

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL - 1950

846. Public Schools—Sale of School Buildings or Sites—Procedure.

CARSON CITY, January 3, 1950.

HONORABLE ROBERT E. JONES, *District Attorney, Clark County, Las Vegas, Nevada.*

DEAR MR. JONES: This will acknowledge receipt of your letter dated December 29, 1949, received in this office January 3, 1950.

You request advice as to the authority of a school district of the second class to sell a school building. You refer to section 6077.11, 1929 N.C.L., 1941 Supp.

Section 6077.11, 1929 N.C.L., 1941 Supp., being section 1 of the Act of 1937, page 380, was repealed by chapter 63, Statutes of 1947, the new School Code.

Section 274, Statutes of 1947, page 304, which defines the powers and duties of school trustees, subdivision 1, provides as follows:

To buy or sell any schoolhouse or schoolhouse site directed to be bought or sold by a vote of the registered electors of the school district; provided, that in school districts in which there shall be fewer than ten (10) families with resident school age, no schoolhouse or schoolhouse site shall be sold without the approval of the superintendent of public instruction or the deputy superintendent of public instruction of that education supervision district;

Subdivision 4 of this section provides:

To call meetings of the registered electors of the school district in order to secure by vote the authority to procure or sell school sites, or to erect, purchase, sell, hire, or rent schoolhouses for the use of the district. Whenever the trustees shall decide to hold such meeting, they shall give at least ten (10) days' notice by posting at least three (3) notices of such meeting in three (3) conspicuous places within the district. One (1) of such notices shall be posted on the school grounds. The notices shall contain the time, place, and purpose of the meeting. The president of the board shall call such meeting to order and shall preside over the deliberations of the same.

The clerk of the board shall keep a record of the proceedings of such meeting in book kept especially for that purpose. In case of absence of either the president or the clerk of the board at such meeting, the registered electors assembled shall proceed to elect a president pro tem or a temporary clerk, as the case may be. All questions placed before the meeting shall be determined by ballot or by taking the "ayes" and "noes" as the meeting shall decide.

Very truly yours,

ALAN BIBLE, *Attorney General.*

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

847. Nurses—Professional Nursing Act—Penalty Provided For Violation Directed Against Person Practicing Without License, Not Against Employer.

CARSON CITY, January 9, 1950.

JANET M. SPENCER, R.N., *Elected Secretary, Nevada State Nurses' Association*
118 California Avenue, Reno, Nevada.

DEAR MISS SPENCER: This will acknowledge receipt of your letter dated January 5, received in this office January 6, 1950.

You request an opinion upon the following questions relative to the Act to regulate professional nursing of the sick in this State;

1. May the local office of a company which operates nationally employ a nurse, who has undoubtedly graduated from an accredited school of nursing but who declines to register in Nevada? Does the Professional Nursing Act provide that this company can be prohibited from employing this nurse? Or any nurse who does not comply with the provisions of the Act? Can this company be fined for employing this nurse, as the nurse can be fined for accepting employment when not registered?

2. May a doctor employ his wife under the circumstances outlined above? Could such doctor refuse to testify, if subpoenaed to appear before the Board of Examiners, on the ground that one party to a marriage cannot be compelled to testify against the other party to that marriage?

The answer to your first question, in our opinion, is that the penalty provided in the Act for its violation, is directed against the person practicing professional nursing without a license, and not against the employer of such person.

The answer to your second question depends upon the definition of professional nursing as used in the Act, which provides that it shall apply to any person who for compensation performs such professional services.

As the hearing before the board, provided in the Act, applies only to disciplinary proceedings against any license under the Act, your inquiry as to the competency of a witness is not related to your inquiry.

Section 1 of the Act to regulate the professional nursing of the sick in Nevada, under chapter 256, Statutes of 1947, as amended by chapter 245, Statutes of 1949, reads as follows:

For the purpose of safeguarding life and health and for the purpose of maintaining high professional standards among professional nurses in this state, any person who for compensation practices or offers to practice professional nursing in this state shall, hereafter, be required to submit evidence that he or she is qualified so to practice, and shall be licensed as hereafter provided, and any institution desiring to conduct a school of nursing shall be accredited as hereinafter provided. After the effective of this act, it shall be unlawful for any person to practice or to offer to practice professional nursing in this state or to use any title, abbreviation, sign, card, or device to indicate that such person is practicing professional nursing in this state unless such person has been duly licensed under the provisions of this Act.

Section 9 of the Act as amended by chapter 245, Statutes of 1949, reads as follows:

No person shall practice or offer to practice professional nursing in this state without having a valid and subsisting license to practice as a registered nurse issued pursuant to this act; nor shall any person who does not hold a valid and subsisting license to practice as a registered nurse issued pursuant to this act

practice or offer to practice in this state as a registered nurse, graduate nurse, a trained nurse, a certified nurse or under any other title or designation suggesting professional qualifications and skill in the field of nursing.

Section 19 of chapter 256, Statutes of 1947, fixes a penalty for any person violating any provision of the Act.

Section 17 of this Act is the only provision relating to the employment of registered nurses.

This section provides that 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. The section does not apply to institutions which serve only as homes for the indigent or aged.

The answer to your second questions is that the punishment would be directed against the person violating the provisions of the Act who practices or offers to practice professional nursing without a license.

Professional nursing as defined in section 2 of the Act as amended by chapter 245, Statutes of 1949, is as follows:

As used in this act, "professional nursing" shall apply to any person who for compensation performs any professional services requiring the application of principals of the biological or physical sciences and nursing skills in the care of the sick, in the preventing of disease or in conservation of health.

As the hearing provided for in the statute is disciplinary proceedings only against any licensee under the Act, and not a criminal prosecution, the answer as to the competency of a husband to testify against a wife is not required by the nature of the circumstances.

Very truly yours,

ALAN BIBLE, *Attorney General.*

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

**848. Insurance—Broker's License May Not Be Issued in Name of Foreign Corporation—
May Be Issued to Qualified Individual.**

CARSON CITY, January 10, 1950.

HONORABLE JERRY DONOVAN, *Insurance Commissioner, Carson City, Nevada.*

Attention: Mr. G.C. Osburn, Deputy.

DEAR MR. DONOVAN: This will acknowledge receipt of your letter dated January 5, received in this office the same date.

You request an opinion as to the authority under the statute, for the Insurance Commissioner to issue an insurance broker's license to a foreign insurance company authorized to do business in the State.

The applications seeks the issuance of a broker's license to the corporation instead of the representative in the State, who has qualified for a broker's license as provided under section 147, subsection (h) of the Insurance Act.

We are of the opinion that the Insurance Commissioner has no authority to issue a broker's license in the name of the foreign corporation. The broker's license may be issued to the qualified individual.

Section 3656.147, 1929 N.C.L., 1931-1941 Supp., as amended by chapter 152, Statutes of

1947, provides for the licensing by the Commissioner of insurance agents.

The Commissioner must be satisfied as to the integrity of the applicant; that the applicant has been a bona fide resident of the State for three months immediately prior to the filing of the application and other qualifications, including an examination.

Subdivision (h) of section 147, provides:

Any person, partnership, association, or corporation may be licensed as an insurance agent upon compliance with the requirements of law; provided, however, that any articles of partnership, association, or corporation shall authorize the applicant specifically to engage in such business. The application for a license by, and the license issued to, a partnership, association, or corporation shall name all members of such group, the persons, officers, directors, or stockholders thereof who are authorized to act as agent or agents thereunder, and no such license shall be issued unless and until the persons named in the application as being so authorized have qualified for individual licenses as hereinbefore provided.

Section 147a was added by the amendment of the Act under chapter 240, Statutes of 1949. This section defines the procedure for issuance of a broker's license.

It requires that the applicant be a bona fide resident of the State of Nevada for three months immediately prior to the filing of the application.

Subdivision (b) provides:

That the application provided for by section 145 has been filed with and approved by the commissioner.

Section 145, as amended by the same chapter, includes the word broker after the word agent. Subsection (9) of this section provides:

The name and address of the applicant, and if the applicant is a partnership or association the name and address of each member thereof, and if the applicant is a corporation the name and address of each of its officers and directors and of all stockholders designated to act for applicant.

Subsection (d) provides:

That applicant has taken and passed the written examination referred to in section 147, and all the provisions of section 147, and all the provisions of section 147 are applicable to examinations of applicants for a broker's license, except that a temporary certificate of convenience shall not be issued on an application for a broker's license.

The last part of section 147a reads: "The provisions of subdivision (h) of section 147 are also applicable to applicants for broker's licenses."

A foreign corporation, although it has complied with the law to do business in the State cannot qualify for a broker's license under the provisions of the statute.

Sections 147 and 147a each require the applicant to be a bona fide resident of the State for a certain period.

The decisions of the Courts as to residence of a corporation are conflicting, and appear to depend upon State statutes. The majority rule appears to be expressed in *Cramer v. Borden's Farm Products Co.*, 58 F(2) 1028, holding that a corporation is a resident of the State which creates it, and for most purposes is deemed to be a nonresident of every other State even though duly admitted to do business therein. Also, *Silverton v. Pacific Mutual Life Ins. Co.* of

California, 16 F. Supp. 315, holding that for the purposes of jurisdiction of Federal Courts, a corporation organized in another State is a resident of that State, and does not lose diversity of citizenship upon removal proceedings because corporation is also authorized to do business in New York.

The rule is applicable to the insurance law of this State as shown by section 140 of the Act which contains the following language:

The term "nonresident broker" as used in this article means any person, partnership, association or corporation, not a resident of a or a domiciled company in this state, * * *.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

849. Fish and Game—Fishing Season—County Game Management Board Cannot Establish Definite Opening Date and Indefinite Closing Date.

CARSON CITY, January 10, 1950.

MR. S.S. WHEELER, *Director, Fish and Game Commission, Post Office Box 678, Reno, Nevada.*

DEAR MR. WHEELER: This will acknowledge receipt of your letter of December 19, received in this office December 20, 1949, in which you request our opinion as to whether or not a County Game Management Board can establish a fishing season with a definite opening date but an indefinite closing date which will be established at a future time by proclamation.

The answer to this inquiry is in the negative.

There appears to be at first glance several conflicting sections concerning your problem, but by reading the Act in its entirety we find that the County Game Management Board does not have the authority to regulate the fishing season in the method set forth in your inquiry.

Section 63 of the Fish and Game Laws of Nevada provides as follows:

The state fish and game commissioners are hereby authorized to divide the State of Nevada into such districts as they may find expedient with reference to hunting or fishing, and fix the dates for hunting or fishing in each of said districts within the limits provided in this act; provided, that the county game management board of any county in this state may shorten or close the season entirely, except as to migratory birds, and it shall be unlawful for any person to hunt in any such district or county on any day or days other than may be designated by the fish and game commissioner or the said county board. The county game management board of each county shall fix the open season in such county within the limits provided in this act not less than sixty (60) days before the date specified in this act for the opening of such season; *provided, that in the event an unforeseen emergency shall arise after any season shall have been declared open, and the county game management board shall determine that the interests of conservation so require, said board may declare such season closed, giving reasonable notice of such action, which notice shall be not less than one day. The state fish and game commission, or any county game management board within its county, may, in the interest of conservation, close to hunting or fishing designated areas in*

each county, in which event the county game management board shall post notice of such closing on the closed area, and give further notice thereof by publication.

The italic portion appears to grant authority to the County Game Management Board by which the Board may close the fishing season if an emergency exists and the required notice is given. However, even if this particular section was controlling the Board would not have the power or the right to set a definite opening date and a closing date to be determined by the Board at an indefinite future time. The term season as used in the statute connotes a definite determinable period, which period may be shortened if the conditions provided for in the statute develop at a later date.

How and where is the authority vested that closes the season is a question that naturally flows from the one you ask and therefore should be answered at this time.

The pertinent part of section 20 reads as follows:

For the purposes specified in this act, the State of Nevada is divided into separate and distinct districts for the protection and preservation of fish and game on the land and in the water. Said enumeration and classification and the specification of the first and last day of the open or of the closed season found in sections 21 to 27, inclusive, of this act, respecting fishing, or sections 57 to 64, inclusive, respecting hunting, shall not prohibit the state fish and game commission or the respective county game management boards from taking any of the following steps by general rules and regulations or in specific instances and giving public notice thereof as is elsewhere in this act provided: * * *

Subsection 7 of section 20, provides as follows:

Providing supervision and control throughout this state over all orders closing the open season temporarily or permanently on the score of emergency imperiling the preservation and conservation of fish, or otherwise, and requiring the approval of all such orders by the state fish and game commission before they become effective.

It is to be noted that this section was amended by the Legislature in 1949.

This section as stated in our opening paragraph is conflicting with section 63, as, according to the latter section, the county board has the authority to close the season without the approval or without consulting the Fish and Game Commission.

Ex Parte Smith, [33 Nev. 466](#), 111 Pac. 930, sets out the following rule: "When two provisions of a statute are not reconcilable, the last one controls as the latest expression of the legislative will."

Therefore, it is our opinion that section 20, subsection 7, is controlling and that the County Game Management Board must only set a definite opening and closing date but must also have the approval of the Fish and Game Commission before the season can be closed as a result of an emergency.

Very truly yours,

ALAN BIBLE, *Attorney General*.

By ROBERT L. McDONALD, *Deputy Attorney General*.

850. Fire Protection—Construction of Buildings and Improvement of District-Owned Property—Authority.

CARSON CITY, January 13, 1950.

HON. JO G. MARTIN, *District Attorney, Lincoln County, Pioche, Nevada.*

DEAR MR. MARTIN: This will acknowledge receipt of your letter dated December 31, 1949, received in this office January 3, 1950.

You write that a Fire Protection District has been organized in your county and ask whether the Board of County Commissioners has the authority to issue general obligation bonds against the territory within the Fire Protection District and an unincorporated town for the completion of a fire house within such district and town. You call attention to section 1929.08, 1929 N.C.L., 1941 Supp., which defines the powers and duties of the board of directors of a fire protection district.

We are of the opinion that the authority to issue bonds for the construction of buildings and improvement of district-owned property is found in chapter 182, Statutes of 1947, and chapter 317, Statutes of 1949.

Chapter 182, Statutes of 1947, authorized the directors to issue bonds in an amount not exceeding \$10,000.

Chapter 317, Statutes of 1949, amended the title of this Act and also section 1 thereof empowering the board of directors of Fire Protection districts to prepare, issue and sell negotiable coupon bonds not exceeding in amount \$25,000 for the purpose of providing funds for the purchase of fire fighting equipment, construction of buildings, and improvements of district owned property for use in their respective districts.

Chapter 182, Statutes of 1947, sections 2, 3, 4, 5, 6, and 7 of the Act were not amended. These sections define the procedure for the issuance of bonds and require an election in accordance with the Act relating to bond elections.

Very truly yours,

ALAN BIBLE, *Attorney General.*

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

851. Fish and Game—No Authority Under State Game Laws to Establish Daily Opening Time Other Than Sunrise Opening Time as Set by Legislature.

CARSON CITY, January 17, 1950.

S.S. WHEELER, *Director, Nevada Fish and Game Commission, P.O. Box 678,* Reno, Nevada.

DEAR MR. WHEELER: This will acknowledge receipt of your letter of January 16, 1950, requesting our opinion as to whether or not the County Game Management Boards or the State Fish and Game Commission have the authority under the State game laws to establish a daily opening time other than the sunrise opening time as set by the State Legislature.

The answer to this inquiry is in the negative.

Section 68 of the Act provides as follows: "It is hereby made unlawful for any person at any time to take any of the wild birds or wild game mentioned and protected in this act except between sunrise and sunset, the same to be considered according to government time reports; provided, that nothing in this section shall be construed to limit or restrict the hours of hunting of migratory birds, which hours shall be those established by federal regulation governing the hunting of migratory birds, or as set by the fish and game commission."

The final paragraph of section 13 reads as follows: “Each such county board shall advise the fish and game commissioner elected from that county as to the needs of the county in the protection and propagation of fish and game. The said county board shall be in charge of all fish and game matters in the county, shall prepare annually a budget of proposed expenditures and submit the same to the state commission, and have such other powers and duties as may be delegated to it by the state commission or provided by law.”

From this section it is apparent that if the County Game Management Board does have this power, it must be found within the Act itself.

Section 60 of the Act provides as follows: “It shall be unlawful for any person to hunt any form of migratory or upland game birds within this state, except during the open season thereon. The commission shall annually proclaim by printed notice in newspapers such seasons, bag limits, and other regulations for the hunting of upland game birds; provided, however, that the county game management board of the respective counties may shorten said season or designate certain days on which shooting shall be allowed in their respective counties.”

It is to be noted that there is authority granted to the Board by this section to shorten the season or designate certain days on which shooting may be allowed, but there is nothing in the statute giving the board authority to determine what hours of a particular day hunting is allowed.

The applicable portion of section 20 reads as follows: “(3) Establishing from time to time the day of the year when an open season shall begin or end; provided, that no open season shall be longer than the period of time now fixed by law, but may be shorter; provided further, the commission may extend the ‘open season’ in any one year in case of emergency arising from overpopulation in respect of any species of game.”

This section, as section 60, does not refer to the hours of the day but merely refers to the day of the year and the length of the season in terms of days. Also, this section by its very terms does not apply to section 68, it not being within those enumerated.

Therefore, as section 68 being later in time does establish definitely the time hunting for upland game is allowable and as there is nothing in the statute giving the commissioners or the County Game Management Boards any authority to alter these established hours, it is our opinion that section 68 must be adhered to.

Very truly yours,

ALAN BIBLE, *Attorney General*.

By ROBERT L. McDONALD, *Deputy Attorney General*.

852. Insurance—Minor May Not Be Licensed as Agent.

CARSON CITY, January 19, 1950.

HON. JERRY DONOVAN, *Insurance Commission, Carson City, Nevada*.

Attention: Mr. G.C. Osburn.

DEAR MR. DONOVAN: The following is in reply to your oral inquiry as to your authority to license as an insurance agent in this State a minor to represent a foreign insurance company licensed to do business in this State.

From the facts presented the father of the minor is a general agent of the insurance company in the State of its domicile and is also the legal guardian of the minor who acts through his guardian in said State. The guardian is not licensed to transact insurance business in this State.

While the provisions of the Insurance Act do not specifically require that an application for an agent license show that the applicant is of legal age, we are of the opinion that the intent of the Legislature is that an agent licensed to do business in this State be one that is qualified to transact the business of insurance and to negotiate and effects contracts of insurance. Persons dealing with a minor should be confronted with the possibility of a determination that the contracts of minors may be declared absolutely void, voidable or valid.

Section 300, N.C.L. 1929, provides that all male persons of the age of twenty-one years and all females of the age of eighteen years, and who are under no legal disability, shall be capable of entering into any contract, and shall be, to all intents and purposes, held and considered to be of lawful age.

Considering the circumstances that the minor acts through is guardian in the State of his domicile, the principal expressed in 11 Am. Jur. page 327, which is that an act performed by an agent in behalf of his principal in another State must be tested by the law of the State in which the relationship had its inception, which controls the extent of the agent's authority; and if they were beyond his power there, they are beyond it everywhere and do not bind the principal.

Therefore, we are of the opinion that the Insurance Commissioner has no authority to license the minor in question as an insurance agent in this State.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

853. Public Schools—Suggested Legislation Re New School District Approved.

CARSON CITY, January 16, 1950.

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

DEAR MISS BRAY: This will acknowledge receipt of your letter dated January 6, received in this office January 9, 1950.

You narrate a circumstance wherein an area adjacent to an organized school district has become settled to the extent that there is a sufficient number of children of school age to organize a school district, but owing to the fact that such area is close enough to afford such children the advantage of attending a large city school instead of a one-teacher school in a small district, you desire an opinion from this as to the authority granted in the School Code to permit the annexation of this unorganized area to the existing district.

You cite the sections of the School Code relative to school districts of all of which deal in this respect with two or more regularly established school districts, and finding no authority therein to meet the presented condition, you submit two suggestions:

1. To secure legislation at the 1951 session which you would make it possible for an organized school territory, under certain conditions.
2. To have a new school district established outside the limits of the organized district, and then have the new school district take the steps outlined in section 39, 1947 School Code, with the approval of the Deputy Superintendent of Public Instruction.

You qualify the second alternative by the inquiry whether there is anything in the statute that

would prohibit the course outlined without the necessity of actually holding school in the new district, but immediately petition for annexation to the organized school district.

We are of the opinion that your conclusion as to the lack of statutory authority to annex unorganized potential school district areas to organized school districts is correctly stated.

In our opinion your first proposition, that is, to secure legislation, is the better, one as the alternative suggested would be an attempt to do indirectly that which cannot be done directly, under the statutes.

Sub-chapter 6 of the 1947 School Code, defines school districts and their various combinations.

Section 38 empowers the Boards of County Commissioners on the recommendation of the Deputy Superintendent of Public Instruction to enlarge the boundaries of school districts wherein there may be uncertainty of maintaining the minimum of five resident children of school age, sufficiently beyond the two hundred fifty-six square mile limit to include five or more such children actually residing therein.

This section would not apply to the circumstances submitted, as there is a sufficient number of resident school children of school age to warrant the establishment of a new school district.

Section 34 provides for the creation of new school districts from unorganized territory.

The other sections of this chapter relate to joining or combining two or more organized districts.

The objection to your suggested alternative is found in section 36, which provides as follows: "Whenever a new school district is organized, school shall commence therein within one hundred twenty (120) days from the date of the action of the board of county commissioners creating such school district, and if school is not so commenced within the said district, then the action creating such district shall be void, and no such school district shall exist."

To create a school district for the sole purpose of annexing the territory to an organized district would overreach the provision of the statute.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

854. Elections—Constitutional Law—Chapters 14 and 38, Statutes of 1949, Relating to Presidential Electors, Violate No Provisions of the Federal Constitutions.

CARSON CITY, January 19, 1950.

HON. ARCHIE L. CROSS, *Assemblyman, Washoe County, Sparks, Nevada*.

DEAR ASSEMBLYMAN CROSS: Receipt is hereby acknowledged of your letter of January 17, 1950, wherein you pose the question whether chapter 38, Statutes of 1949, providing the method of selecting presidential electors, is unconstitutional by reason of the language of section 2 of the fourteenth Amendment to the Constitution of the United States reading, "* * * But when the right to vote at any election for the choice of electors for president and vice president of the United States * * * is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein (in Congress) shall be reduced in

proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.”

STATEMENT

Chapter 38, Statutes of 1949, provides that each political party in this State, qualified by law to place upon the general election ballot candidates for presidential electors, shall at the State convention held in the year a president and vice president of the United States are to be elected, choose from the qualified electors of the State, who are members of the party, the number of presidential electors required by law, and no more, who shall be nominated by the delegates at the party convention. Such nomination shall be certified to the Secretary of State who shall record the names of the nominees in his office as presidential elector nominees of the party. The names of the nominees so chosen shall not be placed on the general election ballot, but the presidential elector nominees of the party whose candidates for president and vice president of the United States are elected shall be deemed the elected presidential electors of the party required by law and the Constitution of the United States are elected shall be deemed the elected presidential electors of the party whose candidates for president and vice president of the United States are elected shall be deemed the elected presidential electors of the party required by law and the Constitution of the United States are elected shall be deemed the elected presidential electors of the party required by law and the Constitution of the United States. The Governor shall issue to such elected electors certificates and commission of election. Prior to the 1949 Act the names of candidates for office of presidential electors were placed on the primary election ballot.

Chapter 14 of the 1949 Statutes amended section 36 of the general election law, i.e., section 2473, N.C.L., 1929, providing the form of ballot. In such amendatory Act it provides the elimination of the names of the candidates for presidential electors. However, it is there provided:

A cross (X) stamped in the square opposite the names of the presidential and vice presidential candidates of a party is a vote for all the electors of that party but for no other candidates.

Do the Acts of 1949 relative to the choosing of presidential electors violate the provisions of section 2, Fourteenth Amendment to the Constitution of the United States?

OPINION

Section 1 of Article II of the Constitution of the United States provides:

1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice president, chosen for the same term, be elected as follows:

2. Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the Congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

3. The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout

the United States.

The foregoing provisions do not provide that the presidential electors shall be elected by the vote of the people, neither do they require such electors need be nominated at a primary election, nor even by nomination at party conventions. Such constitutional provisions leave it to the Legislature of the State to choose the means whereby presidential electors are selected. The language "Each state shall appoint in such manner as the legislature thereof may direct" is significant, as is pointed out in the case of *In re Convention Nominations*, 50 N.Y.S. 2d 727, where the New York Court in 1944 said:

The Convention of 1787 which framed the United States Constitution did not leave the selection of President and Vice President to direct popular choice. The selection was to be made by an electoral college. And, indeed, the selection of the electors themselves was not required to "elect," but the "state" was required to "appoint." The manner of appointment was to be as the Legislature should direct.

The committee of the Convention which drafted the language of the Constitution in its final form demonstrated a singular capacity for precise use of language. Its draftsmen were men of consummate skill in the expression of terms of law and of government. They have had many imitators in many languages by the founders of many governments, and in some substantial part, the success of the Constitution as an instrument of government has been due to the form in which the lawyers who were its draftsmen expressed in words the will of the Convention.

When they used the word "appoint" as they did in the case of presidential electors, and again as they did in the case of ambassadors, the judges of the Supreme Court and other officers of the United States, U.S. Const. Article II, Sect. 2, they meant something quite different from the words "chosen by the people" in the case of members of the House of Representatives. U.S. Const. Article I, Sect. 2. It seems to have been the initial impression of this language before the development of political parties that "appointment" of electors by the states be taken literally.

In *Stanford v. Butler* (Texas, 1944), 181 S.W. 2d 269, the Supreme Court of Texas held, in construing the U.S. constitutional provision relative to the appointment of presidential electors, that in the absence of a State statute to the contrary, that a political party is free to follow any method which it may choose in keeping with party usages and customs in the selection of nominees for presidential electors so long as it does not pursue a method expressly prohibited by law, and that such nominees' names were not required to be placed on the primary election ballot.

In *State ex rel. Hawke v. Myers* (Ohio, 1936), 4 N.E. 2d 397, the Supreme Court of Ohio, in construing a statute practically identical with chapter 38, Statutes of 1949 (Nevada), said:

Relator challenges the constitutionality of sections 4785-107 and 4785-108, General Code, which direct that the names of candidates for presidential electors shall not be printed upon the ballot, but, after nomination, shall be filed with the secretary of state, and that the names of candidates for President and Vice President of parties or groups shall be printed on the ballot with the statement that a vote for the candidates named shall be a vote for the electors of such party or group. Section 1, article II, U.S. Constitution, vests the Legislature with authority to direct the manner in which presidential electors shall be appointed, and, as there is no provision in the Ohio Constitution limiting the exercise of that

delegated power, sections 4785-107 and 47885-108, General Code, are not unconstitutional. *McPherson v. Blacker*, 146 U.S. 1, 13 S. Ct. 3, 36 L. Ed. 869.

Clearly the Nevada Acts of 1949 are not contrary to the provisions of Article II of the Constitution of the United States relating to the appointment of presidential electors in such manner as the Nevada Legislature may direct.

In passing, it is interesting to note that even if the congress of the United States possessed or possesses the constitutional power by legislation to dictate to the States the method by which presidential electors should be selected, it has not done so, as is so well stated in *In Re Green*, 134 U.S. 377, after pointing out the duties of presidential electors, the Court said:

Congress has never undertaken to interfere with the manner of appointing electors, or, where (according to the now general usage) the mode of appointment prescribed by law of the state is election by the people, to regulate the conduct of such election, or to punish any fraud in voting for electors; but has left these matters to the control of the states.

That Congress has not attempted to interfere, even if it had the power so to do, with the selection of presidential electors by the States is well evidenced by the enactment in 1948 of a revision of the Federal Act relating to the duties of presidential electors. Section 1 of that Act provides:

The electors of President and Vice President shall be *appointed* in each state on Tuesday next after the first Monday in November, in every fourth year succeeding every election of a President and Vice President. Title 3, Sec. 1, F. C.A. (Italics ours.)

Do the 1949 Acts of the Nevada Legislature regulating the method of selecting presidential electors violate the provisions of the fourteenth Amendment to the Constitution of the United States?

The answer to this question is in the negative.

In the case of *McPherson v. Blacker*, 146 U.S. 1, the Supreme Court of the United States decided an analogous question arising under Michigan law regulating the manner of electing presidential electors. The Court, after an exhaustive discussion of the matter, held:

1. Under the second clause of Article II of the Constitution, the legislatures of the several states have exclusive power to direct the manner in which the electors of president and vice president shall be appointed.

2. Such appointments may be made by the legislatures directly, or by popular vote in the districts, or by general ticket, as may be provided by the legislature.

3. The second clause of Article II of the Constitution was not amended by the Fourteenth or Fifteenth Amendments, and they do not limit the power of appointment to the particular manner pursued at the time of the adoption of these amendments. In the course of its opinion the Court said:

The constitution does not provide that the appointment of electors shall be by popular vote, nor that the electors shall be voted for upon a general ticket, nor that the majority of those who exercise the elective franchise can alone choose the electors. It recognizes that the people act through their representatives in the legislature, and leaves it to the legislature exclusively to define the method of effecting the object. * * * In short, the appointment and mode of appointment of electors belongs exclusively to the States under the Constitution of the United States. They are, as remarked by Mr. Justice Gray in *In re Green*, 134 U.S. 377, 379, "no more

officers or agents of the United States than are the members of the state legislatures when acting as electors of Federal senators, or the people of the States when acting as the electors of representatives in Congress.” Congress is empowered to determine the time of choosing the electors and the day on which they are to give their votes, which is required to be the same day throughout the United States, but otherwise the power and jurisdiction of the State is exclusive, with the exception of the provisions as to the number of electors and the ineligibility of certain persons, so framed that Congressional and Federal influence might be excluded.

And with respect to the Fourteenth and Fifteenth Amendments the Court said in part:

Nor are we able to discover any conflict between this act and the Fourteenth and Fifteenth Amendments to the Constitution. * * * If because it happened, at the time of the adoption of the Fourteenth Amendment, that those who exercised the elective franchise in the State of Michigan were entitled to vote for all the presidential electors, this right was rendered permanent by that amendment, then the second clause of Article II has been so amended that the States does not prohibit legislation which is limited either in the objects to which it is directed, or by the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed. As we said in *Barbier v. Connolly*, speaking of the Fourteenth Amendment: ‘Class legislation, discriminating against some and favoring others, is prohibited; but legislation which in carrying out a public purpose is limited in its application, if within the sphere of its operation it affects alike persons similarly situated, is not within the amendment.’
113 U.S. 237.”

If presidential electors are appointed by the legislatures, no discrimination is made; if they are elected in districts where each citizen has an equal right to vote the same as any other citizen has, no discrimination is made. Unless the authority is vested in the legislature by the second clause of section 1 of Article II has been divested and the State has lost its power of appointment, except in one manner, the position taken on behalf of relators is untenable, and it is apparent that neither of these amendments can be given such effect.

In the final analysis the Nevada Legislature has not in fact taken away from the electorate the right to vote for presidential electors. The Legislature has simply provided an expeditious method of nominating such electors at State conventions and providing for their election by the simple expedient of voting for the party candidates for president and vice president whom the nominated presidential electors are in honor bound to cast their electoral votes.

There are, in our opinion, no constitutional defects in chapters 14 and 38, Statutes of Nevada 1949.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

855. Heroes Memorial Building—State Department Buildings and Grounds Has Jurisdiction.

CARSON CITY, January 20, 1950.

HON. W.T. HOLCOMB, *Chairman, State Planning Board, Carson City, Nevada*.

Attention: A.M. Mackenzie, Secretary.

DEAR SIR: Reference is hereby made to your letter of January 18, 1950, wherein you inquire what State department has the authority to allocate space in the Heroes Memorial Building upon the vacation thereof by the Highway Department and the State Engineer upon the completion of the new State Office Building.

OPINION

Prior to the enactment of chapter 320, Statutes of 1949, the authority to allocate office space in State buildings was vested in the State Board of Control in section 3 of the State Board of Control Act, the same being section 6974.02, 1929 N.C.L., 1941 Supp. However, chapter 320, Statutes of 1949 purports to create a State Department of Buildings and Grounds and provides for a superintendent thereof. Section 9 of such Act lodges the power in the Superintendent of Buildings and grounds to assign rooms in the capitol building and rooms elsewhere used by the State and shall determine the occupance thereof in such manner as the public service may require. Such 1949 Act also repealed sections 3, 4, 5, 6, and 9 of the State Board of Control Act and by so doing removed the power and authority to assign quarters in State buildings from the State Board of Control to the Superintendent of Buildings and Grounds.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

856. Lost City Museum—State Department Buildings and Grounds Has Jurisdiction— May Provide Caretaker Therefor.

CARSON CITY, January 25, 1950.

HON. VAIL PITTMAN, *Governor of Nevada, Carson City, Nevada*.

DEAR GOVERNOR PITTMAN: Reference is hereby made to your letter of November 16, 1949, wherein you requested the opinion of this office concerning the buildings known as the Lost City Museum. Your question was whether it was possible for the property, which was under the jurisdiction of the State Park commission, to be leased to an individual or operated as a concession by an individual or association. Reference was made in your letter to a deed conveying title to the land, to the State, upon which the buildings were constructed. A copy of the deed accompanied the letter. An examination of the deed disclosed that it was necessary to determine the status of the property as to its location with respect to the State and National Park Service. The necessary information and data was not then available to this office and request was made to the State Superintendent of Parks therefor. The information and data was furnished on January 20, 1950. We are advised that the delay was occasioned by the illness of the Superintendent of National Parks whose advice was sought by the State Superintendent of Parks as to certain phases of the park situation.

STATEMENT

On February 6, 1934, one Robert E. Lee conveyed to the State of Nevada fee simple title to some three and one-half acres of land in the SE of NE , section 24, Township 15 South, Range 67

East, near the town of Overton in Clark County. The deed contains the following reservation, “provided that title shall revert to the Federal Government when that agency is authorized to establish a national park upon the area.” We are advised that no national park has been created over and on the land in question.

Sometime during the depression years, about 1936 we are advised, the buildings comprising the Lost City Museum were constructed on said land by the Federal Civilian Conservation Corps and the title thereto vested in the State.

Whether the State Park Commission, after its creation in 1935 (sections 5585.01-5585.09, 1929 N.C.L., 1941 Supp.) took over the administration of land in question we are not fully advised, except that it has exercised no supervision thereover for the past three years, for one reason, perhaps, that the Legislature has made no appropriation for State Park Service since 1947. However, it now develops that no State park has ever been established over the land in question. The exterior boundaries of the State Valley of Fire Park do not enclose such land, as is shown by the plat thereof furnished by this office. Likewise, we are advised, that while the land lies closely adjacent to the boundary line of the Lake Mead Recreational Area, it is not within it, but, even if it were, still such recreational area is, as stated by the Superintendent of National Parks, not a national park.

Your question requires a determination of what agency of the State now has jurisdiction of the land in question and the Lost City Museum.

OPINION

First it may be stated that an examination of the law discloses that no officer or department of the State is empowered to lease to any person the museum in question.

If a State park had been created and established on the land deeded the State by Robert E. Lee, then under the provisions of the State Park Act Commission would have jurisdiction of the museum and authorized to provide for its care and maintenance, short of leasing it to any person.

Section 5585.06, 1929 N.C.L., 1941 Supp. But no State park was there established and the Commission had and has no legal jurisdiction thereof.

No State or national park being established in the matter, then what State board or commission had and has jurisdiction over the area in question?

In 1933 the Legislature enacted the State Board of Control Act, the same being sections 6974-6974.10, 1929 N.C.L., 1941 Supp. Section 3 of that Act (section 6974.02 supra) provided, “Said

Board shall have supervision and control of the state capitol building, the capitol grounds and state waterworks, the state printing office and grounds, *and all other state buildings, grounds and properties not otherwise provided for by law.*” (Italics ours.)

Pursuant to this section, no other law providing jurisdiction elsewhere over the area involved here, the State Board of Control was vested with the control of such area. Whether such board exercised jurisdiction in the matter is now immaterial as such section was repealed by section 15 of chapter 320, Statutes of 1949, which said chapter created a State Department of Buildings and Grounds and provides for a superintendent thereof.

Section 5 of the 1949 Act, inter alia, provides that the superintendent shall have supervision and control over “all other state buildings, grounds and properties not otherwise provided for by law.”

Section 6 provides that the superintendent shall have authority to expend funds for the care, maintenance and preservation of the aforesaid buildings and appurtenances. Section 9, inter alia,

provides that the superintendent shall assign the rooms in the capitol building, and rooms elsewhere used by the State, and determine the occupance thereof as the public service may require. Section 12 provides that the superintendent is authorized and directed to employ such clerks, etc., including watchmen, and such other persons as may be necessary to carry out the provisions of the Act. Section 13 requires that the superintendent shall take proper care to prevent any theft, etc., or injury to the State capitol building "or any other building or part thereof under his supervision and control." Section 14 provides that funds to carry out the provisions of the Act shall be provided by direct legislative appropriation from the General Fund, and that the duties, functions and funds of the State Board of Control, in this respect, were transferred to the Department of Buildings and Grounds.

Therefore, from the foregoing analysis of the matter, we conclude:

1. That no national park having been established over the land in question, the reversionary clause in the deed is of no present effect.
2. That no State park having been established over the land, the State Park commission had and has no jurisdiction thereover.
3. That the State Department of Buildings and Grounds and the superintendent thereof, provided in chapter 320, Statutes of 1949, is now vested with the jurisdiction and control of the Lost City Museum and appurtenant grounds, but that neither it nor the superintendent is authorized to lease such property to any person.
4. That the Superintendent of Buildings and Grounds may, in his discretion, employ upon such terms as are equitable to the State a watchman or caretaker for such museum and permit the occupance of the buildings by such watchman or caretaker and exhibition therein of relics and other articles as shall be deemed to the best interest of the State and the public.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

857. New State Office Building—Planning Board—Cost of Building To Be Equitably Apportioned Between Bond Issue and State Highway Fund.

CARSON CITY, January 27, 1950.

STATE PLANNING BOARD, *Carson City, Nevada*.

Attention: W.T. Holcomb, Chairman.

GENTLEMEN: Reference is hereby made to your written request of January 20, 1950, for the opinion of this office relative to the interpretation and application of chapter 325, Statutes of 1949, to the division and use of the funds provided in said chapter for the construction of the new State Office Building and the remodeling of the Heroes Memorial Building in Carson City.

The precise question presented by your letter and the copy of the letter of the Legislative Counsel Bureau to the State Planning Board relative to the question, annexed thereto, is: Do the provisions of said chapter 325 provide and require that the entire sum of 4350,000 appropriated from the State Highway Fund be first expended in the construction of the new State Office Building before recourse is or can be had to the funds derived from the bond issue shall be used pro rata in proportion each bears to the total cost of the site and construction of such building?

