedings by Clark County relative to the Clark County Airport Bonds, of which issue your commission has purchased bonds in the sum of \$570,000. In response to your request we have the following comments to offer.

We have examined the transcript of the proceedings for the purpose of issuing \$750,000 of bonds of Clark County for the purpose of acquiring, constructing, equipping, and maintaining a public airport in said county and find the same to be in conformity with the statutes and laws of Nevada.

We find, however, that the printed form of bond submitted does not conform with the resolution to issue the bonds and the advertisement for the sale of such bonds. The resolution fixes the maturity dates of the bonds and makes no provision for calling the bonds before such dates. There is no provision in the resolution that interest on the bonds shall cease on the date when the bonds become due, as appears in the printed bond. The sample of the printed bond recites that the \$5,000 bond is one of a series of 304 such bonds of like tenor with different maturities, while the resolution recites that 114 of said bonds be in the principal sum of \$5,000 each. The paragraph stating the authority under which the bonds are issued should recite “under the authority conferred by sections 289-293 Nevada Compiled Laws 1929; chapter 70, Statutes of Nevada

1937” and as chapter 215, Stats. of Nevada 1947 was in effect before the last resolution was adopted this last-mentioned chapter should be cited in the bond also.

Reference to the Constitution and laws of the State of Nevada should be retained.

We are of the opinion that the redemption of the bonds in semi-annual payments on April 1st and October 1st of each year, while not in accord with the strict letter of the language in section 6085

N.C.L. 1929, that is, “all such bonds shall be redeemed in equal annual installments,” such payments are in accord with the purpose and intent of the Legislature and the reason for the statute. Section 6086 N.C.L. 1929, which provides for the levy of taxes for the payment of such bonds, contains the following language, “make an annual levy sufficient to meet the annual or semiannual payments of principal and interest on said bonds maturing as herein provided.” The tax is levied for an annual payment of \$30,000 of the principal amount and the interest. The amount of principal is to be paid is an equal amount throughout the life of the bonds, and the burden upon the taxpayers is distributed equally throughout the life of the bonds, which is within the twenty-year limitation. The redemption of the bonds in semi-annual payments on April 1st and October 1st follows the collection of the tax after the first two quarters and the last two quarters of installment payments of the annual tax.

Such an interpretation of the sections of the statute appears to us to be supported by the reasoning and decision of the court in the case of *Anderson v. Village of Potsdam*, 203 N.Y.S. 220. annotations 103 A.L.R. 815 and 119 A.L.R. 202.

We are of the opinion that the \$570,000 in bonds purchased by the Nevada Industrial Commission, when the reprinting of the bonds contains the changes we deem necessary, constitute a legal and binding obligation of Clark County.

We understand that no bid was received for the remaining bonds in the total sum of \$180,000 and that such bonds remain unsold.

We are returning herewith Bond No. 1 of the series, together with the letter from Frank Gusewelle, Chairman of the Board of County Commissioners, and we are retaining the transcript of the proceedings for the files in this office.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

cc: Hon. Robert E. Jones, District Attorney, Las Vegas, Nevada

OPINION NO. 47-536 COUNTIES—County Highway Board has no power to create emergency loan.

Carson City, November 7, 1947

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

Dear Al:

This will confirm our telephone conversation of yesterday, November 6, 1947, concerning the power of a Board of County Highway Commissioners to create an emergency loan.

An examination of the County Highway Board Law discloses there is no power provided therein for such board to create an emergency loan. Apparently, the method of raising revenue for highway purposes under that Act is, first, by the sale of bonds authorized by an election and, second, if the bond issue is defeated, the expenditures may be made from the general funds of the county provided, of course, sufficient funds are therein included for that purpose.

An examination of our fiscal management statute fails to disclose that county highway boards are authorized to create emergency loans. For county purposes the power to create such loans is vested in the board of county commissioners so that, as a strict legal proposition, it is apparent that county highway boards as such cannot legally create emergency loans.

However, if the banks will consent to making the loan upon the resolution as adopted by the county highway board, it may be protected for the reason that it is clear it was the unanimous consent of all members of such board that the resolution was adopted. This included the unanimous vote of the three county commissioners, and no doubt, if the matter had been handled by the board of county commissioners alone, the result would have been the same, and as a practical matter, the additional vote of the assessor and district attorney could be treated as surplusage. The Fiscal Management Act was adopted in 1917, some four years after the enactment of the County Highway Board Act and can be treated as a later Act insofar as the above suggestion is concerned. However, if the banks are not agreeable to such proceedings, I feel that the only remedy would be for the county commissioners to institute proceedings to create the emergency loan for the highway purposes or else call for a special election to vote \$80,000 in bonds.

Very truly yours,

ALAN BIBLE
Attorney General

cc: Hon. Grant Robison, Carson City, Nevada

OPINION NO. 47-537 LABOR—Minimum wage and hour law for women—Contracts—laundry workers—Domestic workers.

Carson City, November 10, 1947

Mr. John C. Bartlett, Assistant District Attorney, Washoe County, Reno, Nevada

Dear Mr. Bartlett:

This will acknowledge receipt of your letter dated October 23, 1947, received in this office October 24, 1947.

You request an opinion from this office following our discussion with you relative to the minimum wage and hour law for female workers, and present a situation in which the laundry workers have a contract with the employers. The contract calls for the payment of 63 cents per hour with time and a half under certain conditions and a lunch period of one hour between certain hours of the day. You also inquire as to whether or not females employed by foster homes for children and who do domestic work come under the minimum wage and hour law for women.

Your third question relates to a situation wherein a worker is employed on a part-time basis. For example, a female is employed four hours a day at the rate of 50 cents per hour. Would she be entitled to credit for a lunch hour and also be entitled to one ten-minute rest period?

As we stated in our recent conference with you, chapter 68, Statutes of 1947, amends the Act which regulates the hours of service and fixes a minimum compensation for female workers. Minimum wage and hours of service for such wage is the subject of the Act, and the statute does

not affect the right of employer and employee to contract, when such contract does not involve the payment of a lower wage than the employer is required to pay by virtue of the statute.

Chapter 89, Statutes of 1943, section 1, provides:

It shall be unlawful for any employer of labor in this State to pay a lower wage, salary, or compensation to his employee than that agreed upon through a collective bargaining agreement, if any, or to pay a lower wage, salary, or compensation than the amount that the employer is required to pay his employee by virtue of any existing statute of this State or by contract between employer and employee.

When the contract is not inconsistent with the minimum wage provisions of the statute, it appears that the parties thereto are governed by the terms of the contract and not by the statute. *Bayonee Textile Corp. v. American Federation of Silk Workers*, 172 A. 551, expressed the following rule:

The personal liberty and right of property guaranteed by the Fifth Amendment of the Federal Constitution embraces the right to make contract for the purchase of the labor of others, and equally the right to make contracts for the sale of one's own labor. The enjoyment of these constitutional rights is subject always to the fundamental condition that no contract, whatever its subject matter, can be sustained, which the law, upon reasonable grounds, forbids as inconsistent with the public interest, or hurtful to the public order, or as detrimental to the common good.

The laundry workers and the employers have entered into a contract of employment. In the event a controversy arises as to whether such contract conforms to the statute, the same is subject to disposition by the court, to construe the terms of such contract, and we do not believe it to be incumbent upon the District Attorney or the Attorney General to rule upon the terms of such contract.

Our answer to your second question is that a female performing domestic work in a foster home comes within the exception expressed in section 6 of the Act.

Your third question is answered in the negative.

Section 2825.46, 1929 N.C.L. 1941 Supp., provides as follows:

None of the provisions of this act shall apply to the state, or any county or city or town therein, or to its female employees, or to any female employed in domestic service anywhere within the state.

Section 1061, 1929 N.C.L. 1941 Supp., defines a foster home as follows:

Any family home in which one or more children under 16 years of age not related by blood, adoption or marriage to the person or persons maintaining the home are received, cared for, and maintained for compensation or otherwise, shall be deemed to be a foster home for children. No person shall conduct a foster home so defined without receiving an annual license to do so from the state welfare department.

Section 1061.04, 1929 N.C.L. 1941 Supp., provides that the act shall not apply to homes in which children are placed by their own parents or legal guardians, and where the total cost of care is provided by said parents or guardians.

A domestic servant is defined in the case of *Catto v. Plant*, 137 A. 764, as follows:

Ordinarily "domestic servant" is one whose service is connected with maintenance of house and land, connected with and constituting the establishment of his employer in such way that his

work and duties, whether in or outside the house, have to do with the running of the establishment or estate in providing for and ministering to wants and comforts of members of his employer's household.

Wiseman v. Phipps, 28 N.Y.S. (2) 971:

A "domestic servant" connotes a servant who primarily is employed in and about the maintenance of the home itself. Such a person is a household servant, working within the house for the upkeep thereof and the care and comfort and convenience of the occupants thereof.

The questions of service on a part-time basis as to the rate of pay per hour is provided for in the Act, but a lunch and rest period when the employment is but four hours a day do not appear to be within the scope of the statute.

Section 2825.43, 1929 N.C.L. 1941 Supp., as amended by chapter 166, Statutes of 1945, provides, quoting that part deemed relevant:

* * * provided, all females employed to work, labor or serve a lesser number of hours than eight in any one day * * * shall be paid therefor her wages computed upon the full daily * * * rate then and there paid for such work to cause any reduction of such daily * * * rate or any reduction of the minimum daily * * * rate fixed in this act as applied to such lesser number of hours * * * so employed.

Section 2825.47, 1929 N.C.L. 1941 Supp., as amended by chapter 68, Statutes of 1947, deals with the maximum period of eight hours employment and within such eight hours provides for a meal period and two rest periods. The meal period may be after the end of the third hour and before the end of the sixth hour of work. Two ten-minute rest periods are provided, one within the first four hours of work and the second rest period within the last four hours of work. The subject of the section is eight hours of work within which certain periods of time out are allowed in the employees. It does not appear that it was the intention of the Legislature that the provisions in this section apply when one is employed for a four-hour day.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-538 **OID-AGE ASSISTANCE**—Real estate of recipient exempted only while same is occupied by the surviving spouse or dependent.

Carson City, November 17, 1947

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 October 22, 1947, in which you request an opinion as to whether property owned by a recipient of old-age assistance would be subject to a claim against his estate, in the event of his death, if part of such property was income property and not occupied by the surviving spouse after the death of the recipient.

An opinion was given by this office under date of June 27, 1947, reported in the 1943-1944 Biennial Report, Opinion No. 148, on page 289, wherein we expressed the opinion that section 12 of the Old-Age Assistance Act exempts only the real estate of the recipient while the same is occupied by the living spouse or dependent of the deceased recipient.

You submit a specific case wherein the wife of a recipient cannot qualify for assistance due to the fact that she has not reached the required age. The husband and wife own their own home and three income-producing cabins, all of which is community property. In the event of the death of the husband the wife claims she would have no other means of support than the income from the cabins.

Section 12 of the Old-Age Assistance Act provides, on the death of any recipient, the total amount of assistance paid under this Act shall be allowed as a claim against any estate of such person, after funeral expenses, the expense of last illness, and the expense of administering the estate have been paid.

Section 3365 N.C.L. 1929, sec. 11 of the community property statute, provides that upon the death of the husband one-half of the community property goes to the wife, and the other half is subject to the testamentary disposition of the husband, and in the absence of such disposition goes to his surviving children equally, and in the absence of both such disposition and surviving children, the entire community property belongs to the surviving wife, with certain exceptions, subject however, to all debts contracted by the husband during his life that were not barred by the statutes of limitation at the time of his death. In the absence of testamentary disposition, and in the absence of children, the wife may pay or cause to be paid all indebtedness legally due from said estate, then the community property shall not be subject to administration.

Section 12 of the Old-Age Assistance Act makes the total amount of assistance to any recipient a claim against any estate of the deceased. The entire community property which vests in the surviving wife is subject to the debts contracted by the husband during his life and the above-mentioned section 12 makes the total amount of assistance granted a claim against the community estate. The only exception as provided in the section is that no claim shall be enforced against any real estate of a recipient while it is occupied by the surviving spouse or dependent of recipient. Unless the indebtedness was paid by the wife, the real estate not occupied by her and other community property would be subject to administration for the purpose of paying all indebtedness legally due from such estate.

Wright v. Smith, 19 Nevada 143, holds that title to community property after a man's death is vested in the widow, subject to the payment of the debts, and not subject to administration if the widow pays all the debts legally due from the estate.

In the case of *Hawkins v. Social Security Welfare Board*, 84 P.(2) 930, 148 Kansas Reports 760, the court construed a section of the Old-Age Assistance Act almost identical with section 12 of the Nevada Act, holding as follows:

The recipient of old-age assistance applied for and accepted the old-age assistance granted her under the terms of the statute. The application, the grant of assistance, and the acceptance of that assistance constituted a contract between the plaintiff and the official board having to do with the matter of the old-age assistance granted to her. Plaintiff entered into that contractual relation with defendants on the only terms they were authorized to deal with her—the terms of the statute—so she must be held to have consented to the lien which the statute enacted as a condition of the granting of the old-age assistance she thus obtained.

This rule would apply in the specific case mentioned in your inquiry.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-539 OLD-AGE ASSISTANCE—Recipient does not lose legal residence when leaving state with intention to return.

Carson City, November 17, 1947

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 written request for an opinion submitted November 4, 1947.

You ask what is the limitation, if any, on the absence from this State, in the case of a recipient under the Nevada Old-Age Assistance Act who is advised by doctors to stay in a low altitude and mild climate, due to the condition of the recipient's health, and who spends a great part of his time in California?

The Old-Age Security Department of California has informed your department that the person is not eligible to assistance in California because his legal residence is in Nevada and it is his intention to maintain Nevada as his legal residence.

A person to be eligible to receive old-age assistance must have been actually, physically, and corporeally present in this State for the period required by the Old-Age Assistance Act. When an applicant who established such residence meets the other requirements and becomes a recipient of aid, such recipient is a legal resident of the State and when such legal residence is once fixed, it requires both fact and intention to change it.

Assistance may be granted under the Old-Age Assistance Act to persons who have certain qualifications. Section 2, subdivision (b), provides: "Is a resident of the State of Nevada who has actually resided in this State for a period of five years or more during the nine years immediately preceding the making of the application for such assistance, the last one year of which shall have been continuous and immediately preceding the making of such application." This is the maximum residence requirement as provided in the grants to States for old-age assistance under the Federal Social Security Act and is the residence requirement expressed in many States.

Section 13 of the Nevada Act makes provision for relief to any recipient who removes from one county to another county in the State. The assistance granted shall continue and be paid by the county awarding the same for a period of thirty days after his removal from the county, and at any time thereafter such person shall be entitled to apply for aid in the county to which he removed.

Section 20 of the Act provides: "Subject to the provisions and under the restrictions contained in this Act, every aged and needy person, as defined in this act, *while residing and being a resident of the State of Nevada* shall be entitled, as a matter of right, to old-age assistance, as provided for in this Act; and the provisions of this act providing for the furnishing and payment thereof are and shall be construed to be mandatory." (Italics ours.) If the language, "while residing and being a resident of the State of Nevada," is to be determined as a limitation of the assistance granted a recipient who subsequently leaves this State, the context of the entire Act must be considered to explain the meaning of the words "residing" and being a "resident" of the State.

The residence requirement to enable a person to apply for old-age assistance is defined as one who has actually resided in the State for a period of five years or more during the nine years preceding the making of an application. This requires residence existing in fact rather than in law.

Grants to the States made by the Federal Government, as stated in the Social Security Act under old-age assistance, are for the purpose of enabling each State to furnish financial assistance, as far as practicable under the conditions in such State, to aged needy individuals. The national enactment was an outline under which the several States might unite their public assistance programs into a uniform nation-wide administration thereby establishing a more uniform administration of all phases of Social Security. The Old-Age Assistance Act of Nevada provides in its title and in the provisions of the Act for cooperation with the Federal Government. This being the purpose and policy of the Act, section 20 cannot be construed to mean that a recipient who leaves the State in order that he may preserve his health, when he in good faith does so upon the advice of doctors, that the assistance granted by this State should cease when his physical residence is no longer an actual fact. The terms "while residing and being a resident" should then be construed as legal residence.

McGrath v. Stevenson et al., 77 P.(2) 608, the terms "reside," "residing," "resident," and "residence" are elastic and should be interpreted in light of object or purpose of a statute in which such term is employed.

In re Quin's Estate, 282 Ill. App. 597, the words "residence," "residing," and "domicile" though having different shades of meaning are often used synonymously, and when such words are used in statutes they are used synonymously and signify legal residence or domicile unless their meaning is limited by express definition or context.

In re Gilbert's Estate, 35 N.E. (2) 400, "Residence," "residing," domicile signify legal residence unless their meaning is limited by the context.

Section 6405 N.C.L. 1929, which defines legal residence and the right dependent upon such residence, provides: "* * * should any person absent himself from the jurisdiction of his residence with the intention in good faith to return without delay and continue his residence, the time of such absence shall not be construed in determining the fact of such residence."

See Opinion Attorney General B-24, 1940-1942, Biennial Report.

In order to qualify for assistance an applicant must, as the statute provides, have actually resided in the state for the required period. This limits such residence to an actual, physical and corporeal presence in the State. When a person has established such residence and is a recipient of old-age assistance, in the absence of any specific statutory limitation to out-of-State payments, and such recipient leaves the State and in good faith intends to return whenever that which keeps him away no longer exists, such recipient does not lose his legal residence in this State.

Until the Legislature fixes a limitation upon out-of-State payments, as many States have done, the State and county boards, under section 11 of the Act, may, after investigation, and good cause being discovered, change the amount of assistance, or the same may be entirely withdrawn if the boards find that the recipient's circumstances have altered sufficiently to warrant such action. This provision empowers the board to investigate each case where absence from the State is involved and arrive at a decision upon the facts discovered, giving the recipient reasonable notice and opportunity for a hearing.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-540 OLD-AGE ASSISTANCE—State board may, within its budget, authorize furnishing and payment for office space for state workers in district offices.

Carson City, November 17, 1947

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 October 23, 1947, received in this office October 24, 1947. You refer to an opinion from this office under date of August 28, 1947, respecting the authority of the Division of Old-Age Assistance to pay, when necessary, for office space for old-age assistance workers in counties on a district basis.

As stated in that opinion, there seems to be no clear understanding as to whether office space and equipment for old-age assistance visitors is furnished by the counties, and advised that the problem be submitted to the Legislature in view of the fact that the Legislature would convene in a short time.

Your present question deals with district offices established by the department, rather than individual county offices. Such district offices serve several counties and you state that certain counties have indicated that they are not willing to furnish office space for old-age assistance workers who serve other counties on a district basis.

We are of the opinion that the State Board has defined in the Old-Age Assistance Act may, within its budget system, authorize the furnishing and payment for office space required for State workers in district offices.

Section 1 of the Old-Age Assistance Act provides as follows: “As used in this act, ‘State Department’ means the state welfare department created by the state welfare act entitled ‘An Act providing for the creation of a state welfare department; providing means of cooperation with the federal government and with the counties of Nevada in all matters concerning public assistance to needy individuals; authorizing the administration of funds appropriated or made available to said state welfare department and of the officers and employees of that department; making an appropriation for the support thereof; repealing all acts and parts of acts in conflict herewith; and other matters relating thereto.’”