OPINION

While a preamble prefixed to an Act of the Legislature does not constitute a part of it insofar as the law expressed therein is concerned, still in a proper case it may be looked to for ascertaining the reasons for the enactment of the Act. However, the preamble cannot enlarge or confer powers not appearing in the Act. 50 Am. Jur. 131, sec. 152. Express provisions in the body of the Act cannot be controlled or restrained by the preamble. 50 Am. Jur. 297, sec. 309.

With the foregoing general rule of law in mind we have examined the preamble prefixed to chapter 325, Statutes of 1949, which chapter is the Act providing for the construction of a new State Office Building, for the purpose of ascertaining the foundation upon which the Legislature constructed and enacted such Act, and deduce therefrom the following:

1. That the present State office buildings in Carson City were and are inadequate to house the governmental departments and agencies, thereby interfering with the efficient operation of many of them.

2. That the plans and specifications of a new highway building to house the Highway Department, the Public Roads Administration and the State Planning Board to cost approximately \$700,000, were completed.

4. That the remodeling of the Heroes Memorial Building would furnish additional office space for other State agencies.

5. That the main building (proposed highway building of one store, etc.) would cost approximately \$700,000, that the State's equitable to the highway fund should not exceed \$350,000, and that this sum should represent the value or costs of the Highway Department's interest in the building as an administrative expense, and that the housing of other State departments and agencies should be had at the expense of the State at large by and through the bond issue.

It now develops that the entire cost of construction of the State Office Building, including the cost of the site therefor, will be well under the maximum amount of \$870,000. We think, and so hold that the savings thus effected shall inure to the benefit of both the State and the State Highway Department in proportion that the allocated costs to the State and the Highway Department bears to the total costs.

First, it is axiomatic that the intent of the Legislature is to be found and determined in and from the language used in the statute itself.

Second, that the Legislature is presumed to know the state of the law upon the subject which it legislates.

Third, that section 5 of Article IX, Constitution of Nevada, prohibits the use of State Highway funds for any purpose save the construction, maintenance and repair of the public highways of the State, except the costs of administration.

An examination of the new State Office Building Act discloses that, not only was the said building to be constructed to house the Highway Department and the Public Roads Administration, the duties of which were and are to administer the State Highway Act in the construction, repair and maintenance of the highways of the State, but also to house other State departments and agencies, including the State Engineer's office, the Public Service commission, the State Planning Board, all of whose duties are only remotely, if at all, connected with the Highway Act or its administration. It is clear that the costs of other than the Highway Department and the Public Roads Administration could not constitutionally be charged against any moneys was presumed to know and no doubt did know at the time of the enactment of the Act. Thus, we think, the reason for the language contained in section 3 of the act, i.e.:

The cost of construction of such state office building, together with the site, the heating, lighting, and ventilation systems, and all equipment thereof, shall not exceed the sum of eight hundred and seventy thousand dollars (\$870,000). *Of such sum*, three hundred and fifty thousand dollars (\$350,000) shall be provided from funds of the highway department, and five hundred and twenty thousand dollars (\$520,000) as hereinafter provided. (Italic ours.)

The \$520,000 sum was and is to come from the issuance of bonds thereafter provided.

It is clear that the Legislature intended that in no event was the highway fund to provide more than \$350,000, and this amount only in case the entire cost of construction of the building and the site therefor should be the sum of \$870,000, which of course, also would require the full amount of \$520,000 derived from the bond issue. In brief, that if the entire cost of the building and site was \$870,000 the cost of the building and site was \$870,000, the cost allocated to the highway fund should not exceed \$350,000, and that this sum should represent the value or costs of the Highway Department's interest in the building as an administrative expense, and that the housing of other State department and agencies should be had at the expense of the State at large by and through the bond issue.

It now develops that the entire cost of construction of the State Office Building, including the cost of the site therefor, will be well under the maximum amount of 4870,000. We think, and so hold, that the savings thus effected shall inure to the benefit of both the State and the State Highway Department in proportion that the allocated costs to the State and the Highway Department bears to the total costs, thus reducing the cost so allocated.

There is no provision in the State Office Building Act requiring that the moneys therein appropriated from the State Highway Fund shall first be used in payment of construction costs. It is the opinion of this office that the State Office Building Fund, provided in the Act, was and is to be made up of funds derived from apportionments from the State Highway Fund and from the sale of the bonds provided in the Act, and that progress payments be made therefrom during the construction period. It is further the opinion of this office that the apportionments from the State Highway Fund and the funds derived from the sale of bonds should be based and made upon the proportionate share from each source hereinabove stated.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

858. University of Nevada—Residential Qualification of Students Defined.

CARSON CITY, January 27, 1950.

HON. G.E. PARKER, *Acting President, University of Nevada, Reno, Nevada*.

DEAR PRESIDENT PARKER: Receipt is hereby acknowledged of your letter of January 22, 1950, received January 24, 1950, wherein you request the opinion of this office upon the following proposition.

A young lady student entered the University for the first time in September 1949. Her father and family moved into Reno in June 1949, where the father entered upon the pastorate of the First Methodist Church and at that time established residence within the city. The daughter, now a student in the University, claims exemption from all out-of-State tuition upon the ground that

Reno was her actual residence in September of 1949, and that the intent to become a permanent resident is now legally confirmed. You state that you have ruled that she is exempt from all tuition except for the first semester, i.e., from September 1949, to and including January 1950.

OPINION

Section 7735, Nevada Compiled Laws 1929, as amended at 1945 Statutes, page 258, provides, as far as material here: "The board of regents of the University of Nevada shall have power to fix a tuition charge for students at that University; *provided, however*, that tuition shall be free (a) to all students whose families are bona fide residents of the State of Nevada, and (b) to all students whose families reside outside the State of Nevada, providing such students have themselves been bona fide residents of the State of Nevada for at least six months prior to their matriculation at the University; * * *."

While your letter does not expressly state that the student has been and is now residing with her father and family since removing to Reno and/or upon and since her matriculation at the University, we assume such to be the fact. In such case her residential qualifications fall within subdivision (a) of the above-quoted section of the law, and if her father and family from the month of June 1949, were and are now bona fide residents of the State, the young lady student and is now exempt from all out-of-State tuition, even for the first semester.

It is to be noted that a student's family is not required to spend any prescribed length of time in this State prior to the matriculation date at the University. All that is required is that her family shall at that time be bona fide residents of the State.

In the final analysis residence is the actual taking up of by a person a place of abode with the intention of there remaining permanently or for an indefinite time then and there not expressly determined. It is clear that the father of the student in question took up his abode and removed his family thereto not for the sole purpose of placing his daughter in the University, but for the purpose of assuming the pastorate of a fine church and its congregation. This, we think, constitutes bona fide residence within the meaning of the statute in question here, and, having occurred prior to the matriculation day in September, is, in our opinion, a sufficient compliance with the law to warrant the total exemption from payment of tuition fees for any period whatever on the part of the daughter.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

859. Counties—Funds for Advertising Resources Under Sole Control of County Commissioners.

CARSON CITY, January 30, 1950.

TO THE BOARD OF COUNTY COMMISSIONERS, *Elko County, Elko, Nevada*, and HON. A.L. PUCCINELLI, *District Attorney, Elko County, Elko, Nevada*.

GENTLEMEN: Reference is hereby made to the oral submission of a request for the opinion of this office by the chairman of the Board of County Commissioners of Elko County, George Kennedy, on January 24, 1950, accompanied by the written request therefor submitted by the

District Attorney of such county relative to the question of the proper method of payment by the county of funds set aside for advertising the resources of the county.

STATEMENT

In 1948 the Board of County Commissioners, at the request of the Elko and Wells Chambers of Commerce, levied a tax sufficient to realize the sum of \$5,000 for the purpose of creating an advertising fund for the county of Elko. Such tax levied pursuant to chapter 181, Statutes of 1937, which chapter is entitled "an Act authorizing and empowering the boards of county commissioners of the several counties of this state to take care of, preserve, or promote the agricultural, mining, and other resources and advantages of their respective counties; providing ways and means for these purposes, and repealing acts and parts of acts in conflict herewith." It was proposed that the advertising fund be made available to the respective Chambers of Commerce for the purposes of advertising the various resources of the county.

It appears that no definite understanding was had between the County Commissioners and the Chambers of Commerce as to just how and what entity was to expend the money. The Chambers of Commerce were of the opinion that the actual moneys should be given them for disbursement, while the County Commissioners thought that the moneys should be expended by them upon claims presented to them in the usual course of county business by the Chambers of Commerce. In 1949 it was finally determined that the Chambers of Commerce would submit claims for moneys expended by them for advertising the resources of the county to the Board of County Commissioners and such Board would reimburse them for moneys so expended.

It further appears the County Auditor has refused to allow certain claims submitted by the Elko Chamber of Commerce upon the ground that such claims are not in accord with sections 1957, 1958, and 1959, N.C.L. 1929.

You inquire:

1. Should the bills be paid in view of the prior commitments of the Board of County Commissioners, even though the Auditor has indicated that they are not proper claims?
2. What practice should be adopted by the Board of County Commissioners to govern them in all future expenditure of funds which are expressly set aside for advertising? In this connection, should the cash be given to respective Chambers or should they present their monthly bills therefor?

OPINION

Section 1 of chapter 181, Statutes of 1937, provides:

The boards of county commissioners of the several counties of this state are hereby authorized and empowered to, in their discretion, annually include in their respective county budgets items to cover the expense of exploiting, promoting, and publishing to homeseekers and the public at large, by any means in their judgment calculated to accomplish this purpose, the agricultural, mining, and other resources, progress, and advantages of their respective counties.

Section 2 provides:

Such expenditures as may be by the board of county commissioners of any county in this state be decided upon shall be met by including the same in the annual tax levy for that county * * *.

It is clear that the Boards of County Commissioners may adopt any legal means in their

judgment whereby the exploiting, promoting and publishing to homeseekers and the public at large, the agricultural, mining, and other resources, progress, and advantages of their respective counties, can be effected. Such is the effect of the opinion of a former Attorney General, Opinion No. 84, Report of the Attorney General 1932-1934, construing sections 2027-2029, N.C.L. 1929, the prior Act on the subject. However, we think, section 1 of chapter 181, broad as its provisions may be, does not empower the boards of County Commissioners to disregard the statutory law of this State relating to the allowance and payment of claims against the counties. Such statutory law and chapter 181 are to be construed in pari materia and effect given to both. Chambers of Commerce are not empowered by the Act in question to expend county moneys. That power is vested in the respective Boards of County commissioners alone, not only by chapter 181, but also by sections 1942 and 1943, 1929 N.C.L., 1941 Supp. While the Board of County Commissioners may choose Chambers of Commerce as the agencies through which the proper advertising of the county's resources may be effected, still all claims against the fund provided in and by chapter 181 are to be audited and allowed or disallowed, as the case may be, by such board exercising its discretion as to what shall be deemed the proper means of such advertising so long as such means are used for the purposes set forth in such chapter and no other.

We think that the expenditures from the fund in question are to be had by the Board of County Commissioners in strict accordance with the provisions of section 1942, 1929 N.C.L., 1941 Supp., providing that the Board shall have power and jurisdiction to examine, settle and allow all accounts legally chargeable against the county, and to examine and audit the accounts of all officers having the care, management, collection or disbursements of any money belonging to the county, appropriated by law, or otherwise, for its use and benefit. That strict adherence be had to section 1943, 1929 N.C.L., 1941 Supp., with respect to the necessity of action upon every demand against the county, except salaries of district judges and elective officers, by the board of County Commissioners, and also requiring that no demand shall be approved, allowed, audited, or paid unless each several item, date and value composing it be endorsed thereon.

It is also to be noted that all unaudited claims or accounts against the county shall be presented to the Board of County Commissioners, duly authenticated within six months from the time such claims or accounts become due and payable. Section 1957 as amended at 1945 Statutes, page 21. Also that no claim or account against the county shall be audited, allowed or paid by the Board of County of Commissioners, or any other officer of the county unless the provisions of said section 1957, as amended, are strictly complied with. Section 1958, N.C.L. 1929.

It is our considered opinion that the expenditures from the fund provided in chapter 181 must be had in accordance with the foregoing cited sections of the statutes relating to the expenditure of county funds, and that such expenditures must be approved and allowed by the Board of County Commissioners.

Answering query No. 1—Several of the claims submitted with your inquiry do not show on their face or by annexed vouchers what the claims were for. Cancelled checks of the Chamber of Commerce cannot well be taken as itemized statements of the claims demanded. Section 1943, supra. Apparently the Auditor's objection was well taken. Also, if any of the claims submitted to the Board were more than six months old, they would fall within the provisions of section 1957, above cited. If less than six months old and properly itemized vouchers were submitted and such items were deemed to be within the scope of chapter 181, no doubt it would be legal to allow them.

Whether the claim and bill for entertainment of visiting dignitaries incurred at one of your local hotels constitutes a valid claim within the provisions of chapter 181 is most doubtful.

Answering query No. 2—It is the opinion of this office that the proper practice to be followed in the administration of the fund provided for in chapter 181 is follows:

1. If any agency, other than the Board of County Commissioner, is utilized and such agency expends its own funds in the payment of bills incurred for the purposes of chapter 181, such agency should secure receipted itemized statements showing the items for which the money was expended, the date thereof, and to whom paid, which statements together with canceled checks or other evidence of payment shall be annexed to the statement of claim filed with the Board of County commissioners for audit and allowance from the fund in question.

2. If the Board of County Commissioners shall exercise its own volition in the administration of the fund without the aid of any other agency, it will of course be governed by the statutes providing for the allowance and payment of claims against the county, which said statutes also govern where any outside agency is utilized.

Respectfully submitted,

ALAN BIBLE, *Attorney General.*

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

860. Public Employees Retirement—Continuous Service Defined.

MR. KERWIN L. FOLEY, *Executive Secretary, Public Employees Retirement Board, Carson City, Nevada.*

DEAR FOLEY: This will acknowledge receipt of your letter of January 7, 1950, received in this office the same date, requesting an opinion as to the following question:

Within the intent of the Public Employees Retirement Act, and in view of sec. 8(4), can credit for “continuous service” be given under sec. 15(3) when over any five-year period the services so performed were in positions that do not normally require six hundred (600) hours or more of time each year in the discharge of the functions of the position and are consequently not currently subject to the provisions of the Retirement Act?

In a letter opinion to you from this office dated June 3, 1949, we answered this identical question. Rather than quote verbatim from this letter, I enclose a copy herewith. We might emphasize, however, that in the closing paragraph of this letter we stated that your office had the authority to determine what service in a five-year period will preserve the continuity of employment. We still adhere to this view and if your office has determined that Mr. Culverwell’s service as more each year and he has no other service that will bridge the five-year gap, we feel that his previous service should not be considered toward his retirement. It is necessary that he was holding a position that would normally require more than 600 hours a year during this five-year period.

We are returning herewith the file which you have furnished this office in the above case.

Very truly yours,

ALAN BIBLE, *Attorney General.*

By ROBERT L. McDONALD, *Deputy Attorney General.*

Annexed hereto and made a part of this opinion is a letter off this office dated June 3, 1949, reading as follows:

CARSON CITY, June 3, 1949.

MR. KERWIN L. FOLEY, *Executive Secretary, Public Employees Retirement Board,*
Carson City, Nevada.

DEAR MR. FOLEY: We have under consideration your letter of May 25, 1949, submitting forms of rules and regulations to be promulgated and printed by your Board outlining the administration of the Act as amended by the Legislature of 1949.

We have read the information, questions and answers and interpretation of the law which you left with us and find them proper in form and substance.

We have one suggestion as to the definition of "Continuous Service" submitted to us in an additional letter of the same date. We copy your form inserting however, inserting however, italicized, the words "over any five-year period."

Service for the state or its participating political subdivisions will not be deemed service sufficient to constitute "continuous service" when *over any five-year period* the services so performed were in positions that do not normally require six hundred (600) hours or more of time each year in the discharge of the functions of the position.

Under the definition in section 2 subd. (7) of the Act, if there is no service whatever for five years the preceding time is not counted. Your Board is justified in determining what service in such five-year period will preserve the continuity of employment. We feel the standard adopted is reasonable in order that the intent of the law may be given effect.

Very truly yours,

HOMER MOONEY, *Deputy Attorney General.*

861. Coroners—Duty With Respect to Removal of Human Remains From Aircraft Wreckage.

CARSON CITY, January 31, 1950.

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

Attention: Nevada State Highway Patrol.

GENTLEMEN: Reference is hereby made to the communication addressed to the Nevada State Highway Patrol from Major Joseph C. Smith, U.S. Air Force, Washington, D.C., wherein the request was made for advice concerning the Nevada civil laws governing removal of human remains from aircraft wreckage. You submitted the communication to this office for advice thereon.

Frankly, the Legislature of this State has not legislated upon the exact question, that is, concerning the removal of human remains from aircraft wreckage and we find very little statutory authority dealing with the subject. We assume from the correspondence submitted to this office that it is desired to learn whether the services of a coroner are required in such cases. We can only cite the statutory law in existence today that might be said to deal with the question.

Section 5242, 1929 N.C.L., 1941 Supp., provides as follows:

That in case of any death occurring without medical attendance, it shall be the

duty of the undertaker to notify the local health officer of such death, and refer the case to him for immediate investigation and certification prior to issuing the permit; provided, where there is no qualified physician in attendance, it shall be the duty of the undertaker to notify the local health officer of such death, and refer the case to him for immediate investigation and certification prior to issuing the permit; provided, where there is no qualified physician in attendance, and in such cases only, the local health officer is authorized to make the certificate and return from the statements of relatives or other persons having adequate knowledge of the facts;

Provided further, that if the death was caused by unlawful or suspicious means, the local health officer shall then refer the case to the coroner for investigation and certification. Any coroner whose duty it is to hold an inquest on the body of any deceased person, and to make the certificate of death required for a burial permit shall state in his certificate the name of the disease causing death, or if, from external causes (1) the means of death; and (2) whether (probably) accidental, suicidal or homicidal; and shall, in either case, furnish such information as may be required by the state board of health in order properly to classify the death.

In any case of any death occurring to anyone whose identity is unknown, it shall be the duty of the undertaker before burying such body to annex to the certificate provided for in this section, or in the preceding sections, a certificate from the sheriff that said sheriff has on file in his office the fingerprints of said body. It is hereby made the duty of the sheriff of the respective counties of this state to maintain a file in their respective offices known as the "unidentified deceased persons file" and it shall be the duty of the respective sheriffs, without further compensation, to see that such fingerprints are obtained as in this act provided, and placed in said file as a public record.

Section 11427, N.C.L. 1929, as amended at 1949 Statutes, page 152, provides as follows:

When a justice of the peace, acting as a coroner, or his deputy, has been informed that a person has been killed, or committed suicide, or has suddenly died under such circumstances as to afford reasonable ground to suspect that the death has been occasioned by unnatural means, he shall go to the place where the body is and make an investigation, and he shall proceed to hold an inquest to inquire into the cause of the death. In all cases where it is apparent that the death has been caused by a criminal act, the justice of the peace, acting as coroner, or his deputy, shall notify the district attorney and the sheriff of the county where said inquiry is made and the district attorney and sheriff shall assist in said inquiry. The holding of an inquest, as provided by this act shall be within the sound discretion of the district attorney, or district judge of said county, and such inquest need not be conducted in any case of death manifestly occasioned by natural cause, suicide, accident, or when it is publicly known that the death was caused by a person already in custody; however, an inquest shall be held unless said district attorney or district judge certifies that no inquest is required. If an inquest is held the justice of the peace, acting as coroner, or his deputy, to inquire into the cause of death; provided, however, that a single inquest may be held with respect to more than one death, where all of such deaths were occasioned by a common

cause.

From the foregoing statutes we think that it may be reasonably assumed that in case of an airplane crash that the bodies may be removed therefrom without calling the coroner prior to such removal. On the other hand, in order to preclude any possible objection or difficulty thereafter, we suggest that before the bodies are finally disposed of the Coroner of the district and the District Attorney of the county be notified of the accident, the temporary disposition of the bodies, and whether an inquest shall be deemed necessary.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

862. Counties—Group Insurance—Commissioners Not Authorized to Pay Portion of Premiums for County Employees.

CARSON CITY, February 3, 1950.

HONORABLE ROBERT E. JONES, *District Attorney, Las Vegas, Nevada*.

DEAR MR. JONES: Reference is hereby made to your letter of January 26, 1950, received in this office January 30, 1950, wherein you request the opinion of this office whether the Board of County Commissioners of Clark County can legally pay a portion of the premium for each individual employee of the county who elects to subscribe to a group hospitalization plan, the payment, on behalf of the county, to be over and above, and in addition, to the regular salary of such employee. You advise that both the employees and the County Commissioners are in favor of the plan.

OPINION

It is axiomatic that under the Constitution of this State Boards of County Commissioners are boards of statutory and limited jurisdiction and their action must affirmatively appear to be in conformity with some provision of law giving the power to Act, or it will be without authority. It was well said in *First National Bank vs. Nye County*, 38 Nevada at page 134: "It has been repeatedly decided by this court that boards of county commissioners are of special and limited jurisdiction, and that authority to do any act must have specific statutory provision, therefor, or must be clearly implied from other language contained in the statute."

It follows then that in order for Boards of County Commissioners to allow and pay claims against the public funds of the county of all or any part of premiums for an individual employee of the county, who elects to subscribe to a group hospitalization plan, such Boards must find in the law of the State express statutory authority therefor, or which may be clearly implied from the language thereof.

An examination of the statutory law of this State fails to disclose any statute wherein the power and authority is granted Boards of County Commissioners, either expressly or by implication, to pay from the public funds of the county any part of the premiums in question here. To the contrary, we think, a statute of the State prohibits such practice. If a Board of County Commissioners entered into a contract or proposition to pay such premiums, then such Board would create a liability against the county. Section 1949, N.C.L. 1929 provides: "The board of

county commissioners shall not for any purpose contract debts or liabilities, except those expressly authorized by law, * * *.” This section of the law is still in full force and effect.

It is to be noted that chapter 27, Statutes of 1947, provides a comprehensive plan for the securing of group life and accident insurance and group hospitalization insurance for public employees, including employees of counties. Nowhere in such chapter is there any provision whereby the governing boards of the public entities are empowered to use public funds in the payment of premiums for the employees thereof.

We are constrained to answer your inquiry in the negative.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

863. Taxation—Cigarette Stamp Law Has No Extraterritorial Effect on Out-of-State Concerns Shipping Into Nevada to Private Customers.

CARSON CITY, February 6, 1950.

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

DEAR MR. COLEMAN: Reference is hereby made to your letter of January 24, 1950, wherein you request the opinion of this office upon the following queries:

1. Can an out-of-State concern, who sells and sends cigarettes to consumers within Nevada upon which no tax stamps are placed, be considered, under section 8, chapter 296 of Nevada Statutes of 1949 in violation of our Cigarette Tax Law?
2. Is it within the law for such concern to send to the Tax Commission the money to cover the tax due on such concern to send to the Tax Commission the money to cover the tax due on such cigarettes as they may send into the State without the tax stamp being attached?

Answering query No. 1—It is an axiom of our scheme of government that the laws of a State have no extraterritorial effect, i.e., that such laws cannot well be enforced against a person or an entity who or which resides without the State and there engages in the performance of an Act which if so performed within the State would be in violation of its laws. It may be that an out-of-State concern sells cigarettes to Nevada consumers and sends them into the State to such consumers without affixing to the cigarette packages the Nevada revenue stamps, still such Act is performed by such concern without the State of Nevada, and, by reason thereof, has not itself so violated the Nevada law in Nevada as to bring it within reach of the Nevada statute for punishment for the violation thereof. We cannot say as a matter of law that such out-of-State concern can be required under Nevada law to cease such sales as it may make to Nevada consumers in a State other than Nevada, even though the cigarettes may be shipped to the consumers in this State without the affixing of Nevada revenue stamps.

However, the Congress of the United States has enacted legislation to aid the States in collecting sales and use taxes on cigarettes. It has provided in Public Law No. 363, approved October 19, 1949, that any person selling or disposing cigarettes in interstate commerce whereby such cigarettes are shipped to other than a distributor licensed by or located in a State taxing the sale or use of cigarettes shall, not later than the 10th day of each month, forward to the tobacco administrator of the State into which shipment of cigarettes is made a memorandum or a copy of the invoices covering each shipment made during the previous month which shall include the name and address of the brand and the quantity of the cigarettes so shipped. The penalty for the

violation of the Act being a fine of not more than \$1,000 or imprisonment of not more than six months, or both.

The Federal statute, we think, provides a plan whereby out-of-State sales and shipments of cigarettes into Nevada can now be readily checked. Certainly, if any Nevada consumer is found selling any cigarettes so obtained without Nevada revenue stamps affixed thereto, such consumer is subject to the punishment provided in Cigarette Stamp Tax Act.

Answering query No. 2—In our opinion, if an out-of-State concern is willing to send to the Tax Commission the money sufficient to cover the tax due on cigarettes that it ships into the State without the Nevada revenue stamps attached thereto, such money can be legally received by the Commission.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

864. Nevada Hospital For Mental Diseases—Dividend Checks on Certain Shares of Stock May Be Credited Special Fund.

CARSON CITY, February 7, 1950.

DR. S.J. TILLIM, *Superintendent, Nevada Hospital For Mental Diseases, P.O. Box 2460, Reno, Nevada.*

DEAR DR. TILLIM: This will acknowledge receipt of a copy of your letter dated January 28, 1950, addressed to Hon. J.P. Donovan, State Controller, received in this office February 1, 1950.

You write that the Nevada Hospital For Mental Disease is in receipt of dividend checks on 25 shares of RCA Common Stock in a total amount of \$25. The exact ownership and the whereabouts of the stock is unknown to you. You request an early reply as the dividend check for January 1949, is still undeposited, and you inquire if the money may be credited to the special fund which has been established for the benefit of patients for recreational and occupational therapy activities.

While there is no specific language in the Acts relating to the insane or mentally ill of the State respecting donations, it does not appear that the board of commissioners may not receive gifts to the fund established for recreational and occupational benefit for the patients.

Inquiry from the source initiating the payments should determine the status of the gift and its conditions.

Under the circumstances related in your letter, we see no legal objection to crediting the dividends received to the special fund mentioned.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

cc: Hon. J.P. Donovan, Hon. Dan W. Franks.

865. Public Schools—High School Fund Credited to High School Where Pupils Actually Attend, Not Where They Reside.

CARSON CITY, February 7, 1950.

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

DEAR MISS BRAY: This will acknowledge receipt of your letter dated January 24, 1950, received in this office January 26, 1950.

You present the following question:

At a recent conference relative to the application of sections 152-154, chapter 63, 1947 Statutes of Nevada, the question was raised as to whether the attendance of the high school students involved should be credited to the high school they actually attend or to the high school in the district in which they reside.

Since the apportionment of State funds to district and county high schools is based upon the average daily attendance of such schools for the preceding school year (sections 181.03, 181.04, *idem*), I shall appreciate receiving your opinion on the question so that I may properly apportion the State High School Fund.

We are of the opinion that sections 152-154 of the 1947 School Code do not apply to the apportionment of the State High School Fund under sections 181.01-181.05. The State High School Fund, in our opinion, is credited to the high school where the pupils actually attend as shown by the report of the average daily attendance at such school; and not credited to the high school in the district where the pupils reside, but do not attend such district high school.

Section 152 of the 1947 School Code, page 150, Statutes of 1947, reads as follows:

Whenever it shall be made to appear to the state superintendent of public instruction, in the manner and subject to the conditions hereinafter provided for, that any regularly established four (4) year county or district high school is giving instruction to high school pupils from an adjoining county, he shall ascertain the amount of money raised by taxes for county or district high school purposes in the elementary school district in which such high school pupils have a legal residence, as well as the total number of high school pupil shaving a legal residence in such elementary school district and who attend some regularly established high school in this state. The state superintendent of public instruction shall then divide the amount of money raised in such elementary school district for county or district high school purposes in the elementary school district in which such high school pupils have a legal residence, as well as the total number of high school pupils having a legal residence in such elementary school district and who attend some regularly established high school in this state. The state superintendent of public instruction shall then divide the amount of money raised in such elementary school district for county or district high school purposes by the total number of high school pupils in regular attendance and who have a legal residence in such elementary school district and he shall multiply this result by the total number in average daily attendance of high school pupils attending the high school in the adjoining county, and this amount he shall order the County Treasurer of the county in which such elementary school fund of the high school, giving instructions as aforesaid, subject however, to the following conditions:

1. That the amount of money which the superintendent of public instruction shall order transferred for each of such high school pupils shall not exceed the per capita cost of the high school which they attend, and shall not exceed the average

per capita cost of the high schools of the county where they reside; and, should the amount transferred be less than the average per capita cost paid from the high school fund of the county in which the pupils reside, he shall transfer enough more from this county's high school funds to make the amount transferred equal to such average per capita cost in such county.

Sections 153, 154, and 155 provide the conditions precedent to the transfer of pupils and the payment of the money.

Sections 181.02-181.05 provide how the State High School Fund is constituted and distributed. The distribution is based on the average daily attendance of high school pupils in each high school and made on a teacher-pupil unit.

There is no mention of the residence of the pupils attending a high school and no provision for the transfer of such funds from one district to another as provided in sections 152-154 of the Code.

It is evident from the language of the sections relating to the State High School Fund that the attendance of the high school pupil should be credited to the high school he actually attends and not to the high school in the district where the pupil resides, as evidenced from the provisions of subsection 2 of section 181.03, which contains the following language: "Any teacher, principal, or superintendent who shall knowingly report, cause to be reported, or permit to be reported, as attending high school, any pupil not in actual attendance, shall forfeit his certificate or subject it to revocation, and the same shall not be restored or a new certificate granted within one year after such forfeiture or revocation * * *."

If the distribution as provided by these sections result in inequitable apportionment to the schools involved, the matter should be submitted to the Legislature for remedy.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

866. Fish and Game—License Not Necessary to Hunt Jackrabbits.

CARSON CITY, February 8, 1950.

MR. FRANK W. GROVES, *Assistant Director, Fish and Game Commission, Box 678, Reno, Nevada.*

DEAR MR. GROVES: This will acknowledge receipt of your recent letter in which you request our opinion as to whether or not a person over the age of 16 years can hunt jackrabbits and other nongame animals without a license.

As you are obviously aware, this is a very close question and one which might very possibly be answered either way. Section 51 of the 1949 Fish and Game Act provides that ever person over the age of 16 years who hunts any of the wild birds or animals, traps any of the fur bearing animals or who fishes without first having procured a license therefore as provided in the Act, shall be guilty of a misdemeanor. At first glance it appears that this section would satisfactorily answer the question. However, section 2 of the 1949 Act, in defining "to hunt," states that it refers only to game animals and game birds. Therefore, as a jackrabbit is not a game animal and as "to hunt" refers only to game animals, it appears that from this section a person over the age of 16 years may hunt jackrabbits without a license.

Although the two sections are conflicting, we feel that it was the intent of the Legislature when enacting these provisions to allow those over the age of 16 years to hunt jackrabbits without a license. We further feel, however, that it is a conflict that should be clarified and, as you know, the proper procedure for such clarification is to present it to the Legislature at the next session.

Very truly yours,
ALAN BIBLE, *Attorney General*.
By ROBERT L. McDONALD, *Deputy Attorney General*.

867. Labor—Commissioner Directed By Statute to Prosecute Actions to Recover Claims for Wages Earned and Unpaid, Not for Breach of Contract by Employer.

CARSON CITY, February 9, 1950.

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

DEAR MR. GIBSON: This will acknowledge receipt of your letter dated February 1, 1950, received in this office February 3, 1950.

You present a question wherein the facts submitted relate to a claim filed with you for collection of wages in a case where a person was employed at a monthly rate of pay, was discharged at the close of the second day's work and paid for two days' service. Such discharge was without previous notice and apparently not because such services were unsatisfactorily performed. The claim filed with the Commissioner is for a month's wages, or a portion of a month's wages, based on the fact that the employment was by the month and discharge was without notice.

We construe your inquiry to be, if such a claim is within the duty of the commissioner, under the labor laws of this State, to prosecute an action for collection.

We do not express an opinion under the labor laws of this State, to prosecute an action for collection.

In our opinion the Labor Commissioner is directed by statute to prosecute actions to recover claims for wages or compensation earned and unpaid at the time such claims are presented to the Commissioner and are not claims for causes of action for breach of contract by the employer.

Section 2751, 1929 N.C.L., 1941 Supp., defines the duties of the Labor Commissioner in relation to all laws regulating the hours of the labor, the payment of wages and all other laws enacted for the protection and benefit of employees.

This section contains the following language:

It shall be the duty of said labor commissioner to enforce all labor laws of the State of Nevada, the enforcement of which is not specifically and exclusively vested in any other officer, board or commission, and whenever after due inquiry he shall be satisfied that any such law has been violated, or that the persons financially unable to employ a counsel have a valid and enforceable claim for wages or other demand, he shall present the facts to the district attorney of the county in which such violation occurred or wage claim accrued, showing the name of the claimant and his alleged debtor, a description and the location of the property on which labor was performed, and the right, title, and interest of the debtor therein, and the other property, if any, owned by the debtor, a description

and the location of the property on which labor was performed, and the right, title, and interest of the debtor therein, and the other property, if any, owned by the debtor and the probable value thereof, the time said claimant began and the time he ceased such labor, the number of days' labor performed by him during said employment and the rate of wages and terms of such employment, the date or dates and the amount, if any, paid on said claim, the balance due, owing, and unpaid on said claim, the date demand for payment was made upon the debtor or his agent or representative and the response, if any, to such demand, and the names of the witnesses upon whom the claimant expects to rely to provide said facts and to what facts each of such witnesses is expected to testify, and it shall then be the duty of such district attorney to prosecute the same; * * *.

Section 2775, 1929 N.C.L., 1941 Supp., provides for semimonthly pay days and when the same shall be due and payable. Throughout the section the language "all wages or compensation earned and unpaid" is used.

Section 2776, N.C.L. 1929, provides that whenever an employer discharges an employee, the wages and compensation earned and unpaid at the time of such discharge shall become due and payable immediately.

The Act fixes a penalty for the violation of any of its provisions.

Section 2785, N.C.L. 1929, provides:

Whenever an employer of labor shall hereafter discharge or lay off his employees without first paying them, in cash, lawful money of the United States, or its equivalent, or shall fail, or refuse on demand, to pay them in like money, or its equivalent, the amount of any wages or salary at the time the same becomes due and owing them under their contract of employment, whether employed by the hour, week or month, each of his or its employees may charge and collect wages in the sum agreed its employees may charge and collect wages in the sum agreed upon in the contract of employment for each day his employer is in default, until he is paid in full, without rendering any services therefor; provided, however, he shall cease to draw such wages or salary thirty days after such default.

From the foregoing it appears that the labor laws and the payment of wages or salary that the Labor Commissioner is directed to enforce by suit when the employee is financially unable to employ counsel apply to wages or salary due and owing the employee at the time he was discharged or ceased such employment, and does not apply to damages for breach of contract for a definite period. The free service that the Labor Commissioner and District Attorney are directed to render is for failure to pay the compensation then earned the contract rate, which is a violation of the labor statutes.

The difference between an action for wages due and breach of contract is defined in *United States Reduction Co. v. Nussbaum*, 42 N.E. (2) 403. This was an action brought under a statute substantially the same as the sections of Nevada statutes providing penalties for withholding employee's pay. This was an action brought under a statute substantially the same as the sections of Nevada statutes providing semimonthly pay days and section 2785, supra, providing penalties for withholding employee's pay. The question presented for determination was the amount of wages earned by the appellee at the time of his wrongful discharge. He contended that he earned his salary for the entire month by working two days of the contract period, at which time he was wrongfully discharged. The Court held that the wrongful discharge of a servant under contract of

employment for a definite term gives rise to but one cause of action. This cause of action is not for wages due. His only cause of action is for breach of contract, citing cases.

If the free service directed by the Nevada statute is construed to include compensation claimed under contract, and not confined to wage claims due and unpaid at the time such claims are presented to the Commissioner, such service would be unlimited and not bounded by proper exceptions.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

**868. Corporations—Foreign—Chapter 176, Statutes 1949, Providing Fees For Filing
Certificates of amendment to Articles of Incorporation Constitutional.**

CARSON CITY, February 10, 1950.

HON. JOHN KOONTZ, *Secretary of State, Carson City, Nevada*.

DEAR MR. KOONTZ: Quite sometime ago you addressed a communication to this office wherein you requested our opinion upon the constitutionality of the statute providing the fees to be paid by foreign corporations qualified to do business in Nevada, upon the filing in your office certificates of amendment of certificates of incorporation theretofore filed with you upon qualifying to enter this State. You enclosed with your letter the Certificate of Amendment of the Articles of Incorporation of The Texas Company, a corporation organized and existing under the laws of the State of Delaware, wherein its authorized capital stock was increased from \$350,000,000 to \$500,000,000. Accompanying your letter and the Certificate of Amendment was the letter of counsel for the company requesting that the certificate be filed without exacting the statutory fee for so doing upon the ground that the statute was unconstitutional. In such letter counsel stated his views and cited several cases decided by the Supreme Court of the United States in support of his contention.

Your inquiry is should your office file the Certificate of Amendment without exacting a fee for so doing, or whether the statutory fee should be paid.

We are cognizant of the fact some considerable delay has been had in the rendition of this opinion. However, press of other important public business, coupled with the necessity of an exhaustive examination of the important question involved here, has necessitated such delay.

OPINION

At the threshold of this opinion it appears that we are confronted with the serious question of the constitutionality of a statute imposing certain fees on foreign corporations, which have heretofore qualified pursuant to Nevada law to do business in this State, upon their submitting to the Secretary of State for filing the amendments to their articles of incorporation increasing the authorized capital stock over and above the amount thereof stated in their articles of incorporation filed upon their qualifying in Nevada. The constitutionality of a statute is not to be lightly questioned. Every presumption is in favor of the validity of a statute. *Ex parte Goddard*, [44 Nev. 128](#). It is the duty of the Courts to indulge every presumption in favor of the constitutionality of statutes. *Ex parte Iratacable*, [55 Nev. 263](#). An Act of the Legislature will not

be held unconstitutional unless it is clearly so. *Tonopah & G.R. Co. v. Nevada-California Transp. Co.*, [58 Nev. 234](#). Where the constitutionality of a statute is questioned, every reasonable doubt must be resolved in favor of the statute. *Caton v. Frank*, [56 Nev. 56](#); *Quilici v. Strosnider*, [34 Nev. 9](#); *State v. Wells Fargo & Co.*, [38 Nev. 506](#).