The above Act which is incorporated in the initiative Act providing for old-age assistance, under section 2, gives the department authority to exercise direct supervision of the administration of old-age assistance.

Section of the Act requires the counties to make necessary provisions for county employees engaged exclusively in the performance of welfare service. This section applies to county employees and does not indicate that necessary provisions be made for employees of the State Board.

Section 2 of the Welfare Act defines the duties of the State Board. Subdivision 2 of this section provides: “Provide supervisory and advisory services to county governments in the effective administration of public welfare functions and compilation of statistics and necessary information relative to public welfare problems throughout the state.”

Section 14 of the Old-Age Assistance Act directs the counties to provide the necessary funds to pay assistance to the needy aged persons of the county, and to pay the expenses of county administration.

Section 15 provides for the payment for the State's participation in old-age assistance and the administration thereof as provided in the Act.

The Federal Act which provides grants to the States for old-age assistance makes provision for the Federal Government's participation in the costs of administration.

Cooperation among the three entities is a vital element in the successful administration of the Act.

There is nothing in the statutes that would prohibit the counties furnishing available office space in the county for district workers. If such space is not available the statute does not make it the duty of the counties to furnish it at county expense.

Where the various officers of the Division of Old-Age assistance are district offices the State Board, with the approval of the Federal authorities, would be authorized to provide in its budget for the payment of necessary office space for its workers.

State ex rel. Hinckley v. Court, 53 Nevada 343, approved a rule of statutory construction that is applicable to the statute under consideration, expressed in the following language: "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 Welfare Department is given authority to administer the funds made available for welfare purposes. The Old-Age Assistance Act provides for the State's participation in the administration of the Act and the State Welfare Act authorizes the appointment of such personnel as may be necessary. The authority of the Division of Old-Age Assistance to employ workers would include the authority to provide a place for such workers to perform their necessary duties.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-541 OLD-AGE ASSISTANCE—Temporary confinement in public institution, what constitutes.

Carson City, November 18, 1947

Mrs. Hermine G. Franke, Supervisor, Division of Old-Age Assistance, P.O. Box 1331, Reno, Nevada

Dear Mrs. Franke:

The following is in reply to your question which was included in your inquiry submitted on November 4, 1947, and which we decided should be answered in a separate opinion.

You inquire as to the effect of the Old-Age Assistance Act, section 2, subsection (e), and particularly to the provision contained therein which reads as follows: "*provided further*, no recipient having a dependent, or dependents, shall be deprived of his or her pension or assistance on account of any temporary confinement in such institution."

Your question is directed as to what constitutes a temporary confinement in a public institution.

We are of the opinion that the term temporary may be limited to a reasonable and definite period of time in the application of old-age assistance by a rule or regulation adopted by the State Department of Welfare.

Section 2 of the Old-Age Assistance Act defines the qualifications of an applicant for assistance. Subsection (e) reads as follows:

Is not an inmate of or being maintained by any municipal county, state, federal, or other public institution at the time of receiving any such assistance; *provided*, such an inmate may, however, make application for such assistance, but the same, if granted, shall not in the case of a person without dependents begin until after he or she ceases to be such inmate; *provided further*, no recipient having a dependent, or dependents, shall be deprived of his or her pension or assistance on account of any temporary confinement in such institution.

The first provision in section 2 is that assistance shall be granted under the Act to any person who has all of the following qualifications combined at the time of making the application. Subsection (e) relates to an applicant and also a recipient. A person may not be an inmate of such institution at the time of receiving any such assistance. An inmate may, however, make application while in such institution but such assistance shall not begin until he or she ceases to be such inmate, if such person is without dependents. A recipient having a dependent or dependents, by the last proviso in the section, shall not be deprived of his assistance on account of any temporary confinement in such institution.

While the language in the subsection is not plain and its meaning unmistakable, it appears to be the intent of the statute that a person shall not be entitled to care and support from a public institution and at the same time from the Old-Age Assistance Fund.

See Attorney General's Opinion No. 254, appearing in the Biennial Report of 1936-1937 under date of April 27, 1938.

The word temporary as related to confinement in an institution being a comparative term has no technical meaning and should be interpreted in accord with the evident intent of the Act.

Words and Phrases, vol. 41, defining the term temporary, contains among its many definitions the following:

“Temporary” ordinarily means for a limited as contrasted with an unlimited or indefinite period.

McClayton v. W.B. Cassell Co., 66 F. Supp. 165.

Temporary means transient or passing—not permanent, existing or continuing for a limited time only. *Lord Mfg. Co. v. Nemenz*, 65 F. Supp. 711.

Section 4 of the Old-Age Assistance Act gives the State Department, under subsection (b), authority to make such rules and regulations and take such action as may be necessary or desirable for carrying out the provisions of the Act.

Construction of doubtful provisions in a statute by officers directed to carry out the provisions of a statute has been recognized by the Supreme Court of this State. *Seaborn v. Wingfield*, 56 Nevada 260:

Where a doubt may exist as to a proper construction to be placed on a constitutional or statutory provision, courts will give weight to the construction placed thereon by other coordinate branches of government and by officers whose duty it is to execute its provisions.

Citing *State v. Brodigan*, 35 Nevada 35.

It appears that the department would be authorized to construe the term "temporary" in a regulation that would limit the time of confinement of a recipient in a public institution to a reasonable period, during which assistance would be granted.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-542 CONTRACTS—Invalid if let on basis of anything else than advertised plans and specifications.

Carson City, November 19, 1947

Hon. W.T. Holcomb, Chairman, State Planning Board, Carson City, Nevada

Dear Mr. Holcomb:

The following is a reply to the question you submitted on November 10, 1947, relative to the letting of a contract for the construction of a heating plant at the University.

The facts submitted at our recent conference are that plans and specifications were prepared for a modern, efficient and adequate heating plant for the University, as provided by statute. A call for bids on these plans and specifications was advertised and two bids were submitted. Upon the opening of bids submitted it was discovered that one bid was for the total sum of \$378,000 and the other for \$476,844. The total amount of the appropriation by the Legislature for the construction of the heating plant was the sum of \$318,000. The amount of each bid was above the amount of the appropriation and neither bid could be accepted. The Planning Board and the Board of Regents decided to revise the plans and specifications to reduce the cost of construction to come within the amount of the appropriation.

The question arises, may a contract be entered into with the firm that submitted the lower bid in response to the call for bids to construct the heating plant according to the revised plans?

In our opinion, this cannot be done. We believe that new bids must be solicited on the revised plans and specifications and the contract awarded to the lowest qualified bidder.

A similar question was recently submitted to this office by Clark County wherein the same element was involved. The opinion from this office was that a contract let upon the basis of anything else than the advertised plans and specifications would be let without competitive bidding which is necessary to give it validity.

Chapter 247, Statutes of 1947, which made the appropriation for the construction of a modern, efficient and adequate heating plant for the University, provided in section 4 that the preparation of detailed plans and specifications with respect to the heating plant shall be carried out by the State Planning Board in the manner now provided by law.

Chapter 81, Statutes of 1947, which amends section 6975.05, 1929 N.C.L. 1941 Supp., provides that the State Planning Board shall have final authority for approval as to architecture of all buildings, plans, designs, type of construction and major repairs, and shall solicit bids for and let contracts for new construction or major repairs to the lowest qualified bidder. The evident intent of the Legislature is to secure competitive bidding on such contracts.

The courts have persistently held that to require bids upon one basis and award the contract upon another is a disregard of the statute requiring competitive bidding.

Chippewa Bridge Co. v. Durand, 99 N.W. 603, 106 Am. St. Rep. 931, the court held:

The contract made did not accord with any bid submitted, formally, or with the invitation for bids; and that it was made as a result of negotiations between the city officers and the bridge company, the price of the work and the terms of payment being materially changed from what other bidders had the opportunity of considering. A more flagrant disregard of the provisions of the city charter in respect to such matters it would be hard to find in any of the cases in books touching on such question. That the contracts were utterly void and furnished no justification for turning over public money to the respondent Bridge Company * * * is too manifest to require further decision.

Wickwire v. Elkhart, 43, N.E. 215, decided the right to strike certain provisions from bids in letting contracts as a result of competitive bidding. The court held:

It is, it seems to us, perfectly clear that all competitors were entitled to place their bids upon the basis upon which the contract was to be awarded, and that to require bids upon one basis and award the contract upon another was, in practical effect, but to abandon all bids. * * * When his bid was accepted striking out the features which departed from the elements upon which all bids were asked and received, if it did not destroy his bid it was because he was concurring in the bid made by the alteration. He thus had the advantage of two bids.

See *Nebraska Light & Power Co. v. City of Villisca*, 261 N.W. 423; *Specialty Co. v. Washoe County*, [24 Nev. 359](#).

Therefore, in order to let a contract for the construction of the heating plant, according to the revised plans and specifications, bids should be solicited by advertisement and the contract let to the lowest qualified bidder.

The question referred to this office by the Board of Regents as to whether the resulting plant will be modern, efficient and adequate, should be viewed from the standard of fact rather than of law, and should be decided by those responsible for the heating plant project.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-543 OLD-AGE ASSISTANCE—Retrospective payments not authorized.

Carson City, November 19, 1947

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 written request for an opinion from this office submitted on October 22, 1947, as follows:

We would like your opinion as to whether it would be legally possible to make assistance payments for the purpose of correcting previous administrative actions. For instance, certain circumstances arise which make it necessary for the State agency to reconsider certain of its administrative actions and which require the making of payments with respect to applications previously rejected, to increase regular payments, correct erroneous payments, release delayed payments, and make payment to carry out a decision of a fair hearing.

We are of the opinion that the Old-Age Assistance Act is prospective only and not retrospective. There is no authority under the present Act for the Division of Old-Age Assistance to make such retrospective payments as outlined in your inquiry.

If such payments will be matched under regulations of the Federal Security Agency as current and correctable, for a period of two months, it will require action by the Legislature before the State Board is authorized to make such back payments.

Section 8 of chapter 1, Statutes of 1945, being the Act to provide for old-age assistance to the needy aged persons in the State, provides as follows:

Upon the completion of such investigation the state department shall promptly, but within thirty (30) days thereafter, report its findings and recommendations to the county board. The county board shall decide whether the applicant is eligible for assistance under the provisions of this Act, and within that time determine in accordance with the rules and regulations of the state department the amount of such assistance and the date on which such assistance shall begin. Within ten (1) days after such determination, the county board shall notify the applicant and the state department of its decision. Such assistance shall be paid monthly to the applicant in the manner hereinafter provided in this act.

Section 2 of the Act sets out the qualifications that an applicant must have before being eligible to the assistance granted by the Act. Proof of these qualifications must be made to the boards and an investigation made as to the need of such applicant by considering all income from every source in order to arrive at the amount of assistance granted. When this is determined, the date on which such assistance shall begin is fixed and the amount is paid monthly to the applicant as provided in the Act.

Section 18 of the Act provides that the Secretary of the State Board furnish to the Governor, State Controller, and State Treasurer, a correct list of recipients and the monthly amounts to be paid to each. This list is furnished in advance to permit the prompt issue of warrants each month. The budget for State and county is prepared upon a basis of actual expenditures during the year, and taxes are levied to meet the estimated needs for the next year. Investigation is made, the amount determined and the date fixed when assistance shall begin. Payments are made monthly as per list furnished in advance.

Section 11 of the Act provides that all assistance grants may be reconsidered when deemed necessary by the department and the amount of assistance changed or entirely withdrawn if circumstances warrant such action. In the event of such change or withdrawal the recipient is entitled to notice and an opportunity for a fair hearing. There is no language in this section that clearly expresses the intention of the Legislature to make such changes in assistance retroactive. A change of circumstances which would warrant a reduction in the allowance made should date from the decision at the hearing, and, as the section does not define a specific period prior to the time when corrective payments to increase assistance shall extend, such increase should date from the decision of the boards, with or without a hearing.

Every reasonable doubt is resolved against a retroactive operation of a statute by the Supreme Court of this State. *Viriden v. Smith*, 46 Nevada 208, held as follows, citing *United States v. Heth*, 3 Cranch 399: "that statutes are intended to operate prospectively only, and words ought not to have a retroactive operation unless they are so clear, strong and imperative that no other meaning

can be annexed to them, or unless the intention of the legislature cannot be otherwise satisfied. Every reasonable doubt is resolved against a retroactive operation of a statute. If all the language of a statute can be satisfied by giving it prospective action only, that construction will be given it.”

State Letter No. 52 from the Federal Security Agency, submitted with your inquiry, makes provision for retroactive payments to increase regular payments and correct erroneous payments, but a definite period of two months is fixed in which such back payments will be matched with Federal funds.

The language of the statute can be satisfied by giving it prospective action. There is no rule of construction which would permit the reading into the section language that would make it retrospective to a definite, or for an indefinite period.

Funds for old-age assistance are raised upon a budget basis. Retroactive payments with respect to applications previously rejected, increases of regular payments and correction of erroneous payments could complicate estimated expenditures and confuse the budget system.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-544 BANKING—Small Loan Act does not bar license from making loans over \$300—Interest rate.

Carson City, November 19, 1947

Mr. Grant L. Robison, Superintendent of Banks, Carson City, Nevada

Dear Mr. Robison:

This will acknowledge receipt of your letter dated October 29, 1947, received in this office October 30, 1947.

You request an interpretation of section 15 of the Nevada Small Loan Act. Your question is directed to the authority of a license under the Act to charge for and collect interest on a loan in excess of \$300 at the rate prescribed in section 13 of the Act, providing that the interest at the rate of 1 percent per month is charged and collected on that part of the loan in excess of the \$300.

We are of the opinion that the Small Loan Act does not bar a licensee under the Act from making loans over three hundred dollars. The Act provides the greater rate of interest that may be charged on loans of three hundred dollars or less, and prohibits the charging of a greater rate of interest on a loan in excess of three hundred dollars than the lender would be permitted by law to charge if he were not a licensee.

Section 15, chapter 192, Statutes of 1943, the Act to define and regulate the business of lending in amounts of three hundred dollars or less, provides as follows:

No licensee shall directly or indirectly charge, contract for, or receive a greater rate of interest than the lender would be permitted by law to charge for a loan of money if he were not a licensee who permits any person, as borrower or as endorser, guarantor, or surety for any borrower, or otherwise, or any husband and

wife jointly or severally, to owe directly or contingently, or both, to the licensee at any time a sum of more than three hundred dollars for principle.

The title of the Act relates to loans in amounts of three hundred dollars or less, and to permit those licensed under the Act to make charges at a greater rate of interest than lenders not licensed thereunder.

Section 15 does not limit the loans to three hundred dollars or less, but provides that the licensee shall not charge or receive a greater rate of interest on any loan to the same person at any time than the interest that a lender would be permitted to charge for a loan of money if he were not a licensee under the Act.

There is no language in the Act to prevent a licensee, if he wishes, to make loans in excess of three hundred dollars at the rate permitted by law under section 4323 N.C.L. 1929, which provides that parties may agree for the payment of a rate of interest not to exceed the rate of twelve percent per annum. The statute does prevent the rate of interest provided for loans of three hundred dollars or less to be received on larger loans through the device of splitting up the loan between borrower and wife or borrower and co-maker as provided in section 15.

In the case of *Rouse v. Jennings*, 249 N.W. page 10, the court construed a section of the Michigan Small Loan Act similar to section 15 of the Nevada Act. The court held:

The initial loan was legitimate. The renewal note, standing alone, was legitimate and that note is one in suit. Plaintiff complied strictly with the statute in limiting the loan at the high rate of interest to \$300, and violated no law in granting renewal thereof and, in addition, lending \$60 at the legal rate of interest. Plaintiff's license to make small loans did not bar him from making other loans at regular and lawful rates of interest.

It appears that your practice of permitting licensees to make loans on the basis of three and one-half percent per month on the first \$100 three percent on any amount over \$100 up to \$300, and one percent per month on the amount over \$300, if the borrower so agrees, is within the provisions of the statute.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-545 BONDS—Walker River Irrigation District Bonds valid and binding Obligations—Nevada Industrial Commission.

Carson City, November 20, 1947

Hon. D.J. Sullivan, Chairman, Nevada Industrial Commission, Carson City, Nevada

Re: Purchase of Walker River Irrigation District and Local Improvement District No. 4 Bonds

Dear Mr. Sullivan:

This will acknowledge receipt of your letter of November 6, 1947, supplemented by a copy of a letter from Mr. C.O. Gelmstedt, Secretary-Manager, Walker River Irrigation District,

Yerington, Nevada, dated November 10, 1947, enclosing transcripts and court confirmation of the above-entitled bond issue, which supplementary material was delivered to us on November 13, 1947.

You request the opinion of this office as to the validity of the bond issue covered by the above-entitled proceedings.

We have examined the decree confirming proceedings in the matter of the issue of \$518,500 refunding bonds of the Walker River Irrigation District and the decree confirming the issue of \$25,500 bonds of Local Improvement District No. 4 of Walker River Irrigation District, Lyon County, Nevada, by Honorable Clark J. Guild, District Judge of the First Judicial District, together with the opinions as to the validity of such issues by Messrs. Orrick, Dahlquist, Neff, and Herrington, Bond Law Attorneys of San Francisco.

We are of the opinion that the said bonds are valid and legally binding obligations of the Walker River Irrigation District, Lyon County, Nevada, and that the acts and proceedings of the district have been regularly and legally performed, and that such investment of surplus funds of the Nevada Industrial Commission is authorized in subsection (b) of section 2721, 1929 N.C.L. 1941 Supp.

We return herewith copies of transcripts and decisions of the court and opinion of bond attorneys.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-546 FISH AND GAME—Trapper's license for child under 16 years of age not required—Bear, no season—Golden eagle, no season.

Carson City, November 21, 1947

Nevada Fish And Game Commission, P.O. Box 678, Reno, Nevada

Attention: S.S. Wheeler, Director

Gentlemen:

Reference is hereby made to your letters of November 4, 1947, received in this office on November 6, 1947, requesting the opinion of this office upon the following matters:

1. You inquire whether a child under the age of 16 years must have a muskrat and mink trapper's license in order to trap such animals.

Mink and muskrat are fur-bearing animals. Section 1, Fish and Game Act. Section 51 of the Act provides that every person *over* the age of 16 years must have a license to trap fur-bearing animals. This language certainly implies that a child under the age of 16 would not be required to obtain such license.

2. You inquire whether the hunting of bear is legal all year or is closed entirely and if it is closed, is there any way of opening it for a certain length of time.

The Fish and Game Act is very ambiguous with respect to the protection and/or hunting of bear. Bear are classed as game animals in section 1 of the Act.

Section 6 of the Fish and Game Act defines open season as meaning the time during which it shall be lawful to hunt, trap or fish for game animals, fur-bearing animals, game birds or fish.

Section 8 of the same Act states that game animals shall be preserved, protected, and perpetuated and that they shall not be hunted, trapped, or fished for at such times or places or by such means or in such manner as will impair the supply thereof, nor during any closed season.

In view of these sections of the law and since we find nothing within the Act which specifically declares an open season on bear, it is our opinion that the season for hunting bear is closed.