In order to justify a court in pronouncing a legislative act unconstitutional or a provision of a state Constitution to be in contravention of the Constitution of the United States, the case must be so clear as to be free from doubt. 11 Am. Jur. 719, Sec. 92.

The duty of the courts so to construe a statute as to save its constitutionality when it is reasonably susceptible of two constructions includes the duty of adopting a construction that will not subject it to a succession of doubts as to its constitutionality, for it is well settled that a statute must be construed, if fairly possible, so as avoid not only the conclusion that it is unconstitutional but also grave doubt upon that score. Thus, if the proper construction of a statute is doubtful, the doubt must be resolved in favor of the law. 11 Am. Jur. 729, Sec. 97.

Notwithstanding the constitutional objections advanced by counsel for the Texas Company and the array of authorities submitted in support of such objections, still we entertain grave doubts as to the unconstitutionality of the statute providing the fees to be paid the Secretary of State by foreign corporations.

The Texas Company qualified to do business in Nevada in 1941 pursuant to sections 1841-1843, N.C.L. 1929. Section 1842 provided:

On filing certified articles, papers, or other instruments of incorporation, as required by section 1 of this act (Sec. 1841), said corporation shall pay the same fees to the secretary of state as are paid by corporations organized under the laws of this state.

In 1941 the fee statute providing the fees to be paid the Secretary of State providing the entrance fee for the qualifying foreign corporation and also the fees for filing certificates of amendments of its articles of incorporation. The fees then provided were the same for both domestic and foreign corporations. Section 7421.01, 1929 N.C.L., 1941 Supp. Nowhere in such section, or in sections 1841-1843, N.C.L. 1929, or in any other statute can be found language holding out to any foreign corporation that the fees and the charges provided by law at the time of its qualification in Nevada would not be changed or enlarged. The Texas Company, we submit, entered the State under an equivocal license and knew at that time that if it increased its authorized capital stock, it would be required to pay the fee therefor in a substantial amount upon filing its certificate of amendment in Nevada.

Section 7421.01, *supra*, was amended at 1949 Statutes, page 363. The filing fees were therein materially increased. However, such amendment contains the same identical language found in section 7421.01 with respect to the computation of and payment of fees for the filing of certificates of amendments of articles of incorporation and also that foreign corporations shall pay the same fees to the Secretary of State as are required to be paid by corporations organized under the laws of this State.

We understand that The Texas Company's position is that the 1949 amendment is unconstitutional in that it deprives it of its property without due process of law, denies it the equal protection of the laws, and imposes an undue burden upon interstate commerce, contrary to

the Fourteenth Amendment and the commerce clause of the Constitution of the United States. Counsel for the company has cited many cases decided by the Supreme Court of the United States in support of the constitutional question and, frankly, such cases do in the main sustain his position. However, the Supreme Court has not been consistent in its holdings on the question as applied to foreign corporations. We think such inconsistency is well pointed out in *J.I. Case Threshing Mach. Co. v. Stewart (Mont.)*, 199 Pac. 909. The Montana Court had before it a statute of Montana fixing the fees to be charged foreign corporations for the filing of certificates of amendment. The company objected to the payment of the fees provided upon the constitutional grounds presented here. The court held the statute invalid, but in so doing it pointed out most clearly the inconsistent holdings of the Supreme Court, beginning with *Western Union Tel. Co. v. Kansas*, 216 U.S. 1, decided in 1910, holding the Kansas statute on the subject invalid. The *Western Union* case was followed by a number of U.S. cases down to 1913 when the case of *Baltic Mining Co. v. Massachusetts*, 231 U.S. 68, was decided, which case in fact overruled the prior *Western Union* case, and upheld the validity of a Massachusetts statute very similar to the one held invalid in the prior case. The Montana Court said:

The statute was upheld as a valid exercise of legislative authority by the state, and the opinion was quite general among members of the legal profession that the court had, in effect, overruled its former decisions in the *Western Union Telegraph Company* case and other cases of group. In harmony with the decision in the *Baltic Mining Co.* case are *St. Louis, S.W.R. Co. v. Arkansas*, 235 U.S. 350, * * * *Kansas City Pt. S. & M.R. Co. v. Botkin*, 240 U.S. 227, * * * *Kansas City, M. & B. R. Co. v. Stiles*, 242 U.S. 111, * * * and *General Railway Signal Co. v. Virginia*, 246 U.S. 500, * * *.

The Montana Court, after discussing the statute in question said:

The prevailing impression that the *Baltic Mining Company* case had modified or overruled the *Western Union Telegraph Company* case was finally dissipated completely by more recent decisions of the Supreme Court of the United States.

Citing *Looney v. Crane Co.*, 245 U.S. 178, and the *International Paper Co. v. Massachusetts*, 246 U.S. 135, wherein the decision in the *Western Union Telegraph Company* case was reaffirmed. The Montana case was decided June 27, 1921. It may be, if the decision on the instant case here rested upon the state of the law as pointed out by the Montana Court in 1921, that there would be such an unconstitutional infirmity in the 1949 amended fee statute as would remove any doubt as to its unconstitutionality. However, we think, the Supreme Court of the United States in more recent cases and in a case prior to 1910 has so held in analogous situations that the doubt as to the unconstitutionality of the Nevada Act is increased and not lessened.

Counsel for The Texas Company refers to and cites *Atlantic Refining Co. v. Virginia*, 302 U.S. 22, 82 L. ed. 24, decided in 1937, relating to a graduated entrance fee imposed on foreign corporations, with the maximum of \$5,000, with the suggestion that such case could not well be cited as authority that the Supreme Court had therein had a change of point of view toward lifting the barriers against discriminatory entrance fees. We are not in agreement with such suggestion. To the contrary such case is most pertinent authority for the proposition that a State may base its entrance fee entirely upon the authorized capital stock of a foreign corporation. That such fee is not a tax. That such fee does not burden interstate commerce and neither does it deprive the corporation of its property without due process of law. We find no language in the opinion that it

is incumbent upon a State to fix a definite maximum sum as an entrance fee. Virginia did fix the sum at \$5,000 but this was within the discretion of the Virginia Legislature. No foreign corporation, or domestic one for that matter, can be misled as to the amount of entrance or incorporation fees required by the Nevada law. The fee statute sets forth a comprehensive formula for the computation of such fees, including the fee for filing amendments to articles of incorporation. Every corporation knows, from such statute, just what fees, and the computation of the amounts thereof, are required. Clearly that is certain which is capable of being made certain. Such is the rule laid down in *Norcross v. Cole*, 44 Nev. at page 93.

The objection that the entrance fee in the *Atlantic Refining Co.* case burdened interstate commerce was answered by the Court as follows:

In support of that contention it is said that the authorized capital stock represents property located in forty-seven States and several foreign countries used in both interstate and foreign commerce. But this is not true. Authorized capital has no necessary relation to the property actually owned or used by the corporation; furthermore, the fee for which it is the measure represents simply the privilege of doing a local business. Because the entrance fee does not represent either property or business being done, it is immaterial that in fixing its amount no apportionment is made between the property owned or the business done within the State and that owned or done elsewhere.

The entrance fee is obviously not a charge laid upon interstate commerce; nor a charge furtively directed against interstate commerce; nor a charge measured by such commerce. Its amount does not grow or shrink according to the volume of interstate commerce or the amount of the capital use in it. The size of the fee would be exactly the same if the company did no interstate commerce in Virginia or elsewhere. The entrance fee is comparable to the charter, or incorporation, fee of a domestic corporation—a fee commonly measured by the amount of the capital authorized. It has never been doubted that such a charge to a domestic corporation whatever the amount is valid, although the company proposes to engage in interstate commerce and to acquire property also in other States. No reason is suggested why a different rule should be applied to the entrance fee charged this foreign corporation.

Further, there is no discrimination of any kind in the Nevada statute relative to the fees to be paid by foreign corporations and domestic corporations, each must pay the same fees. They are placed on the same plane—each pays according to its authorized capital stock with respect to its organization and entrance fees and also upon its increase in its authorized capital stock. Certainly if the entrance fee of a foreign corporation is based upon its authorized capital stock and does not constitute a tax because it does not represent either property or business being done within a State, and that it is immaterial that in fixing its amount no apportionment is made between the property owned or the business done within the State and that owned elsewhere, any increase in such capital stock thereafter made by such corporation occupies the same status and such increase then bears the same relation to the business of the corporation within a State as the original stated amount of authorized capital stock, and the right of a State to require additional fees for the filing of certificates of amendment to the articles of incorporation of foreign corporations is the same as in the case of the original filings. Such is the right and power of a State over its domestic corporations that in many, if not all, instances are required to meet the

competition of foreign corporations within the domestic corporation's State of domicile. And again, if the use of the authorized capital stock of a foreign corporation as the measure of the entrance fee does not burden interstate commerce, it is most reasonable to suppose that a fee based upon an increase of that same capital stock would not constitute a burden on interstate commerce. It can well be said that the Atlantic Refining Co. case does not serve to remove a doubt as to the unconstitutionality of the Nevada statute.

The Texas Company is a large concern. We are advised that it has entered and does business, both interstate and intrastate, in nearly every State in the Union. That its large capitalization of \$500,000,000 is witness to the fact that it wields great competitive power. It was organized and is now existing under the laws of the State of Delaware, and we are advised its cost of organization there was small, comparatively speaking, and the expense of filing its amendments increasing its authorized capital stock was nominal. In this connection it was well said by the Supreme Court of Michigan in an analogous case, i.e., *Montgomery Ward & Co. v. Corporation and securities Commission*, 312 Mich. 117, (decided in 1945):

Looking at the question realistically, if plaintiff is correct, incorporators may seek a corporate franchise in a State which offers unusual advantages by way of lower franchise fees, taxes, and more favorable limitation of liabilities, et cetera. It is thus possible for a corporation to be formed in such a state with a nominal capitalization at the time of its organization. Thereafter it may obtain a license to do business in some foreign State or States where it expects to do a very large intrastate business. When the organization of the corporation is fully completed in other States, its authorized capital may then be increased to a larger amount without any capital may then be increased to a larger amount without any obligation for the payment of additional license or admittance fees on such increase. The corporation may thereby use a very large amount of its capital in intrastate business without additional expense, although competing domestic corporations in the latter States might be required to pay large fee on any sizable increase of capitalization.

Such is the case here. It is no answer, we think, to say other States in the Union have provided only nominal fees for the filing of amendments to articles of incorporation on the part of foreign corporations. Nevada has seen fit to place foreign corporations on the same level and subject to the same liabilities with respect to the qualifications based upon authorized capital stock. Certainly there can be no claim of discrimination.

But, The Texas Company also contends that the fee provided in the Nevada statute for the filing of its Certificate of Amendment of its Articles of Incorporation constitutes a tax, and as a tax constitutes an unconstitutional exaction on the part of the State. If it is a tax, which we do not wholly concede, still we think that fundamentally it is a constitutional tax for the reason that it is imposed upon both domestic and foreign corporations alike, without any discrimination at all in favor of the domestic concerns. This question received the earnest consideration in *American Smelting & Refining Co. v. Colorado*, 204 U.S. 103, 51 L. ed. 393 (decided in 1907). In that case the smelting and refining company, a New Jersey corporation, entered and qualified in Colorado by payment of its entrance fee and also an additional fee for increasing its capital stock. Some three years later the Legislature enacted a franchise tax statute which required the payment of a tax from foreign corporations in double the amount due from domestic corporations. The company refused to pay the tax upon the ground that when it qualified in the

State in the first instance and paid the then required fees that thereafter the State could not impose any other fees or taxes upon it, save ad valorem property taxes. The Supreme Court of the United States held that the tax on the foreign corporation was invalid because it was at a higher rate than that assessed domestic corporations, but it also held that if the tax had been nondiscriminatory that it would have been valid and that the State had the right to impose such nondiscriminatory tax on foreign corporations.

We think it apropos to here point out that in *Hangover Fire Ins. co. v. Carr*, 272 U.S. 494, 71 L. ed. 372, a case often cited against the power of the State to exact taxes from foreign corporations that the court was most careful, in distinguishing between the power of the State to exact entrance fees of foreign corporations and the levying of taxes thereon, to say that, with respect to taxation, after a foreign corporation was admitted into a State it stood equal to and is to be classified with domestic corporations of the same kind.

In the case of *Great Atlantic & Pacific Tea co. v. Grosjeans*, 301 U.S. 412, 81 L. ed. 1193, the chain store tax case, the Supreme Court held that a State statute which imposes a chain store tax graduated upon the basis of the number of stores included under the same general management or ownership, whether operated in the State or not, does not arbitrarily and unreasonably discriminate in favor of local as against national chains. And further, that such a statute providing a tax on such stores, whether operated in the state or not, does not contravene the constitutional requirement of due process by imposing a tax upon property or privileges possessed or enjoyed by a taxpayer beyond the borders of the State.

If the exaction complained of here is now a tax, certainly the exaction of a similar fee required by section 7421.01, 1929 N.C.L., 1941 Supp., was a tax in 1941 of which the company had full knowledge and if it, prior to the 1949 amendment, had increased its authorized capital stock, we submit, it would have then been liable for the fee as a tax at that time. The fact that such fee or tax was increased in 1949 and which now governs in the filing of amendments increasing the capital structure is of no moment. In *Lincoln National Life Ins. Co. v. Read*, 325 U.S. 673, 89 L. ed. 1861, the precise question was considered by the Supreme Court relative to a premium tax assessed to foreign insurance companies, which tax was increased as provided by a statute long after the company had entered and qualified in the State (Oklahoma). Objection was made that the tax was not collectible upon the constitutional ground that the statute violated the equal protection clause of the Fourteenth Amendment. The State Court allowed the collection of the tax computed on 2 percent of the premiums collected in the State, but disallowed the collection at the rate of 4 percent (the increased percentage provided in the statute) upon the ground that the domestic corporations were not required to pay such percentage. The Supreme Court affirmed, and also held that a State may constitutionally impose on a foreign corporation for the privilege of doing business within its borders more onerous conditions than it imposes on domestic corporations, and may exact from foreign corporations a tax or rate of tax other than that imposed on domestic concerns.

Lastly, in *Ford Motor Co. v. Beauchamp*, 308 U.S. at page 336, the Supreme Court made the following significant statement:

In a unitary enterprise, property outside the state, when correlated in use with property within the state, necessarily affects the worth of the privilege within the state. Financial power inherent in the possession of assets may be applied, with flexibility, at whatever point within or without the state the managers of the business may determine. For this reason it is held that an entrance fee may be properly measured by capital wherever located. The weight, in determining the value of

the intrastate privilege, given the property beyond the state boundaries is but a recognition of the very real effect its existence has upon the value of the privilege granted within the taxing state. This was recognized by this Court in *Atlantic & Pacific Tea Co. v. Grosjean* where an occupation or license tax on chain stores was graduated “on the number of stores or mercantile establishments” included under the same management “whether operated in this State or not.” We said: “The law rates the privilege enjoyed in Louisiana according to the nature and extent of that privilege in the light of the advantages, the capacity, and the competitive ability of the chain’s stores in Louisiana considered not by themselves, as if they constituted the whole organization, but in their setting as integral parts of a much larger organization.” This same rule applies here.

We conclude that there is a very grave doubt as to the unconstitutionality of the 1949 Nevada Act, i.e., chapter 176, Statutes of 1949, providing the fee to be collected for the filing of the Certificate of Amendment of the Articles of Incorporation of The Texas Company. It is, therefore, our opinion that the fee is a constitutional and valid fee and should be collected.

Respectfully submitted,

ALAN BIBLE, *Attorney General*.

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

**869. Planning Board, State—May Not Pay Flat Rate per Month for Car Rental—
Reimbursement for Travel Governed by Chapter 247, Statutes 1949.**

CARSON CITY, February 14, 1950.

MR. FORREST M. BIBB, *Director of the Budget, Carson City, Nevada*.

DEAR MR. BIBB: This will acknowledge receipt of your letter dated January 30, 1950, received in this office January 31, 1950.

You write that the Legislative Counsel Bureau has questioned procedure whereby the State Planning Board pays a flat rate of \$40 per month for car rental to an employee of the Board as reimbursement for his travel on Planning Board work.

An opinion is requested as to whether the State Board of Examiners is within its legal rights in approving such claims for car rental in lieu of travel reimbursement for the State Planning Board.

We cannot find authority in the Act creating the State Planning Board for the procedure outlined in your letter.

We are of the opinion that the provisions of chapter 247, Statutes of Nevada 1949, control in fixing the amount of money allowed for necessary traveling by private conveyance for employees of the State Planning Board.

Chapter 247, Statutes of 1949, amends section 6943, 1929 N.C.L., 1941 Supp., as amended by chapter 116, Statutes of 1495, and reads as follows:

When any district judge, state officer, commissioner, or representative of this state, or other state employee, shall be entitled to receive his necessary traveling expenses in the transaction of public business within the state, such person shall be paid a per diem allowance not exceeding eight dollars (\$8) for any one calendar day and for any period of less than a full calendar day such person shall receive a subsistence allowance of one dollar and twenty-five cents (\$1.25) for each full

six-hour period such person is on travel status, and in addition shall receive a lodging allowance of three dollars (\$3) for each night his duties require him to remain in travel status, and also an allowance for transportation, but the amount allowed for traveling by a private conveyance shall not exceed the amount charged by public conveyance; provided, however, that where it appears to the satisfaction of the board of examiners that travel by private conveyance is more economical or where it appears that, owing to train or stage schedule or for other reasons, travel by public conveyance is impractical, or in case where a part of the route traveled is not covered by public conveyance, the board of examiners, in its discretion, is authorized to allow for traveling by private conveyance an amount not to exceed seven and one-half cents per mile so traveled.

The Legislature is supreme as to policy or expediency of a statute. Change in the Act, if desired, is a matter for legislative consideration and action.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

870. Real Estate—Corporations—Member Licensed as Real Estate Broker May Not Also Receive License as Individual Broker.

CARSON CITY, February 16, 1950.

NEVADA REAL ESTATE COMMISSION, *No. 8 Arcade Building, Reno, Nevada*.
Attention: Mr. Ray P. Smith, Secretary.

GENTLEMEN: Reference is hereby made to your letter of February 9, 1950, received in this office February 14, wherein you request our opinion as to whether a real estate broker who is an officer of a corporation and designated by such corporation and who receives a real estate broker's license to so act, can also secure an individual real estate broker's license to act in his own behalf.

OPINION

Corporations may act as real estate brokers upon compliance with the Act creating the State Real Estate Board (now commission), section 2, chapter 150, 1947 Statutes. However, any such corporation desiring to act as a real estate broker must, in its application for a broker's license, designate some officer of the corporation to act as a real estate broker agent of the corporation who must also file an application for such license jointly with that filed by the corporation. Section 9 of the 1947 Act. The license when granted to such corporation officer only permits him to act as a real estate broker as an officer and/or agent of the corporation, and not in own behalf. Section 9, supra. It is also provided in said section 9 as follows:

Each and every member or officer of a copartnership, association or corporation who will perform or engage in any of the acts specified in section 2 of this act, other than the member or officer designated for such purpose by the copartnership, association, or corporation, in the manner above provided, however, that the license issued to any such member or officer of a copartnership,

association, or corporation, shall entitle such member or officer to act as a real estate broker only as an officer or agent of said copartnership, association, or corporation and not on his own behalf.

It is further provided in section 17 of the Act, as amended at 1949 Statutes, page 442:

If any real estate broker licensed hereunder as a member of a copartnership or association or as an officer of a corporation should discontinue his connections with such copartnership, association, or corporation, and thereafter desire to act as an individual real estate broker, or become associated with any other copartnership, association, or corporation, said broker shall be required to file an application and pay an original broker's fee for a new license as an individual broker or as a member of such new copartnership, or association, or as an officer of such new corporation.

We think it clear from the foregoing provisions of the Act in question that the intent of the Legislature was and is to limit the right of an officer of a corporation to serve as a real estate broker, so long as he is an officer of such corporation, to the business of his corporation so licensed as a real estate broker. It is our considered opinion that your inquiry must be answered in the negative.

Very truly yours,

ALAN BIBLE, *Attorney General.*

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

871. Motor Vehicles—Vehicles Sold to Dealer During Month of January Not Subject to Penalty For Nonpayment of Registration Fees When Sold By Dealer in Month of February.

CARSON CITY, February 17, 1950.

PUBLIC SERVICE COMMISSION, *Motor Vehicle Division, Carson City, Nevada.*

Attention: Mrs. Louise Lindsay, Director.

DEAR MRS. LINDSAY: Reference is hereby made to your letter of February 10, 1950, received in this office February 14, 1950, wherein you request our opinion concerning the collection of the \$3 penalty for nonpayment of the annual motor vehicle registration fee. You advise as follows:

I will cite the following cases for your information and would appreciate a written opinion on this from your office.

A person sold his car to a dealer in Reno on the 12th of January, and that car was in the dealer's lot until the 7th of February when it was sold, during that time it was never operated on the highway. When it was sold on the 7th of February the new customer went to the assessor's office with an affidavit of non-operation signed by the dealer to cover the period from the 12th of January until the 7th of February and he was charged a \$3.00 penalty.

It is my opinion that the dealer makes the affidavit just from the time the car was in his possession until it is sold. We realize that the plates expire on the 31st of December but there is a grace period during the month of January and no penalty is to be charged. The assessor's office claims that the affidavit of repossession should cover all the month of January.

OPINION

Section 14a of the Motor Vehicle Registration Act, i.e., 4435.13, 1929 N.C.L., 1941 Supp., provides:

Every vehicle registration under this act shall expire at midnight on December thirty-first each year and shall be renewed annually upon application by the registered owner by presentation of the certificate of registration for the current year and by the payment of the same fees together with the personal property tax as provided for original registration, and such renewal shall take effect on the first day of January each year. * * *.

The foregoing provision of the Act, standing alone, requires the renewal of the annual registration of motor vehicles and the payment of the fees therefore on or before January 1 of each year, in order to avoid the penalties elsewhere provided in the Act. However, a grace period has been provided in section 28a and b of the Act, being section 4435, 1929 N.C.L., 1941 Supp., providing as follows:

(a) Whenever any vehicle shall be operated upon the public highways of this state without there having been paid therefore the registration or transfer fee required by this act, such fee shall be deemed delinquent; * * *.

(b) If such registration fee shall not be paid within thirty days after the same becomes delinquent a penalty of three dollars shall be added thereto; and if such transfer fee shall not be paid within thirty days after the same shall become delinquent a penalty equal to the fee shall be added thereto and collected.

This latter provision has been administratively construed for many years to extend the annual renewal of motor vehicle registration and the payment of the fees therefor to February 1 of each year without invoking the penalty clause. Such construction, we think, has been and is correct.

In the instant case the owner of the car in question was delinquent on January 12. However, he had up to February 1 within which to secure and pay for the new annual registration of such car without the imposition of the statutory penalties. If on January 12, or any day in January he had sold the care to some individual, other than a car dealer, without the new annual registration thereof and such car was then and thereafter operated on the highways of the State by the new owner up to February 1 without obtaining the new registration, the penalty would have accrued and was legally collectible upon the application for registration thereafter made.

However, the car in question was, on January 12 sold to a car dealer and remained in his possession and ownership until February 7. During this period of time the car was deemed to be covered by the dealers' license plates and the registration thereof for the then current year, as provided in section 16(a) and (b) of the Act, i.e., section 4435.16, 1929 N.C.L., 1941 Supp. Such section provides:

(a) A manufacturer of or dealer in motor vehicles, trailers, or semi-trailers having an established lace of business in this state, owning such new or used vehicles and operating them upon the public highways exclusively for the purpose of testing each such vehicle may make application upon an official blank provided for that purpose to the department for a general distinguishing number or symbol; * * *.

(b) The department, upon receipt of such application and when satisfied that

the applicant is entitled thereto, shall issue to the applicant a certificate of registration containing the latter's name and business address and general distinguishing number or symbol assigned to him in such form and containing such further information as the department may determine, and every vehicle owned or controlled by such manufacturer or dealer, and permitted to be registered under a general distinguishing number, while being operated for the purpose of testing, demonstrating, or selling the same, shall be regarded as registered hereunder.

The effect of the foregoing section of the law is to place a used car, or a new one of r that matter, within the provisions thereof, without additional registration by an individual, so long as such car is owned by the car dealer and controlled by him for the purpose of testing, demonstrating or selling the same. In brief, such section of the law is to create an exemption from the general licensing provisions of the registration Act so long as such car is owned by the dealer and not used by him as his personally owned car, as distinguished from those owned by him for testing and demonstrating for the purpose of sale.

It is true that the Motor Vehicle Registration Act requires that a transferee of the title to a motor vehicle shall within ten days after the transfer of the title, as upon a sale, forward to the department the certificate of the indorsed certificate of ownership and the certificate of registration for the purpose of showing the transfer of the title to a new owner and a new registration in the name of the new owner. Section 15 of the Act, i.e., section 4435.14, 1929 N.C.L., 1941 Supp. However, subsection (c) thereof provides:

The provisions of subdivision (b) of this section requiring a transferee to forward the certificate of registration to the department shall not apply in the event of the transfer of a vehicle to a dealer intending to resell such vehicle and who operates the same only for demonstration purposes, but every transferee shall, upon transferring his interest or title to another, give notice of such transfer to the department and indorse the certificate of registration to the new owner.

We think it clear that the foregoing section of the law coupled with the provisions of the law relating to the use and purpose of dealers' plates signifies the intent of the Legislature that individual registration of cars owned by a car dealer is not required. Therefore, we conclude:

1. That while the original owner of the car in question may have been delinquent at the time of the sale of the car to the car dealer, still the penalty for such delinquency had not accrued so as to be legally collectible until February 1 next following.
2. That from the date of purchase of the car and the sale thereof by the dealer the car was covered by the licensed dealers' plates and no penalty had accrued during such time.
3. That upon the purchase of the car by the new owner, the car was then acquired by him free of any accrued penalty and no such penalty could legally be collected from him.

We are further of the opinion that the foregoing conclusions should govern in all like situations, and until changed by legislative enactment.

Respectfully submitted,

ALAN BIBLE, *Attorney General*.

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

872. Welfare—No Authority to Require Adopting Parents to Pay Fee for Delivery Charges Prior to Adoption.

CARSON CITY, February 20, 1950.

MRS. BARBARA C. COUGHLAN, *Director, Division of Child Welfare Services,*
P.O. Box 1331, Reno, Nevada.

DEAR MRS. COUGHLAN: This will acknowledge receipt of your letter dated February 2, 1950, received in this office February 3, 1950.

You write that the Washoe Medical Center has advised the State Welfare Department that a deposit is required in advance to cover delivery charges for expectant mothers who are not legal responsibilities of the county, and who are not financially able to pay such costs themselves. In some instances the natural parent plans to relinquish the baby to the State Welfare Department for adoptive placement. You inquire if the department may propose to prospective adopting parents that they pay a fee to cover such delivery costs and suggest if the fee paid by the prospective adopting parents would not be required to apply on the delivery cost of the particular baby they seek to adopt, it would be possible to use such amounts as a basis of a Revolving Fund. The deposit when required by the hospital could then be advanced from this fund. You also write that the adopting parents would not be asked to pay the fee for delivery charges until an infant was actually placed with them for adoption by the department.

We are of the opinion that there is no statutory authority for the procedure outlined in your request for advice.

Chapter 327, Statutes of Nevada 1949, is the Act relating to public welfare, creating the State Welfare Department and defining its powers and duties. Section 10, subsection 1, provides as follows:

Administer all public welfare programs of this state, including old-age assistance, blind assistance, aid to dependent children, general assistance, child welfare services and such other welfare activities and services as now are or hereafter may be authorized or provided for by the laws of this state and vested in the department.

Subsection (6) provides:

Make all investigations required by a court in adoption proceedings as provided by law.

Subsection (8):

Provide services and care to children, shall receive any child for placement, and shall provide for their care directly or through agents.

The foregoing provides the general powers and the powers respecting the receiving of children for placement and for adoption.

Chapter 246, Statutes of 1947, is an Act to amend an Act to provide for the adoption of children. There is no provision in this amendment or in the Act approved March 31, 1941, under sections 1065-1065.07, 1929 N.C.L., 1941 Supp., or under section 9478, 1929 N.C.L., 1941 Supp., providing for the adoption of illegitimate children that would authorize the State Welfare Department to require prospective adopting parents to pay a fee for the care, maintenance, medical and surgical treatment and hospitalization of expectant mothers who are not financially able to pay for the same and who are not legal responsibilities of the county.

Very truly yours,

ALAN BIBLE, *Attorney General.*

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

873. Public Employees Retirement—Certain Power Districts Are Political Subdivisions and Eligible for Participation in Retirement System.

CARSON CITY, February 21, 1950.

MR. KERWIN L. FOLEY, *Executive Secretary, Public Employees Retirement Board, Carson City, Nevada*.

DEAR MR. FOLEY: This will acknowledged receipt of your letter of February 6, 1950, received in this office February 7, 1950, in which you request our opinions to the following question:

In view of the language of sec. 2(2) of the Public Employees Retirement Act, is the Lincoln County Power District No. 1, or any other power district organized under the applicable Statutes, eligible for membership in the Public Employees Retirement System?

The answer to this inquiry is in the affirmative.

Section 2(2) of the Public Employees Retirement Act provides as follows:

The term "public employer" means the state, one of its agencies or one of its political subdivisions and irrigation districts created under the State of Nevada.

Therefore, if the Lincoln County Power District, or any other power district, falls within the confines of the above-quoted section, the power district may become a member of the system.

It is our opinion that in Nevada a power district is a political subdivision of the State. We are aware that the term "political subdivision" has many varied meanings. To substantiate our opinion, however, we refer you to the case of *State v. Lincoln County Power District*, 60 Nevada 401, in which the Court held at page 409:

Power districts, as provided for in chapter 72, laws of 1935, are also political subdivisions of the state, created to make available to the public, to any municipality, the state, and any public institution, an abundant supply of electricity at the lowest cost consistent with sound economy and prudent management for use for the purpose of raising the standard of living, promoting more efficient development and use of the mineral resources of the state, and reducing unemployment. * * * .

Therefore, regardless of how the term "power district" has been interpreted in other jurisdictions, it has been interpreted to be a political subdivision in our own State and, consequently, is eligible to participate in the Retirement Act.

Very truly yours,

ALAN BIBLE, *Attorney General*.

By ROBERT L. McDONALD, *Deputy Attorney General*.

874. Counties—Board of County Commissioners Authorized to Advance Money to Water Districts Without Security—Las Vegas Valley Water District.

CARSON CITY, February 21, 1950.

HONORABLE ROBERT E. JONES, *District Attorney, Las Vegas, Nevada*.

DEAR MR. JONES: Reference is hereby made to your letter of January 28, 1950 wherein you request the opinion of this office as to whether the Board of County Commissioners of Clark County can make an unsecured loan to the Las Vegas Valley Water District under the provisions of section 18 of the Las Vegas Valley Water District Act, as amended at 1949 Statutes, page 215.

Your letter of January 28, 1950, did not in our opinion provide us with all the necessary information in connection with the question, and we request further advice on February 2, 1950 as to whether the bond required by section 2 of the Act as found at 1947 Statutes, page 556, was given upon the filing of the petition with the Board of County Commissioners as therein provided for. You replied in your letter of February 17, 1950, wherein you advised further concerning the matter and gave us information not theretofore conveyed to the extent that the bond was not given as required in section 2 of the Act. However, you directed our attention to section 23 of the Act which was added in 1949 wherein apparently the Legislature ratified, legalized, and confirmed and validated the preliminary action of the petitioners and the Board of County Commissioners had in the matter of initiating the Las Vegas Valley Water District, and while such section does not specifically refer to the failure to provide the bond, we assume therefrom that the failure to file such bond was validated by the Act of the Legislature.

OPINION

Frankly, this office is of the opinion that the provision for a bond to be given upon the filing of the petition with the Board of county Commissioners in the first instance, as provided in section 2 of the Act, was in effect the very purpose of protecting the county for the cost of the initial organization of the district and would have the effect as security for money necessary to pay the cost of the initial organization proceedings. However, it now appears that the Legislature has validated all Acts had upon the enacting of the 1949 amendment and, of course, has validated the proceedings insofar as the nongiving of the bond is concerned.

It is a well-known rule of law in this State that Boards of County Commissioners only have such powers as are expressly granted them in the law or by such implication as a reasonably necessary to carry their express powers into effect. Under this rule we think that the Board of County Commissioners of Clark County are required to advance funds to the district as may be necessary to pay the preliminary organization, administration, and engineering costs thereof, and as amended by the 1949 Act including bond elections on such terms of repayment as may be agreed upon. Such are the provisions of section 18 of the Act as amended. There is no express declaration therein that the Board of County Commissioners shall require security for the advancement of the funds. There is a requirement, however, that the money shall be repaid and that upon the terms mutually agreed upon between the board and directors of the Las Vegas Valley Water District.

Respectfully submitted,

ALAN BIBLE, *Attorney General*.

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

875. Architecture—Applicability of Statute Respecting Firm Names for Registered Architects.

CARSON CITY, February 21, 1950.

STATE BOARD OF ARCHITECTURE, *Post Office Box 2107, Las Vegas, Nevada.*

Attention: Mr. Walter Zick, Secretary-Treasurer.

DEAR MR. ZICK: This will acknowledge receipt of your letter dated February 7, 1950, received in this office February 9, 1950.

You present circumstances wherein a firm uses the title "Architects, Engineers & Contractors" and has used such title several years before the Act regulating the practice of architecture was passed. You state one member of the firm, only, is applying for a license to practice one member of the firm, only, is applying for a license to practice one member of the firm, only, is applying for a license to practice architecture. The other two members could not qualify under the law. You quote section 35, chapter 220, Statutes of Nevada 1949, requiring all members of a firm to be licensed in order to maintain the present firm name, and it was challenged on the basis of an "Ex post facto law," in that no law could effect a previously established firm name. Your inquiry is, does the board issue a license, all things being equal asking them to adhere to the requirements of the law and if they do not comply then revoke the license until they do comply. On the other hand, if only one member of the firm is licensed could the name be changed to read and indicate the one member "Architect" indicating the other members are not included as "Architects."

We are of the opinion that the title "Architects, Engineers & Contractors" is not such a title as contemplated by the Act regulating the practice of architecture.

The Act provides that firms, associations and partnerships of architects, may practice as such architects when each member of the firm is registered under the Act. There is no provision in the Act authorizing the board to revoke a license for the reason set out in your inquiry.

Section 35, chapter 220, Statutes of Nevada 1949, reads as follows: "Nothing in this act shall be construed as preventing firms, partnerships, or associations of architects from practicing as such provided each member of such firm, partnership, or association is registered under the provisions of this act." The section applies to firms, partnerships and associations of architects, practicing as such.

Section 16 of the Act defines the practice of architecture, and excepts the functions of professional engineering as defined by Nevada law.

Section 34 provides: "This act shall not be construed so as to prevent persons other than architects from filing application for building permits or obtaining such permits providing the drawings for such buildings are signed by the authors with their true appellation as engineer or contractor or carpenter, and so forth, but without the use of any form of the title architect, nor shall it be construed to prevent such persons from designing buildings and supervising the construction thereof for their own use."

The firm advertising themselves as "Architects, Engineers & Contractors" would not be holding out to the public as an association of architects under a firm name.

The drawings for buildings furnished by the firm could be signed by the author as provided in section 34, or made and signed by the member who was a registered architect under his certificate.

Section 27 of the Act defines the cases in which a certificate to practice architecture may be revoked.

Very truly yours,

ALAN BIBLE, *Attorney General.*

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

876. Nevada Hospital For Mental Diseases—Tuberculosis Patients—Care and Treatment of Indigents.

CARSON CITY, February 21, 1950.

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 February 7, 1950, received in this office February 8, 1950.

Your letter states that the following question was recently posed to the Nevada State Hospital authorities, coming from the Nevada State Tuberculosis Association—is the Nevada State Hospital responsible for the treatment of patients with tuberculosis when tuberculosis is known to exist at the time of commitment as an insane person?

You write that the person in question is now being cared for through funds from the Tuberculosis Association and from a county in the State at a hospital in another county in the State. If the person's condition requires his placement in an institution outside the State, should the hospital then pay for such special care. This would place a heavy financial burden on the hospital and relieve the designated agencies from further liability.

You call attention to the fact that the State Hospital does not have the special facilities medically required for proper care of tuberculosis, and also that the problem is different from one where a person already committed to the hospital subsequently develops tuberculosis.

We are informed that the Nevada State Tuberculosis Association does not assume responsibility for the payment of hospitalization of tuberculosis patients and in the particular case, which is the subject of your inquiry, the patient has been cared for by the county of residence under the Act to permit the State to assist, extend and improve the care of persons in active stages of tuberculosis when such persons are cared for at public expense.

We are, therefore, of the opinion that the expense of the care and treatment of such indigent patient should be paid by the county in which the patient is a resident and the State of Nevada, subject, however to the order of the court committing the patient.

Chapter 183, Statutes of Nevada 1947, is the Act to which reference is made. Section 1 of the Act provides:

The state board of health shall have authority to formulate all policies and adopt all rules and regulations for the purpose of carrying out the provisions of this act.

SEC. 2. Every person infected with active tuberculosis and who has been determined to be a menace to the health of the general public, under the rules and regulations of the state board of health shall be cared for at public expense; provided, said person: (a) Is unable to pay for his or her medical or hospital care. (b) Has no relatives legally liable and financially able to pay for his or her support. (c) Has been for one year a bona fide resident of the county.

Section 4 of the Act was amended by chapter 172, Statutes of 1949, and reads as follows:

The state shall reimburse the county a sum equal to ninety cents (90 ¢) for each one dollar expended on each patient for hospitalization, treatment and medical care under rules and regulations provided by the state board of health;

provided, however, that such reimbursement shall be made by the state for such time as funds are available under the provisions of this act, and when such funds have been expended, the state shall not thereafter be obligated.

Section 7 of the Act, which was not amended, provides that any patient, who under the provisions of the Act is entitled to receive care and treatment, shall be placed in a hospital that has been approved by the State Board of Health.

The 1947 Act made an appropriation of \$50,000 and the amendment of 1949 appropriated the sum of \$60,000. It appears, therefore, that the State Board of Health would not approve the placement of the patient in a hospital that did not have the facilities to care for such patient in the active stages of tuberculosis.

The public expense under the Act to care for indigent tubercular patients is paid by the State to the extent of ninety percent until the appropriation has been expended, and the entire expense is paid by the State for the care of indigent insane persons.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

877. Housing Authorities—Veterans—Priority Construed as Applying to Veterans of World Wars I and II.

CARSON CITY, February 23, 1950.

HONORABLE HAROLD O. TABER, *District Attorney, Washoe County, Reno, Nevada*.

DEAR MR. TABER: This will acknowledge receipt of your letter dated February 16, received in this office February 17, 1950.

You write that the Federal Housing Authority has taken the position that the Nevada 1947 Housing Authority law restricts priority to veterans of World War II, and for that reason is holding up a grant of funds to the Reno Housing Authority for the purpose of making a survey preliminary to a grant of funds for the construction of a low-cost housing project in Reno. Apparently the 1949 Federal Housing law requires that priority be given to veterans of World Wars I and II.

You submit that subsection (j) of section 1 of the 1947 Act defines veterans as those serving with the armed forces in World War II, and section 9 which deals with priorities mentions "servicemen" in addition to veterans. In as much as section 1 of the definitions does not include the word "servicemen" you have taken the position that the use of the word in section 9 can be construed to mean veterans of other wars including World War I.

You present your conclusion, and request an opinion from this office.

We are of the opinion that your conclusion as to the interpretation of the language of the construction of the Act in question is correct.

The purpose and intention of the Act as specifically expressed in section 20 thereof should govern the interpretation of the words used in the Act in the light of the purpose sought to be accomplished.

Chapter 253, Statutes of Nevada 1947 is an Act to provide for the creation of housing authorities. The title of the Act contains the language: “* * * authorizing the authority to borrow money or accept contributions from the federal government, * * *.”

Section 20 of the Act reads as follows: “In addition to the powers conferred upon an authority by other provisions of this act, an authority is empowered to borrow money or accept contributions, grants, or other financial assistance from the federal government for or in aid of any housing project within its area of operation, to take over or lease or manage any housing project or undertaking constructed or owned by the federal government, and to these ends, to comply with such conditions and enter into such mortgages, trust indentures, leases or agreements as may be necessary, convenient, or desirable. It is the purpose and intent of this act to authorize every authority to do any and all things necessary or desirable to secure the financial aid or cooperation of the federal government in the undertaking, construction, maintenance, or operation of any housing project by such authority.”

The first sentence in section 2 of the Act reads: “The following term whenever used or referred to in this act, shall have the following respective meanings, unless a different meaning clearly appears from the context:”

Subjection (j) reads as follows: “‘Veterans’ shall mean persons who served in the military forces of the United States of America during the second world war and who have been discharged from service in such military forces, other than by dishonorable discharge.”

Veterans are defined as persons who served in such military forces during the second world war. This definition is modified, however, when a different meaning clearly appears from the context.

According to “Webster,” the word “context” means: “The weaving together of words in language, also the discourse or writing so produced.”

Section 9 of the Act, paragraph (a) reads: “It may rent or lease the dwelling accommodations therein only to veterans and other persons of low income, with preference to veterans and servicemen and families of deceased persons who served in the armed forces, and at rentals within the financial reach of such persons:”

Section 21 contains the following language: “* * * an authority may acquire property and construct housing projects thereon for the purpose of leasing dwellings to servicemen, veterans, and their families, and the families of deceased persons who served in the armed forces, * * * during the existence of the acute shortage of housing available to such persons as determined by applicable law or as may be provided for in any contract for financial assistance with the federal government; * * *.”

The last paragraph of this section again refers to “veterans and servicemen and the families of deceased persons who served in the armed forces, * * *.” The same language is used in section 22.

The title of the Act as well as the context discloses its paramount purpose to cooperate with the Federal Government to supply housing facilities for persons of low income with preference for veterans and servicemen and families of deceased persons who served in the armed forces of the United States.

The general rule in the interpretation of statutes is, that when the Legislature defines the language it uses, its definition is binding upon the court. However, as stated in Sutherland Statutory Construction, vol. 2, section 4814, page 358: “In interpreting a statute a court looks to the subject of the act and the object which it intends to accomplish. When the subject matter is

clearly ascertained and its general intent is determined, all words used in the act will be interpreted according to that intent. Thus, when the intent has been established, words may be modified, altered or supplied, and the general words restrained and narrow words explained so as to obviate any repugnance or inconsistency with the general intention of the legislature.”

This principal is endorsed in *Ex parte Siebenhauer*, 14 Nevada 365; *Tobin v. Gartiez*, 44 Nevada 179; *In re McGregor*, 56 Nevada 407.

Limiting the definition of veterans to those only who served in World War II, thus denying the Housing Authority the privilege of receiving financial assistance from the Federal Government, would narrow the limits of the Act to an extent never intended by the Legislature.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

878. Bonds—City of Reno 1949 Sanitary and Storm Drain Sewer Improvement District No. 1 Bonds Are Legal Obligations.

CARSON CITY, February 27, 1950.

HON. VAIL PITTMAN, HON. DAN FRANKS, HON. JERRY DONOVAN, *Members State Board of Finance, acting as State Board of Investments, Carson City, Nevada.*

Re: City of Reno 1949 Sanitary and Storm Drain Sewer Improvement District No. 1 Bonds—
Amount \$48,805.90.

GENTLEMEN: Pursuant to your successful bid for the purchase of the City of Reno 1949 Sanitary and Storm Drain Sewer Improvement District No. 1 Bonds, subject to the approval of this office, the City of Council of Reno has submitted to us for our approval the transcript of its proceedings initiating, perfecting and creating the issuance of bonds for the said improvement district.

OPINION

We have carefully examined such transcript and we are of the opinion that such transcript contains a complete record of each and every statutory step necessary in the perfecting of the issue of said bonds. That all legal notices required by law have been given and made. That the city ordinance providing for the issuance, form, amount, term of the bonds and the sale thereof was duly and legally enacted, passed and adopted by the City Council. That the form of the bond conforms to the ordinance and contains all legal recitals relating thereto.

It is, therefore, our opinion that the City of Reno 1949 Sanitary and Storm Drain Sewer Improvement District No. 1 Bonds constitute and are legal obligations of the city of Reno and that the full faith and credit of said City is pledged to the redemption thereof.

Respectfully submitted,

ALAN BIBLE, *Attorney General*.

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

879. Bonds—City of Reno 1949 Sterling Village Improvement District Bonds Are Legal Obligations.

CARSON CITY, February 27, 1950.

HON. VAIL PITTMAN, HON. DAN FRANKS, HON. JERRY DONOVAN, *Members, State Board of Finance, acting as State Board of Investments, Carson City, Nevada.*

Re: City of Reno 1949 Sterling Village Improvement District Bonds—Amount \$87,648.00.

GENTLEMEN: Pursuant to your successful bid for the purchase of City of Reno 1949 Sterling Village Improvement District Bonds, subject to the approval of this office, the City Council of Reno has submitted to us for our approval the transcript of its proceedings initiating, perfecting and creating the issuance of bonds for the said improvement district.

OPINION

We have carefully examined such transcript and we are of the opinion that such transcript contains a complete record of each and every statutory step necessary in the perfecting of the issue of said bonds. That all legal notices required by law have been given and made. That the city ordinance providing for the issuance, form, amount, term of the bonds and the sale thereof was duly and legally enacted, passed and adopted by the City Council. That the form of the bond conforms to the ordinance and contains all legal recitals relating thereto.

It is, therefore, our opinion that City of Reno 1949 Sterling Village Improvement District Bonds constitute and are legal obligations of the City of Reno and that the full faith and credit of said City is pledged to the redemption thereof.

Respectfully submitted,

ALAN BIBLE, *Attorney General.*

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

880. Public Schools—Inability of Teacher to Perform Her Part of Contract for Period of Ten Weeks Discharged Contract Without Liability to School District.

CARSON CITY, February 27, 1950.

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

DEAR MISS BRAY: This will acknowledge receipt of your letter dated February 20, 1950, received in this office February 23, 1950.

You outline a circumstance in which a teacher under contract in a school district employing only one teacher received an injury, not in the course of her employment, and as a result was unable to perform her duties as such teacher. The absence from duty was unable to perform her duties as such teacher. The absence from duty was during the first year this teacher was employed at t his school. The board of trustees allowed her sick leave and paid a full month's salary while she was away from school. During her absence, and due to the difficulty in securing a substitute teacher, the trustees were forced to employ a qualified teacher from outside the State. This teacher was definitely promised the position of teaching for the remainder of the school term. The trustees are apprehensive that they will have two teachers each claiming that she is legally employed for the school year.

You inquire for what period of time may a teacher hold a school district to a contract for her

services when she is unable to fulfill her part of the contract due to personal injury or illness.

We are of the opinion that the trustees of the school district did all that was required by statute in the case presented. The inability of the teacher to perform her part of the contract for a period of ten weeks discharged the contract without liability of the school district for damages.

Section 274 of the 1947 School Code, subsection 11, empowers trustees of school districts to employ legally qualified teachers under written contract specifying the salary and the length of the term of school for which employed.

Section 322 prescribes the oath to be teacher before entering upon the discharge of the duties of such teacher, which is a part of the contract, and requires the teacher to well and faithfully perform all the duties of the office of teacher.

Section 325 defines the school month, rate of payment, and absence with pay. This section contains the following language: “* * * and provided, that all school boards are hereby authorized in their discretion to pay the salary of any teacher unavoidably absent because of personal illness or accident, or because of serious illness, accident or death in his or her family; provided also, that such salary shall not be paid for more than ten (10) school days in the aggregate in any one (1) school year, or for more than twenty (20) school days in the aggregate for any two (2) consecutive years, or for more than thirty (30) school days in the aggregate for any three (3) consecutive years in the same school, subject to the approval of the school board, unless specially authorized by the unanimous vote of the school board of such school, upon the written request of such teacher, for some special substantial, and convincing reason therefor, and under such peculiar circumstances as to make such compensation fair and reasonable to all affected thereby and not detrimental to such school, and unless also approved by the deputy superintendent of public instruction of that educational supervision district * * *.”

A teacher, to well and faithfully perform all the duties of such office, must be familiar with the powers and duties of a teacher as expressed in the School Code. Laws as to substantial rights and remedies at the time a contract is made become a part of the contract.

It appears that in the case presented the teacher was paid for a longer period during her absence from teaching than the time specified by statute and under the circumstances such compensation was fair and reasonable and not detrimental to such school. Owing to the difficulty of securing a substitute teacher the trustees were forced to secure a teacher outside the State. Efficient teachers, as a general rule, seek employment for a definite period, and not as substitutes.

The contract of the teacher in the school was a contract to perform a personal service. The rule as expressed in 13 C.J. page 644, section 719, is as follows: “Contract to perform personal acts are considered as made on the implied condition that the party shall be alive and capable of performing the contract, so that death or disability will operate as a discharge.”

In *Auran v. Mentor School District*, 233 N.W. 644, holding that the teacher's contract was one for personal service which was discharged by such sickness on her part as to incapacitate her from performing her duties, the court stated that the contract was entire, binding her to teach the school for the full term, and her incapacity to perform discharged the contract.

If the trustees in the case presented could have secured a suitable substitute teacher without detriment to the school they would undoubtedly have done so, but, under the circumstances, it does not appear that they have violated any law and made the district liable for damages.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

881. University of Nevada—Board of Regents Not Empowered to Construct Faculty Housing Units Nor Borrow Money for Such Purpose Unless Authorized by Legislature.

BOARD OF REGENTS, *University of Nevada, Reno, Nevada*.

Attention: G.E. Parker, Acting President, University of Nevada.

GENTLEMEN: Reference is hereby made to your request of February 23, 1950, for the opinion of this office concerning the power of the Board of Regents to construct faculty housing units under University sponsorship and management and to borrow money for such purpose. You inquire:

1. Does the Board of Regents have authority to embark on such a project?
2. Does the Board of Regents have authority to borrow money from the State Retirement fund or from any other source to finance such a project?

OPINION

The Board of Regents of the University of Nevada was and is a board created by section 7 of Article XI, Constitution of Nevada. However, such constitutional provision does not provide the powers and duties of such board. Such provision provides that the Board of Regents shall control and manage the affairs of the University and the funds of the same under such regulations as may be provided by law. Thus the constitution placed the defining of the powers and duties of the Board of Regents in the Legislature and that body was required to and has from time to time in legislative enactments provided the statutory powers of such board. In brief, the University is a public institution subject to legislative control and its Board of Regents, the instrumentality through which the will of the Legislature is carried out. 55 Am. Jur. 7 sec. 8. A statute endowing the Regents with certain corporate powers and prescribing the mode and manner by which they are to exercise the control given them over the affairs of the University limits their duties and powers to the purpose of their creation. *Re Royer (Cal.) 56 Pac. 461.*

The Board of Regents as constituted in this State is closely analogous to the Board of County Commissioners as constitutionally authorized by our Constitution. It has long been the canon of statutory construction that the Boards of County Commissioners possess only such powers as are expressly granted them by the Legislature, and such implied powers as may be necessary to carry the express powers into effect.

We think such rule is applicable to the Board of Regents.

An examination of the statutory law of Nevada relative to the University and its Board of Regents fails to disclose that such board has been or is now authorized to construct faculty housing units and/or to borrow money for such purpose. It is our considered opinion that before faculty housing units can be legally constructed by the Board of Regents that the Legislature must authorize such construction and provide necessary funds therefore. Your inquiries are answered in the negative.

Respectfully submitted,

ALAN BIBLE, *Attorney General*.

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

882. University of Nevada—Board of Regents Not Authorized to Use Appropriation Provided in Chapter 301, Statutes of 1949, for Emergency Purposes Until Purposes Provided in State Have Been Accomplished.

CARSON CITY, February 28, 1950.

BOARD OF REGENTS, *University of Nevada, Reno, Nevada.*

Attention: G.E. Parker, Acting President, University of Nevada.

GENTLEMEN: Reference is hereby made to your letter of February 24, 1950, wherein you request the opinion of this office as to whether the Board of Regents could properly use any of the moneys appropriated by chapter 301, Statutes of 1949, for emergencies occurring before any of the purposes of said chapter have been accomplished.

The Act provides an appropriation of \$50,000 to carry out the provisions thereof, apportioned as follows:

1. \$20,000 for the purpose of the purchase and installation of a steam boiler in the boiler room of the engineering building. Sections 1 and 4 of the Act.
2. \$30,000 for the purpose of carrying out the provisions of section 2 of the Act requiring (a) the readjustment of steam to hot water heating in the central heating system; (b) reconversion of steam to hot water heating in Mackay building; (c) completion of installation of heating and ventilating system in engineering building and Mackay building. Sections 2 and 5 of the act.

Section 4 of the Act provides:

Of said sum, twenty thousand dollars (\$20,000) shall be used to carry out of the purposes of section 1 of this act, *and after the directives of section 2 have been accomplished, the unused portion of said twenty thousand dollars (\$20,000) shall revert to the postwar fund on the first Monday in January 1951.* (Italics ours.)

It is clear that insofar as section 4 is concerned none of the \$20,000 if the whole thereof is not expended for the purposes of the new boiler installation, can be used for emergency purposes.

Section 5, of the Act reads as follows:

Of said sum, thirty thousand dollars (\$30,000) shall be used to carry out the purposes of section 2 of this act, *and after the directives of section 2 have been accomplished, the unused portion of said thirty thousand dollars (\$30,000) shall be available to meet any emergency that may arise relative to the central heating system at the University of Nevada.* Any unused portion shall revert to the postwar reserve fund on the first Monday in January 1951. (Italics ours.)

We think the Legislature in the enactment of the foregoing section 5 has expressly provided that none of the apportioned \$30,000 can be used for emergencies until the conditions of section 2 have been fully met and each of the directives therein set forth have been accomplished.

Respectfully submitted,

ALAN BIBLE, *Attorney General.*

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

883. University of Nevada—Minor Student of Divorced Parents, Whose Custody Awarded Mother, a Nonresident, Not Entitled to Out-of-State Exemption of Tuition.

CARSON CITY, March 1, 1950.

BOARD OF REGENTS, *University of Nevada, Reno, Nevada.*

Attention: G.E. Parker, Acting President, University of Nevada.

GENTLEMEN: Reference is hereby made to your letter of February 24, 1950, wherein you request the opinion of this office as follows:

Our file of decisions and precedents does not cover the case where parents are divorced, the parent who has custody of the child lives outside the State, and the child receives its grade school and high school education outside the State, but is supported by the parent living in the State of Nevada.

The Board of Regents directed me to request of you a decision as to whether a student with such a background could properly be exempted from the payment of out-of-State tuition.

OPINION

We assume from your letter that the sole custody of the student, a minor, was awarded to the mother in the decree of divorce and who was and now is a nonresident of Nevada, and that the father, a resident of Nevada, contributes to the support of such minor student.

The general rule of law governing the domicil of a minor child in such a case is well stated in 17 Am. Jur. 627, sec. 59:

When parents are divorced without disposing of the right to the custody of their minor child, the domicil of the child follows that of the father. When a divorce has been granted to the wife, however, and the unrestricted custody of the minor child of the marriage given her in the decree, her own domicil, and not the father's establishes that of the child, provided, of course, the court of jurisdiction in the premises. * * * Moreover, other special circumstances have frequently had weight in cases where courts have refused rigidly to adhere to the arbitrary rule that the father's domicil fixes that of the child.

Applying the foregoing rule of law to the instant question and assuming the facts to be as hereinabove stated, and the student in question had not himself (or herself) been a bona fide resident of Nevada for at least six months prior to his or her matriculation at the University, then in our opinion such student is not entitled to be exempted from the payment of out-of-State tuition as provided in chapter 167, Statutes of 1945.

Respectfully submitted,

ALAN BIBLE, *Attorney General.*

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

884. Elections—Individual Candidates May File Declarations of candidacy at Any Time During Calendar Year Prior to 50 Days Before Primary Election.

CARSON CITY, March 2, 1950.

HON. ROBERT E. JONES, *District Attorney, Clark County, Las Vegas, Nevada.*

DEAR MR. JONES: reference is hereby made to your letter of February 28, 1950, wherein you request the opinion of this office as to whether declarations of candidacy for public office

can be received by the County Clerk for filing prior to the date of the official calling of the primary election by the Secretary of State, which date will be on or about June 17, 1950.

OPINION

Section 5 of the Primary Election Law, being section 2408, N.C.L. 1929, as amended at 1947 Statutes, page 476, provides:

The name of no candidate shall be printed on an official ballot to be used at a primary election unless he shall qualify by filing a declaration of candidacy, or by an acceptance of a nomination and by paying a fee as provided in this act.

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

(b) Ten or more qualified electors may, not more than eight nor less than fifty-five days prior to the September primary, file a designation of nomination designating any qualified elector as a candidate for nomination for any elective office. When such designation shall have been filed, it shall be the duty of the officer in whose office it is filed to notify the elector named in such designation thereof. If the elector named in the designation shall, not later than fifty days prior to the primary, file an acceptance of such nomination and pay the required fee, he shall be a candidate before the primary in like manner as if he had filed a declaration of candidacy. * * *

The purpose of the foregoing section of the law is to provide the means whereby the names of party candidates and nonpartisan candidates are placed upon the primary election ballots and fixing the final date for the filing of the declarations of or acceptances of candidacy. The Legislature has seen fit to provide a date for the filing of designations of nomination signed by qualified electors prior to which such designations could not be filed. On the other hand, no such restriction is imposed upon individuals filing their own declarations of candidacy. The only restrictions there imposed being such declarations must be filed not less than fifty days prior to the primary. We think that if the Legislature had deemed it expedient to have limited the time of filing of declarations of candidacy of individual candidates to the time beginning with the calling of the primary election by the Secretary of State as provided in section 2407, N.C.L. 1929, as amended at 1945 Statutes, page 173, it would have said so, as such time corresponds very closely to the time provided for the filing of designation of nominations. The failure to impose such time restriction on individual candidates is, we think, significant.

It is, therefore, our opinion that declarations of candidacy of individual candidates can legally be received by and filed by the County Clerk at any time in the calendar year of election prior to the calling of the primary election by the Secretary of State up to the final date therefor provided in the law.

Respectfully submitted,

ALAN BIBLE, *Attorney General.*

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

885. Bonds—Elections—Propositions Should Be Stated and Presented Singly.

CARSON CITY, March 3, 1950.

HON. WM. J. CROWELL, *District Attorney, Nye County, Tonopah, Nevada.*

DEAR MR. CROMWELL: This will acknowledge receipt of your letter dated February 27, 1950, received in this office February 28, 1950.

You write that the County Commissioners, sitting as a town board, seek to provide for the calling of an election for the purpose of submitting to the property owners and electors the question of authorizing the issue of bonds for the purchase of a water and sewerage system.

You call attention to section 1327 et seq., N.C.L. 1929, and also section 1397.01 et seq., N.C.L. 1929, 1941 Supp., and inquire as to the relation of each in the procedure of acquiring public utilities.

You request advice as to whether the proposition to acquire the water and sewer system should be submitted to the voters singularly or if the two questions could be submitted together.

In answer to your questions we submit a summary of the statutes, as one Act provides for the issuance of bonds and payment out of revenue from the utility and if such revenue is not sufficient by a tax levy, while the later Act provides for the payment of the bonds solely from the revenue of the utility.

The general rule in submitting questions of bond elections to the electorate is that it is necessary that propositions be stated and presented singly. We believe this is the safest course to follow.

The Act of 1911 empowered the County Commissioners, with regard to the management of the affairs and business of any unincorporated town within their respective counties, to acquire by construction, purchase or otherwise, sewerage systems, light systems, water systems, or combinations of such systems, under section 1327-1340, inclusive.

Section 1331 provides a fund for the payment of the bonds when sold. This section provides that whenever the revenue from the sale of service provided for in the Act shall be insufficient for the purpose of paying principal and interest on the bonds the County Commissioners shall levy an additional tax sufficient to retire the bonds as they become due.

The revenue bond law of 1937, under sections 1397.01-1397.13, inclusive, as amended by chapter 129, Statutes of 1949, provide for strictly revenue bonds.

Section 1397.08 provides that revenue bonds issued under this Act shall not be payable from or charged upon any funds other than the revenue pledged to the payment thereof. No holder of any such bonds shall ever have the right to compel any exercise of the taxing power of the municipality to pay any such bonds or the interest thereon. The bonds are paid solely from the revenue pledged to the payment of the bonds.

Bonds issued under the Act of 1911, sections 1327-1340, are in part general obligations bonds whenever the revenue from the utility shall be insufficient to retire such bonds.

The Act of 1937, sections 1397.01-1397.13, as amended, provides for revenue bonds payable from a special fund and are not the general obligations of the issuing public body, and are not payable from its general resources raised by taxation. See 43 Am. Jur. page 500, section 285; *Bankhead v. Sulligent*, 155 So. 869; *Guthrie v. Mesa*, 56 P.(2) 655; 124 A.L.R. 1459; 72 A.L.R. 688; 96 A.L.R. 1385; *Henderson v. Dawson Company*, 286 P.125.

The necessity that propositions or questions be submitted to voters singularly is discussed in the volume of American Jurisprudence on pages 344-346 and 19 Am. Jur. page 299. Among the citations under the note is 5 A.L.R. 539; 26 L.R.A. (U.S.) 666; *Blaine v. Hamilton*, 116 P. 1076;

35 L.R.A. (U.S.) 577.

We believe that the type of bond should be left to the determination of your local governing board.

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

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

886. Indians—State of the Law With Reference to Sale of Intoxicating Liquors to Indians.

CARSON CITY, March 3, 1950.

HON. VAIL PITTMAN, *Governor of Nevada, Carson City, Nevada*.

DEAR GOVERNOR PITTMAN: Reference is hereby made to the letter of your secretary, Alice C. Maher, of February 27, 1950, requesting the opinion of this office concerning the sale of intoxicating liquor to Indians, i.e., whether Indians under Federal law are allow in establishments where intoxicating liquors are sold, and whether Indians under Federal law are allowed in establishments where intoxicating liquors are sold, and whether local and county peace officers are empowered to arrest people who sell such liquor to Indians.

OPINION

For many years it was unlawful for any person to sell, barter or give intoxicating liquors or drugs to any Indian within this State. It was also made a felony for any person within the State to sell, barter or give to an Indian who was not award of the United States Government any such intoxicating liquors. Further, it was a misdemeanor for any Indian to solicit any person to purchase intoxicating liquor for him. Sections 10189 and 10190, N.C.L. 1929. Neither of these sections prohibited an Indian entering places where such liquors were sold or disposed of, save and except, Indians under the age of twenty-one years came under the provisions of the law prohibiting minors from remaining in saloons. Section 10594, N.C.L. 1929.

Sections 10189 and 10190, N.C.L. 1929, were expressly repealed by chapter 135, page 456, Statutes of 1947. Thus, insofar as the law of the State of Nevada prohibiting sales of liquor to Indians is concerned, they are now placed on the same footing and subject only to the same restrictions and penalties as those of the white race, which includes the prohibition of the loitering of any person under twenty-one years of age in a saloon or other place where intoxicating liquors are sold, unless accompanied by parent or guardian, chapter 99, Statutes of 1949; the giving or furnishing of money by any person to a minor with which to purchase intoxicating liquor, chapter 271, Statutes of 1947; and the prohibiting of a minor from purchasing and/or consuming intoxicating liquors in any saloon or place where the same are sold, chapter 272, Statutes of 1947. Also the selling or giving of intoxicating liquor to an habitual drunkard by saloon keepers and bartenders, when so notified by members of the drunkard's family or peace officers is prohibited. Sections 10586-10588, N.C.L. 1929.

However, with respect to Indians who are wards of the United States Government, it is to be noted that section 10191, N.C.L. 1929, a companion section to sections 10189 and 10190, N.C.L. 1929, was and is not repealed. Such section provides:

Any person who shall, within this state, so unlawfully dispose of any such intoxicants, as set forth in section 242, to any Indian who shall be ward of the government of the United States, and for which offense the government has enacted, or may hereafter enact, laws against, with punishments therefor, may be arrested by any peace officer and delivered to the United States authorities, for punishment under the laws of the United States. Upon such arrest, the arresting officer shall immediately notify the nearest proper United States official (United States commissioner, United States district attorney, or United States marshal, for the District of Nevada) that such offense has been committed, and that the offender has been so arrested and shall request such United states officials, so notified, to take charge of such offender, to be prosecuted under the laws of the United States. Such arresting officer shall hold and detain, or cause to be held and detained, such offender, in the same manner as holding and detaining other offenders against the laws of the state or city, for a reasonable length of time, to enable the authorities of the United States to respond to such notification and request, and to take charge of the offender; and upon request of a proper United States official, to be proceeded against under the laws of the United States, and shall furnish him with all information and evidence he may possess for the prosecution of the offender. The term “ward of the government of the United States,” for the purposes of this and the preceding section, shall be construed to mean any Indian over whose tribe or person the government of the United States assumes any superintendency, guardianship or wardship, whether the same arises from government Indian reservation, holding lands in allotment, or from any other cause.

The Federal statute prohibiting sales of intoxicating liquors to Indian wards of the United States Government is section 1154, title 18, Federal Code Annotated, reading:

(a) Whoever sells, gives away, disposes of, exchanges, or barter any malt, spirituous, or vinous liquor, including beer, ale, and wine, or any ardent or other intoxicating liquor of any kind whatsoever, except for scientific sacramental, medicinal or mechanical purposes, or any essence, extract, bitters, preparation, compound, composition, or any article whatsoever, under any name, label, or brand, which produces intoxication, to any Indian to whom an allotment of land has been made while the title to the same shall be held in trust by the Government, or to any Indian who is a ward of the Government under charge of any Indian superintendent, or to any Indian, including mixed bloods, over whom the Government, through its departments, exercises guardianship, and whoever introduces or attempts to introduce any malt, spirituous, or vinous liquor, including beer, ale, and wine, or any ardent or intoxicating liquor of any kind whatsoever into the Indian country, shall, for the first offense, be fined not more than \$500 or imprisoned not more than one year, or both; and, for each subsequent offense, be fined not more than \$2,000 or imprisoned not more than five years, or both.

We think this section of the Federal law clearly points out what Indians and under what circumstances they are deemed to be wards of the United States Government, i.e., (1) an Indian to whom an allotment of land has been made while the title thereto shall be held in trust by the United States, (2) an Indian who is a ward of such government under charge of an Indian superintendent, (3) an Indian, including mixed bloods, over whom the United States Government through its departments exercises guardianship.

As to Indians coming within the provisions of the foregoing Federal statute the prohibition of

sales of intoxicating liquors applies and any State, county or local peace officer of this State would have the power to arrest any person violating such Federal statute pursuant to the power granted such peace officer under said section 10191, N.C.L. 1929.

We conclude:

1. That neither the State law nor the Federal law prohibits any Indian twenty-one years of age and over from entering a saloon or other place in this State where intoxicating liquors are sold or disposed of.

2. That the State law does not prohibit the sale of intoxicating liquor to an Indian who is of the age of twenty-one years and upward.

3. That the Federal statute prohibits the sale or disposal of intoxicating liquors by any person to an Indian who is the ward of the United States Government as defined therein, and that any State, county, or local peace officer may make arrest of any such person pursuant to the authority provided in said section 10191, N.C.L. 1929.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

887. Public Schools—Interpretation Chapter 20, Nevada School Code as to General Application of \$200 Limit Per High School Pupil.

CARSON CITY, March 6, 1950.

HON. ROBERT E. JONES, *District Attorney, Clark County, Las Vegas, Nevada*.
Attention: John C. Mowbray, Deputy.

DEAR SIR: This will acknowledge receipt of your letter dated February 28, 1950, received in this office March 1, 1950. You request an interpretation of chapter 20 of the Nevada School code and chapter 19, section 124, as to the general application of the two-hundred dollar limit per high school pupil. You call our attention to chapter 18, section 119, as applied to the high schools in Clark County.

Chapter 18, chapter 63, Statutes of Nevada 1947, provides for the division of Clark County into educational districts. Section 119, as amended by chapter 155, Statutes of 1949, provides that the high schools now operating within the boundaries of the educational districts established in this chapter (chapter 18) are designated as district high schools within the purview of chapter 20 of the School Code.

Chapter 20 is chapter relating to district high schools in counties not having a county high school. Clark County does not have a county high school.

The language in section 132 of chapter 20 is plain and unambiguous and there is no room for interpretation or construction. This section does not refer to the County Board of Education and does not limit the county aid to district high schools in fixing the tax at a figure which will provide not to exceed two-hundred dollars per high school student.

Chapter 19 relate to district high schools in counties having county high schools. Section 124 provides for county aid to district high schools in such counties and the method of apportionment of such county aid. Subsection 4 of this section contains the following language: “* * * then the county board of education shall fix the county aid to district high school tax at a figure which

will provide county aid to district high school tax at a figure which will provide not to exceed two hundred dollars (\$200) per high school student * * *.”

The two chapters do not bear upon the same subject, one relates to district high schools in counties having county high schools and the other to counties not having county high schools. Therefore, the chapters are not in pari materia and cannot be construed together.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

888. Highway Department, State—Relocation Highways—Abandonment Unused Right of Way—Reversion of Title.

CARSON CITY, March 6, 1950.

HON. W.T. HOLCOMB, *State Highway Engineer, Carson City, Nevada*.

DEAR MR. HOLCOMB: This will acknowledge receipt of your letter dated February 16, 1950, received in this office February 16, 1950.

Your letter refers to instances wherein the location of a State highway has been changed, leaving small areas previously acquired for highway purposes for which there is no further need due to relocation.

You write that you are unable to find any decisions which show definitely the entire procedure to follow in abandoning unused right of way, and the right to reversion of title to ownership of abutting property and the successor in interest.

A specific case is presented wherein it is necessary to relocate a state highway and property owners have expressed their willingness to transfer the new right of way to the Department, but request that the abandoned areas adjacent to their property revert to them.

You submit the following questions:

1. Is it necessary that action be taken by the Highway Board, such as a resolution, showing the abandonment, or does that automatically follow the vacating of the section of road?
2. Is it necessary that the county Commissioners take similar action to that listed in question No. 1?
3. If the above action is needed and taken by one or both parties (that is the Highway Department and the County Commissioners) to whom does the abandoned or vacated right of way revert?

You also cite section 5063.29, 1929 N.C.L., 1941 Supp., relating to reversion of title respecting streets.

We are of the opinion, in answer to your first question, that while the statutes do not define the procedure to be followed by the Highway Department upon the vacation of an established state highway, or any part thereof, the fact should be determined by resolution of the Highway Board and not require further proof of abandonment.

Second, we are of the opinion where the vacation of a State highway releases the easement over a road that was formerly a county road, it may then be vacated by the County Commissioners as provided by statute.

Third, in the absence of a statutory provision, our answer would be theoretical in nature and

not expected to produce a practical result as viewed from the interest of the Highway Department.

Section 5063.29, 1929 N.C.L., 1941 Supp., is section 30 of an Act to provide for city, county and regional planning and establishment of districts to carry out the purposes of the Act. The section specifically provides the proceedings for vacation of streets, the recording of the order of the planning commission, and specifically provides upon such recording the title to the vacated street shall vest in the abutting owners. Streets, roads, public easements and rights of way subject to the provisions of the Act are governed thereby.

Authority to obtain easements for State highways is found under section 5344, N.C.L. 1929.

Section 5347, N.C.L. 1929, empowers the Highway Department to divert or change an established highway route with the approval of the County Commissioners.

Section 5369, N.C.L. 1929, defines the procedure for County Commissioners to locate, open and vacate county roads.

The statutes do not provide for the reversion of title in the event that State highways or county roads are vacated as public highways. 25 Am. Jur. page 424, section 128, relative to reversion of title in such cases, reads as follows:

Rights with respect to reversion of title upon abandonment or vacation of a highway depends, in the absence of statutory provisions, upon the ownership of the fee. * * * Where a mere easement of use as a public highway is taken or granted so that the fee of the soil remains in the original owner, the vacation or discontinuance of the highway as such restores exclusive possession thereof to such owner, or to his successor or assigns, depending, in the event of a conveyance, upon the effect thereof as carrying title to the portion of the highway in question.

Vacation of a State highway which was formerly a county road vests such county road in the jurisdiction of the County Commissioners which may be vacated by such board. See Attorney General's Opinion 258, Biennial Report 1944-1946, and Opinion No. 154, Biennial Report 1934-1936.

The rights of original owners and abutting land owners of property taken or granted for streets and highways respecting reversion of title upon vacation, has been before the courts many times. As a matter of fact any classification is to a considerable degree unsatisfactory in that it separates in some instances rather closely related cases. See 18 A.L.R. 1008; 42 A.L.R. 236; 70 A.L.R. 564.

The request of property owners that the portions of the right of way in the specific case mentioned revert to them as a consideration for the granting of an easement for the relocation of the highway is beyond the powers of the Highway Department to grant under the construction of the law governing reversion of title in such cases.

The vacation of an established highway, or a part of such highway, notwithstanding the absence of a statute defining such procedure, should be by resolution of the State Highway Board, showing the portion of the old road not included in the lines of the relocation and vacated for the reason that the same has been rendered unnecessary and useless for highway purposes by the change of location and vacated for the reason that the same has been rendered unnecessary and useless for highway purposes by the change of location, with maps attached if necessary.

The deed for public highway is for a right of way acquired under the statute which does not expressly provide for the acquisition of the fee, and is an easement of passage with the powers

and privileges incident thereto.

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

889. Public Employees Retirement—Housing Authority Eligible to Become Member of System.

CARSON CITY, March 7, 1950.

MR. KERWIN L. FOLEY, *Executive Secretary, Public Employees Retirement Board, Carson City, Nevada*.

Attention: Mr. Kenneth Buck, Administrative Assistant.

DEAR MR. FOLEY: This will acknowledge receipt of your recent letter requesting our opinion as to whether the Housing Authority could be considered eligible participants in the State Retirement Plan.

The answer to this inquiry is in the affirmative, assuming the Housing Authority was integrated into the system as a political subdivision or agency of the State of Nevada.

Section 2(2) of the 1949 Retirement Act provides as follows:

The term "public employer" means the state, one of its agencies or one of its political subdivisions and irrigation districts created under the State of Nevada.

The Act which creates the Housing Authority and gives to it the various rights and powers is chapter 253, page 782, of the 1947 legislative enactments. At page 785 the Act provides as follows:

Such housing authority is hereby created a public body corporate for municipal purposes and shall be a municipal corporation.

In the case of *Wells v. Housing Authority of City of Wilmington et al.* 197 S.E., page 693, wherein the question arose as to whether or not the Housing Authority was actually a municipal corporation, the Court in holding that it was quoted with approval *Curry v. District Township*, 17 N.W. 191, wherein the Court said:

The word "municipal" as originally used in its strictness, applied to cities only, but the word now has a much more extended meaning, and when applied to corporations the words "political," "municipal," and "public" are used interchangeably.

The cases are limited which hold a municipal corporation is an agency or political subdivisions or agencies of the State, the Housing Authority is eligible to become a member of the Retirement System.

Very truly yours,
ALAN BIBLE, *Attorney General*.
By ROBERT L. McDONALD, *Deputy Attorney General*.

890. Constitutional Law—Elections—Section 31 Primary Law as Amended by 1947 Statutes 776 Unconstitutional—Independent Candidates.

CARSON CITY, March 8, 1950.

HON. JOHN KOONTZ, *Secretary of State, Carson City, Nevada*.

DEAR MR. KOONTZ: Reference is hereby made to your letter of March 6, 1950, and to the letter addressed to you concerning the application of section 31 of the Primary Election Law, the same being section 2435, N.C.L. 1929, as amended at 1947 Statutes, page 776, to an independent candidate for office.

STATEMENT

A qualified elector of this State was registered as a member of a qualified political party in Nevada and pursuant to such registration voted at the State biennial election held in 1948. Such elector has not reregistered since that time. It also appears the elector was a candidate as a nonpartisan in a municipal election in 1949. You request the opinion of this office whether the elector in question is now eligible to file as an independent candidate for the office of Governor in view of the provisions of said section 31 of the primary election law as amended at 1947 Statutes, page 776.

OPINION

Section 31 of the primary election law provides for the nomination of independent candidates by the filing of certificates of nomination signed by the requisite number of electors as provided therein. It is provided that the certificate shall state the name of the principle, if any, which the person nominated therein and thereby represents, but in so doing the name of no political party as defined in the primary law existing at the last preceding general election shall be used. It is further provided in said section:

Any candidate filing such certificate of nomination for any office shall be required to state under oath that he has not, within one year prior to the date of such filing, been registered a member of any political party.

The facts as submitted with the inquiry show that the elector voted at the 1948 State biennial election and that he did not thereafter reregister either changing his political affiliation or reregister as an independent without any stated political party interest. We must, therefore, assume that his registration card of 1948 or prior thereto is on file in the office of the County Clerk of the elector's county for reason the County Clerk would have had no statutory authority to have canceled and removed such card from the files, unless such elector failed to vote and there being a State or Federal officer and/or attaché, which does not appear to have been the fact. Section 2375, N.C.L. 1929, section 2566, N.C.L. 1929, as amended at 1943 Statutes, page 169.