Whether or not there should be an open season on bear is a question of policy and one upon which the Legislature should speak.

Under the provisions of section 1, subdivision (d), the Fish and Game commission, whenever it is in the public interest to do so, upon reasonable public notice, may add or take from any of the appropriate classifications, any animal, bird, or fish. Should your commission desire to deal differently with the bear, then it no doubt could place such bear in a different classification, such as fur-bearing for example, and bring the bear within the provisions of the taking of fur-bearing animals.

3. You inquire whether it is legal to kill the golden eagle.

Section 1 of the Fish and Game act makes a specific classification of birds as "migratory game birds," "Upland game birds," "predatory birds," and "nongame birds." Nongame birds are defined as including all birds other than those specifically classified as migratory, upland, or predatory.

Citing the same sections dealing with the question of hunting bear, it is to e particularly noted that in section 8 nongame birds shall not be hunted, trapped, or fished for at such times or places or by such means or in such manner as will impair the supply thereof, nor during any closed season.

Since we find nothing within the Act which specifically declares an open season on the golden eagle, it is our opinion that there is no reason for taking the golden eagle.

Very truly yours,

ALAN BIBLE
Attorney General

OPINION NO. 47-547 FISH AND GAME—Hunting license not required to protect domestic animals from predators—Trapping—Use of dogs unlawful in hunting fur-bearing animals.

Carson City, November 21, 1947

Nevada Fish And Game Commission, P.O. Box 678, Reno, Nevada

Attention: S.S. Wheeler, Director

Gentlemen:

This will acknowledge receipt of your letter of November 3, 1947, received in this office November 4, 1947, requesting the opinion of this office upon four queries therein propounded, the same being numbered 1, 2, 3, and 4. We will answer each query by number.

Answering query number 1—First, we know of now law that protects predatory animals. In fact, they are deemed pests. Your specific inquiry is whether it is necessary for a rancher to possess a hunting license in order to protect his domestic animals from predators such as the coyote?

In our opinion the rancher does not need a hunting license in order to protect his domestic animals from predators such as the coyote.

A coyote is a predatory animal and is so classified in section 1 of the Fish and Game Act. After classifying predatory animals in this section they are not again mentioned in the Act, nor is there any attempted regulation made concerning them. It is true that section 51 of the Act refers to wild birds or animals, but it is also true that section 53 of the Act states in part that “All licenses issued as herein provided shall be valid, and shall authorize the person to whom issued to hunt game birds and animals, * * *.” Reading the Act as a whole, and reading the two sections above-quoted together, we do not believe it was the legislative intent to require license from ranchers protecting their property from predators. Equally clear, it is not the intention of the Legislature, as expressed in the title of the Act, to protect, propagate and introduce predator animal sin the State. Likewise, section 51 noted above uses the term “wild animals” generally, while other sections of the law deal specifically with game animals. See section 53 among others.

Under the doctrine of *State v. Hamilton*, [33 Nev. 418](#), one section of a statue treating specifically of a matter will prevail over other sections in which incidental or general reference is made to the same matter.

The Legislature is presumed to know the state of the law on the subject upon which it legislates and, undoubtedly, in enacting a new Fish and Game Code, the Legislature was aware of the many State laws dealing with the control and eradication of rodents and predatory animals.

As to the constitutional right of an individual to protect his private property from predatory animals, see *Meyers v. State*, 29 Ohio 330.

Answering query number 2—Strange as it may seem, from the language of section 51 of the Act, no license is required to trap a predator animal as the language of such section, with respect to trapping, relates solely to fur-bearing animals which re not classed as predatory animals in section 1 of the Act.

Answering query number 3 dealing with the question of whether the county game management boards have the power to shorten or close the trapping season as fixed in the act, an examination of the Fish and Game Act discloses that the definition of the words “hunt” and “hunting,” etc., and the words “to trap,” “trapping,” and “trapped,” etc., are in effect nearly synonymous because the result of either of the methods used in the capturing and killing of animals. Section 63 of the Act provides that the county game management board of any county in this State may shorten or close the hunting or fishing season entirely except as to migratory birds. If such boards have such power with respect to hunting, then it would seem that they have the same power to close the season where animals are taken by trapping, in view of the fact that either method depletes the supply of animals, and also fish, and, as we understand the Fish and Game Act, it is for the preservation of wild game and fish life.

Section 73 does provide that it shall be unlawful for any person to hunt, trap, etc., any fur-bearing animals protected by the provisions of the Act except between the first day of November and the 15th day of March of the following year. We think this section is to be construed in para materia with section 63 and that both sections are effective and, in the event the county game management board closes the trapping season, then section 73 would not permit the trapping of fur-bearing animals within such closed area.

Answering query number 4 relating to whether it is legal to use a dog to pursue and tree mink and then shoot them with a rifle. In the event such practice is possible, would the person so doing require a hunting or trapping license in order to pursue the activity?

We think the answer is to be found in section 74 of the Act, which is clear and express in its terms and provides as follows: “It shall be unlawful for any person to at any time hunt any fur-bearing animal in any manner other than by trap or gun, or at any time molest or destroy, or attempt to molest or destroy, any muskrat nest.” Mink is a fur-bearing animal and is so included

in section 1 of the Act. We doubt whether a dog could be used in connection with the killing of the mink, but, in any event, the person must have either a hunting license or a trapping license.

Very truly yours,

ALAN BIBLE
Attorney General

OPINION NO. 47-548 COUNTIES—Sheriff—Not entitled to additional fees except as provided in statute fixing the salary of such sheriff.

Carson City, November 29, 1947

Hon. Robert E. Jones, District Attorney, Clark County, Las Vegas, Nevada

Dear Mr. Jones:

Reference is hereby made to your letter of November 20, 1947, propounding the following query concerning which you desire the opinion of this office:

Whether chapter 29, page 34, Statutes of Nevada 1947, supersedes all of the other statutes, including the general license revenue law, with respect to the right of the Sheriff to receive the commission provided in section 6697 N.C.L. 1929 on license fees collected pursuant to the general license revenue Act, or whether the 1947 statute makes it mandatory that the Sheriff pay over to the County Treasurer all fees of every kind and nature which he collects without deducting the 6 percent commission provided in said section 6697?

(1) It may be that the 1947 Legislature intended, in said chapter 29, to provide an annual salary for the Sheriff to the exclusion of his right to retain fees and commissions provided in other statutes. In view of such an observation, we are frank to state that there may be considerable merit to such contention. However, our examination of the law discloses that there is considerable doubt surrounding such a proposition and in order that such doubt may be cleared up and resolved one way or the other in a satisfactory manner, we suggest that if the grand jury is of the opinion or feels that such was the intent of the Legislature, the matter can be very easily determined by the proper action in your District Court, with the right of appeal to the Supreme Court, and thus for a certainty remove any doubt in the matter.

(2) This office has considered your question very carefully, and after viewing it from all angles and considering all the possible elements entering into the question, we are of the opinion that the answer is to be found in the case of *Bradley v. Esmeralda County*, 32 Nevada 159.

This case arose over a suit brought by the Sheriff of Esmeralda County against the county to recover some \$4,500 in fees, a greater portion of which grew out of his duties as ex officio collector of license fees amounting to some \$3,423. IN that case the Act of the Legislature of 1905 provided that the Sheriff of Esmeralda County should receive a salary of \$4,000 per annum and such fees in civil actions as are now allowed by law, and as ex officio Assessor he received \$1,200 per annum. We are not concerned with the controversy of his acts as ex officio Assessor. However, the question was presented as to the right of the Sheriff as ex officio license collector to receive the commission of 6 percent then provided in the law on all licenses sold by him. The contention was made by the county that his annual salary of \$4,000 and fees in civil actions precluded him from retaining such commission. Briefly, the holding of the court was that the Salary Act of 1905, because it made no mention of the Sheriff's duties as ex officio collector of

licenses and that such ex officio office was separate and distinct from the office of Sheriff, entitled him to receive such commission. Compare the language of the statute there involved with the 1947 Act in question here. We are of the opinion that we have the same situation and that, by reason of the fact the Legislature did not specifically mention the duties of the ex officio license collector, it thereby left the door open for the Sheriff to retain the commissions provided in section 6697 N.C.L. 1929.

In addition to such case this office has held in two former opinions, premised upon the same case, that under the salary statutes submitted for the opinion of this office the sheriff was entitled to the fees provided in the general revenue Act, the same being section 6697 N.C.L. 1929. Opinion No. 1, dated January 10, 1921, Report of Attorney General 1921-1922 and Opinion No. 42, dated May 18, 1943, Report of Attorney General 1943-1944.

Chapter 29, Statutes of 1947, with respect to the salary of Sheriff does not, in our opinion, take away from the Sheriff the right to the commissions provided in section 6697 N.C.L. 1929 for the reason that, as stated in the case of *State v. Laughton*, 19 Nevada 202, and several cases thereafter, the making of a person an ex officio officer by virtue of his holding another office does not merge the two into one and, as stated in the Bradley case, the offices being separate and distinct, the person holding them is entitled to the compensation provided in the law for each of the offices, unless, as held in *State v. Beard*, 21 Nevada 218, and *Lobenstein v. Storey County*, 22 Nevada 376, the salary statute specifically provided that the ex officio services would come within the annual salary therein fixed. We are, therefore, of the opinion that as a legal proposition of the Sheriff of Clark County, pursuant to chapter 29 of the 1947 Statute, is entitled to the commission provided in section 6697 N.C.L. 1929. However, we are of the opinion, assuming that the prior salary Acts permitted the Sheriff to retain some \$300 per annum from the Sheriff's fees collected by him, that said chapter 29 has abrogated such right and that since April 1, 1947, he was and is not entitled to retain any such fees.