We think the elector's registration card pursuant to which he was authorized to vote now of record as to his political affiliation, being within a year of the last date for the filing of certificates of nomination, i.e., fifty days prior to the September primary election (section 31, as amended at 1947 Statutes 776), brings the elector in question squarely within the provisions of said section 31 hereinabove quoted, provided, the Legislature possessed the constitutional power to legislate.

The fact that the elector in question was a nonpartisan candidate in a municipal election in 1949 has, in our opinion, no bearing on the instant question. Qualifications for municipal offices are not governed by the primary election law. That law provides: "This act shall not apply to special elections to fill vacancies, nor to the nomination of officers of incorporated cities, nor to the nomination of officers for reclamation and irrigation districts." Section 2405, N.C.L. 1929.

We find it necessary in order to formulate an opinion upon the question presented to examine

the constitutional law relating to the subject. We are not unmindful of the fact that the Supreme Court of this State has said many times that it would not pass upon the constitutionality of a statute unless it was necessary to a determination of the matter before it, and also, that if there was a doubt as to its unconstitutionality, that such doubt would be resolved in favor of its constitutionality. A statutory enactment of the Legislature is always presumed to be constitutional, and were it not for the fact that the 1947 amendment to section 31 of the primary election had been held unconstitutional in an ex parte proceeding in 1948 by Judge Guild in the First Judicial District Court of the State of Nevada, in and for the County of Storey, we would here rest the opinion alone upon a construction of the amended statute. Judge Guild's order and decision in the matter before him does not contain a recital of his reasons for holding the amendment unconstitutional, but does contain a most definite statement that the oath required of an independent candidate filing a nominating petition or certificate that he had not within one year prior thereto been registered as a member of any political party was not necessary and unconstitutional, and directed the clerk to place the name of the candidate on the general election ballot as an independent candidate. Thus a District Court of Nevada has held the amended statute in question unconstitutional. We therefore deem it necessary, in view of the importance of the question, to state our opinion of the law thereon.

The question is, we think, has the Legislature imposed an additional qualification upon a candidate for public office that is warranted by the constitution of this state by inserting in section 31 of the primary election law the language:

Any candidate filing such certificate of nomination for any office shall be required to state under oath that he has not, within one year prior to the date of such filing, been registered as a member of any political party.

There can be no question as to the constitutionality of the primary election law of this State as a whole. That question was definitely decided in *Riter v. Douglass*, [32 Nev. 400](#). However, the instant question was not raised or decided in that case, nor any later cases in our Supreme Court. An extensive examination of cases of other States fails to disclose any case directly in point with the question here.

The law of Nevada with respect to the right to hold office is based on the primary qualification of the candidate being a qualified elector of the State.

Qualified electorship is the primary basis of the right to hold public office. *Paris v. District Court*, 42 Nev., p. 241.

The constitutional right of a qualified elector to become a candidate for public office is scarcely less important than his right to vote at an election. This Court has repeatedly held that the legislature is without power to infringe the constitutional right of an elector to vote. Citing—*Davis v. McKeeby*, [5 Nev. 369](#); *State v. Findlay*, [20 Nev. 198](#); *State v. Board of Examiners*, [21 Nev. 67](#). Judge Norcross, dissent in *State v. Brodigan*, 37 Nev., p. 506.

All persons are equally eligible to office who are not excluded by some constitutional or legal disqualification. * * * The right of the people to select from citizens and qualified electors whomsoever they please to fill an elective office is not to be circumscribed whomsoever they please to fill an elective office is not to be circumscribed except by legal provisions clearly limiting the right. *Schur ex rel. v. Payne*, 57 Nev., p. 291.

The right to hold public office is one of the valuable rights of citizenship. The

exercise of this right should not be declared, prohibited or curtailed except by plain provision of law. Ambiguities are to be resolved in favor of eligibility to office. *Gilbert v. Breithaupt*, 60 Nev. p. 165.

The qualifications of an elector in this State are set forth in section 1, Article II of the Constitution:

All citizens of the United States (not laboring under the disabilities named in this constitution) of the age of twenty-one years and upwards, who shall have actually, and not constructively, resided in the state six months, and in the district or county thirty days next preceding any election, shall be entitled to vote for all officers that now or hereafter may be elected by the people, and upon all questions submitted to the electors at such election; provided, that no person who has been or may be convicted of treason or felony in any state or territory of the United States, unless restored to civil rights, and no idiot or insane person shall be entitled to the privilege of an elector. There shall be no denial of the elective franchise at any election on account of sex.

The Supreme Court long ago held with respect to the qualifications of an elector that any person possessing the qualifications of an elector as defined in the foregoing section of the Constitution is entitled to the right of suffrage and that it was not within the power of the Legislature to deny, abridge, extend or change the qualifications as thus prescribed in the Constitution. *State v. Findlay*, [20 Nev. 198](#).

The qualifications of an elector are those prescribed by the Constitution of Nevada for those seeking public office, other than the electoral qualifications, are delineated in the Constitution as follows:

No person shall be eligible to any office who is not a qualified elector under this constitution. No person who, while a citizen of this state, has, since the adoption of this constitution, fought a duel with a deadly weapon, sent or accepted a challenge to fight a duel with a deadly weapon, either within or beyond the boundaries of this state, or who has acted as second, or knowingly conveyed a challenge, or aided or second, or knowingly conveyed a challenge, or aided or assisted in any manner in fighting a duel, shall be allowed to hold any office of honor, profit or trust; or enjoy the right of suffrage under this constitution. The legislature shall provide by law for giving force and effect to the foregoing provisions of this section; provided, that females over the age of twenty-one years who have resided in this state one year, and in the county and district six months next preceding any election to fill either of said offices, or the making of such appointment, shall be eligible to the office of superintendent of public instruction, deputy superintendent of public instruction, school trustee, and notary public. Section 3, Article XV, Constitution.

The constitutional qualifications for candidate for Governor are that he shall be a qualified elector and at least twenty-five years of age and be a resident of Nevada for two years preceding election. Section 3, Article V, Constitution. The qualifications for candidate for Lieutenant Governor are the same as prescribed for Governor. Section 17, Article V, Constitution. Section 19, Article V of the Constitution provides that any elector shall be eligible to either of the offices of Secretary of State, Treasurer, Controller, Surveyor General and Attorney General. There are no disqualifications from holding public office contained in the Constitution, except as provided

in section 1 of Article II, i.e., conviction of treason or felony unless restored to civil rights and insanity; the conviction of embezzlement or defalcation of public funds, or the giving or receiving a bribe for the procuring of an office, section 10, Article V; or the ineligibility of a Supreme Court Justice or District Judge to any office other than a judicial office during the term for which he was elected for a judicial office, section 11, Article VI.

Thus it is clear that, aside from the express qualifications and disqualifications set forth in the Constitution, any qualified elector in this State, as defined in section 1 of Article II of the Constitution, may become a candidate for public office. Qualified electorship being the primary basis of the right to hold public office, we think it follows that if the Legislature cannot impose certain additional qualifications upon an elector insofar as his right to vote is concerned, that it cannot well impose additional qualifications upon an elector with respect to this right to be a candidate for and hold public office other than those that can be constitutionally imposed.

That insofar as party candidate for public office are concerned it is now settled law in this State that all of the regulations and restrictions contained in the primary election law are constitutional and that party candidates are bound thereby. *Riter v. Douglass*, [32 Nev. 400](#). However, in that case it was said, with respect to independent candidates, that the law providing the filing of petitions of candidacy of independent candidates was not repealed by the primary law and stated at page 432:

The present law is uniform in so far as it treats the various classes of electors who may desire to get on the official ballot, and if candidates or political parties do not wish to avail themselves of the privilege accorded them of securing their nominations as now provided by the primary law, or by the reason of not being able to qualify with the legislative requirements imposed, they still have the constitutional privilege of running independently.

Again, at page 439-440, the Court said:

The contention of counsel for appellant that the legislature cannot preclude an elector from voting for any qualified elector for any office for which such elector is constitutionally qualified is not involved in the present case, which relates only to primary elections.

We have stated in this opinion that all those candidates who may be disqualified from participating in the right to go on the official ballot by reason of coming of voting age since the last election or otherwise through the primary election, as provided by this act, are legally privileged and entitled to run independently to the same extent as they were prior to the passage of this law under the provisions of the old law regarding the rights and election of independent candidates, which is not repealed, and thereby secure a place on the official ballot. If for any reason the law precludes a qualified elector and candidate from appearing on the official ballot or precludes any qualified elector from voting for any qualified candidate, the law to that extent would be unconstitutional.

There has been no fundamental change in the primary election law with respect to the candidacy of independent candidates since the foregoing pronouncement of the Supreme Court, save the 1947 amendment to section 31 which is in question here.

Long ago the Supreme Court in *Davis v. McKeeby*, [5 Nev. 369](#), held that on application for registration by one who could not take the oath prescribed by the registration law, but who was

entitled under the Constitution to the right to vote, that the oath required by the registration law was unconstitutional, and that a statute which makes the enjoyment of a constitutional right depend upon an impossible condition, or upon doing of that which cannot be legally done, is equivalent to an absolute denial of the right under any condition.

In *Clayton v. Harris*, [7 Nev. 64](#), the Court held that the oath then required by the registration statute, i.e., that the registrant solemnly swear that he would support, protect and defend the Constitution and government of the United States against all enemies and that he would bear true faith, allegiance and loyalty thereto, etc., was unconstitutional in that the Legislature could add no qualifications as title to the right of suffrage to those prescribed by the Constitution.

To same effect is *State v. Stone*, [24 Nev. 308](#).

In *State v. Findlay*, [20 Nev. 198](#), the Court held that the statute prescribing the qualifications of electors prohibiting Mormons from voting and requiring applicants for registration to take an oath that they were not members of the Mormon Church was in direct violation of section 1 of Article II of the Constitution.

Thus the Supreme Court has determined the law of this State with respect to the power of the Legislature to add to the qualifications of an elector to vote as established by and in the Constitution, and that determination is that no qualifications other than those provided in the organic law can be imposed upon an elector.

Registration for the purpose of voting by a qualified elector is not a requisite necessary in order to become a candidate for public office. *Gilbert v. Breithaupt*, [60 Nev. 162](#). [Registration for](#) the purpose of voting is a lawful requirement so as to enable the elector to cast his vote. Also, registration of the elector for the purpose of showing his party affiliation is a legal requirement, as is the necessity of such registration to enable a candidate to avail himself of the rights and privileges of engaging in a primary election. *Riter v. Douglass*, supra.

However, the right of a qualified elector in this State to become a candidate for public office is, we think, a constitutional fundamental right, and such right being primarily based upon qualified electorship it follows that no qualifications can legally be imposed upon such candidate that could not or cannot be constitutionally imposed upon a qualified elector in order that he may become a qualified voter, save and except the qualifications set forth in the Constitution as hereinabove mentioned may be legally imposed upon candidates for office. Certainly if the oaths required by statute in the *Davis and McKeeby* and *State v. Findlay* cases had been held constitutional and applicants for registration could not have taken such oaths without perjuring themselves, they would have been disfranchised and held to be not qualified electors within the meaning of the constitution and by reason thereof deprived of their right to be candidates for and hold public office.

We think the same reasoning applies in the instant case. A qualified elector may have registered as a member of a qualified political party, he may have voted for all or a major portion of such party's candidates and supported the tenets of such party at the last election, he may intend to so do in the future, but, he may believe that his policies as to a certain office may be different from those of his party and he is desirous of putting them into effect by an independent campaign therefor. This belief and the reasons therefor may well have arisen within one year of the time for filing his candidacy for the office he seeks and he has not changed his registration showing his affiliation with a political party, yet, in effect, the law says that he cannot become an independent candidate unless he states under oath that he has not, within one year prior to the date of the filing of his nomination petition, been reregistered as a member of any political party.

If such person takes such oath under such conditions he would undoubtedly perjure himself.

Entertaining the views hereinbefore set forth, we are of the opinion and so hold: (1) That portion of section 31 of the Primary Election Law as amended at 1947 Statutes, page 776, requiring an independent candidate for public office to state under oath that he has not within one year prior to the date of filing his nominating petition or certificate, been registered as a member of any political party imposes an unconstitutional qualification upon a qualified elector seeking to become a candidate for public office.

(2) That the elector in question is eligible to file as an independent candidate, provided he meets all of the constitutional requirements of the office.

Respectfully submitted,

ALAN BIBLE, *Attorney General*.

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

891. Counties—Road Funds May Not Be Used for Construction of Airports.

CARSON CITY, March 10, 1950.

HON. JOHNSON W. LLOYD, *District Attorney, Eureka County, Eureka, Nevada*.

DEAR BUD: This will acknowledge receipt of your letter of February 27, 1950, received in this office March 1, 1950, requesting our opinion as to the following question:

1. Can Eureka County in the interests of an airport for the protection and interests of its citizens adequate transportation, integrate the Airport Program into the General County Road Program?
2. Can Eureka County by integrating and making its Airport Program part of the said County Road Program, draw the necessary funds therefrom to sponsor its share of costs in the construction of the airport?
3. Can Eureka County, in the event *no* gasoline tax funds, or direct tax moneys are used, draw upon the County Road Fund, from those moneys paid into it through poll taxes, in order to sponsor the airport program?

The answer to all of the above inquiries is in the negative.

Section 3013, N.C.L. 1929, provides as follows:

It shall be unlawful for any commissioner, or any board of county commissioners, or any officer of the county to authorize, allow, or contract for any expenditure unless the money for the payment thereof is in the treasury and specially set aside for such payment. Any county commissioner or officer violating the provisions of this section shall be removed from office in a suit to be instituted by the district attorney of the county wherein said commissioner or officer resides, upon the request of the attorney general, or upon complaint of any interested party; provided, that the provisions of this section shall not apply to lawful advances for the support of county farm bureaus and the payment of water commissioners' salaries and expenses when such advances are reimbursable from the proceeds of any tax levied for such purpose.

Chapter 316 of the 1949 legislative enactments provides as follows:

- (a) Notwithstanding any other provision of this act there is hereby levied an excise tax on motor vehicle fuel, in addition to any other tax in this act provided,

of one-half (½) cent per gallon. This tax shall be accounted for by each dealer and shall be collected in the manner provided in this act and shall be paid to the state treasurer, who shall receipt the dealer therefor. The receipts of the tax as levied in this subsection and collected by the state treasurer shall be allocated quarterly by the state treasurer, to the counties and shall be used exclusively on county roads under the direction of the boards of county commissioners of the several counties upon the following formula: * * *

Article II, section 7 of the Nevada Constitution provides as follows:

The legislature shall provide by law for the payment of an annual poll tax, of not less than two nor exceeding four dollars, from each male person resident in the state between the ages of twenty-one and sixty years (uncivilized American Indians excepted), to be expended for the maintenance and betterment of the public roads.

Therefore, from the above-quoted sections, it is our opinion that although Eureka County does need an airport the money received from road funds cannot be used for this purpose.

We do feel, however, that your problem could be solved by having the County Commissioners authorize an emergency loan as provided in section 3014, 1929 N.C.L., 1941 Supp.

Very truly yours,

ALAN BIBLE, *Attorney General*.

By ROBERT L. McDONALD, *Deputy Attorney General*.

892. Public Employees Retirement—Persons on Leave or Loan Prior to Enactment of Retirement Act (Excluding Military) Not Entitled to Credit.

CARSON CITY, March 13, 1950.

MR. KERWIN FOLEY, *Executive Secretary, Public Employees Retirement Board, Carson City, Nevada.*

DEAR MR. FOLEY: This will acknowledge receipt of your letter of March 3, 1950, received in this office March 6, 1950, requesting our opinion as to the following question:

In accrediting, for retirement, service performed in years prior to the establishment of the Public Employees Retirement System, can credit be given for periods whenever the employee rendered service to, and was paid by, employers other than participating employers (excluding military service), when the member was on leave of absence without pay from the service of an employer who is at the present time a participating member or was regarded as being "on loan" to the nonparticipating employer?

The answer to this inquiry is in the negative.

Section 17(1) of the Public Employees Retirement Act provides as follows:

Within the limits of the rules hereafter adopting regarding absence from service, no approved leave of absence preventing or interrupting services by an employee to *an employer participating in the system shall be deemed to break the continuity of the employee's membership in the system.* (Italics ours.)

It is to be noted that this provision only applies to leaves of absence granted by a participating employer, while your question is directed to leaves of absence or "loans" prior to the

establishment of the retirement system, hence this section is not applicable to the situation proposed by you.

Section 17(2) provides as follows:

Any employee of an employer participating in the system who entered the armed forces of the United States after September 15, 1940, and prior to the time this act takes effect or enters the armed forces hereafter and who, within one year after being honorably discharged therefrom, returned to the service of the employer either prior to the time this act takes effect or thereafter, shall be entitled, subject to the limitations of this act, to credit for all his service to the employer prior to the time this act takes effect and to credit for all his service in the armed forces after September 15, 1940, as if he had been an employee of the employer throughout his service in the armed forces after that date.

This section, as you will note, makes specific reference to those who enter the armed service prior to the adoption of the Act but has no reference to those merely on leave of absence or on loan prior to the adoption of the Act.

Therefore, as there is no statutory authority for accrediting such time, while there is authority to crediting time for military service, it is our opinion that the Legislature did not intend to give credit to those persons on leave or loan prior to the enactment of the retirement system except to those employees in the military service.

Very truly yours,

ALAN BIBLE, *Attorney General*.

By ROBERT L. McDONALD, *Deputy Attorney General*.

893. Constitutional Law—Special Acts Creating County Commissioners Districts Unconstitutional—Special Acts Creating Assembly Districts, Grave Doubt as to Unconstitutionality Thereof.

CARSON CITY, March 21, 1950.

HON. ROBERT E. JONES, *District Attorney, Clark County, Las Vegas, Nevada*.

DEAR MR. JONES: Reference is hereby made to your letter of March 4, 1950, requesting the opinion of this office whether chapter 269, page 568, 1949 Statutes, purporting to create County Commissioner Districts in Clark County is unconstitutional in that it violates section 25, Article IV of the Constitution. Some delay in complying with your request has been occasioned by reason of other pressing public business and also careful examination of the law on the question presented. In your letter you advise that it has been the practice in Clark County of many years to elect the three County Commissioners at large. You state you are advised that in Washoe county the various County Commissioners run from their particular districts only, and are voted upon only by the electors of their own districts rather than by the county at large. You request that if the 1949 statute is found unconstitutional, to state our views as to whether the candidates for County Commissioners should continue to be elected at large as in the past or whether they should be voted upon only by the electors of their own districts rather than by the county at large. You request that if the 1949 statute is found unconstitutional, to state our views as to whether the candidates for County Commissioners should continue to be elected at large as in the past or whether they should be voted upon only by the electors of the district which they

represent.

At the threshold of this opinion we desire to state that over a long period of years whenever the question was informally presented to this office we have consistently stated that it was our opinion that a special and local Act of the Legislature creating County Commissioner Districts within a particular county was and would be unconstitutional, but no formal request for an official opinion thereon has been presented to this office for many years until your request therefor of March 4, 1950.

We are not unmindful of the importance of the question involved from a constitutional standpoint. We are aware of the fact that some four special and local Acts creating County Commissioner Districts have been enacted in the past, including the Clark County Act. The diversity of such Acts and various opinions concerning them resulting in, we think, a marked divergence from the constitutional provisions relating thereto, and in view of the fact that the question involved here may be submitted to a court by interested parties for the determination thereof, we deem it advisable to now state our views and opinion thereon.

STATEMENT

Chapter 269, page 568, Statutes of 1949, purports to divide Clark County into three County Commissioner Districts as follows:

1. All that portion of Clark County comprising the election precincts of the Nelson township and the Searchlight township shall be known as commissioner district No. 1, and shall be represented by one member of the board of county commissioners.

2. All that portion of Clark County comprising the election precincts of the Bunkerville township, of the Logandale township, of the Mesquite township, of the Moapa township, and of the Overton township shall be known as commissioner district No. 2, and shall be represented by one member of the board of county commissioners.

3. All the remaining portion of Clark County, Nevada, shall be known as commissioner district No. 3, and shall be represented by three members of the board of county commissioners.

SEC. 2. At the general election in 1950 and at alternate general elections thereafter there shall be elected from district No. 1, one long-term commissioner, who shall be elected at large and serve for a term of four (4) years, and who shall be a qualified elector and resident of said district. At the general election in 1950 and at alternate general elections thereafter there shall be elected from district No. 2, one long-term commissioner, who shall be elected at large and serve for a term of four (4) years, and who shall be a qualified elector and resident of said district. At the general election in 1950 and at each general election thereafter there shall be elected from district No. 3, two short-term commissioners, who shall be elected at large and serve for a term of two years, and who shall be qualified electors and residents of said district. At the general election in 1952, and at alternate general elections thereafter, there shall be elected from district No. 3, one long-term commissioner, who shall be elected at large and serve for a term of four (4) years, and who shall be a qualified elector and resident of said district.

Section 3 requires the County Commissioners to establish election precincts within the

county in such a manner that every precinct shall be wholly within some one of the districts. Section 5 provides that if, during his term of office, any commissioner shall remove from the district from which he was elected, his term of office shall immediately terminate and a vacancy thereby created shall be filled according to law.

The question is, is such statute unconstitutional as being in violation of section 25, Article IV, Constitution of Nevada?

OPINION

In Opinion No. 15, dated February 78, 1923, an opinion rendered to Governor Scrugham by Attorney General Diskin, it was held that a Senate bill having for its purpose the establishment of County Commissioners districts in Mineral County was unconstitutional in that it would provide commissioner districts in that county that were not applicable to other counties in the State and therefore be in violation of section 25, Article IV of the Constitution providing a uniform system of county and township government throughout the State. We concur in that opinion for the following reasons.

Section 25, Article IV of the Constitution provides:

The legislature shall establish a system of county and township government, which shall be uniform throughout the state.

Section 26 of the same Article provides:

The legislature shall provide by law for the election of a board of county commissioners in each county, and such county commissioners shall, jointly and individually, perform such duties as may be prescribed by law.

Section 20 of said Article IV provides, inter alia:

The legislature shall not pass local or special laws in any of the following enumerated cases, that is to say * * * regulating county and township business; regulating the election of county and township officers * * *.

Section 21 of the same Article provides:

In all cases enumerated in the preceding section and in all other cases where a general law can be made applicable, all laws shall be general and of uniform operation throughout the state.

We think it clear that said chapter 269 of the 1949 Statutes, among other things, is in conflict with said section 20 of Article IV of the constitution in that it regulates county business. It is well said in *Singleton v. Eureka County*, 22 Nev., at page 101:

There are several other constitutional provisions with which the act seems to conflict, but there is one with which the conflict is clear, and that is that no local or special law shall be passed regulating county and township business. That the law is local to Eureka County cannot be denied, and to some extent it certainly regulates the business of that county. "County business" may be defined as covering almost everything that concerns the administration of the county government. *It includes the election or appointment of its officers and employees, the amount of their compensation, and how, when, and from what fund it is to be paid.* This act directs how the watchman is to be appointed, upon which there have been three different regulations. * * * This is a regulation of county business, within the meaning of the constitution, concerning which local laws are forbidden. (Italics ours.)

It was held in *Schweiss v. District Court*, [23 Nev. 226](#), that an Act of the Legislature

incorporating Storey County was a local and special Act regulating county business and therefore in conflict with said section 20 of said Article IV.

That the 1949 Act in question regulates the election of county officers, i.e., County Commissioners, cannot well be doubted. The language thereof is certainly clear that the method of electing the County Commissioners is specifically regulated.

Our Supreme Court in *Conservation District v. Beemer*, 56 Nev., at page 116, clearly stated the rule applicable here:

It is a general rule, under such provisions as those of sections 20 and 21 of article 4 of the state constitution, that if a statute be either a special or local law, or both, and *comes within any one or more of the cases enumerated in section 20, such statute is unconstitutional*; if the statute be special or local, or both, but does not come within any of the cases enumerated in section 20, then its constitutionality depends upon whether a general law can be made applicable. (Italics ours.)

In *McDermott v. County Commissioners*, [48 Nev. 93](#), it was held that while the Legislature may pass local and special laws in some circumstances, it may not do so in any of the cases enumerated in section 20, Article IV of the Constitution relative to regulation of county and township business, even though a general law would be inapplicable within section 21 of said Article.

The necessity for uniformity in county government is well stated in *Singleton v. Eureka County*, 22 Nev. at pages 98-99:

Among a number of provisions in the constitution directed against this evil is the one requiring the legislature to establish a system of county and township government which shall be uniform throughout the state. To a certain extent the system to be adopted was left to the discretion of the legislative body, but the requirement is absolute that, whatever the system may be, it must be uniform, indicating that this uniformity was a more important consideration with the constitution makers than the plan to be adopted. These limitations upon the power of the legislature should be executed by the courts in the same spirit in which they were adopted, and so as to prevent legislation sought to be guarded against.

A system of government consists of the powers, duties and obligations placed upon the political organization, and the scheme of officers charged with their administration. If the system is to be uniform, it is necessary that these powers, duties and obligations shall be the same in each county; that the same officers shall be provided, and the responsibilities of government be divided among them in the same manner; otherwise the system is not uniform, for, as here used, the word means that the county governments to be established are in all essential particulars to be alike.

In *State v. Donovan*, 20 Nev., at page 79, the Court said:

The principle which determines its constitutional validity is decided by ascertaining the effect of the law. If in its operation and effect it is so framed as to apply in the future to all counties coming within the class mentioned, it is neither local nor special, within the meaning of the constitutional prohibition against the passage of local or special laws.

Long ago in *State v. Boyd*, 19 Nev., at pages 43-44, the Supreme Court said:

It is claimed by relator that the provisions is a violation of article 4, sec. 25, of the constitution, which provides that “the legislature shall establish a system of county and township government, which shall be uniform throughout the state.” If this requirement can be expressed more significantly in its application to this case, it means that the legislature shall establish a uniform plan or method for the government of all the counties of the state. It is a matter of general knowledge that legislatures are disposed to adopt, without particular scrutiny, measures proposed by the representatives of a particular locality, affecting it only, and not the state at large. The object of the provision was to prevent this character of legislation in relation to county government. Any change in the general system of county government may affect every county in the state. Among the advantages attained by this requirement is that legislation upon this subject will receive the careful attention of the members of the legislature in general, all proposed alterations will be scrutinized, and frequent and disturbing changes avoided.

In obedience to the requirements of the constitution, the legislature of 1886, in dealing with the general subject of county government, provided, among other things, for the election of a county assessor and a county treasurer for each county in the state. This legislation remains in effect in each county, unless the act of 1883, exempting Washoe county from its operation, and consolidating these offices in the county, can be upheld. It is too clear for argument or controversy that a legislative act, arbitrarily establishing this plain difference in the government of Washoe county from that of the other counties of the state, violates the system of uniformity contemplated by the constitution. No elaboration of the proposition can make it plainer than the simple statement of the facts.

Thus the law is well settled that where certain matters are enumerated in section 20 of Article IV of the Constitution upon which the prohibition therein against special and local legislation applies, that any special or local Act enacted in violation thereof is and will be unconstitutional.

The context of the 1949 legislative Act in question shows beyond any doubt that it applies to Clark County and Clark County alone. Its provisions cannot by any construction whatever be made applicable to any other county in this State. To the contrary its provisions remove such county from any uniformity in the districting and election of its County Commissioners to the extent that its provisions are not even uniform with the provisions of other special and local Acts purporting to create County Commissioner Districts.

The Act creating commissioner districts in Washoe County divides the county into two districts, i.e., all that portion comprising the voting precincts of Reno and Verdi and all of the county south of Reno comprises district No. 1, all the rest of the county comprises district No. 2. The candidates for office of County Commissioner for the respective districts shall be qualified electors and residents of the districts for which they are candidates. The candidates are elected as follows—at each general election a commissioner is elected from district No. 1 to serve for four years. There is no provision in the Act stating whether the candidates are voted for at large throughout the county, or, only by the voters of their districts. However, we are advised they are voted for by the voters of their districts. Chapter 30, page 25, Statutes of 1933.

The Act providing commissioner districts for Storey County divides the county into two districts. District No. 1 comprises all of Storey County north of the south boundary line of Virginia City. The candidates for office of County Commissioner shall be qualified electors and residents of the districts for which they are candidates. At each general election there shall be

elected in District No. 2 a commissioner to serve for two years, and a commissioner elected from district No. 1 to serve for four years. The Act did not provide specifically whether the candidates were to be voted for at large throughout the county or only by the voters of the respective districts. Chapter 55, page 97, Statutes of 1937. However, the Act was amended in this respect in 1941 to provide that the candidates of the respective districts shall be voted for by the voters of the entire county. 1941 Statutes, page 67.

In 1943 the Legislature enacted an Act dividing Mineral County into three commissioner districts, requiring the commissioners to be residents and qualified electors of the districts they represented, i.e., that the commissioner from district no. 1 shall be a resident and elector of the Hawthorne precincts; that the commissioner from district No. 2 shall be a resident and elector in the Mina, Luning, or Mount Montgomery precincts; and that the commissioner from district No. 3 shall be a resident and elector in any precinct in the county including the precincts enumerated in districts Nos. 1 and 2. Provision was made for the election of candidates from the respective districts at each subsequent regular election, the office of long-term commissioner to be prorated each biennial election to each district. Vacancies in office to be filled from bona fide elector residents of the district in which the vacancy occurred. Candidates for commissioner to be voted on by the qualified electors of the entire county. Chapter 17, page 15, Statutes of 1943. However, this Act was repealed in its entirety at 1945 Statutes, page 112.

None of the foregoing special and local Acts provides or provided for a Board of Commissioners of more than three members. The Clark County Act does provide for a board of five members. It needs but a cursory examination of each of the foregoing Acts to demonstrate that they are not uniform with each other in several particulars and neither are they uniform within the meaning of the term with respect to the general law for the election of County Commissioners, and particularly the general Act providing for the districting of counties into commissioner districts.

The Constitution, as we have shown, provides that in all cases “where a general law can be made applicable, all laws shall be general and of uniform operation throughout the state.” Section 21, Article IV.

In 1893 the Legislature provided a uniform Act for the dividing of counties into commissioner districts, which Act is now sections 1964-1967, inclusive, N.C.L. 1929. The Act provides that when twenty percent or more of the qualified electors of any county in this State shall petition the Board of County Commissioners of their county therefor, it shall be the duty of such board, on or before the first Monday in July preceding any general election, to divide the county into three commissioner districts. The division to be made to conform to the established boundaries of election precincts or wards to that each and every precinct or ward shall be wholly within one of the commissioner districts. Each district to embrace, as near as may be, one-third of the voting population of the county, to be determined by the vote cast at the last general election; provided, that in case not more than three election precincts or wards exist in the county, then each election precinct or ward shall constitute a commissioner district.

Provision is also made for the publishing of notice of the establishment of the districts and the election precincts embraced therein. Provision is also made for the election of long- and short-term commissioners and providing that the first long-term commissioner in office at the time of the districting of the county shall represent the district in which he was resident when elected. It

is also provided that “County commissioners shall be elected by the qualified electors of the county wherein they reside as other county officers are now elected.”

There can be no question, we think, but that the foregoing Act constitutes a general law with respect to the dividing of counties into commissioner districts applicable to all the counties within the State commissioner districts applicable to all the counties within the State and that it falls squarely within the provisions of sections 20, 21, and 25 of Article IV of the Constitution. It may be that such Act does not provide for a board of commissioners of five members. In this respect, however, we think that if it is desirable that a county have a board of five members, the remedy does not lie in the Legislature enacting a special Act directed to one county to elect such a board, but the remedy is to provide a general Act for that purpose applicable to all the counties in the State. Such is the effect of *State v. Woodbury*, [17 Nev. 337](#), wherein the Supreme court was construing section 1 of the Act creating the Boards of County Commissioners and defining their powers and duties, of 1865, as amended at 1869 Statutes 92, being now section 1935, N.C.L. 1929, wherein provision was made for the election of Boards of County Commissioners composed of five members in counties polling more than four thousand votes. The Court approved the Act upon the ground it was general and applicable to all counties of the State polling a similar vote.

However, the provisions contained in said section 1935, N.C.L. 1929, providing for the election of Board of County Commissioners of five members were nullified and repealed in 1883 by the provisions of what is now section 1985, N.C.L. 1929, reading: "Hereafter each board of county commissioners of the several counties of this state shall consist of three members; and not more than three county commissioners shall be elected or appointed in any county of this state." This statute has not been amended by any general Act of the Legislature. That it is of general and uniform application in every county in the State cannot well be questioned.

Thus, we think, the general law of this State with respect to the qualifications and election of County Commissioners is contained in section 1936, N.C.L. 1929, wherein it is provided:

Said commissioner shall be qualified electors of their respective counties, and shall enter upon their duties on the first Monday in January succeeding their election, and shall hold their offices two or four years, as the case may be, as provided in this act * * *.

And as provided in sections 1935 and 1985, N.C.L. 1929, that they be elected "by the qualified electors of each county" and that the board shall "consist of three members."

Clearly the provisions of the Clark County Commissioner Districting Act do not square with the general uniform law respecting the number of and the method of election of County Commissioners. Such Act relates solely to Clark county. Its provisions cannot well be made to apply to any other county in the State. It is most clearly apparent and beyond any doubt that such Act is in serious conflict with section 25, Article IV of the Constitution, and by reason thereof we are of the opinion, and so hold, that said Act is unconstitutional.

We are further of the opinion that the said Act in question being unconstitutional and unless the provisions of sections 1964-1967, N.C.L. 1929, the uniform Act relating to the districting of counties for commissioner purposes is complied with, that the candidates for County Commissioners are to be chosen and voted upon by the electors at large in the county.

ASSEMBLY DISTRICTS

In your letter requesting an opinion upon the constitutionality of the County Commissioner Districting Act for Clark County you stated that you are advised that there probably will be a contest with reference to the 1949 Statute providing for the election of Assemblymen from

districts rather than at large and that you presume our opinion with reference to the County Commissioners would also apply to assembly districts. You request our opinion thereon.

STATEMENT

The provision providing assembly districts for Clark County is contained in chapter 189, page 653 of the 1947 Statutes. No amendment thereof appears in 1949 Statutes. Section 2 of the 1947 Act provides, briefly, three assembly districts and provides the election of one Assemblyman each from districts Nos. 1 and 3, and four Assemblymen from district No. 2. All Assemblymen to be elected at large.

OPINION

The foregoing opinion on the constitutionality of the Clark County Commissioner District Act and the holding that such Act is unconstitutional is based upon the most clear and apparent violation of the constitutional provisions governing the uniformity of county government. There is, in our opinion, no room for a doubt as to its unconstitutionality. On the other hand, it is a well-grounded rule of the Supreme Court of this State that Acts of the Legislature are presumed to be constitutional and that where there is a doubt as to the unconstitutionality thereof such Acts will be deemed constitutional.

An examination of the Nevada Constitution fails to disclose any provision therein expressly requiring that the election of Assemblymen must be entirely uniform in all counties. Section 13 of Article XV of the Constitution requires the enumerating of the inhabitants of the State approximately every 10 years for the purpose of arriving at a basis of representation in the Legislature by the apportionment of representatives based on population.

Section 3 of Article IV provides:

The members of the assembly shall be chosen biennially by the qualified electors of their respective districts * * * .

Section 5 of such Article provides:

Senators and members of the assembly shall be duly qualified electors in the respective counties and districts which they represent * * * .

Section 6 of the Article provides:

Each house shall judge of the qualifications, elections, and returns of its own members * * * .

We think the foregoing constitutional provisions, particularly where the word "districts" is used, create a serious doubt as to the unconstitutionality of the Assembly District Act in question. We are, therefore, constrained to answer your inquiry in the negative.

Respectfully submitted,

ALAN BIBLE, *Attorney General*.

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

894. Fire Protection—Cooperative Agreements.

CARSON CITY, March 23, 1950.

HON. C.J. McFADDEN, *District Attorney, White Pine County, Ely, Nevada.*
Attention: Donald W. Hemingway, Deputy District Attorney.

DEAR SIR: This will acknowledge receipt of your letter dated March 2, 1950, received in this office March 6, 1950.

You write that the County Commissioners of White Pine county have had an agreement as to fire protection in East Ely whereby the fire equipment of the city of Ely has been used for the suppression of fires in East Ely. This agreement is made pursuant to the provisions of sections 1929.15-1929.18, 1929 N.C.L., 1941 Supp.

You inquire if it is necessary that a fire protection district, as outlined in sections 1929.01-1929.12, 1929 N.C.L., 1941 Supp., be organized in order to have the property setup for fire protection in East Ely, or may a cooperative agreement be properly used under sections 1929.15-1929.18, supra.

The County Commissioners, under the agreement, have levied a special tax on the property which is outside the city, but receives fire protection within the agreement. You ask if such a tax is lawful and as to the maximum of such special fire tax.

We are of the opinion that sections 1929.15-1929.18, 1929 N.C.L., 1941 Supp., are independent of sections 1929.01-1929.12 and that the cooperative agreement may be entered into without the organization of a fire protection district.

Section 1929.16 is section 2 of the Act authorizing County Commissioners to cooperate with city fire departments for the protection of property and prevention of fire; providing for funds necessary therefore, and defining the duties of City Councils and Boards of County Commissioners. In our opinion the section prescribes a definite method for the payment of the expenses necessary for the participation of counties in such agreements with cities, and no authority can be found in the act for the levy of a special tax on the property receiving such protection.

The Act providing for the organization of fire protection districts, approved March 23, 1937, sections 1929.01-1929.12, N.C.L., 1941 Supp., and amendments, is an Act to provide for the voluntary organization of such districts under certain conditions.

The later Act does not require the organization of fire districts in order to authorize the commissioners to enter into cooperative agreements with cities having a fire department.

Section 1929.15, 1929 N.C.L., 1941 Supp., empowers the various Boards of County Commissioners in counties wherein are located city fire departments to enter into cooperative agreements with the City Council whereby the city fire department may be enabled to use its personnel and equipment within such areas beyond the city limits of the city concerned for the protection of property and for the prevention and suppression of fire.

Section 1929.15 provides:

The expenses incident and necessary for the participation of counties in such agreements with cities, as provided in section 1 hereof, shall be paid out of the general fund of such counties, and the county commissioners of any county acting under the terms of this act shall annually, at the time of making its budget, make an estimate of the expenses necessary to carry out its agreement, under the provisions of this act, and budget the same in all respects as other items of the budget may be made.

Section 1929.17 provides that such agreements shall be evidenced by written agreements and shall be spread upon the minutes of the meetings of each of the bodies at the time of adoption.

The Act clearly designates the county fund out of which the expenses are paid, and makes no provision for the levy and collection of a special tax on the property involved.

It is well settled that boards of county commissioners are inferior tribunals of special and limited jurisdiction, and that they can only exercise such powers as are especially granted, and that when the law prescribes a mode which they must pursue in the exercise of these powers, it excludes all other modes of procedure. *State v. Boerlin*, [30 Nev. 473](#).

The payment out of the General Fund of the county, as provided in the statute, when only a small portion of the county benefits, cannot be remedied by construction when the language of the statute is plain and unambiguous. This is a matter of legislative action.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

895. Public Schools—Authority of Superintendent of Public Instruction to Authorize Transfer of Funds for Tuition of High School Pupils Dependent Upon Facts in Each Case.

CARSON CITY, March 24, 1950.

HON. HAROLD O. TABER, *District Attorney, Washoe County, Reno, Nevada*.

Attention: Grant L. Bowen, Deputy.

DEAR MR. TABER: This will acknowledge receipt of your letter dated March 2, 1950, received in this office March 3, 1950.

You request an opinion respecting the authority of the Superintendent of Public Instruction to authorize a transfer of funds from the high school fund of Washoe county to the Fernley High School, Lyon County, for the tuition of high school pupils of Wadsworth High School located in Washoe County, under the provisions of section 152 of the 1947 School Code.

This matter was also submitted to this office by the Superintendent of Public Instruction, with the signed copy of the resolution of the Board of Education of Fernley High School District No. 4, and copy of letter from the Superintendent to the County Treasurer of Washoe County.

It appears that the clerk of the Wadsworth School District wrote the County Treasurer protesting the transfer on the basis that the trustees of Wadsworth had made arrangements with the trustees of Sparks for the tuition of Wadsworth High School pupils during the 1948-1949 school year.

You call attention to section 156 of the School code which provides for the entering into agreements between trustees of a high school which may be discontinued by reason of small enrollment, and trustees of other nearby high schools in the same or adjoining county for the education of all the pupils of the high school so discontinued. The correspondence does not show that the arrangement between Wadsworth and Sparks was made by written agreement for all the pupils of the discontinued school under the conditions of section 156.

We are of the opinion that the authority of the Superintendent of Public Instruction to order the transfer depends upon the facts in this particular case.

If the arrangement made by the trustees of the Wadsworth district for the education of its high school pupils was by written agreement with the Sparks district, and such agreement was approved by the Board of County Commissioners of the county and by the Superintendent of Public Instruction, then the compensation for such education would be paid under the provisions of section 159 of the School Code. Otherwise, the school giving instructions to high school pupils from an adjoining county would be entitled to receive payment for such instruction under

the provisions of sections 152-155 which empowers the Superintendent of Public Instruction to order a transfer of funds in such cases.

Section 156 of the 1947 School Code provides as follows:

Whenever it shall appear feasible and practicable that any Nevada high school be discontinued because of small enrollment of pupils or because better educational facilities may be provided the students thereof at other nearby high school, the governing board of the former may enter into a written agreement with the governing board of the latter high school in the same or any adjoining county in this state for the education of all the students of such high school so to be discontinued in such other nearby high school in the same or in adjoining county in this state, if and when such written agreement is approved by the boards of county commissioners of the county or counties in which such contracting high schools are situated and by the superintendent of public instruction of this state.

Any such agreement shall be for the period of one (1) year only, but subject to renewal from year to year at the option of the school boards affected. The agreement shall recite the annual per capita amount to be paid to the school receiving the high school students by the school from which they come, and shall specify the time for such payments. Such agreement shall further indicate definite arrangements for the transportation of the high school pupils to and from the high school to which they are so transferred, and for the payment of the expenses of such transportation.

Section 157 provides that each school entering into the agreement shall retain its legal and educational identity.

Section 158 provides a method for the termination of such agreements, and section 159 provides the manner in which compensation for such education shall be paid.

When the procedure defined in section 156 has been followed, it is evident that the Superintendent of Public Instruction would be informed of the agreement and such information would govern any action in making the transfer of funds subject to the conditions provided in sections 152-155, chapter 63, 1947 School Code.

From the correspondence it appears that the Superintendent of Public Instruction received a resolution from the Board of Education of Fernley High School District under the provisions of sections 152-155 of the School Code. The resolution contained the requisite facts on which the application for funds was based and the Deputy Superintendent for the Supervision District furnished the relative data required under section 152. It appearing that there was not a nearer or more convenient high school in the county in which the high school pupils had a legal residence, the transfer was made.

Section 152 of the School Code recites the conditions upon which a transfer of funds shall be made by the Superintendent of Public Instruction when a high school in adjoining county shall satisfy such Superintendent that it has given instruction to high school pupils of a district in the other county. The section provides that the Superintendent of Public Instruction shall then divide the amount of money raised in such elementary school district for county or district high school purposes by the total number of high school pupils in regular high school attendance and who have a legal residence in such elementary school district and he shall multiply this result by the total number in average daily attendance of high school pupils attending the high school in the adjoining county, and this amount he shall order the County Treasurer of the county in which

such elementary school district is situated to transfer to the school fund of the high school, giving instructions as aforesaid. This subject to the condition that the amount of money ordered transferred shall not exceed the per capita cost of the high school which they attend and shall not exceed the average per capita cost of the high school of the county be transferred if there is a nearer and more convenient high school in the county in which such pupils have a legal residence.

According to the information received by this office from the Superintendent of Public Instruction, the procedure defined in section 152 was followed in making the transfer of funds, and, in the absence of a written agreement for the education of all the high school pupils in Wadsworth at the Sparks High School, which agreement had been approved by the County Commissioners of Washoe County and the Superintendent of Public Instruction, the action of the Superintendent was within the authority of the statute.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

896. Public Schools—School District Not Liable for Torts Committed by Trustees or Employees.

CARSON CITY, March 24, 1950.

HON. ROBERT E. JONES, *District Attorney, Clark County, Las Vegas, Nevada*.

Attention: John C. Mowbray, Deputy.

DEAR SIR: This will acknowledge receipt of your letter dated March 21, 1950, received in this office March 23, 1950, enclosing your opinion submitted in regard to the liability of school district boards of education and members for injuries sustained by students and employees on school grounds.

We agree with your general proposition that a school district, being merely an agency of the State, and in the absence of a statute imposing such liability, is not liable for torts committed by its trustees or employees.

As your opinion is general and does not state facts in any specific case, we quote the following inquiry and opinion of M.A. Diskin, a former Attorney General, with which we are in accord:

(Attorney General's Opinion No. 345, Biennial Report 1929-1930.)

INQUIRY

1. Who is liable in case of an accident to a student in a school shop?
2. In case the liability extends to the school board, or school district, or the teacher, to what extent does the liability exist?
3. Can school boards take out insurance to protect students in case of such accidents?

OPINION

1. Answering your first inquiry, it is impossible for us to state who might be liable under the circumstances without a complete statement of the facts.

2. 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.

3. It is our opinion that school boards could not take out insurance, for the reason that the relation of the employer and employee does not exist. In any event, the school boards in their official capacity would not be liable for a tort and, therefore, would not be authorized to take out insurance.

There has not been enacted a statute in this State, since the opinion, imposing liability for torts committed by trustees or employees of school districts.

Subsequently the 1947 School Code, sections 443-447, provided for accident insurance for athletic teams and made an appropriation for the period July 1, 1947, to and including June 30, 1949. There was no appropriation made by the Legislature in 1949 for this purpose.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

897. Elections—Supreme Court and District Judges May Not File for any State Office, Other Than Judicial, During Term for Which Elected—Not Ineligible for Office of United States Senator or Representative in Congress.

CARSON CITY, March 29, 1950.

HON. JOHN KOONTZ, *Secretary of State, Carson City, Nevada*.

DEAR MR. KOONTZ: This will acknowledge receipt of your letter dated March 21, 1950, received in this office the same day. You request an opinion on the following questions:

1. Can a duly elected Justice of the Supreme Court or District Judge whose term ends in 1950 (or technically it may be January, 1951, when his successor will take office) file for State Office (nonjudicial) in 1950 for a term of office that takes effect in January of 1951?

2. Can such a candidate, under the facts outlined in No. 1, file for National Office, such as the United States Senate?

Answering your first question, we are of the opinion that the rule followed by a majority of the decisions on this question, under constitutional provisions similar to Nevada, is that the word "eligible" has reference to the status of the candidate at the time of filing for the election so that when the electors make their choice at the election it should be made from persons then eligible to the office which is sought by the candidate. Your first question is, therefore, answered in the negative.

Your second question, in our opinion, is answered in the affirmative. Article VI, section 11 of the Constitution of Nevada provides as follows:

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

Article I, section 2-2, Constitution of the United States, provides:

No person shall be a representative who shall not have attained the age of twenty-five years and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Section 3-3:

No person shall be a senator who shall not have attained the age of thirty years and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

Section 5-1:

Each house shall be the judge of the elections, returns, and qualifications of its own members, * * *.

The Nevada Constitution makes Justices of the Supreme Court and District Judges ineligible to hold any office other than judicial during the term for which they shall be elected.

While some decisions have held, in determining eligibility to public office, that it relates to the time of assumption of an office rather than that of election thereof, the majority of cases hold that eligibility for office has been defined as capable of being chosen, legal capacity of being appointed, elected or chosen as well as holding.

See Words and Phrases, Permanent Addition, Volume 14.

In the case of *State ex rel. Reynolds v. Howell*, 126 P. 954, also cited in *State v. Hall*, 173 P(2) 153, the Court granted a writ of nomination of a judge of the Superior Court for nomination for Governor, even though the judge's term for which he was elected expired a day or more before the Governor's term would begin. The constitution of the State provided as follows: "The judges of the supreme court and the judges of the superior court shall be ineligible to any other office or public employment than a judicial office or employment during the term for which they shall have been elected." The Court defined the word "eligible" as capable of being chosen, competent to hold office, that the term relates to the capacity of holding as well as that of being elected.

The Court cited numerous cases, among them *State v. Clark*, [3 Nev. 566](#). The Nevada Court in this case held, "* * * we think, to carry out the intention of the Constitutional Convention, we ought rather to give it (eligible) a more extended significance than is generally given, and hold that it means both 'incapable of being legally chosen' and 'incapable of legal holding.'"

The decision construed section 9, Article IV of the Nevada Constitution, which provides that no person holding any lucrative office under the Government of the United States shall be eligible to any civil office of profit under this State. The Court held that a person holding the office of the United States District Attorney on the day of election is incapable of being chosen to the office of Attorney General of the State. The Court also held that a person holding a civil office under the United States can resign such office without the consent of the appointing power, or the acceptance by it of such resignation, that it is not in the power of the Executive to compel any civil officer to remain in office.

That appointed judges are not within the prohibition of the Constitution was the subject of an opinion of the Attorney General, No. 287, 1944-1946 Biennial Report. The opinion held: "The constitutional provision sets up a period of time as one standard and it is 'the term for which they shall have been elected.' 'They' relates back to justices of the Supreme Court and District Judges. Nothing is said as to any term for which they shall have been 'appointed.' The persons affected by this inhibition must be elected judges."

This provision of the Constitution is the subject of a proposed amendment, under Senate Joint Resolution No. 6, Statutes 1949, page 684, by adding the words “or appointed” to the phrase “during the term for which they shall have been elected,” and, if approved by the people, the constitutional prohibition will apply to appointed as well as elected judges.

The provisions of the Nevada Constitution cannot apply to candidates for United States Senate or House of Representatives since neither by constitutional provision nor legislative enactment can a State prescribe qualifications for such offices.

The authority of the United States Government is supreme in its cognizance of all subjects which the Constitution has committed to it. 11 Am. Jur. page 306, sec. 8.

In the case of *State ex rel. Wittengel v. Zimmerman*, 24 N.W. 504, the Court held that the provision of the Wisconsin Constitution that judges of the Supreme and Circuit Courts shall not hold any public office, except a judicial office, and that all votes for them shall be void, did not invalidate election of Circuit Judge as nominee for office of United States Senator or prevent the counting of votes cast for him, since neither by constitutional provision nor legislative enactment can a State prescribe qualifications of a candidate for office of the United States Senator in addition to those prescribed by the Constitution of the United States.

In *Ekwall v. Stadelman*, 30 P(2) 1037, the Court held:

By section 5 of article 1 of the Federal Constitution, each house is the sole judge of the qualification of its members. It is obvious that those qualifications of which they are to judge must be those prescribed by the Constitution of the United States, and by them alone. A Representative is an officer not of the state but of the federal government. *Lamar v. United States*, 241 U.S. 103, 36 S. Ct. 535, 60 L. Ed. 912. The office Representative being created by the constitution and his power being such as therein defined, there can be no other qualifications than those contained in the Constitution itself, and, in respect to those matters, the provisions of the Constitution are the supreme law of the land.

State ex rel. Johnson v. Crane, 197 P(2) 864, held that a provision of the State Constitution that the Governor shall not be eligible to any other office during the term for which he was elected does not prevent the Governor from becoming a member of the United States House of Representatives or the United States Senate, since provisions of the Federal Constitution dealing with qualifications of members of the House of Representatives and the Senate are controlling.

Thus it appears that under the Constitution of Nevada a justice of the Supreme Court or district judge may not file as a candidate for any State officer, other than a judicial office, during the term for which he shall have been elected; but this constitutional provision does not make such judges ineligible to become candidates or be elected to the office of Senator or Representative in Congress of the United States.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

898. Elections—Registered Voter May Not Change Political Affiliation for Purpose of Becoming Candidate on Party Ticket.

CARSON CITY, March 30, 1950.

HON. ROBERT. E. JONES, *District Attorney, Clark County, Las Vegas, Nevada.*

DEAR MR. JONES: On March 28, 1950, you telephoned a request to this office for an opinion upon the following question:

Mr. X, a citizen of Clark County, was registered as a member of one of the major political parties in 1948 and voted its ticket. In 1949 he changed his official registration in the County Clerk's office to that of a member of the other major political party. Now Mr. X has applied to the County Clerk to change his registration back to that of the first major political party and desires to file his declaration of candidacy for constable of one of the Las Vegas townships. May he do so?

On March 29, 1950, in reply to the foregoing, we wired you as follows:

Re your request of 28th. It is our opinion that Chapter 145 Statutes 1947 prohibits candidates for public office changing political party affiliations since the last preceding general election for the purpose of becoming a party candidate of a party other than that of which the proposed candidate was a member at the time of registering.

This letter is to confirm the telegraphic opinion.

Supplementing the telegraphic opinion, we desire to point out that section 2408, N.C.L. 1929, providing the form for and method of filing declaration of candidacy by candidates for party nominations to public office, was amended 1945 Statutes, page 173, and the following language inserted therein, particularly in the form of declaration:

That I have not registered and changed the designation of my political party affiliations or an official registration card since the last general election.

This same language was continued over in the 1947 amendment to the same section, as shown at 1947 Statutes, page 477. We think this particular amendment is clear and express and was intended and does prevent the change of political affiliation after an election by a member of a political party, who by change of such political affiliation could thereby become a candidate for an opposing political party.

A leading case on this particular question is that of *Roberts v. Cleveland*, 149 P(2) 120, 153 A.L.R. 635, wherein the exact question was submitted to the Supreme Court of New Mexico dealing with the proposed change of political faith of a candidate for United States Congress. After an exhaustive examination of the facts, the New Mexico Court held as follows. A statute providing that no one shall become a candidate for any office who has changed his party affiliation within twelve months prior to calling of election is constitutional and the candidate for Congressman was denied the right to change his party affiliation in order that he might become a candidate for the other opposing party. This case was well supported by *State ex rel. Murphy v. Graves*, 109 N.E. 590; *Garnder v. Ray*, 157 S.W. 1147; *Curyea v. Wells*, 138 N.W. 165; *Smith v. Ward*, 197 N.W. 684. The case of *Ritter v. Douglass*, [32 Nev. 400](#), has removed all doubts as to the constitutionality and effect of our primary election law as applied to party candidates.

In view of the state of the law as above set forth, we answer your inquiry in the negative.

Very truly yours,

ALAN BIBLE, *Attorney General.*

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

899. Public Schools—Purchase of Buses for Transportation of Pupils.

CARSON CITY, March 31, 1950.

HON. JAMES A. CALLAHAN, *District Attorney, Humboldt County, Winnemucca, Nevada.*

DEAR MR. CALLAHAN: This will acknowledge receipt of your letters dated March 28, 1950, received in this office March 29, 1950. You request an opinion from this office relative to an opinion rendered by you to the trustees of the high school in your county.

It appears that the trustees seek to purchase a school bus not for the purpose of transportation of pupils, but for the purpose of transportation of pupils to athletic contests, band contests, etc. The cost of the bus is stated as \$8,500. Your second letter encloses a form of lease and option agreement which provides for the payment of the purchase price in annual installments. You advised the trustees that the purchase of the bus as contemplated is beyond the statutory authority of such trustees.

We are in accord with your opinion for the reason that we cannot find authority in the statute to permit the school board to purchase a school bus in the manner outlined in your letters.

Sections 160 to 165, inclusive, relate to the transportation of pupils, the procedure to secure funds for such purpose, and the use of such funds.

Section 164 authorizes the purchase, rent or hire of school buses out of such fund.

Section 165 empowers the school boards to permit the use of such buses belonging to the school district for the transportation of pupils in interscholastic contents and other school activities properly part of the school program.

It will be seen from reading these sections that the primary purpose of purchasing a school bus is for the transportation of pupils to and from school. The additional use is granted when the vehicles belong to the school district.

Section 274, defining the powers and duties of school trustees, gives authority to equip and supply the schools with all things necessary for the operation of the schools of the district. This section contains the language, "Notwithstanding the foregoing provisions of this paragraph, bids must be advertised for all contracts over five hundred (\$500) dollars as provided in section 286 of this school code * * *."

Section 239 makes it unlawful for any governing board or any member thereof any school district, county high school, or district high school or educational district to authorize, allow or contract for any expenditure unless the money for the payment thereof has been specially set aside for such payment by the budget.

The making of such a contract as proposed would violate the fundamental principle which prohibits the doing of a thing indirectly which cannot be done directly. Attorney General's Opinion No. 112, May 12, 1922, called attention to this principle in the advertising for bids by school trustees. Opinion No. 228, March 16, 1926, hold that contracts in excess of budget are void.

Very truly yours,

ALAN BIBLE, *Attorney General.*

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

900. Contracts—Must Be Let to Lowest Responsible Bidder if Exceeding \$1,000.

CARSON CITY, March 31, 1950.

MR. DONALD W. HEMINGWAY, *Deputy District Attorney, White Pine County, Ely, Nevada.*

DEAR MR. HEMINGWAY: This will acknowledge receipt of your recent letter requesting an opinion as to whether or not the count is obligated to let a contract to the lowest bidder when there are several bidders who are within the bid price as set by the County Commissioners.

It is our opinion, assuming the contract in the aggregate exceeds \$1,000 and the lowest bidder is responsible, that he is entitled to the contract.

We are aware that in the advertisement for bids the county reserves the right to accept or reject any and all bids, however, this reservation does not give the right to the county to contravene the applicable statute. The pertinent part of the applicable statute, i.e., chapter 241 of the 1947 legislative enactments, provides as follows:

In letting all contracts of any and every kind, character, and description whatever, where the contract in the aggregate exceeds the sum of one thousand dollars, the county commissioner shall advertise such contract or contracts to be let, stating the nature and character thereof * * *. *All such contracts shall be let to the lowest responsible bidder*, subject to the provisions of the twenty-third section of the act to which this is supplementary; provided, that the provisions of this act shall not apply to contracts for the construction or repair of bridges, highways, streets, or alleys where the same conflicts with other acts in relation to bridges, highways, streets, or alleys. (Italics ours.)

The statute is clear and unambiguous and from the portion we have underlined it is apparent that the Legislature intended the statute to be mandatory. Consequently, it is subject to only one interpretation.

We are of the opinion, therefore, that if the contract exceeds \$1,000 and is to be let at all, it must be let to the lowest responsible bidder.

Very truly yours,

ALAN BIBLE, *Attorney General.*

By ROBERT L. McDONALD, *Deputy Attorney General.*

901. Gambling—Tax Commission Holding Cash Bond Under Gambling Act not Required to File Claim in Bankruptcy to Recover Amount of Bond.

CARSON CITY, April 4, 1950.

NEVADA TAX COMMISSION, *Carson City, Nevada.*

Attention: R.E. Cahill, Secretary.

GENTLEMEN: This will acknowledge receipt of your letter dated March 18, 1950, received in this office March 29, 1950.

You inquire as to the status of the Tax Commission in the matter of a cash bond of \$5,000 on deposit with the State Treasurer received from Tahoe Biltmore Hotel, Inc., under section 10c of the Gambling Act.

On January 5, 1950, the Tax Commission received notice from Hon. Frank W. Ingram, Referee in Bankruptcy, that the corporation had been adjudged bankrupt.

You request an opinion as to whether the Tax Commission should declare a forfeiture of the bond or file a claim with the Referee in Bankruptcy.

We are of the opinion that the Tax Commission should satisfy its claim out of the cash bond and notify the Referee in Bankruptcy of any balance remaining.

6 Am. Jur. pages 583-584: "A secured creditor desiring to participate in the general fund of the bankrupt estate is required first to exhaust his security and credit the proceeds on his claim, or to the credit its value upon his claim and share in the general estate for the balance, * * *. If a secured creditor so chooses, however, he may stay out of the bankruptcy proceedings entirely and look to the security alone for the payment of his debt."

In *Ward v. First National Bank*, 202 Fed. 609, the Court held that it was not necessary for a pledgee bank to make a formal proof of its claim against the estate of its bankrupt pledgor, saying: "There is no requirement that a creditor holding a security shall do this, although he may do so at his option. He can rely upon his security and enforce it otherwise."

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

902. Health—Board Has Authority to Examine School Children Suspected of Having Communicable Disease.

CARSON CITY, April 4, 1950.

DANIEL J. HURLEY, M.D., *State Health Officer, Carson City, Nevada*.

DEAR DR. HURLEY: This will acknowledge receipt of your letter dated March 29, 1950, received in this office March 30, 1950.

First, you request an opinion relative to the duties and powers of a health officer, State, county or local, in examining school children suspected of having a communicable disease.

Second, you enclose a letter from Mr. E. Frandsen Loomis, a member of the Legislative Counsel, in which he calls attention to section 9, chapter 184, Statutes of 1939, repealing certain numbered sections of the Public Health Act which do not correspond to numbered sections of the same Act in the compiled laws, disclosing an inconsistency which appears to be irreconcilable.

In answer to the first part of your inquiry, we are of the opinion that the State Board of Health, county and local health officers, under rules and regulations promulgated by the State Board, have statutory authority to examine school children suspected of having a communicable disease.

Section 5276, N.C.L. 1929, which provides that laws of the State regulating the practice of medicine shall not be construed to interfere with treatment by spiritual means, relates to treatment alone, and cannot be the basis for objection to investigation and examination under the sanitary and quarantine laws of the State.

Second: Reading section 9 of chapter 184, Statutes of 1939, in connection with the entire chapter, it appears that the intention of the Legislature as disclosed should govern and the error appearing should be reconciled as a clerical error.

Section 5959, 1929 N.C.L., 1941 Supp., defines the general powers of the State Board of Health.

Section 5266, N.C.L. 1929, defines the duties of a health officer upon the appearance of any dangerous contagious disease in any school district. This section contains the following language: “If the rules of the state board of health provide for the exclusion from school of teachers, or pupils from homes where such diseases exist, the health officer shall request the principal of the school to exclude from school attendance all such persons until a written order signed by the health officer permitting attendance at the school is presented.”

Section 5276, N.C.L. 1929, provides as follows: “None of the provisions of this act or the laws of this state regulating the practice of medicine or healing shall be construed to interfere with the *treatment* by prayer or with any person who administers to or treats the sick or suffering by mental or spiritual means, nor shall any person who selects such *treatment* for the care of disease be compelled to submit to any form of *medical treatment*, nor shall any such person be removed to any isolation hospital or camp without their consent; *provided the sanitary and quarantine laws of the state are complied with.*” (Italics ours.)

The School Code, chapter 63, Statutes of Nevada 1947, sections 355-359, provide for the inspection of school children for physical defects. Section 356 empowers the State Board of Health to prescribe rules for making such inspections.

Section 359 provides: “Any child shall be exempt from the examination herein provided upon written statement from his or her parents or guardian that they object to the same.” While this section exempts children from examination upon written objection, section 356 empowers the State Board of Health to prescribe rules for making such inspection.

Section 5259, 1929 N.C.L., 1941 Supp., provides that the State Board of Health is declared to be supreme in all health matters and that rules and regulations of the Board, when properly adopted and published, shall have the force and effect of law and shall supersede all local ordinances and regulations heretofore or hereafter enacted inconsistent therewith.

Section 5276, N.C.L. 1929, provides that the provisions of the Public Health Act shall not be construed to interfere with treatment of the sick by prayer or spiritual means. It does not prohibit the examination of a person under the sanitary and quarantine laws of the State.

As the Court held in *Blue v. Beach*, 50 L.R.A. 64, children may be denied the privilege to attend school by reason of their refusal to submit to proper rules of discipline. If expulsion can result from the violation of a rule, the object of which is to promote the morals of the pupils and efficiency of the school in general, certainly one which is intended and calculated to promote the health of pupils ought to be sustained.

Relative to the inquiry of Mr. Loomis, there is an error in section 9, chapter 184, Statutes of 1939, which names certain sections of the Public Health Act and designates these sections as constituting certain sections in the Nevada Compiled Laws 1929. While the sections of the Act named do not correspond with the numbers of the compiled laws sections, the error may be reconciled by determination of the legislative intent. The error appears in designating certain sections of the original Public Health as repealed, but this error can be reconciled because the section also designates these sections as constituting certain sections in the compiled laws although they do not correspond with the numbered sections of the Act.

Section 6 of the 1939 Act amends section 25 of the Act. This section was named in the repeal contained in section 9 of the same Act, but the corresponding section in the compiled laws was not given. Section 25 contains the general powers of the State Board of Health and is found under section 5259, 1929 N.C.L., 1941 Supp.

Section 9 cannot be construed as the intention of the Legislature to repeal a section amended

by the same Act.

As held by the Court in *Worthington v. District Court*, [37 Nev. 212](#), the intention of the Legislature to amend specific statute must govern, and a clerical mistake as to the section amended must be disregarded.

While there is an inconsistency in some of the section numbers of the Public Health Act and the section numbers in the compiled laws which should be called to the attention of the Legislature, it is our opinion that section 5259, 1929 N.C.L., 1941 Supp., sections 5262, 5264, 5265, 5266, and 5276 N.C.L. 1929, remain in force and effect.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

903. Taxation—Successor to Dissolved Partnership Not Required to Obtain New Distributor's License for Same Year.

CARSON CITY, April 11, 1950.

MR. HENRY COLEMAN, *Liquor Tax Division, Nevada Tax Commission, Carson City, Nevada*.

DEAR MR. COLEMAN: This will acknowledge receipt of your recent letter in which you have enclosed a letter received by you from Mr. Clark Guild, Jr., wherein he sets forth the following facts for your determination:

On January 19, 1950, Richard Terry and Harold Drew, doing business as State Distributors, agreed to dissolve their partnership after having paid their license fee of \$700.00 for 1950. Since the 19th of January, 1950, Harold Drew has been the sole operator of State Distributors.

Will it be necessary for Mr. Drew and Henry Martin, Jr., who are forming a partnership as of April 1, 1950, under the style and fictitious name of State Distributors, to acquire a new license and pay an additional licensing fee for 1950, inasmuch as the present license is still in existence and the firm who acquired the license will still be in operation subsequent to April 1, 1950?

The answer to this problem is in the negative.

The only provisions of the Nevada statutes that may possibly have any bearing on the problem are the following:

Section 3690.07, 1929 N.C.L., 1941 Supp.:

Every license issued under this act shall set forth the name of the person to whom it is issued. If the license is issued under a fictitious name, such license shall set forth, in the addition to said name, the name or names of each of the persons conducting the business under the fictitious name. The license shall also specify the location by the street and number of the premises in respect to which the license is issued, and the particular class of liquor or liquors that the license is authorized to sell.

Section 3690.08, 1929 N.C.L., 1941 Supp.:

Each license shall be signed by the licensee, shall be nontransferable, and shall be posted in a conspicuous place in the premises in respect to which it was issued.

Chapter 187, section 5, 1947 legislative enactments:

Application for any of the licenses hereinabove described shall be made to the county commissioners of the county in which the applicant maintains his principle place of business. The application shall be made on such form as the state tax commission of the State of Nevada shall prescribe, and shall include the name and address of the applicant, and if a partnership, the names and addresses of all partners, and if a corporation, association, or other organization, the names and addresses of the president, vice president, secretary, and managing officer or officers, and shall specify the location by street and number of the premises in respect to which the license is sought.

The county commissioners of each county shall examine all applications filed with them as hereinabove provided, and in addition thereto shall require satisfactory evidence that the applicant is a person of good moral character.

Each applicant for a wholesale wine or liquor dealer's license or for a wholesale beer dealer's license shall agree to establish and maintain a place of business in the State of Nevada, and must keep on hand therein at all times liquor of a wholesale value of at least one thousand (\$1,000) dollars.

Each application shall be accompanied by the annual license fee hereinafter required for the particular license for which application is made.

It is apparent that none of the above quoted sections will lend any assistance in answering this problem and consequently we must find our answer from the general law on this particular subject.

Vol. 30, section 96, page 308, American Jurisprudence, entitled Intoxicating Liquors, makes the following statement:

On this principle, a license issued to a firm of which a given person is a member confers no authority to sell, on another firm, of which also the same person is a member. Where, however, before the expiration of the license, whether issued to the firm as such or to its individual members, one member acquires the interest of the others in the firm business and property, it is held that he may continue the business under the unexpired license, except where the required consent of property owners and the constituted authorities to a firm license is not accepted as consent to the operation of the place licensed by one of the partners.

The facts as set forth by Mr. Guild indicate that the license was issued to the firm and not to the persons constituting the firm in their individual capacity, and, applying the law as above stated, we see no reason why the same firm should be required to acquire a new license for the same year.

We realize that liquor licenses are not transferable and that the County Commissioners must determine the moral character of the applicant prior to the approval of the license, but as the Nevada statutes are silent on the particular question involved and assuming the incoming partner has been approved or will be approved by the County Commissioners as to his moral character, it is our opinion that the particular firm involved may continue to do business under the existing license.

As you know, your Commission is in a position to make reasonable rules and regulations concerning problems of this nature. Although we have ruled on this particular problem, it might

be advisable for your office to establish rules and regulations concerning problems of a similar nature that may arise in the future.

This office, as you know, has previously ruled that a licensee who ceases to operate under his license is not entitled to a refund. We wish to inform you at this time that the present opinion in no way alters our former opinion regarding refunds.

Very truly yours,

ALAN BIBLE, *Attorney General*.

By ROBERT L. McDONALD, *Deputy Attorney General*.

904. Contractors—Independent—Authorized Representatives Defined.

CARSON CITY, April 11, 1950.

HON. ROBERT E. JONES, *District Attorney, Clark County, Las Vegas, Nevada*.

Attention: J.K. Houssels, Jr., Deputy District Attorney.

DEAR MR. JONES: This will acknowledge receipt of your letter dated April 8, 1950, received in this office April 10, 1950. You request an interpretation of section 1474.13, 1929 N.C.L., 1941 Supp., with a view to ascertaining whether an independent contractor who contracts directly with the county in certain construction work is an authorized representative of the county and comes within the exception of said section.

We are of the opinion that such an independent contractor, as outlined in your letter, is not an authorized representative of the county within the meaning of section 1474.13, 1929 N.C.L., 1941 Supp., with a view to ascertaining whether an independent contractor who contracts directly with the county in certain construction work is an authorized representative of the county within the meaning of section 1474.13, 1929 N.C.L., 1941 Supp., and requiring a license as provided in the Act defining contractors and providing for the licensing of contractors.

Section 1474.10, 1929 N.C.L., 1941 Supp., provides as follows: "The term contractor for the purpose of this act is synonymous with the term 'builder' and, within the meaning of this act, a contractor is any person, except a licensed architect or a registered civil engineer, acting solely in his professional capacity, who in any capacity other than as the employee of another with wages as the sole compensation, undertakes to, or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, excavation or other structure, project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structure or works in connection therewith."

Section 1474.13, 1929 N.C.L., 1941 Supp., provides: "This act does not apply to an authorized representative of the United States Government, the State of Nevada, or any incorporated town, city, county, irrigation district, reclamation district or other municipal or political corporation or subdivision of this state."

The policy of the Act as disclosed in section 1474.24 is to require a contractor, for the safety and protection of the public, to show a degree of experience and general knowledge of the building and health laws of the State and the rudimentary principles of the contracting business. This is the purpose sought to be accomplished and the benefits to be obtained. The term authorized representative has no technical meaning and should not be construed to mean that

contractors who submit bids and undertake to do work for the state, counties and municipalities should be exempt from the provisions of an Act the purpose of which is for the protection and safety of the public.

The plain meaning of the word representative is being or acting as the agent of another especially by authority. 2 Am. Jur., page 17, section 8: "An independent contractor may be distinguished from an agent in that he is a person who contracts with another to do something for him, but who is not controlled or subject to the control of the other in the performance of such contract, but only as to the result."

The term "authorized representative" is defined in *Bowles v. Wheeler*, 152 F(2) 34. The Court, in construing the provisions of the Emergency Price Control Act, held on page 38: "The Act (Sec. 201 (a)) authorizes the appointment of employees 'to carry out the functions and duties' of the administrator. Other provisions of this section in any place, and the administrator is authorized to issue such regulations and orders as he deems necessary to carry out the purposes and provisions of the act. The language is sufficient to give the administrator power to delegate the suite bringing function to any authorized representative."

An independent contractor who contracts to build, construct, alter, repair, add to or improve any building is not performing any delegated function, and is not an authorized representative of the county.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

905. Counties—Uniform County Commissioner District Act Governs as to Creation of County Commissioner Districts. Special Acts Unconstitutional.

CARSON CITY, April 11, 1950.

HON. HAROLD O. TABER, *District Attorney, Washoe County, Reno, Nevada*.

DEAR MR. TABER: Reference is hereby made to your letter of April 5, 1950, wherein you request the opinion of this office upon the following queries:

1. Is the Act of 1933 dividing Washoe County into two commissioner districts constitutional?
2. Several candidates from the Sparks district have already filed their declaration of candidacy. Is it necessary that these candidates refile in the event your opinion is that the 1933 Act is unconstitutional?
3. Can the County Commissioners legally divide the County into three commissioner districts pursuant to the Statute of 1893 and if this is done, is each district entitled to a commissioner who is elected from that district or are the commissioners from the three districts elected from the County at large?

OPINION

Under date of March 21, 1950, in Opinion No. 893, this office rendered its opinion on the constitutionality of chapter 269, page 568, Statutes of 1949, purporting to create County Commissioner Districts in and for Clark County. It was there held that such Act was

unconstitutional as being in violation of section 25, Article IV, Constitution of Nevada, as well as in conflict with sections 20 and 21 of the same Article, in that said Act was a special and local Act prohibited by those constitutional provisions. A copy of such opinion has heretofore been furnished your office for reference.

Answering query No. 1—An examination of chapter 30, page 25, Statutes of 1933, being the Act creating County Commissioner Districts in Washoe County, in our opinion, discloses that such Act is a within the same category as the Clark County act, and for the reasons set forth in our opinion No. 893, we are constrained to hold that the Washoe County Commissioner Districting Act is also unconstitutional.

Answering query No. 2—There is no question but that the candidates of the sparks district filed their declarations of candidacy in good faith for the purpose of running for the office of County Commissioner of that district. It would now be unfair to unduly penalize them. We are of the opinion that they may follow the following procedure:

(a) They may withdraw their declarations of candidacy if they so desire, and if withdrawn their filing fees should be refunded.

(b) In the event Washoe County is not divided into County Commissioner Districts pursuant to the general law, they may, if they so desire, amend their present declarations of candidacy to read as declarations of candidacy as candidates at large for the office of County Commissioner, without payment of further fees.

(c) If Washoe County is divided into County Commissioner Districts pursuant to the general law prior to the last day for the filing of declarations of candidacy, and the present Sparks candidates' declarations of candidacy are still on file, such declarations may and should be deemed declarations of candidacy for the new district.

Answering query No. 3—The Board of County Commissioner can legally divide Washoe County into three commissioner districts upon literally complying with the provisions of the 1893 statute, i.e., sections 1964, 1967, N.C.L. 1929. When the Commissioner districts are established in conformity with the provisions of the foregoing statute, then a commissioner is elected from each district as is provided in section 1966, N.C.L. 1929. However, while the commissioners are candidates for their respective districts as set forth in section 1966 and are elected to represent their districts, still they are voted for by the voters at large throughout the county. Section 4 of the original Act of 1893 provided: "County commissioners shall be elected by the qualified electors of the district wherein they reside in the same manner as township officers are now elected." Statutes of 1893, page 33. In 1895, section 4 was amended to read as follows: "County commissioners shall be elected by the qualified electors of the county wherein they reside s other county officers are now elected." Statutes of 1895, page 39. The 1895 amendment is now section 1967, N.C.L. 1929.

Respectfully submitted,

ALAN BIBLE, *Attorney General*.

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

906. University of Nevada—State Board of Control—Destruction of Records Governed by Sections 7278.11-7278.13, 1929 N.C.L., 1941 Supp.

CARSON CITY, April 12, 1950.

HON. VAIL PITTMAN, *Governor of Nevada, Carson City, Nevada.*

DEAR GOVERNOR PITTMAN: Reference is hereby made to the letter of Alice C. Maher, your secretary, of April 5, 1950, and the enclosure therewith of the letter of P.W. Hayden, Comptroller of the University of Nevada, requesting advice as to the destruction of old records and with respect to the power of the State Board of Control thereover. It is noted from the letter of Mr. Hayden that it is desired to know how far back the University should keep the following records: "Departmental requisitions, purchase orders, receipts, cancelled checks." Reference is also made to sections 7278.11 and 7278.12, 1929 N.C.L., 1941 Supp., and its application to the instant question.

OPINION

It is the opinion of this office that sections 7278.11-7278.13, both inclusive, 1929 N.C.L., 1941 Supp., controls insofar as the authority therein provided is applicable to the instant question. The University of Nevada, of course, is a department of the State and we think its records, insofar as their destruction is concerned, fall within the foregoing provisions of the law and that the authority of the State Board of Control should be obtained by the Comptroller of the University, and perhaps its Board of Regents, before destruction thereof is had. The length of time the specifically mentioned records are to be kept we think also falls within the discretion of the Comptroller of the University, its Board of Regents, and the State Board of Control and that only such records be destroyed as in the opinion of the foregoing are entirely obsolete and of no further use.

Respectfully submitted,

ALAN BIBLE, *Attorney General.*

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

907. Counties—Opinion No. 742, Ante, Corrected to Conform to Chapter 302, Page 611, Statutes of 1949. (Note: This opinion is an opinion correcting Opinion No. 742 and should be read in connection therewith.)