(3) We note your additional question concerning the power of the Sheriff to retain 6 percent of the gambling license fees now provided by a Clark County ordinance. We assume that the ordinance was enacted either by the Board of County Commissioners as such or the county licensing board composed of the County Commissioners, the Sheriff, and the District Attorney, the County Commissioners being commissioned to enact such ordinance by subdivision (14), section 1942 N.C.L. Supp. 1931-1941, while the county licensing board was empowered to enact such an ordinance pursuant to sections 2037-2040 N.C.L. 1929. If the ordinance was enacted by the board of County Commissioners and fails to contain a provision authorizing the Sheriff to retain such commission, then he has no power to do so. On the other hand, if the ordinance was enacted by the county licensing board, then, in our opinion, the board could not legally empower the Sheriff to retain such commission by reason of the fact that section 2039 N.C.L. 1929 provides that the board is authorized, empowered, and commissioned to act for the purposes of the Act without further compensation to said board or clerk thereof.

Very truly yours,

ALAN BIBLE
Attorney General

By: W.T. Mathews
Special Assistant Attorney General

OPINION NO. 47-549 FISH AND GAME—Beaver—Removal of.

Carson City, December 2, 1947

Nevada Fish And Game Commission, P.O. Box 678, Reno, Nevada

Attention: S.S. Wheeler, Director

Gentlemen:

In your letter of November 21, 1947, you advise with respect to beaver, that several ranchers who have beaver on their ranches do not want such beaver removed and that on the other hand ranchers down stream from the first-mentioned ranchers, together with State water commissioners, desire the removal of such beaver. You further request advice as to how to proceed in the matter in view of possible and probable controversies arising where attempts are made to remove beaver contrary to the wishes of the land owner of the land whereon beaver are found.

Section 75 of the Fish and Game Act expressly provides when and how beaver may be taken, in brief, as follows:

1. Upon complaint made by the land owner to the State Fish and Game commission, whereupon an investigation shall be made by the commission or its agents of the land reported as being damaged by beaver, together with the extent of the damage. If the commission shall then be satisfied and so determine the necessity therefor, it may order the trapping of such beaver as it may deem necessary to prevent further damage to the land in question.

2. The commission, on its own motion, may, through its agent, trap beaver without complaint of the land owner when such trapping *will in no way impair the supply of beaver*.

With respect to the first statutory proposition concerning the removal of beaver, we think, the statute relates to the injury or damage occasioned by beaver to the land owner making the complaint, that is, by beaver actually being and living on such land. To apply such statute to beaver situate on the land of another, even if upstream, would and will open the door to a most controversial subject pertaining to water rights and the law governing them.

The removal of beaver, and consequently the dams erected by them, from a stream, except upon the complaint and consent of the land owner of the land where such beaver dams are situate, present questions of far-reaching importance and effect. Each case must rest upon its own foundation and set of facts concerning the obstruction or nonobstruction of the stream as it affects the flow of water for irrigation purposes, and its effect upon the water rights of the water users on the stream. These are questions most difficult of determination and are only justiciable in our courts. Upon this phase of the question we feel that the Fish and Game Commission has no jurisdiction.

We, therefore, respectfully suggest that the commission abide by and proceed under a strict interpretation of section 75 until such time as the pertinent questions shall be judicially determined.

Very truly yours,

ALAN BIBLE
Attorney General

By: W.T. Mathews
Special Assistant Attorney General

OPINION NO. 47-550 AGRICULTURE—Standards for products and containers—Powers of state department.

Carson City, December 8, 1947

Department Of Agriculture, State of Nevada, P.O. Box 1027, Reno, Nevada

Attention: Lee M. Burge, Supervising Inspector

Gentlemen:

Reference is hereby made to your letter of December 5, 1947, requesting the opinion of this office relative to the application of section 11 of the Standards for Agricultural Products and Containers, the same being sections 451-451.14 N.C.L. Supp. 1931-1941.

In reply to Question 1 with respect to the power of the department to require products to be packed in containers conforming to the grade of product as evidenced by the section therefor after inspection, section 11 of the Act is very broad in its provisions and we think quite comprehensive. Before a standardization of containers may be made by the department we think that section 3 of the Act must be followed specifically, that is to say, when any alterations or modifications of standards already made are effective public notice thereof for not less than thirty days must be given in such manner as the State Quarantine Officer may deem reasonable.

We are of the opinion that the department may, and perhaps should, allow reasonable variations from standards made for any particular product, but if such variations are deemed inadequate, new and different variations may be promulgated, together with a requirement that the container shall specify the grade or variation of the grade of the product. We think it necessarily follows that if a particular certificate is issued and it is found that the product does not conform to the grade provided in the certificate and its variations, then the department or its Quarantine Officer may legally require repacking of the product with markings to conform to the particular grade for such product.

Answering Question 2 with respect to the power of the department to set up standard containers for products such as turkeys, potatoes, onions, tomato plants, etc., we are of the opinion that the department has such power provided section 3 of the Act is fully complied with.

Very truly yours,

ALAN BIBLE
Attorney General

By: W.T. Mathews
Special Assistant Attorney General

OPINION NO. 47-551 PUBLIC SCHOOLS—Payment of education other than in public school not authorized—Transportation of resident children to schools outside state not authorized—Davis Dam.

Carson City, December 9, 1947

Hon. Robert E. Jones, District Attorney, Clark County, Las Vegas, Nevada

Dear Mr. Jones:

This will acknowledge receipt of your letter dated December 2, 1947, received in this office December 4, 1947.

You ask if it would be legal for the local Board of Education to pay to the Utah Construction Company in Nevada a reasonable sum to compensate the company for providing educational facilities for children at Davis Dam under an agreement whereby facilities for children at Davis Dam under an agreement whereby the company would either provide a school at the dam, paying all expenses to maintain the school, or defray the cost on transportation for the children to a proper school at Kingman, Arizona.

You realize that such procedure may be unusual and state that the problem cannot be solved in the manner you would like to solve it until such time as the population at the dam warrants the construction of a school. You do not state the number of resident children in the dam area in Nevada.

The letter to you from Attorney General Bible under date of November 20, 1947, indicated his views on this subject.

We have a careful analysis of chapter 63, Statutes of 1947, the new School Code, and conclude that there is no authority in the Code under which the Board of Education could contract with the Utah Construction Company to furnish a school and educational facilities for the Nevada children residing at Davis Dam, or to furnish transportation for such children residing at Davis Dam, or to furnish transportation for such children to attend school in Arizona.

Chapter 6 of the School Code, section 34, provides for the creation of unorganized territory into school districts by the county commissioners. The creation of such district is initiated by petition from guardians or parents of at least five resident children.

Section 1, chapter 1, of the Act provides that the parent or guardian of a child between the ages of seven and eighteen years shall send such child to a public school during all the time such public school shall be in session in the school district in which such child resides.

Chapter 31 of the code provides for the election of trustees in all school districts, and chapter 25, section 181, subsection 2, provides for the levy of a tax by the county commissioners in the county for the needs of the several school districts in the county as shown by the budgets submitted. Subsection 3 provides that the trustees of a district may levy a special tax for the district.

In districts employing not more than two teachers, and in which the special tax has been levied, and there is not sufficient funds to maintain the school for nine months during the year, provision is made under chapter 27 for aid to such schools out of the Aid to Rural School Fund.

Subsection 3 of section 205 of this chapter determines the basis upon which aid is granted and the following subsection provides that the amount determined to be necessary to each rural school applying for aid shall be paid out of such fund to the County Treasurer for the account of the rural school.

Section 298, chapter 31, provides: "The board of school trustees the respective school districts of the State of Nevada are hereby given such reasonable and necessary powers, not conflicting with the constitution and laws of the State of Nevada, as may be requisite to promote the welfare of school children."

Section 294 of the same chapter makes it the duty of the clerk of the board for each school to draw all orders for the payment of moneys belonging to his district, subject to the direction of trustees, and such orders shall be valid vouchers for the county auditor for the payment out of the funds belonging to such school.

Chapter 18 of the Code provides for the division of Clark County into educational districts and provides that the new subdistricts may be created in accordance with sections 34 and 43 of chapter 6.

Section 110 of this chapter provides that the boards of education created shall have all the powers and duties of any board of trustees of a school district.

The Legislature has provided a uniform system of public schools in the State, and for the establishment and maintenance of school districts, and for the transportation of children to school under specified conditions.

Authority for the payment of education other than in a public school or for the transportation of resident children to schools outside the State cannot be found in the statute. Such authority cannot be read into the statute as there would be no logical stopping point.

Article XI, section 2, of the Nevada Constitution contains the following language: "The legislature shall provide for a uniform system of common schools, by which a school shall be established and maintained in each school district at least six months in every year * * * and the

legislature may pass such laws as will tend to secure a general attendance of the children in each school district upon said public schools.”

The purpose of the constitution and the statutes is to provide for the education of the children of the State in the public schools of the State. Boards of education and school trustees are created by law and derive their authority solely from the statutes, and can only exercise such powers as are specially granted, and a mode of exercising their powers prescribed by law is exclusive. *See Office Specialty Manufacturing Co. v. Washoe County*, 24 Nevada 359; *State v. Boerlin*, 30 Nevada 473; *State v. McBride*, 31 Nevada 57.

As we are not familiar with the exact conditions existing at the Davis Dam, we suggest you confer with Miss Mildred Bray, State Superintendent of Public Instruction.

We enclose herewith a copy of our opinion of October 7, 1947, and letter opinion of November 20, 1947, relating to the Davis Dam school question.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-552 BANKING—Corporation may not act as trustee unless principal office located within state.

Carson City, December 10, 1947

Mr. Grant L. Robison, Superintendent of Banks, Carson City, Nevada

Dear Mr. Robison:

The following is in reply to the letter from the attorneys of Wells Fargo Bank & Union Trust Company of California, which you submitted to this office on December 8, 1947, for an opinion.

The company holds an asset of a trust created in California a one-half interest in a parcel of real property in Reno which is under lease. The real property in question is the only property in Nevada which will be distributed, the other property under the trust being held in California. The rentals collected by the company from this property is the only transaction carried on in Nevada as an incident to the general operation of the trust.

The question is, whether this would be considered as the doing of a banking or trust company business in Nevada under sections 5 or 47 of the Nevada Bank Act, sections 747.04 and 747.46, 1929 N.C.L. 1941 Supp.

The Supreme Court of this State in the case of *Pacific States Security Co. v. District Court*, 48 Nevada 53, in construing the language “doing any business in the state,” held as follows: “In most jurisdictions it has been held that single or isolated transactions do not constitute doing business within the meaning of such statutes, although they are part of the very business for which the corporation is organized to transact, if the action of the corporation in engaging therein indicates no purpose of continuity of conduct in that respect.” This case was decided in July 1924.

The Legislature, under chapter 63, Statutes of 1943, enacted the following:

An Act prohibiting corporations, their officers, employees, or agents acting in their behalf, not organized under the laws of this state, except a national banking association with its principal place of business in the State of Nevada, from being appointed to act in this state as executor, administrator, guardian of infants or estates, receiver, depository, or trustee under appointment of any court or by authority of any law of this state.

SECTION 1. No banking, or other corporations, unless it is organized under the laws of and has its principal place of business in this state, or is a national banking association, the principal place of business of which is located within this state, nor any officer, employee, or agent of such corporation acting in its behalf, shall hereafter be appointed to act as executor, administrator, guardian of infants or estates, receiver, depository, or trustee under appointment of any court or by authority of any law of this state.

The foregoing chapter should be called to the attention of the attorneys for the Wells Fargo Bank & Union Trust Company for their consideration.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-553 DISTRICT OF COLUMBIA—Congress has power to provide municipal government for—Nevada residents not prohibited by Nevada law from voting in such municipal election.

Carson City, December 10, 1947

Hon. Vail Pittman, Governor of Nevada, Carson City, Nevada

Dear Governor Pittman:

Receipt is hereby acknowledged of your letter of December 2, 1947, together with the letter of Congressman Auchincloss, concerning the proposed action on the part of Congress to establish, in effect, a home-rule government in the District of Columbia. We also acknowledge receipt of the preliminary report of the committee on the District of Columbia concerning such proposed legislation. We note the inquiry of Congressman Auchincloss as to whether the voting in the District of Columbia by a resident of the State of Nevada would cause such resident to lose his voting rights in this State. You request the opinion of this office on such question.

Congress is empowered by the Constitution of the United States to exercise exclusive legislation in all cases whatsoever over the District of Columbia. Paragraph 17, section 8 of article I, United States Constitution. In addition thereto, the Constitution of the United States provides in section 2 of article VI of such instrument as follows:

This constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

It needs no citation of authority other than the foregoing to demonstrate that Congress has absolute control over all legislation concerning the District of Columbia to the exclusion of any State law or constitutional provision of a State concerning any matters it may legislate upon for such district.

From an examination of historical law we find that in 1802 an Act was passed by Congress incorporating the city of Washington and therein provided that the Mayor and common council of such city be elected by the white male inhabitants thereof. This Act remained in effect until at least 187 when, in that year, the District of Columbia was created a body corporate for municipal purposes with a territorial government provided, together with a delegate in Congress, a Governor and Legislative Assembly. It appears this government did not prove satisfactory and in 1874 such government was abolished and the affairs of the District were then lodged in a commission appointed by Congress, which Act was later amended in 1878 and which provides for the present system of government of the District of Columbia, which government, apparently, was never questioned in the courts.

It now seems to be the consensus of opinion of the Congressional committee that a local government be provided for the District of Colombia. We note from the report of the committee that it is proposed that residents of other States employed by the Government, or serving in some administrative or Congressional capacity, in Washington be permitted to vote in the local election after residence in the District for one year. We do not question the power of Congress to provide a law for such purpose.

An examination of the Constitution and Election Laws of this State fails to disclose any express prohibition against residents and citizens of this State from voting in elections in other jurisdictions and particularly in the District of Columbia. Our constitutional provision, providing that 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, relates to the right of franchise in the State of Nevada alone and, of course, our election laws were drafted pursuant to such constitutional provision with respect to residence. Such constitutional provision being section 2, article II, Nevada Constitution.

We think that if the proposed Congressional Act for the District of Columbia does no more than to provide for the election of, we might say, municipal officers for such District, then Nevada residents and citizens would be permitted to vote therein without danger of losing their right of franchise in the State. However, if such law should go further and provide for the election of any other officers than the purely local officers as a municipal proposition, then, we think, our constitutional provision would intervene.

Apparently the bill proposing a new form of government for the District of Columbia has not been drafted. A conclusive opinion cannot well be written until such bill is drafted and we have had an opportunity to peruse it. We suggest that if such bill is drafted, we be furnished a copy thereof for further consideration.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-554 FIRE PROTECTION—State forester firewarden and assistants do not have powers of peace officers—May apprehend and arrest persons violating fire control laws—Supervision of timbered lands act.

Carson City, December 23, 1947

Hon. Wayne Mcleod, State Forester Firewarden, Carson City, Nevada

Dear Mr. Mcleod:

Reference is hereby made to your letter of December 18, 1947, requesting rulings of this office relative to the duties of State Forester Firewarden with respect to his authority to appoint deputies having police authority to enforce State fire laws. You also inquire whether the State Forester Firewarden and/or his assistants have the legal right to apprehend any person believed guilty of violating State fire laws. You refer to section 4, chapter 149, Statutes of 1945, which statute creates the position of State Forester Firewarden and assistant.

OPINION

Said section 4 provides that the State Forester Firewarden and/or his assistant shall supervise or coordinate all forest, watershed and range fire control work in Nevada * * * administer all fire control laws in Nevada outside of townsite boundaries and such other duties as might be designated by the State Board of Fire Control. The State Forester Firewarden is also authorized to employ clerical assistance, county and district coordinators, patrolmen, fire fighters and other employees as needed.

While the foregoing section is quite broad in its terms and provides for the administration of the fire control laws, still, nowhere in such section or elsewhere in chapter 149 is the State Forester Firewarden, his assistant or patrolmen or other employees appointed by him, given the powers of peace officers. We think it is well settled in the law that before any administrative officer is empowered to exercise the powers of peace officers the statute must so provide and in the absence of such power being conferred by the Legislature we think it most advisable to state that such administrative officers should exercise considerable care so as not to assume the full powers of peace officers. Otherwise, in some cases, such officers might be faced with an action for false arrest.

However, the law of this State grants private persons the right to make arrests in the following cases, that is to say, such private persons may make an arrest without a warrant:

(1) For a public offense committed or attempted in his presence. The public offense includes misdemeanors.

(2) When the person arrested has committed a felony, although not in the presence of the private person making the arrest.

(3) When a felony has in fact been committed and the private person has reasonable cause for believing the person arrested to have committed to it. Section 10752 N.C.L. 1929.

It follows that pursuant to the power to arrest provided in the foregoing section that the administrative officers, including patrolmen engaged in the forest, watershed and range fire control work, would have the power to apprehend and arrest persons violating fire control laws in accordance with the enumerated powers to arrest stated above.

In connection with such power to arrest the private person making the arrest without a warrant must without unnecessary delay take the person arrested before a magistrate (justice of the peace) or deliver him to a peace officer. Section 10762 N.C.L. 1929. In connection with this section we advise that the person arrested must be taken before the nearest magistrate or delivered to the nearest peace officer in the county in which the arrest is made and a complaint stating the charge against the arrested person must be laid before the magistrate. Section 10764 N.C.L. 1929.

As most of the violations of fire control laws in this State constitute misdemeanors, it follows that the private person making the arrest must have been present when the offense was committed or attempted.

We conclude that the State Forester Firewarden has the authority to appoint the officers and assistants provided in section 4 of the 1945 Act, but they do not have the full powers of peace

officers. They do have the power of apprehending persons guilty of violating fire control laws in the manner as above-stated.

You further inquire with respect to the Act providing for the protection of timbered lands, the same being sections 3164-3166 N.C.L. 1929, as to what authority is charged with the responsibility of enforcing such law.

No direct administrative authority is provided in the Act. Apparently enforcement thereof was left to the general law enforcing agencies of the State which would be had upon complaint made by some person that the law was being violated, which complaint would be made to a justice of the peace, a warrant issued, and the person arrested pursuant to the warrant. However, we think section 4 of the 1945 Act, while not giving you full powers of supervision of the timbered lands Act, still, we think, it gives you reasonable powers of administration thereof in view of the fact that such Act was intended to preserve the water supply of the State in watershed areas and can be coordinated with your other forest fire control work.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-555 PUBLIC SCHOOLS—School Board has no authority to dispose of bonds at private sale—Sale of bonds must be readvertised—Beatty School District.

Carson City, December 26, 1947

Hon. Mildred Bray, Superintendent of Public Instruction, Carson City, Nevada

Dear Miss Bray:

The following is in response to your question as to the purchasing of school bonds which were issued by the Beatty School District of Nye County.

From the letter accompanying the transcript of the proceedings for the bond issue it appears that notice of the sale of the bonds was given as required by statute, and that the date for the opening of bids was set for November 24, 1947, at the hour of 8 o'clock p.m. on that date.

There were no bids received as the result of such advertisement. As stated in the letter from District Attorney Crowell, the school board has adjourned its meeting from day to day awaiting a bid.