CARSON CITY, April 12, 1950.

HON. M.C. OGLESBY, *Clark County Assessor, Las Vegas, Nevada.*

DEAR MR. OGLESBY: Reference is hereby made to your letter of April 8, 1950, referring to an opinion rendered by this office on April 25, 1949, directed to District Attorney Robert E. Jones of Clark County, relative to the question of whether the County Assessor was required to advertise for and obtain bids from publishers for the printing of the taxpayers' list required by the provisions of section 6429, N.C.L. 1929, in view of the amendment of section 1963, N.C.L. 1929, as found in chapter 241, Statutes of 1947. You direct our attention to an amendment to section 6429, N.C.L. 1929, as contained in the 1949 Statutes of Nevada, page 611, and suggest that we did not consider such 1949 amendment in the preparation and furnishing of the opinion of April 25, 1949, which is our opinion No. 742. You now inquire whether the 1949 amendment in effect requires that the County Commissioners first approve a bill contracted by the Assessor for the printing of such tax lists before such lists are printed.

OPINION

In Opinion No. 742 we held that it was incumbent upon the County Assessor to have the tax list printed and that the County Commissioners were not empowered to require or to themselves advertise for bids thereof. In preparing Opinion No. 742 our attention was not called to the 1949 amendment. The truth of the matter is that the 1949 amendment was approved March 29, 1949, as is shown on page 611 of the 1949 Statutes, and at that time this office had not received a copy of the advance sheets of the 1949 Statutes, so that in fact we did not have the 1949 amendment before us. Consequently, our opinion did not refer to such amendment.

The 1949 amendment struck out from section 6429 the provision “that the cost of printing the aforesaid list shall not exceed twenty cents for each name for as many copies as there are names on the list.” The pertinent amendment, however, is included in the next following sentence, which reads as follows: “The several boards of county commissioners in this state are authorized and empowered to allow the bill contracted *with their approval* by the assessor under this section and the several county auditors are authorized to draw their warrant in payment of the same.”

(Italics ours.)

After careful examination of the foregoing amendment, we conclude that such amendment now requires that before the printing of the tax list is had the Assessor shall, insofar as possible, ascertain the cost of printing such tax list from the respecting printing establishments in his county and thereafter submit to the Board of County Commissioners the prices he has obtained therefor and obtain the approval of the Board of County Commissioners for the printing of the same by some printing establishment whose bill meets the approval of the county Commissioners. In this respect our Opinion No. 742 is corrected.

We desire to point out, however, that the 1949 amendment may so operate as to cause considerable trouble with respect to the publishing of the tax list in the event that the County Commissioners should refuse to approve any bill contracted by the Assessor. On the other hand, the statute is mandatory that the tax list be published by the Assessor. It thus seems clear that the 1949 amendment to section 6429, N.C.L. 1929, should be the subject of further clarification by the next session of the Legislature.

Respectfully submitted,

ALAN BIBLE, *Attorney General*.

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

908. Taxation—Contracts of Sale—Veterans Exemption.

CARSON CITY, April 14, 1950.

HON. VAIL PITTMAN, *Governor of Nevada, Carson City, Nevada*.

DEAR GOVERNOR PITTMAN: This will acknowledge receipt of your letter of March 27, 1950, received in this office March 29, 1950, requesting the opinion of this office as to whether or not a veteran, who is purchasing a house under a deed of contract, is entitled to the veterans' tax exemption as provided for in chapter 22, page 26, 1949 legislative enactments.

The answer to this inquiry is in the affirmative.

The applicable section of chapter 22 of the 1949 Act reads as follows:

The property of any person who has served in the armed forces of the United

States in time of war, and upon severance of such service has received an honorable discharge or certificate of service from such armed forces, or who having so served is still serving in such armed forces, shall be exempt from taxation to the extent of one thousand (\$1,000) dollars assessed valuation of property in which such person has any interest shall be deemed the property of such person.

As you will note from the portion quoted, the Legislature did not distinguish between a deed of contract and a deed of trust, but, to the contrary, provided that the first \$1,000 assessed valuation of property which such person (veteran) has any interest in shall be deemed the property of such person.

One who is purchasing real property by deed of contract has, in any event, an equitable interest in that property and he also has a possessory right which by the law of this State is taxable and, therefore, it is our opinion that such an interest was contemplated by this section of the Act and the first \$1,000 assessed valuation of such property should be exempt from taxation.

Very truly yours,

ALAN BIBLE, *Attorney General*.

By ROBERT L. McDONALD, *Deputy Attorney General*.

909. Taxation—Veterans Exemption—“Time of War,” World War I and II Defined.

CARSON CITY, April 17, 1950.

NEVADA TAX COMMISSION, *Carson City, Nevada*.

Attention: R.E. Cahill, Secretary.

GENTLEMEN: This will acknowledge receipt of your letter dated April 10, 1950, received in this office April 12, 1950.

You submit inquiries from County Assessors as to the following:

1. For the purposes of smoking a veteran eligible for tax exemption, what period of time is considered time of War in World War I?
2. Similarly, what period is considered as time of war in World War II?

ANSWER

No. 1. By joint resolution of Congress and Proclamation of the President a state of war was declared to exist between the United States and Germany on April 6, 1917. 40 U.S. Statutes at Large 1651.

The same war was at an end by joint resolution of Congress and Proclamation by the President on July 2, 1921. In re Miller, 281 Fed. 764.

No. 2. The second World War began December 8, 1941, by declaration in joint session of Congress and Proclamation by the President following the attack on Pearl Harbor by Japan, Sunday, December 7, 1941.

The date considered as the close of World War II, as contemplated by the Statute of Nevada, was held by this office to be December 31, 1946. See Attorney General's Opinion No. 717, January 6, 1949, quoting from the President's Proclamation No. 2714, under Title 50 War Appendix, pocket part, page 107, and Porter v. Wilson, 69 F. Supp. 447.

Very truly yours,

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

910. Nevada State Hospital for Mental Diseases—Burial of Indigent Patients Charge Against State and Paid From Apportionment for General Support of Hospital.

CARSON CITY, April 17, 1950.

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 April 10, 1950, received in this office April 12, 1950.

You request an opinion as to whether the Nevada Hospital for Mental Diseases is entitled to reimbursement from the State Treasury for the burial of indigent deceased patients under the provisions of chapter 184, Statutes of 1949; and if the hospital has a claim against the State of Nevada for reimbursement of costs, against what fund may such claim be made.

We are of the opinion that the cost of burial of indigent patients who die at the Nevada State Hospital is paid out of the appropriation for the general support of the hospital.

The language in chapter 184, Statutes of 1949, making the cost of such burial a charge against the State has the same meaning as the language in section 3511, 1929 N.C.L., 1941 Supp., which provides that indigent patients shall be cared for at the expense of the State.

Chapter 184, Statutes of 1949, is an Act requiring further duties of the board of commissioners of the Nevada Hospital for Mental Diseases. Under the provisions of the Act it is made the duty of the board to provide a decent burial for any inmate or patient who dies while such inmate, at any cemetery without the hospital grounds. The cost of such burial, where there are known relatives, shall be borne by such relatives, and where there are no known relatives, shall be borne by such relatives, and where there are no known relatives, the cost of such burial shall be a charge against the State of Nevada, but the cost thereof shall not exceed the amount charged for the burial of indigents in the county in which the burial takes place.

Section 3511, 1929 N.C.L., 1941 Supp., relates to the commitment of insane persons and how expenses are paid. This section provides that a person incompetent to provide for his support and who has no property applicable for such purpose, and no kindred in certain degrees of sufficient means to provide for such support, the judge shall order such person cared for at the expense of the State.

The care of such patients is a duty of the board, and the burial of such patients is a further duty of the board. The only appropriation out of which such expense may be paid is the appropriation for the hospital.

Very truly yours,

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

911. Public Service Commission—Section 16, Mineral County Power District Act, as Amended in 1925, Still in Effect.

CARSON CITY, April 24, 1950.

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

Attention: J.G. Allard, Chairman.

GENTLEMEN: Reference is hereby made to your letter of April 21, 1950, together with copy of letter dated March 28, 1950, from the California Electric Power Company relative to chapter 48, Statutes of 1925, concerning rates charged by the Mineral County Power System as being subject to your Commission.

The specific inquiry directed to you by the California Electric Power Company is whether section 16 of the Mineral County Power System Act is still in effect.

OPINION

The inquiry is directed to the following language appearing in section 16 of the Mineral County Power System Act at 1925 Statutes, page 59:

The maintenance and operation of said Mineral County Power System shall be under the control, supervision and authority of the board of managers, and rates charged to consumers for sale and distribution of electrical energy and current, and the tolls for telephone service, with the terms and conditions thereof, shall be fixed by said board, subject to the supervision of the Nevada Public Service Commission, who may revise, raise or lower same.

The foregoing language was written into the original Mineral County Power System Act in 1921. The section was amended in 1925, as above stated, the amendment being an addition to the foregoing language dealing with unpaid charges as liens against the property of the consumer. Since 1925 said section 16 has not been amended nor repealed and it is the law on the question today.

We note your reference to our opinion of March 11, 1949, concerning the Lincoln County Power District No. 1 and your advice to the California Electric Power Company that you had no jurisdiction under section 16 by reason of the Lincoln County Power District opinion.

The Lincoln County Power District opinion was written upon a different question and the opinion relates to a power district created under the general statute providing for power districts. It is clear under the law relating to power districts and the Public Service Commission that aside from jurisdiction vested in the Public Service Commission in the Power District Act dealing with the creation, consolidation and dissolution of such districts, that otherwise the Commission had and has no jurisdiction thereover. On the other hand, the Commission has and has no jurisdiction thereover. On the other hand, the Mineral County Power System was created by a special Act of the Legislature, is a county-owned property and, in our opinion, bears no relation to a municipal corporation. Apparently your Commission does have jurisdiction concerning the Mineral County Power System as provided in section 16.

Respectfully submitted,

ALAN BIBLE, *Attorney General.*

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

912. Taxation—Highway Contractors' Road Building Equipment Subject to Taxation in Nevada.

CARSON CITY, April 27, 1950.

HON. JO G. MARTIN, *District Attorney, Lincoln County, Pioche, Nevada.*

DEAR MR. MARTIN: Reference is hereby made to your letter of April 13, 1950, wherein you request the opinion of this office upon the following query:

Can a County Assessor lawfully assess and collect taxes against the machinery and equipment of a highway construction contractor temporarily situated within the county, prorating the collection for the portion of the year during which the property is so situated?

You advise that highway contractors are awarded contracts for public highway construction work and bring their highway construction machinery into the county for the purpose of such work for the length of time necessary to complete their contracts, usually for the period of several months. You further advise that while such machinery is within your county it receives the protection of the State law and the benefit of the expenses incurred in affording such protection by the county. You also advise that some of the contractors claim to have paid the full year's taxes elsewhere, either inside or outside of this state.

OPINION

Section 1, Article X, Constitution of Nevada provides:

The legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation of all property, real, personal and possessory * * * excepting such property as may be exempted by law for municipal, educational, literary, scientific or other charitable purposes.

And as to corporations, in section 2, Article VIII of the Constitution, it is provided:

All real property and possessory rights to the same, as well as personal property in this state belonging to corporations now existing or hereafter created, shall be subject to taxation the same as property of individuals.

Section 6418, N.C.L. 1929, as originally enacted and as subsequently amended, provides:

All property of every kind and nature whatsoever, within this state, shall be subject to taxation, except * * *

Then follows certain express exemptions, which do not and could not constitutionally include the property of highway contractors for any reason. 1949 Stats. 26.

Section 6421, N.C.L. 1929, provides that between the first day of January and second Monday in July in each year the County Assessor, except when otherwise required by special enactment, shall ascertain and assess all property in this county, both real and personal, subject to taxation in this State. The statute law of this State fails to disclose any special enactment contrary to the above section with respect to the property in question here.

It is provided in section 6429, N.C.L. 1929, even as amended at 1949 Statutes 611, that it shall be the duty of the Assessor of each county, on or before the third Monday in July of each year, to prepare and deliver to each taxpayer in the county a printed list of each taxpayer and the total valuation of the property so assessed to each taxpayer.

Section 6434, N.C.L. 1929, as amended at 1939 Statutes 285, provides for the meeting of the County Boards of Equalization on the fourth Monday in July, continuing until the third Monday in August of each year, for the purpose of equalizing assessments and valuations therein

appearing, and hearing matters on appeal from the County Boards of Equalization.

The foregoing sections of the Revenue Act disclose, we think, that all property, real and personal, within the State subject to taxation and assessed by the County Assessors is to be assessed between the first day of January and the second Monday in July of each year. It is clear that the constitutional provisions provided for the taxation of all property within the State save such property that therein stated may be exempt by law.

In Opinion No. 89, dated September 11, 1917, the then Attorney General analyzed the statutes then in effect, which were substantially the same as above cited, and held that the assessment rolls were to be completed on or before the third Monday of July. And in a companion opinion, No. 90 of the same date, held that if personal property came into the State between the first day of January and the second Monday in July, it was subject to taxation; if it came into the State after the second Monday in July, it was not taxable for that year. Report of Attorney General, 1917-1918. There has been, we think, no major change in the statutory law on the subject since the foregoing opinions, save and except, that now a County Assessor is empowered to tax pro rata on a monthly basis a new or used motor vehicle being registered for the first time in this State. 1949 Statutes 481. This statute, of course, has no application to highway contractors' road building machinery and equipment.

The precise question her is, the road building machinery and equipment of a highway contractor brought into this State for the purpose of completing a highway construction or reconstruction contract taxable in this State during the time used n completing such contract?

First, we think there is no constitutional provision, State or Federal, nor any definite provision of constitutional law prohibiting one State from taxing the personal property of a resident of another State, which property is within the taxing State at the time of the assessment of taxes thereon and which property is not in transit through such taxing State, nor therein being stationed in and for a purely temporary purpose and for a very short period of time. We think highway contractors' machinery and equipment is not brought into the State for a temporary purpose nor for a short period of time when it is brought in for the purpose of performing and completing a highway construction or reconstruction contract, which may and usually does require many months to complete. During all of that time it is within and receives the protection of the laws of that State.

In such a case the maxim "Mabilia sequuntur personam" does not apply, but the exception thereto becomes applicable, i.e., that where tangible personal property has been acquired an actual situs in a State other than the domicil of its owner and there receives the protection of that than the domicil of its owner and there receives the protection of that State's laws, then it is taxable by the latter State. 51 Am. Jur. 466-474, secs. 451-462. Anno. 110 A.L.R. 700-732; 123 A.L.R. 180-184; Union Ref. Co. v. Kentucky, 199 U.S. 194. And such is the rule in Nevada, as is well shown in United States Line v. District Court, [56 Nev. 38](#).

We think that the highway contractors' machinery and equipment brought into and used in this State in the performance of highway construction contracts acquires an actual situs for taxation purposes, even though such machinery and equipment may upon completion of the work be removed from the State. Such is the weight of authority. In each of the following cases construction work on railroads, dredging and other like work, and in each case it was held that such property was subject to the personal property tax assessed thereon. See *Gromer v. Standard Dredging Co.*, 224 U.S. 362; *Eoff v. Kenneflick-Hammond Co.*, 96 S.W. 986; *Neely v. Black*, 96 S.W. 984; *Griggsby Constr. Co. v. Freeman*, 32 So. 399; *North American Dredging Co. v. State*, 201 S.W. 1065; *Hamilton & G. Co. v. Emery County*, 285 Pac. 1006.

With respect to privately owned property taxation is the rule and exemption therefrom the exception. Persons claiming exemption must point to a statute clearly and beyond any doubt exempting their property from taxation. 51 Am. Jur. 526, sec. 524.

It is our opinion that the County Assessor can legally assess and collect personal property taxes on highway contractors' machinery and equipment brought into this county for the purpose of being used in the work of constructing or reconstructing a highway pursuant to a contract therefor, provided, such machinery and equipment is first brought in between the first day of January and the second Monday of July of the then current year, provided further, if such machinery and equipment is brought in after the second Monday in July it will not be taxable for that current year, but may become so taxable the next year if it still is in such county or elsewhere in the State.

We are further of the opinion that there is no statutory authority for the Assessor to prorate the taxes assessed on a monthly basis as to such property.

We are also of the opinion that any such contractor having paid the personal property tax on such machinery and equipment for the current year in one county of the State, cannot be required to again pay such tax in another county of the State for the same year. Tangible real or personal property within the State is to be taxed once and only once in each year. *State v. Earl*, [1 Nev. 334](#); *State v. C. & C. Ry. Co.*, 29 Nev. at page 500.

Respectfully submitted,

ALAN BIBLE, *Attorney General*.

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

913. Fish and Game—Office of Justice of the Peace and Member of County Game Management Board Incompatible.

CARSON CITY, April 28, 1950.

HON. JOHN F. SEXTON, *District Attorney, Lander County, Battle Mountain, Nevada*.

DEAR MR. SEXTON: Reference is hereby made to your letter of April 21, 1950, wherein you advise that the newly appointed Justice of the Peace of Austin Township is also a member of the County Game Management Board. You inquire as to whether he would be precluded from sitting on the case of a game law violation by reason of his membership on the County Game Management Board.

OPINION

In Opinion No. 635, dated June 23, 1948, found at page 423, Report of Attorney General 1946-1948, this office held that the office of Justice of the Peace and membership on the State Fish and Game Commission was incompatible upon the ground that a Justice of the Peace is deemed to be a judicial officer and occupies a judicial position, and, by reason of the separation of the powers of State government, as provided in section 1, Article III of the Constitution of this State, a Justice of the Peace charged with judicial powers cannot exercise powers properly belonging to either of the other departments of State government, to wit, the executive or legislative.

We think the same reasoning applies to the instant question. The County Game Management Board is part and parcel of the executive department of the State for the administration of the State game law and is in the same category as the State Fish and Game Commission. We therefore conclude that the office of Justice of the Peace of Austin Township is incompatible with a position as a member of the County Game Management Board.

Respectfully submitted,

ALAN BIBLE, *Attorney General*.

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

914. Fish and Game—Indians May Not Take Trout From Summit Lake and Sell Them off the Reservation.

CARSON CITY, April 28, 1950.

MR. FRANK W. GROVES, *Assistant Director, Fish and Game Commission, Post Office Box 678, Reno, Nevada*.

DEAR MR. GROVES: This will acknowledge receipt of your recent letter in which you request the opinion of this office as to whether or not Indians on Summit Lake Indian Reservation have authority to take trout from Summit Lake and sell them off of the reservation.

The answer to this inquiry is in the negative.

As you undoubtedly know, it is a general principle of law, as found in 27 American Jurisprudence, at page 552, section 19. "Since the jurisdiction of the Federal Government over Indian tribes and over the members of such tribes while they are on Indian reservations is exclusive, it has been held that a State cannot enforce its game and fish laws within the domain of an Indian reservation situated within the boundaries of the State * * *."

However, as corollary to this principle it is also a general rule that Indians, though living upon an Indian Reservation and maintaining tribal relations, are amenable to the laws of the State when off the reservation.

The cases supporting the last stated proposition are innumerable and the law is so clear on this point that I see no reason to refer to these specific cases. For a collection of these cases I might refer you to Volume 13, Annotated Cases, at page 193, which are in support of the rule as above stated.

Summit Lake Indian Reservation was established by an Executive Order under date of January 14, 1913, and is a legally established reservation and therefore the Indians while on the reservation are under the exclusive jurisdiction of the Federal Government, but while off the reservation are subject to the laws of the State and consequently do not have the authority to sell trout from Summit Lake off the reservation, but do have the authority to sell them to persons coming into the reservation and purchasing the fish.

Very truly yours,

ALAN BIBLE, *Attorney General*.

By ROBERT L. McDONALD, *Deputy Attorney General*.

915. Airports—Statutes Providing Airport Zoning Regulations Do Not Empower Nevada State Highway Department to Promulgate Such Regulations.

CARSON CITY, May 1, 1950.

HON. W.T. HOLCOMB, *State Highway Engineer, Carson City, Nevada.*

Attention: Mr. C.C. Boyer.

DEAR MR. HOLCOMB: The following is in reply to your oral request for an opinion submitted on a memorandum of facts relative to the establishment of airport zoning and airport hazard areas in connection with landing facilities not owned by or controlled by the State under agreement with other public agencies. According to the memorandum the landing area for aircraft is under lease to an individual and is used by itinerant and local airmen. The CAA advises the landing area is in poor condition, having no maintenance, no operator and no service. As far as known no political subdivision has a public investment in this property.

The question submitted: Does the State Highway Department under chapter 246, Statutes of Nevada 1949, have authority to establish airport zoning regulations for this landing area for aircraft under sections 13 and 14 of the Act? You also inquire as to the applicability of chapter 205, Statutes of 1947, which provides for airport zoning by municipalities and other political subdivisions.

The answer to your first question, in our opinion, is that the special powers conferred in sections 13 and 14 of chapter 246, Statutes of 1949, relate only to airports, landing areas and air navigation facilities owned by the State or controlled by the State under agreement with political subdivisions.

Answering your second inquiry, we are of the opinion that chapter 205, Statutes of 1947, which empowers municipalities and other political subdivisions to administer and enforce airport zoning regulations, applies to any airport hazard area within its territorial limits and would be applicable to the facts submitted.

The Act of 1949, under chapter 246, Statutes of 1949, authorizes the State to develop a State-wide system of airports and to accept Federal aid in the acquisition, construction, maintenance and operation of airports and navigation facilities, declaring such to be a public purpose. Certain tax funds collected on the sale of aviation fuel are set aside for this purpose and the Nevada State Highway Department is authorized to administer such activities from funds made available.

The taxes for this purpose as defined in section 3 of the act are the unrefunded taxes collected from the sale of aviation fuel.

Throughout the Act reference is made to the operation or maintenance of an airport or air navigation facility owned, leased or controlled by the State.

Section 4 provides that the State may, by purchase, gift, devise, lease, eminent domain proceedings, or otherwise, acquire existing airports and navigation facilities, provided, however, it shall not acquire or take over any airport or air navigation facility owned or controlled by a county, municipality, or public agency without the consent of such municipality, county, or public agency.

Section 11 provides for entering into agreements by the State with any other public agencies for joint action pursuant to carrying out the purposes of the act. Such agreements shall specify its duration, the proportionate interest which such agency shall have in the property involved, and the proportionate costs of acquisition, improvement, operation and maintenance.

Section 13 provides as follows: "In addition to the general and special powers conferred by this act, the state is authorized to exercise such powers as are necessarily incidental to the exercise of such general and special powers."

Section 14: “Nothing contained in this act shall be construed to limit any right, power or authority of the state to regulate airport hazard by zoning.”

The power to regulate airport hazards by zoning relates to airports owned or controlled by the State under the provisions of the Act.

The Legislature is presumed to have knowledge of the State of the law upon the subject upon which it legislates. *Clover Valley Land & S. Co. V. Lamb*, [43 Nev. 375](#).

Sections 13 and give the State authority over such hazards independent of the Act which empowers municipalities and other political subdivisions to administer and enforce airport zoning regulations.

This Act is contained in chapter 205, Statutes of 1947. The Act provides for the appointment of a zoning commission, the adoption of regulations, provides for public hearings and treats of zoning and airport hazards specifically.

Section 3 of the Act provides as follows: “In order to prevent the creation or establishment of airport hazards, every political subdivision having an airport hazard area within its territorial limits may adopt, administer, and enforce, under police power and in the manner upon conditions hereinafter prescribed, airport zoning regulations for such airport hazard area, which regulations may divide such area into zones, and, within such zones, specify the land uses permitted and regulate and restrict the height to which structures and trees may be erected or allowed to grow.”

Section 7 provides that no airport regulations shall be adopted or changed except by action of the board after a public hearing, at which public utilities owning facilities in the area involved, other parties in interest and citizens shall have an opportunity to be heard.

It appears, therefore, that the hazard to the airport in question would come within the jurisdiction of the political subdivision within which the airport is located rather than under the jurisdiction of the State.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

916. Public Utilities—Public Service Commission Possesses no Jurisdiction to Regulate Rates for Sale of Electricity Generated in California and Transmitted in Inter-State Commerce Into Nevada.

CARSON CITY, May 5, 1950.

PUBLIC SERVICE COMMISSION, *Carson City, Nevada*.

Attention: J.G. Allard, Chairman.

GENTLEMEN: Reference is hereby made to your letter of April 27, 1950, requesting the opinion of this office concerning the jurisdiction of the Commission to fix the rates to be charged for electrical energy generated in California by the California Electric Power Company and then sold and delivered to the Mineral County Power System and transmitted by such county power system over its own power line into and there sold to consumers in Nevada.

The question is, does the Commission have jurisdiction to fix the rates charged for the electrical energy generated in California by the California company and then sold and delivered to the Nevada concern and by it transmitted into Nevada for resale and use?

OPINION

In the generation, sale, delivery and transmission of the electrical energy in question, we think, both the California company and the county power system were and are engaged in inter-State commerce, and, being so engaged, that the Nevada Commission has no separable independent jurisdiction to fix the rates to be charged by the California company for electrical energy generated in California and there delivered to the Nevada concern. The Nevada Commission possesses no extraterritorial jurisdiction provided in the Nevada law which in any manner could be binding or recognized in and by a sister State.

We are of the opinion that the jurisdiction over the fixing of the rates to be charged by a generating company of electrical energy in one State and then delivered to another concern for resale and use in another State is governed by the provisions of the Federal Power Act administered by the Federal Power Commission, such Act being Title 16, sections 824-825s, Federal Code Annotated.

The Federal Act vests broad powers in the Federal Power Commission with respect to the regulation, rates and practices with respect to the transmission and sale of electrical energy in inter-State commerce. In section 824 of the Act it is provided:

- (a) It is hereby declared that the business of transmitting and selling electric energy for ultimate distribution to the public is affected with a public interest, and that Federal regulation of matters relating to generation to the extent provided in this Part next following and of that part of such business which consists of the transmission of electric energy in interstate commerce and the sale of such energy at wholesale in interstate commerce is necessary in the public interest, such Federal regulation, however, to extend only to those matters which are not subject to regulation by the States.
- (b) The provisions of this Part shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce, but shall not apply to any other sale of electric energy or deprive a State or State commission of its lawful authority now exercised over the exportation of hydroelectric energy which is transmitted across a State line. The Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy, but shall not have jurisdiction, except as specifically provided in this Part and the Part next following, over facilities used for the generation of electric energy over facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or over facilities for the transmission of electric energy consumed wholly by the transmitter.
- (c) For the purpose of this Part, electric energy shall be held to be transmitted in interstate commerce if it is transmitted from a State and consumed at any point outside thereof; but only insofar as such transmission takes place within the United States.
- (d) The term "sale of electric energy at wholesale" when used in this Part means a sale of electric energy to any person for resale.
- (e) The term "public utility" when used in this Part or in the Part next following means any person who owns or operates facilities subject to the jurisdiction of the Commission under this part.

Thus it appears that pursuant to the commerce clause of the Constitution of the United States Congress has entered the field of regulation of the transmission of electrical energy in inter-State commerce, which it had and has the constitutional power so to do the exclusion of the jurisdiction of the States and their Commissions over the express subject therein delegated to the Federal Power Commission.

In *Jersey Central Power & Light Co. v. Federal Power Commission*, 129 Fed. 2d 183, affirmed by U.S. Supreme Court in 319 U.S. 61, it was held that the provisions of the Federal Act were intended by Congress to be applied only to electrical energy at wholesale in inter-State commerce was a public utility within the jurisdiction of the Federal Power Commission even if it had no facilities as the term is used in the statute other than generation facilities, since generation facilities, when used in the aid of such sales, are within the jurisdiction of such Commission.

And in *Connecticut Light & Power Co. v. Federal Power Commission*, 324 U.S. 515, it was held that the jurisdiction of the Federal Commission did not depend upon the volume or proportion of inter-State electrical energy involved and that the fact such volume was insignificant in proportion to the whole amount generated was no ground for exemption from the jurisdiction of the Federal Commission.

Sections 824d and 824e of Title 16 clearly provide for the fixing of the rates to be charged for the furnishing of electrical energy in inter-State commerce by the Federal Commission, and it is clear therefrom that as to such inter-State transmission of such energy the jurisdiction to fix such rates is vested in such Commission.

Section 824h of Title 16 contains provisions for the use of joint boards composed of members from Commissions from each of several States affected by the proceedings and vests certain powers in such boards the proceedings of which will have such force and effect and be conducted in such manner as the Federal Commission may prescribe. Apparently such joint boards are in the nature of advisory boards. It is also provided in such section that the Federal Commission may confer with and hold joint hearings with State Commissions in matters in which the Federal Commission has jurisdiction.

It is clear from the foregoing Federal statute that the Federal Commission has complete jurisdiction in the matter of the fixing of the rates for the sale and delivery of electrical energy which is thereafter transmitted in inter-State commerce.

We are of the opinion that the California Electric Power Company in the sale and delivery of the electrical energy to the Mineral County Power System is a public utility engaged in the furnishing of electrical energy in inter-State commerce within the meaning of the Federal Power Act, particularly said section 824 of Title 16 F.C.A., and by reason thereof is subject to the jurisdiction of the Federal Power Commission with respect to the fixing of the rates for the sale and delivery of the electrical energy in question, and that the Nevada Commission has no separable independent jurisdiction thereof.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

917. University of Nevada—Aliens May Not Be the Faculty.

CARSON CITY, May 11, 1950.

HON. JAY A. CARPENTER, *Director, Mackay School of Mines, University of Nevada, Reno, Nevada.*

DEAR MR. CARPENTER: This will acknowledge receipt of your letter dated May 8, received in this office May 11, 1950, requesting information on the following questions:

- a. Can the University employ an alien on its faculty?
- b. Can the Nevada school districts employ an alien to teach?
- c. Does it make a difference if the papers for citizenship have been taken out?

We are of the opinion that your questions (a) and (b), according to the statute in such case provided, must be answered in the negative.

The answer to your question (c) is that first papers for citizenship do not make a difference in the employment of aliens, but an alien who was employed in the educational departments of the State before the passage of the School Code in 1947, is not subject to dismissal, under the mandatory provisions of the statute, if such alien had declared his intention to become a citizen of the United States.

Section 349, chapter 63, Statutes of Nevada 1947, the School Code, provides as follows: "From and after the passage of this school code, the superintendent of public instruction, board of regents of the state university, county and district boards of education, and boards of school trustees are and each of them is hereby empowered and required to dismiss any teacher, instructor, principal, or superintendent, professor or president employed in the educational department of this state who is not a citizen of the United States, or who has not declared his or her intention to become a citizen."

Section 350 provides: "It shall be unlawful for the superintendent of public instruction, board of regents of the university, county and district boards of education and boards of education and boards of school trustees to engage or hire any president, superintendent, principal, teacher, instructor, or professor in any of the educational departments of this state who is not a citizen of the United States."

The following sections make it unlawful for disbursing officers to pay salaries to persons so employed who are not citizens and fix a penalty for the violation of the provisions of the section.

Very truly yours,

ALAN BIBLE, *Attorney General.*

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

918. Bonds—State Trust Funds May Not Be Invested in Revenue Bonds.

CARSON CITY, May 11, 1950.

HONORABLE GRANT L. ROBISON, *Secretary of State Board of Finance, Banking Department, Carson City, Nevada.*

DEAR MR. ROBISON: This will acknowledge receipt of your letter dated May 9, received in this office May 10, 1950, requesting an opinion as to the authority of the State Board of Finance to invest State trust funds in revenue producing bonds issued by any county or city, citing chapter 191, Statutes of Nevada 1943.

We are of the opinion that the class of bonds designated in chapter 191, Statutes of 1943, in which the funds of the State and its various departments may be lawfully invested are general

obligation bonds, as specified in the Act, and not revenue bonds. Chapter 191, Statutes of 1943, uses the term “general obligation bonds” which is well understood in the financial market. These bonds constitute a lien upon the property within the subdivision which is subject to taxation. Such bonds are an indebtedness of the district and expressly provide for the annual levy of a tax to pay principal and interest.

The statute under which revenue bonds are issued and the terms and conditions in the bonds themselves, state clearly that they are payable solely from the income, revenue, or proceeds of the enterprise or project to build or operate for which they were issued. “Hence, they are bonds payable from a special fund, are not the general obligations of the issuing public body, and are not payable from its general resources raised by taxation.” 43 Am. Jur., page 500, sec. 285. Section 2 of the Act mentioned requires the Attorney General to give his legal opinion as to the validity of such bonds and contains the following language: “* * * unless such commission or board, or other state agency, be satisfied from such inquiry and opinion that the bonds of such federal agencies are underwritten or payment thereof guaranteed by the United States and of the financial standing and responsibility of the State, county, incorporated city, or district issuing such bonds, then such commission or board, or other state agency, shall not invest such funds therein, * * *.”

This language reveals the intention of the Legislature to limit investment in bonds which are payable from the general resources raised by taxation in the unit issuing the bonds.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

919. Public Utilities—Public Service Commission Possesses no Jurisdiction Over Proposed Sale of Utility Property From one Utility to Another—Commission has Jurisdiction to Supervise the Fixing of Rates for Las Vegas Valley Water District.

CARSON CITY, May 16, 1950.

PUBLIC SERVICE COMMISSION, *Carson City, Nevada*.

Attention: Lee S. Scott, Secretary.

GENTLEMEN: Reference is hereby made to your letter of May 9, 1950, wherein you advise and request the opinion of this office as follows:

The Las Vegas Water District, created by Chapter 167, Statutes 1947, as amended by Chapter 130, Statutes 1949, is contemplating the purchase of the wells, springs and transmission facilities of the Las Vegas Land and Water Company.

The Las Vegas Land and Water Company is a public utility under the laws of this State and holds a Certificate of Public Convenience and Necessity, issued by this Commission, to serve the City of Las Vegas and adjoining area, with water service.

Will you kindly render an opinion on the following points:

1. Does this Commission have jurisdiction over the sale of the wells, springs and transmission facilities of the Las Vegas Land and Water Company to the Las Vegas Valley Water District?

2. After the operations are commenced by the Las Vegas Valley Water District, will this Commission have jurisdiction over the rates and services of said district?

OPINION

Chapter 167, Statutes of 1947, purports to authorize the creation and establishment of a water district in the Las Vegas Valley in Clark County. Very broad powers are granted such district when its organization has been perfected, which we understand has been accomplished. The main purpose of the district, as gathered from the Act, is to provide for the procurement, storage, distribution and sale of water and rights in the use thereof from Lake Mead for industrial, irrigation, municipal and domestic use, and to provide for the conservation of ground water resources of the Las Vegas Valley, and to purchase, acquire and construct the necessary works to carry out the purpose for which it was created. Provision is also made for extensive powers relating to issuance of revenue and general obligation bonds, particularly in the 1949 amendments to the Act as found in chapter 130, 1949 Statutes.

An examination of the Acts providing for the creation and establishment of the water district and the broad powers vested thereby in its board of directors discloses that whatever else the district is or may become as a public entity, that in carrying out the paramount purpose of the law it is and will be at least a quasi public corporation exercising the functions of a public utility.

Answering query No. 1. Had the functions, powers and authority of the water district and its board of directors been left as provided in the 1947 Act, the query would be easily answered by reference to the opinion of this office, Number 732, rendered your Commission March 11, 1949, relative to the jurisdiction of the Commission over Lincoln County Power District No. 1, organized and existing under chapter 72, Statutes of 1935. We there held that such power district did not fall within the jurisdiction of the Commission with reference to the approval by the Commission of a change in ownership of the water system of the town of Pioche and the fixing of rates for water service, upon the ground and for the reason that said chapter 72 contained a provision that such chapter was complete in itself and that no other law, general or special, should apply to such power district.

The 1947 Las Vegas Water District Act in section 19 provided: "That this act is complete in itself and shall be controlling. The provisions of any other law, general, special or local, except as provided in this act, shall not apply to a district incorporated under this act."

An examination of the 1947 Act fails to disclose any exception to section 19 relating to the powers of the Commission, so, had the 1947 Act not been amended in 1949, it is clear that no jurisdiction was vested in this Commission over any act or practice of the Water District.

In 1949 the Legislature amended section 19 of the 1947 Act, and inter alia, provided therein as follows: "This act shall itself constitute complete authority for the doing of the things herein authorized to be done. The provisions of no other law, either general or local, except as provided in this act, shall apply to the doing of the things herein authorized to be done, and no board, agency, bureau or official, other than the governing body of the district and the public service other than the governing body of the district and the public service commission of the State of Nevada, shall have any authority or jurisdiction over the doing of any of the facts herein authorized to be done, nor shall any proceedings, nor publications, notice of election be required for the doing of such acts except as herein specifically required." 1949 Stats. 215.

An examination of the 1947 Act, together with the 1949 amendments, fails to disclose any act or practice of the water district and/or its board of directors, officers or engineers is subject to supervision of this Commission, save and except the provision contained in section 16 of the 1947 Act as amended at 1949 Statutes, pages 210-214, wherein it is provided: "No board or commission other than the governing body of the district and the public service commission of the State of Nevada shall have authority to fix or supervise the making of such rates and charges."

The general rule with respect to the jurisdiction of a Public Service Commission is well stated in 43 Am. Jur. 701, sec. 193: "A public service commission has, however, no inherent power; all its power and jurisdiction, and the nature and the extent of the same, must be found within the statutory or constitutional provision creating it."

A Public Service Commission has no powers except those granted by the Public Utilities Act. *Cleveland C.C. & St. L.R. Co. v. Illinois Commerce Commission*, 146 N.E. 606, 54 A.L.R. 45.

All powers and jurisdiction of the Public Service Commission must be found within the four corners of the statutes creating it, since it is a tribunal of purely statutory creation. *Monroe v. Railroad Commission of Wisconsin*, 174 N.W. 450, 9 A.L.R. 1007.

A Public Service Commission has the power to supervise and regulate public utilities as it finds them. It has nothing to do with creating or bringing them into existence. Such a commission possesses no other power than that conferred upon it by the law of its creation, and under that law it has at the utmost only the power that is conferred upon it by the law of its creation, and under that law it has at the utmost only the power that is conferred in express terms or by necessary or fair implication. *Richland Gas Co. v. Hale*, 125 So. 130.

A Public Service Commission is an administrative agency created by statute and has no inherent powers. It is not the function of such commission to aid in the creation of new public utilities, but simply to supervise and regulate those which are in existence and come under its authorized jurisdiction. *State v. Department of Public Service*, 150 Pac. 2d. 709.