You request an opinion from this office as to whether a sale of such bonds without readvertising would be valid.

The general rule as expressed in 43 Am. Jur. page 373, is that a subdivision, acting through its officers, is just as firmly bound by the provisions of the controlling statute in selling its bonds as in the holding of a bond election and voting for and issuing bonds.

Section 213 of the School Code, page 184, Statutes of 1947, provides that all school bonds shall be sold at a public sale, after a notice calling for bids for the purchase of such bonds, and that the bonds shall be sold to the responsible bidder making the highest bid therefor. It further provides if all bids are rejected the school board shall readvertise such bonds for sale.

If all bids were rejected there would have been no sale of the bonds and the same condition exists if no bids were received at the time fixed in the notice when bid would be received and public opened. The bonds remain unsold and the school board has no authority to dispose of them at private sale.

We are of the opinion that the Beatty School Board should readvertise the sale of such bonds and that your department, if it so desires, submit a bid for the purchase of the same.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

cc: Honorable Wm. J. Crowell, District Attorney, Tonopah, Nevada

OPINION NO. 47-556 NEVADA HOSPITAL FOR MENTAL DISEASES—May accept unconditional gifts of property—County commissioners may authorize outside medical service for indigents.

Carson City, December 30, 1947

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 December 24, 1947, received in this office December 29, 1947.

You submit the following questions:

1. Is it permissible for the Nevada State Hospital to accept unconditional gifts of substantial sums of money or construction of buildings on the State Hospital grounds for the use of patients at the hospital?
2. It is permissible for the Hospital authorities to enter into an agreement with the County Commissioners of the respective counties in the State on medical and surgical costs for indigent patients when such services must necessarily be rendered outside the confines and facilities of the State Hospital?

In answer to your first question, we are of the opinion that there is no provision in the statutes which would prohibit the Nevada State Hospital from accepting unconditional gifts of property to the State for the benefit of the hospital. Such property when accepted would be under the exclusive control of the hospital board under the provisions of section 3509 N.C.L. 1929.

You state in your letter that an agreement has been made between the hospital authorities and Washoe County which appears to be the answer to your second question in respect to one county.

Among the powers granted the County Commissioners is the power to take care of and provide for the indigent sick of the county in such a manner only as is or may be provided by law.

Section 5140 N.C.L. 1929, as amended by chapter 62, Statutes of 1943, provides: "When any poor person shall not have relatives of sufficient ability to care for and maintain such poor person, or when such relatives refuse or neglect to care for and maintain such poor person, then said poor person shall receive such relief as the case may require out of the county treasury, and

the County Commissioners may either make a contract for the maintenance of said poor person, or appoint such agents as they may deem necessary to oversee and provide for the same.”

It appears that the provision of the statutes is broad enough to authorize the County Commissioners to agree to pay for the extra medical services to such indigents when such service is required and must be rendered outside the facilities of the State Hospital.

Very truly yours,

ALAN BIBLE
Attorney General

By: George P. Annand
Deputy Attorney General

OPINION NO. 47-557 COURTS—District Court has no power to call special election to vote on disincorporation of city.

Carson City, December 31, 1947

Hon. Wm. D. Hatton, District Judge, Tonopah, Nevada

Dear Judge Hatton:

Receipt is hereby acknowledged of your letter December 26, 1947, requesting our views as to the power of the District Court to call a special municipal election to vote on the question of disincorporation with the city of Hawthorne.

We note that District Attorney Evansen is of the opinion that the court has the power to call an election for the purpose of submitting the question to the voters. We also note that you are inclined to the view that no such authority is given under the statute, that is, section 1207 N.C.L. 1929.

Section 1207 provides, as you well know, that whenever one-fourth of the legal voters of an incorporated city or town shall petition the District Court of the proper county for disincorporation, then the court shall cause to be published for at least thirty days a notice stating the question of disincorporation will be submitted to the legal voters of such city or town at the next municipal election. We have studied this particular section very carefully, as an individual section and also in connection with other pertinent sections of the incorporation law, and, frankly, we are of the opinion that the court has not been vested with the power to call a special election for the purpose of submitting the question of disincorporation to the voters. It seems to us, in view of the fact that the providing for elections and the calling thereof is a purely legislative matter, that if the Legislature had intended to delegate the power to the court to call an election, special in character, for the purposes stated in section 1207, it would have said so. The fact that the Legislature provided in such section that the election should be held at the next municipal election negatives any implied power in the court to call a special election.

It was held by our Supreme Court in *Sawyer v. Haydon*, 1 Nevada 75, that an election can be held only by virtue of some constitutional provision or legal enactment, either expressed or by direct implication, authorizing that particular election. The court has not departed from that doctrine down through the years. We find from an examination of the general law that elections are purely legislative matters and, while the Legislature may delegate the power to call elections, still, such delegation must be expressly provided for or by such clear implication as to admit of no doubt and, we think, by reason of the separation of the powers of government in our

constitution that unless the court was expressly directed to call such special election it has no power so to do.

We note from your letter that there is a slight implication in section 1207 that the matter of voting on the question would not be restricted to the regular municipal elections by reason of the last sentence in such section reading: "not more than one of such elections shall be held in two years." It may be that such sentence contains an implication that the matter could be submitted at a special election, however, we think the only power provided in the law in question to call special elections is vested in the city council. Section 1102 N.C.L. 1929. We think that if, upon presentation of the proper petition to the District Court and the city council thereafter were prevailed upon to direct a special election by way of ordinance, then such election, special in character, could be held, wherein the voters could vote upon the question of disincorporation pursuant to the notice given by the court as provided in section 1207.

We think that the last sentence of section 1207 really implies that the election for the disincorporation was to be held at the time of the regular municipal election. The law provides in section 1102 that all municipal elections in cities incorporated under this Act shall be held on the first Tuesday after the first Monday in May of each odd-numbered year. The original Act provided in section 36, which is now section 1137 N.C.L. 1929, that all elective officers shall hold their respective offices for two years and until the successors are elected and qualified, thus conforming to the provisions for the municipal election as provided in section 1102. However, said section 36 was amended three times, to wit, in 1911, 1915, and later in 1923 and the terms of the elective officers were extended to four years. The Legislature for some reason did not amend section 1102 with respect to the times of municipal elections, so that ordinarily municipal elections are now held once every four years for the election of officers. This being the status of the law, we suggest that, in view of the provisions of section 1102 requiring municipal elections in each odd-numbered year, if the city council of Hawthorne refuses to enact an ordinance providing for a special election on the question involved that a municipal election could be held under the statute on the first Tuesday after the first Monday in May 1949.

After due consideration of the matter, we reiterate that in our opinion the District Court has now power to call a special election concerning the question involved.

Very truly yours,

ALAN BIBLE
Attorney General

By: W.T. Mathews
Special Assistant Attorney General

OPINION NO. 47-558 WILD HORSES—Hunting by airplane prohibited.

Carson City, December 31, 1947

Dr. Edward Records, Department of Agriculture, P.O. Box 1027, Reno, Nevada

Dear Dr. Records:

Reference is hereby made to your letter of December 26, 1947, and also copy of your letter to Governor Pittman of December 12, 1947, with respect to the killing and capturing of wild horses in this State.

We note that a considerable number of wild horses have been captured, presumably by means of an airplane, wherein stallions were shot by rifle shots from the airplane and the remainder of the troop of wild horses were captured by means of being peppered by shot from shotguns in the airplane. Your inquiry is—

- (a) whether wild horses may be killed by means of being shot from airplanes, and
- (b) whether the peppering of wild horses by means of shotgun shot from airplanes, constitute violation of the law of this State?

As stated in your letter of December 12, 1947, chapter 180, Statutes of 1945, provides that any aeronaut or passenger who, while in flight within this State, shall intentionally kill or attempt to kill any birds or animals shall be guilty of a misdemeanor and punishable by a fine of not more than \$500. The same section provides, by way of proviso, that wolves, coyotes, Canadian lynx, bobcats, or mountain lions may be hunted and killed from airplanes under permit of the State Board of Stock Commissioners. This section undoubtedly prevents the killing of wild horses, either stallions, mares, or colts when shot from an airplane and any such animal so killed will constitute the person killing them a violator of the law and subject to punishment therefor.

We now come to the question of whether shooting the wild horses with shotguns and peppering them, as disclosed in your letter, constitutes a violation of the law.

We are inclined to the view such practice does constitute such a violation. We have in the law of this State a section of the Criminal Law devoted to the cruelty of animals, the same being section 10569 to 10585 N.C.L. 1929, both inclusive. Section 10569 provides as follows:

The word "animal," as used in this article, does not include the human race, but includes every other living creature;

The word "torture" or "cruelty" includes every act, omission, or neglect, whereby unjustifiable physical pain, suffering or death is caused or permitted.

This provision of the law is all inclusive and when coupled with section 10574 N.C.L. 1929, providing as follows:

A person who overdrives, overloads, tortures or cruelly beats or unjustifiably injures, maims, mutilates or kills an animal, and whether belonging to himself or to another * * * procures or permits any animal to be overdriven, overloaded, tortured, cruelly beaten, or unjustifiably injured, maimed, mutilated or killed * * * is guilty of a misdemeanor,

it is the opinion of this office that section 10574 so operates as to preclude, first, the hunting of wild horses by airplane, as above provided, but in addition thereto so operates as to prevent the cruel treatment of such horses by maiming them with shot from shotguns.

Therefore, it is the opinion of this office that the effect of the Nevada law is to prevent the hunting, killing or maiming of wild horses by persons so doing while operating or riding in airplanes in this State.

Very truly yours,

ALAN BIBLE
Attorney General

By: W.T. Mathews
Special Assistant Attorney General