There being no provision in either the 1947 or 1949 Las Vegas Water District Acts empowering the Commission to exercise any jurisdiction over the sale of the Las Vegas Land and Water Company to the district, it is necessary to advert to the Public Utility Act of this State creating and fixing the powers and duties of the Commission with respect to the instant question. Such Act being sections 6100-6146, inclusive, N.C.L. 1929, and as amended from time to time thereafter, such amendments not being material here. A close examination of that Act discloses that nowhere therein has the Legislature clothed the Commission with express power to supervise or approve the sale of public utility property by one utility to another, nor is there any necessary implication that it has such power flowing from the Act. Such Act does vest the Commission with the power to supervise and regulate the charges made a public utility for service performed by it, and provides ample power and procedure therefor.

Further, it is to be noted that the proposed sale of the Las Vegas Land and Water Company facilities constitutes a complete sale thereof for further public utility service by the water district, and does not purport to be a sale of surplus water by the company so as to bring the sale within the purview of "An Act authorizing and permitting public utility corporations to purchase water or electric current for public utility corporations to purchase water or electric current for public utility uses," the same being sections 6147-6149, inclusive, N.C.L. 1929, wherein the approval of the sale of surplus water or electricity is required to be approved by the Commission.

Entertaining the views hereinabove set forth, we are of the opinion and so hold that the

statutory law of this State provides no power or jurisdiction in the Commission over the proposed sale of the facilities of the Las Vegas Land and Water Company to the Las Vegas Valley Water District.

Answering query No. 2. Undoubtedly the 1947 and 1949 Acts provide for the creation and establishment of a quasi public entity endowed with all the characteristics of a public utility for the procurement, storage and sale of water to all who desire such service. We think there is no question but that the water district, when it acquires the proper facilities for the sale and distribution of water to the consumers in any of its area, immediately becomes subject to the public service commission law with respect to the rates, charges and practices for and in connection with its water service and that this Commission is now vested with jurisdiction thereover, particularly so in view of the language incorporated in section 16 of the Act as amended at 1949 Statutes, page 214, reading: "No board or commission other than the governing body of the district and the public service commission of the State of Nevada shall have authority to fix or supervise the making of such rates and charges." Your query is answered in the affirmative.

Respectfully submitted,

ALAN BIBLE, *Attorney General*.

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

920. Taxation—Property Believed Escaping Taxation—Opportunity To Be Heard.

CARSON CITY, May 22, 1950.

NEVADA TAX COMMISSION, *Carson City, Nevada*.

Attention: Mr. R.E. Cahill, Secretary.

GENTLEMEN: This will acknowledge receipt of your letter dated May 8, received in this office May 10, 1950.

You enclose standard forms of application for Taylor Grazing and Forest Service permits for grazing livestock on the public domain and inquire if the number of livestock shown on the permits for grazing would constitute substantial evidence of the number of livestock owned by each permittee in the year for which the permits were issued.

Your second question is, "If substantial evidence was in possession of either the County or State board of Equalization which indicated that the full numbers of livestock were not on the current assessment roll, would it be necessary for them to notify the taxpayer to appear and show cause why additional numbers should not be added to his assessment?"

You write, "It appears that the addition of more livestock would constitute escaped or omitted property, in which event notification of the taxpayer might not be necessary."

We are of the opinion, in the event the Taylor Grazing and Forest Grazing permits issued to an owner of livestock showing the number of livestock owned by the permittee, were made available to the County or State Board of Equalization or the Tax Commission, the statement of ownership of livestock would constitute substantial evidence of the number of livestock owned by the permittee in the year for which the permits were issued.

The answer to your second question, in our opinion, is that wherever additional property is added to the assessment of a taxpayer by the county Board of Equalization, the State Board of Equalization or the Tax Commission after the adjournment of the State Board of Equalization as

property found to be escaping taxation, notice to the taxpayer concerned with opportunity to be heard must be given.

Section 6548, N.C.L. 1943-1949 Supp., as amended by chapter 52, Statutes of 1945, defines the duties of the Tax Commission after adjournment of the State Board of Equalization.

This section contains the following language: "The said commission shall have the power to cause to be placed on the assessment roll of any county, property found to be escaping taxation coming to its knowledge after the adjournment of the state board of equalization; * * * provided further, said commission shall not raise or lower any valuation established at the session of the state board of equalization unless, by the addition to any assessment roll property found to be escaping taxation, it shall be found necessary so to do; * * *."

While the language in the section does not include a notice to taxpayer to appear and show cause why additional property should not be added to his tax assessment, it should be construed in harmony with the Act relating to public revenues, and the due process of law clause in the Constitution. "Due process of law" of which no person shall be denied, means that no one shall be deprived of his property without notice and a reasonable opportunity to be heard in his own behalf. *Humboldt Land & C. Co. v. District Court*, 47 Nevada 396.

The fundamental requisites of "due process of law" are notice and opportunity to be heard. *King Tonopah M. Co. v. Lynch*, 232 Fed. 486.

Considering the entire revenue Act and particular the sections providing for a County Board of Equalization and a State Board of Equalization, provision is made for notice and an opportunity to be heard when increased valuations in assessments are intended.

Another indication that the intent of the Legislature is to require notice to the taxpayer when his tax assessment has been raised, is found in section 9 of the Act, section 6550, N.C.L. 1929. This section before amendment in 1939 did not require a notice to the property owner affected by the increase in assessment. The section as amended contains the following language relative to the secretary of the state board of equalization, * * * "shall, whenever the valuation of any piece or class of property shall have been raised, forward by mail to the property owner or owners affected thereby due notice of such increased valuation."

The substantial evidence discovered by the valuation division that the full number of livestock owned by any taxpayer was not shown on his assessment should be submitted to the County Assessor, and if necessary to the County Board of Equalization or the State Board of Equalization, where an opportunity would be given the taxpayer to be heard.

Property would not escape taxation by following such procedure, or by giving the taxpayer notice to appear and show cause why such additional numbers of livestock should not be added to his assessment, as section 7, chapter 52, Statutes of 1945, provides that in the event such property found to be escaping taxation cannot be placed upon the prior year's assessment roll.

The fundamental idea in due process of law, as expressed in 51 Am. Jur., page 673, dealing with taxation, is that notice and opportunity to be heard be afforded with respect to the validity and amount of the tax before it is conclusively established against the taxpayer, and his property subjected to the lien.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

921. Planning Board, State—Authority to Act for State—State Office Building, Las Vegas.

CARSON CITY, May 22, 1950.

MR. PAUL EMMERT, *Division Counsel, Generation Services Administration, Community Facilities Service, 630 Sansome Street, San Francisco 11, California.*

Re: Application No. Nev. 26-P-1001.

DEAR MR. EMMERT: This will acknowledge receipt of your letter dated May 12, received in this office the same date, submitting a copy of Public Law 352 of the 81st Congress, an Act to provide for the advance planning non-Federal public works.

You write that the State of Nevada, acting through the State Planning Board, has filed an application for an advance under this Act to finance the cost of the plan preparations for a State Office Building to be located in Las Vegas.

The question arises as to the basic authority of the State Planning Board under existing legislation to act for the State in the proposed planning, where there has been no specific delegation of authority from the Legislature respecting the proposed public work, nor any appropriation therefor.

We are of the opinion that the State Planning Board of Nevada under existing legislation has the fundamental and essential authority to act for the State of Nevada in the planning for a State building in Las Vegas, Nevada.

Section 3 of Public Law 352, 81st Congress, reads as follows: “No loan or advance shall be made hereunder with respect to any individual project unless it conforms to an over-all state, local or regional plan approved by a competent state, local or regional authority.”

The Act of the Nevada Legislature creating the State Planning Board as amended by chapter 81, Statutes of Nevada, 1947, contains in section 5 thereof, the following language.

“It shall be the function and duty of the state planning board:

“(a) To make a comprehensive state plan for the economic and social development of the State of Nevada. To this end, it shall conduct research and studies relating to the natural resources and to other factors in the progress of the state.”

The State Planning Board in 1949 transmitted to the Governor of the State of Nevada the six-year capital improvement program for Nevada as prepared by said board for the period 1949-1955.

The report contained the recommendations for advance planning and programming of the State's capital improvements in the listing by each State agency of its needed capital improvements and their estimated costs, for a period of at least six years, and the assembly and review of these programs from an over-all State planning viewpoint.

The construction of a State Office Building in Las Vegas was included in this over-all State plan, the construction of which was favored by the State Planning Board.

The purpose of Public Law 352, 81st Congress, approved October 13, 1949, as expressed in clause (c) of the first section, reads as follows:

“(c) thereby to attain maximum economy and efficiency in the planning and construction of local, State, and Federal public works, the Administration of General Services is hereby authorized during the period of two years immediately following the date upon which this Act becomes effective, to make loans or advances, from funds appropriated for that purpose, to the

States, their agencies, and political subdivisions (hereinafter referred to as 'public agencies') to aid in financing the cost of architectural, engineering, and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action preliminary to the construction of public works (exclusive of housing): *Provided*, That the making of loans or advances hereunder shall not in any way commit the Congress to appropriate funds to undertake the construction of any public works so planned."

The proposed State building at Las Vegas conforms to an over-all State plan which is approved by a competent State authority, the State Planning Board, by virtue of the authority vested in said board under chapter 81, Statutes of Nevada 1947.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

922. Counties—County Not Exempt From Payment of Clerk's Fees in Civil Actions Brought in the Courts of Another County.

CARSON CITY, May 23, 1950.

HON. ROBERT E. JONES, *District Attorney, Clark County, Las Vegas, Nevada*.

DEAR MR. JONES: Reference is hereby made to your letter of May 15, 1950, wherein you advise that Clark County has commenced an action in the First Judicial District Court, in and for the County of Ormsby, against Nye County and Mineral County, involving a claim for hospitalization for illness extended by Clark County to one who was a resident of either Nye County or Mineral County. Your inquiry is, is Clark County required to pay to the Clerk of Ormsby County the fees provided by law upon the filing of a complaint in a civil action by the plaintiff in the District Court of Ormsby County?

OPINION

It appears from your letter of inquiry and from the opinion of the District Attorney of Ormsby County on the question annexed to your letter that there is a divergence of opinion in the matter. The District Attorney of Ormsby County basis his opinion that the fees in dispute are payable by

Clark County upon an interpretation of section 1 of the 1947 Act regulating fees of County Clerks, wherein the following language appears, "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." 1947 Stats. 407 (Italics ours). On the other hand, we understand that it is your opinion that the exemption of the State from the payment of fees, as above quoted, also exempts a county from payment of such fees upon the ground that a county is merely a political subdivision of the State and that an exemption of the State in the matter also inures to the benefit of the county.

In the examination of the law preparatory to this opinion we have been unable to find any case directly in point or touching the precise question propounded. The fee statute for the Ormsby County clerk provides:

SECTION 1. The county clerk of Ormsby County, Nevada, and ex officio clerk of the First judicial district court of the State of Nevada, in and for the county of Ormsby, shall charge and collect fees as follows:

On the commencement of any action or proceeding in the district court (excepting a probate or guardianship proceeding), to be paid by the party commencing the action or proceeding, fifteen dollars * * *.

There is no exemption contained in such Act exempting the State or any county from payment of the fees therein provided, except, "that no fee shall be allowed to or charged by the clerk for any services rendered in any criminal case." 1945 Stats. 50.

An examination of the County Clerks' fee statutes for the respective counties of the State which are now in effect and which were in effect prior to the enactment of the 1947 Act above mentioned, save there appears no special Act for Lander County was ever enacted, discloses that eight of such Acts contain no exemption for the State or any county in civil actions. The Act for Clark County contains this provision: "that said clerk shall neither charge nor collect any fees for services rendered by him to the State of Nevada or the County of Clark or any city or town within said county, or any officer thereof, in his official capacity." 1933 Stats. 14. A similar provision is contained in seven fee statutes, some of which were enacted prior to 1933.

Whether the fee statutes containing no exemption applicable to the Stat were effective for that purpose is now immaterial. The 1947 Act, providing the additional filing fee upon the commencement of any civil action or proceeding, is a general Act applicable to all counties in the State and the prohibition therein against the charging of fees for services rendered the State is of general application and is effective as an amendment to all of the fee statutes in that respect.

That prohibition is clear and express. We think that if the Legislature had intended a similar prohibition as to all of the counties, it could well have made such prohibition clear. However, the language used infers a different intention. It provides that the clerk of *each county* shall charge and collect on the commencement of *any* civil action or proceeding a fee, etc., provided that such clerk shall neither charge or collect *any* fees for services rendered the State or *the* county, or any city or town with *said* county. It seems to us that the prohibition against the charging of fees against a county relates solely to a particular county commencing a civil action in its own district court. The context of the section in this respect relates to a single county. The terms "*the county*" and "*said county*" impart a singularity of thought and intent as distinguished from a broad prohibition had the Legislature said "the State of Nevada and counties" or "any county in the State." It is said in 62 C.J. 834, sec. 5:

THE. It is a definitive adjective, a demonstrative word used especially before a noun to particularize its meaning; the article which designates one particular from a class or number, disassociating it from others of the same class, determines what particular thing is meant; that is, what particular thing we are to assume to be meant, or directs what particular thing or things we are to take or assume as spoken of, and has a restrictive operation, and confines the subject to the particular thing or person previously mentioned; the definite article; the word used before nouns, with a specifying or particularizing effect, as opposed to an indefinite article, or to the indefinite generalizing force of "a" or "an."

See also *United States v. Hudson*, 65 Fed. 71; *Hoffman v. Franklin Motor Car Co.*, 122 122 S.E. 229; *Craig v. Bayes*, 11 P. 2d 673.

The Legislature has complete control of the entire subject of counties, except where prohibited by constitutional provisions. *Quiclici v. Strosnieder*, [34 Nev. 9](#). There is no constitutional prohibition with respect to the charging of filing fees to a county commencing a civil action in the courts of the State. Section 20, Article IV the Constitution, provides, inter alia, "nothing in

this section shall be construed to deny or restrict the power of the legislature to establish and regulate the compensation and fees of county officers.”

In *State v. Fogus*, [19 Nev. 247](#), it was held that, pursuant, to the foregoing constitutional provision, it was within the power of the Legislature to pass local and special laws regulating the compensation and fees of county officers.

The word “fee” means a charge fixed by law for official services rendered in the line of official duties by a public officer. 36 C.J.S. 628, 1 Cooley, Taxation, 4th Ed. 108, sec. 33. In *State v. Fogus*, supra, pages 250-251, it is said with respect to such fees: “it is not essential to such

exactions that they should inure to the personal benefit of the officer. The officers are but agents of the State for transacting the public business; and it is, in its nature, a matter wholly immaterial to those requiring their services whether the amount paid therefor goes to the officer, or into the public treasury, provided no more is exacted than is just and reasonable for the facilities afforded and the services performed.”

If the Legislature has complete control of the entire subject of counties, subject to constitutional restrictions, and if it has the power to regulate the fees of county officers by special and local Acts, which as we have shown it does have, then it follows, we think, that the Legislature possessed the power to require counties to pay clerks’ fees upon the commencement of civil actions in the courts of the State in such manner and subject to such restrictions it deemed necessary to impose.

We are not unmindful of the rule with respect to the applicability of statutory provisions to the sovereign State, i.e., that as a general rule where the State is not mentioned the statute has no application. We are also cognizant of the fact that a county is but an integral part of the State created for the more effective and efficient administration of the laws and policy of the State. However, the situation in the instant matter is that the State has been expressly mentioned in section 1 of the 1947 Act in question and expressly exempted from the provisions of the Act. On the other hand, the county has also been expressly mentioned in language, we think, that it is clear and express to the point that the county is not to be exempted from the provisions of the Act, save and except as to those civil actions or proceedings brought in the district court of that particular county.

It may be that the provisions of the 1947 Act with respect to counties is inequitable and poor policy, if so, the Legislature possesses ample power to correct the matter.

Respectfully submitted,

ALAN BIBLE, *Attorney General*.

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

923. Corporations—Redemption of Shares of Stock By Open End Investment Companies Does Not Constitute Reduction of Capital.

CARSON CITY, May 24, 1950.

THATCHER, WOODBURN AND FORMAN, *Attorneys at Law*, 206 North Virginia Street, Reno, Nevada.

Attention: John Thatcher.

GENTLEMEN: Reference is hereby made to your letter of sometime ago requesting the opinion of this office for and in behalf of the United States Bureau of Internal Revenue and

Treasury Department concerning the interpretation of sections 7 and 25 of the 1925 General Incorporation Act of Nevada as applied to the operations of the Mutual Investors, Inc., a Nevada corporation. The opinion being requested because of the apparent ambiguity of section 25 and that there has been no Nevada court interpretation thereof and the desire of the Federal bureaus to be advised of the opinion of this office thereon.

STATEMENT

The Investors Mutual, Inc., is a corporation organized and existing under and by virtue of the 1925 General Incorporation Act of Nevada. The corporation is authorized to engage in the investment business and is known as an "open end" investment company subject to and as defined in section 80a, et seq. of Title 15, United States Code. Under its articles of incorporation each shareholder may and can require the company to redeem his share or shares of stock upon written request certificates. The company thereupon is required to redeem such shares and pay therefor, in accordance with the terms of the articles and the formula therefor therein provided, the then determined net set value of such shares.

The redemption of the shares of stock is not, in the final analysis, a mere purchase by the corporation of its own shares, as it is specifically provided in Article IV of its articles that the shares so redeemed return to the status of authorized but in issued shares and do not become treasury shares. Such shares, after redemption, are again offered for sale and sold and new certificates therefor issued. In fact an open end investment company is so known for the reason that it is the daily practice of such a company to redeem shares and sell shares, and that often the number of shares sold in a single day will exceed the number of shares redeemed. As a result there is a constant fluctuation in the number of shareholders and the number of shares outstanding at any one time, with a consequent fluctuation of the capital of the company.

There is a dispute between the Investors Mutual and the United Sates Bureau of Internal Revenue relative to certain credits claimed by the Mutual in connection with payment of its income tax prior to or for the year 1945. It is stated in the letter of inquiry as follows:

In its dispute with the Bureau of Internal Revenue, the company claims that each redemption of shares, in accordance with the Articles of Incorporation and the conditions which are embodied on the face of the certificate itself, is a partial liquidation for which the company is entitled to a dividends paid credit for the purpose of computing its taxable income. The Treasury Department contends, on the other hand, that there was not a partial liquidation for the reason that a partial liquidation involves a reduction in capital and no certificate of such reduction was filed, as provided for in section 25 (Section 1624, N.C.L. Supp.) of the Corporation Act of 1925.

The precise question as to which an opinion is requested of you is, therefore, whether or not upon each redemption, of which there are thousands during the year, any reduction of capital effected thereby must be under the authority of the Board of Directors and a certificate thereof filed as provided in section 7 (Section 1606, N.C.L. Supp.).

OPINION

At the threshold of this opinion we desire to point out that no case can be found wherein the

courts of Nevada have passed upon the question presented, nor interpreted the sections of the 1925 Corporation Law involved herein. Neither have we found any case wherein the precise question was presented and/or decided by any court. We must assume that it is a case of the first impression insofar as the Nevada law is concerned.

The legal problem presented is whether the redemption of shares of stock by an open end mutual investment company in the manner provided in its articles of incorporation, pursuant to a valid contract theretofore made with a shareholder, to redeem, upon application therefor made by the shareholder, so operates as to cause such a reduction in its capital as to require the adoption by its Board of Directors of a resolution amending its articles of incorporation and the subsequent filing of a certificate of such amendment with the Secretary of State as provided in section 7 of the 1925 law, being section 1606, 1929 N.C.L., 1941 Supp., and section 25 of such law, being section 1624, 1929 N.C.L., 1941 Supp.

The general rule of law, as stated in a majority of the cases, with respect to contracts with purchasers of shares of stock incorporations whereby the corporations agree to repurchase the same is well stated in 13 Am. Jur. 351, section 248:

There is considerable variance among the authorities as to the validity and effect of an agreement by a corporation entered into contemporaneously with the sale of, or subscription to, its stock, to repurchase the same, or to refund the consideration paid therefor upon return of the certificates, or to cancel the subscription and refund the amount paid therefor. In one class of cases, constituting the majority, either the validity of such agreement has been directly sustained as against such defenses as ultra vires, violation of public policy or statute relating to purchase of their own stock by corporations, or reduction of the capital by such purchase or by division thereof among stockholders, or the agreement has been given effect indirectly by permitting the purchaser to recover the purchase price, sometimes even under the express assumption that the agreement to repurchase was ultra vires, provided that such recovery would not prejudice the rights of creditors or other stockholders of the corporation. The general rule has been applied not only where the repurchase was to be effected at the option of the purchasers, but also where it was to be effected at the option of the corporations.

The foregoing text is well supported by the many cases cited in Annotation, 101 A.L.R. 154 et seq. The foregoing authorities, of course, do not relate in every instance to open end investment companies. They are cited to show that contracts for the repurchase of shares of stock are, in the main, not ultra vires, so long as creditors' rights and shareholders rights are not jeopardized by such repurchase.

The distinguishing feature of an "open end investment company" is the company's standing officer to redeem capital stock issued by it. *New York Stocks, Inc. v. Commissioner of Internal Revenue*, 164 Fed. 2d 75. It would seem then that when a State, through its incorporation laws, sanctions an open end investment company, it does so with that distinguishing feature in mind, and unless it specifically provides in its laws that the redemption of the shares of stock shall be deemed a reduction of its capital and must be accounted for in the same manner and by the same method as the reduction of capital by other corporations, that the State does not consider such redemption as such a reduction of capital requiring amendments to the articles of incorporation,

particularly so where the shares so redeemed do not constitute treasury shares, but to the contrary constitute authorized but unissued shares subject to sale by the company to other investors.

Corporations organized pursuant to the Nevada Act of 1925 are granted the power "to purchase, hood, sell and transfer shares of its own capital stock, and use therefor its capital, capital surplus, surplus, or other property or funds; provided, that no such corporation shall use its funds or property for the purchase of its own shares of capital stock when such use would cause any impairment of the capital of the corporation, except as provided in section 25 of this act * * *."

Subdiv. 3, sec. 1608, 1929 N.C.L., 1941 Supp. This section, we think, clearly provides the power for a corporation to purchase its own shares and pay therefor from its capital without the necessity of filing certificates of amendment relating thereto with the Secretary of State, so long as such purchase would not nor does not impair its capital to the detriment of its shareholders and creditors and the efficient carrying out the purposes of the corporation, the failure of which to observe no doubt would be disastrous to the corporation.

The exception in subdivision 3, "except as provided in section 25 of this act," specifically directs attention to the section of the law expressly relating to the reduction of capital of corporations.

This section, in our opinion, was written into the law for the very purpose of providing the method whereby corporations desirous of reducing their capital, or perhaps by reason of unforeseen circumstances forced to so reduce, could reduce such capital and give notice to the world that it had been reduced, so that all persons thereafter dealing with such corporation would be held to the knowledge of its then authorized capital.

However, a close and careful study of such section, in our opinion, fails to disclose any intent of the Legislature that its provisions were to relate to an open end investment company whose articles of incorporation, as do the articles of the company whose articles of incorporation, as do the articles of the company in question, authorize the redemption of the shares of its shareholders when upon redemption such shares immediately assume the status of authorized but unissued shares that can be and are immediately offered for sale and sold, thus from time to time replenishing the treasury of the company for the outlay made in the redemption. There may be a reduction of capital from time to time, but there is also a replacement thereof from time to time, so that as a practical matter it would be difficult to ascertain with any degree of certainty when and at what point there was such a reduction of capital requiring the company to comply with the provisions of sections 25 and 7 of the law, at least until such time as the redemptions so far exceeded the sales of shares as to point to an actual impairment of capital to the injury of shareholders and creditors.

We are of the opinion that sections 25 and 7 of the law in question are not ambiguous insofar as open end investment companies are concerned. We think such sections have no application to such companies in the ordinary course of their business, and only come into play when such companies are desirous of reducing their entire capital in like manner as other corporations.

There is no provision, we think, in the 1925 Act requiring solvent open end investment companies to file certificates of amendment concerning any reductions of capital brought about by redemptions of shares in accordance with contracts to so redeem sanctioned by their articles of incorporation.

It is our considered opinion that the redemption of shares of stock by the Investors Mutual Inc., had in the ordinary course of its business, where such redeemed shares immediately assume the status of authorized but unissued shares, does not constitute such a reduction of capital as will require the application of section 25 of the Nevada Corporation Act of 1925.

Very truly yours,
ALAN BIBLE, *Attorney General*.
By W.T. MATHEWS, *Special Assistant Attorney General*.

924. Public Employees Retirement—Status of Teachers Presently Retired, Returning to Service and Again Entering Retirement.

CARSON CITY, May 25, 1950.

MR. KERWIN FOLEY, *Executive Secretary, Public Employees Retirement Board,*
Carson City, Nevada.

Attention: Kenneth Buck, Administrative Assistant.

DEAR MR. FOLEY: This will acknowledge receipt of your recent letter in which you request the opinion of this office as to the following question:

Under the Public Employees Retirement Act and in view of the contract covering integration of the Public School Teachers Retirement System and the Public Employees Retirement System, may a teacher presently retired to return to service and, upon again entering retirement, receive an allowance based in whole or in part upon the compensation received during the period of re-employment?

The answer to this inquiry is in the affirmative.

We might state at the outset that the Public Employees Retirement Act does not contain anything that directly answers your problem and it will therefore be necessary to construe the Act in its entirety to arrive at the correct solution.

Section 23 states that no one who is receiving benefits shall not be employed by the State and it follows therefrom that one may be re-employed, but first he must be removed from the retirement rolls. Assuming this to be the case and he is re-employed, the withdrawals your office will make will be based on the salary he receives after being re-employed.

Section 14 provides that after attaining the retirement age one is eligible to retire at one-half of his average salary during his last five years of service.

Therefore, if a person is re-employed after retiring and subsequently requires again, it is our opinion that his retirement allowance must be based as set forth in section 14 of the Act.

We further are of the opinion that the following two questions will not alter the answer to the basic problem:

If the said teacher, now drawing an allowance through the Public School Teachers Retirement System, should refuse an allowance through the Public Employees Retirement System, although eligible therefor, would it affect your answer to Question 1?

If the said teacher should receive an allowance through the Public Employees Retirement System for one or more months prior to re-entering employment, would it affect your answer to Question 1?

Very truly yours,
ALAN BIBLE, *Attorney General*.
By ROBERT L. McDONALD, *Deputy Attorney General*.

925. Intoxicating Liquor—Sale to Indians—Revocation of Licenses by County Liquor Board.

CARSON CITY, May 26, 1950.

HON. A.L. PUCCINELLI, *District Attorney, Elko County, Elko, Nevada.*

DEAR MR. PUCCINELLI: This will acknowledge receipt of your letter in which you request the opinion of this office as to the legality of the action recently taken by the Elko County Liquor Board.

It is our understanding from reading your letter, Mr. Wright's letter and discussing the problem with Mr. Kennedy, one of your County Commissioners, that the following are the facts as they occurred.

That the Grand Jury of Elko County investigated a situation existing at a Mountain City regarding the selling of liquor to Indians. They then reported their findings to the Elko County Liquor Board and recommended that proper steps be taken to revoke the license then in existence at Mountain City.

The Elko County Liquor Board as a result thereof called a meeting after discussing the problem among the board members, at which time some of the members related their findings regarding the situation and the board sent a written notice to all of the liquor licensees in Mountain City informing them that their licenses were revoked. This was on the 27th day of April, 1950.

Mr. George Wright, attorney for some of the licensees, objected to the procedure on their behalf on the following grounds:

1. The notice of revocation was made by the Elko County Licensing Board and not by the Elko County Liquor Board.
2. A verified petition was not filed as required by law.
3. No notice whatsoever was given to the licensees.
4. An offense has not been committed by the licensees.

You, as District Attorney, wrote an opinion stating in effect that the action of the board was legal.

We have a copy of your brief and also the points and authorities submitted by Mr. George Wright supporting his contention and have thoroughly researched the problem ourselves. We submit herewith our conclusions.

As to the first point set forth by Mr. Wright we are of the opinion that your answer thereto is correct, namely, that the objection is merely a technical objection and has no bearing on the basic issue involved.

Secondly, it is our opinion that the filing of a verified petition is not necessarily a requirement of the law.

Section 3690, 1929 N.C.L., 1941 Supp., provides as follows:

Whenever it shall become lawful to buy, sell, possess or otherwise traffic in any intoxicating, spirituous, malt, fermented, or other liquors, or wines, the board of county commissioners, the district attorney, and the sheriff in each of the several counties in this state are hereby authorized, empowered and commissioned, for the purposes of this act, to act jointly (without further compensation) as a liquor board, to grant or refuse liquor licenses, and to revoke the same whenever there is, in the judgment of a majority of such board, sufficient reason for such revocation. It is hereby declared to be the power and duty of the

liquor board in each of the several counties of the state to enact ordinances regulating the sale of intoxicating liquors in their respective counties; fixing the hours of each day during which liquor may be sold or disposed of; prescribing the conditions under which liquor may be sold or disposed of; prohibiting the employment or service of females or minors in the sale or disposition of liquor; and prohibiting the sale or disposition of liquor in places where, in judgment of the board, such sale or disposition may tend to create or constitute a public nuisance, or where by the sale or disposition of liquor a disorderly house or place is maintained; provided, all liquor dealers within any incorporated city or town are to be exempt from the force and effect of this act, and are to be regulated only by the city government therein.

It is to be noted that this statute gives to the Liquor Board the power to grant or to revoke liquor license and requires that it is the Board's duty to enact ordinances regulating the sale of liquor in their particular county.

Your Liquor board enacted the following, which is a portion of the Elko County liquor ordinance:

(2) The Elko County Liquor Board may, *upon their own motion*, and shall, upon the verified complaint, in writing of any person, investigate the action of any licensee hereunder and shall have the power to suspend, or revoke, a license hereunder for violation of said liquor Ordinance or for misrepresentation of a material fact by the applicant in obtaining a license hereunder.

We agree with your opinion in that a license may be summarily revoked in accordance with this section as indicated by the italic portion of the ordinance. However, if a verified complaint is filed, it is essential that a citation issue and there be a hearing as provided. In the facts, as we understand them and as set out by both yourself and Mr. Wright, there was not a verified complaint filed and consequently the notice, hearing, etc., may be dispensed with. If such an ordinance is constitutional, then both objections 2 and 3 as set forth by Mr. Wright are adequately answered, as we pointed out above the Nevada statutes give the county the power to enact such an ordinance.

In 27 Nevada 71 a similar case arose and although the petitioner appeared, the Court said on page 76: "By appearing the petitioner waived notice, but, as he objects to the sufficiency of the citation, we prefer to treat the case on the merits, *and as if there had been no notice or appearance.*" (Italics ours.) The Court then went on to discuss the law in numerous other States and concluded by saying on page 87"

From a general review of the authorities it appears that a license for the sale of liquors may be revoked before the expiration of the time for which it has been granted by the act of the legislature directly, or by the will of a majority of the voters expressed at an election, or by the board or mayor in their or his discretion, and with or without notice to the licensee, if statutory authority and conditions be pursued. It is apparent that the respondents acted within the letter and requirements of these statutory provisions, and that they are not unconstitutional.

Therefore, it is our opinion that the County Liquor Board was within its legal rights when it revoked the licenses referred to in your letter.

Mr. wright, in his points and authorities on page 7, has set forth some of the statutes regarding grand juries and concludes that the grand jury exceeded its power in this situation.

We might call your attention to section 10826, 1929 N.C.L., 1945 Pocket Part: “* * * may inquire into any and all matters affecting the morals, health, and general welfare of the inhabitants of the county, or of any administrative division thereof, or of any township, incorporated city, irrigation district, or town therein.”

We feel that this particular section is broad enough to include recommendations to the County Liquor Board and we have already pointed out why we consider the Board’s action legal.

Very truly yours,

ALAN BIBLE, *Attorney General*.

By ROBERT L. McDONALD, *Deputy Attorney General*.

926. County Commissioners—Not Authorized to Execute Option Agreement to Purchase Sewer Property for a Sum Greater Than Provided in the Bond Election—Boards Cannot Execute Such Agreements as Extend Beyond Their Term of Office.

CARSON CITY, May 31, 1950.

HON. WILLIAM J. CROWELL, *District Attorney, Nye County, Tonopah, Nevada*.

DEAR MR. CROWELL: Reference is hereby made to your letter of May 25, 1950, wherein you request the opinion of this office relative to whether the Board of County Commissioners of Nye County may legally execute an agreement with the Tonopah Sewer Company for the sale and purchase of its sewer system in the town of Tonopah, Tonopah being an unincorporated town and governed by the Board of County Commissioners.

STATEMENT

Briefly the facts are, on April 25, 1950, the voters of the town of Tonopah at a special election by a large majority of the property owners and nonproperty owners therein authorized the purchase of all the property and facilities of the Tonopah Sewer Company for the sum of \$60,000 and authorized the issuance of revenue bonds in that amount for such purpose, in anticipation of, if necessary, condemnation proceedings in the courts for the acquiring of the sewer property and facilities. Subsequent to the election of the sewer company proposed and submitted an agreement to the Board of County Commissioners wherein, if executed, the sewer company would sell and the Board of County Commissioners would purchase on July 1, 1952, the sewer property and facilities for the sum of \$60,000 cash. The agreement also contains an accelerating option clause substantially as follows: that the sale and purchase of the property if had on July 1, 1950, the purchase price would then and there be \$74,400, then follows different periods of time and dates wherein the option could be exercised at reduced purchase prices down to and including June 1, 1952, where the purchase price is pegged at \$60,600.

The question is, can the Board of County Commissioners legally execute such agreement, if so, would it be necessary to hold another election in order to authorize an increased purchase price over and above \$60,000.

OPINION

It is well settled in the law of this State that Boards of County Commissioners are boards of limited jurisdiction and their powers restricted to those expressly provided by statute, or implied

from the express powers there granted necessary to carry out such express powers, and no more.

The statutory law with respect to the power of such boards to enter into contracts contains a restriction that, we think, applies to the agreement in question here. Section 1973, N.C.L. 1929, provides: "No member of any board of county commissioners within this State shall be allowed to vote on any contract which extends beyond his term of office." It is clear that the proposed agreement, if legally executed, would in any event bind the board to purchase the sewer property on July 1, 1952. We are advised that the term of office of two of the members of the present Board of County Commissioners will expire on the first Monday in January 1951, some eighteen months prior to the date on which the property in question could be purchased for \$60,000. We entertain grave doubts as to the power of two members of the present board to authorize the execution of the agreement, and, because of the above-quoted statutes, we are of the opinion, by reason of the restriction therein contained, that the present Board of County Commissioners cannot legally execute such agreement. One member, of course, cannot enter into any agreement binding upon anyone.

We are advised that the election held in the town of Tonopah on April 25, 1950, wherein the purchase of the sewer property and the issuance of bonds therefor was authorized, was held pursuant to an Act of the Legislature authorizing unincorporated towns to acquire by purchase or otherwise sewage systems, the same being sections 1327-1340, inclusive, N.C.L. 1929. This Act clearly provides for the acquisition for such towns by the Boards of County Commissioners of sewage systems as well as other public utilities. Section 2 of the Act, i.e., section 1329, N.C.L. 1929, provides: "The bonds herein provided for and hereby authorized to be issued by any such city or town shall not at any time exceed the sum or amount designated by the authority authorizing the issuance thereof * * *."

The ballot voted by the electors in the special election provided for the issuance of \$60,000 in bonds, and no more. This limitation, we think, is a strict limitation upon the Board of County Commissioners and such board cannot, by reason of the result of the election, contract at any time to pay more than \$60,000 for the property in question, unless and until another election authorizing a larger sum for such purpose shall have been had. The general rule of law is that the cost of a public improvement, as stated in ballots used in a special election in reference thereto, is a limitation upon subsequent official acts based upon a favorable vote. 43 Am. Jur. 343, sec. 89. Anno. 117 A.L.R. 895. See also *Dreming v. Topeka*, 117 A.L.R. 884, 81 Pac 2d. 720.

We therefore conclude and so hold:

1. That the present Board of County Commissioners of Nye County cannot legally execute the presently proposed agreement by reason of the provisions of section 1973, N.C.L. 1929, prohibiting any member of the board from voting upon a contract that extends beyond his term of office.
2. That the said board cannot legally execute the proposed agreement whereby the option therein provided could be exercised prior to the final purchase date in the sum and amount in excess of \$60,000.
3. That if a price in excess of \$60,000 is required for the purchase of the sewer property, another election is necessary to authorize such excess in the purchase price and the authorization of the issuance of bonds therefor.

Respectfully submitted,

ALAN BIBLE, *Attorney General*.

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

927. Sanitary Districts—Publication of Notice Intention to Create.

CARSON CITY, June 13, 1950.

HONORABLE DONALD W. HEMINGWAY, *Deputy District Attorney, White Pine County, Ely, Nevada.*

DEAR MR. HEMINGWAY: This will acknowledge receipt of your letter dated June 5, received in this office June 7, 1950. You request an interpretation of section 2, chapter 138, Statutes of Nevada 1947, respecting the publication of notice of intention to create a sanitary district under the Act.

The question presented is whether it is required to public such notice every day for 10 days preceding the passage of such ordinance or if one publications 10 days preceding the date noticed is sufficient.

We are of the opinion that the statute does not require publication in a newspaper every day for 10 days before the date noticed. The statute requires a period of at least 10 days and it would eliminate any question of doubt to fix the date in the notice at more than 10 days from the first publication, and public 3 times. For example the board could give notice by publishing on June 16, June 23, and June 30, of notice of intention to pass on the question on July 1.

Section 2, chapter 138, Statutes of 1947, quoting that part deemed relevant to your question, reads as follows:

“* * * provided, however, that such ordinance can only be passed after a notice of intention to create such a district or districts shall have been given by said sanitary board by publishing for at least ten (10) days, preceding the passing of such ordinance, in some newspaper of general circulation published in the county, * * *.”

The question of a daily publication to satisfy the requirement of a certain period of time was decided in *Mayor of Baltimore et al. v. Little Sisters of the Poor*, 56 Md. 400, cited in *Words and Phrases*, Vol. 4, page 679. The Court held that the cod which requires at least 60 days' notice of any application for the passage of an ordinance in at least 2 of the daily newspapers in the city, does not require a daily publication for 60 days, but it requires that the notice shall be published in 2 of the newspapers in the city and that 60 days shall elapse after the publication of the notice before such ordinance shall be passed.

The Supreme Court of this State in the case of *In Re Hegarty's Estate*, 45 Nevada 145, interpreted the statute requiring the publication of notice of petition to probate a will which provided, “* * * shall not be less than ten nor more than twenty days.”

The Court found from the record that the notice was not published 10 days before the date of the hearing which was fixed in the notice for Monday the 9th day of February 1920, and the first publication was made on January 31, 1920, while the last was made on February 7, 1920. The Court found that the notice was published only 9 days before the date designated, and set aside the order admitting the will to probate.

See also Attorney General's Opinion No. 198, 1934-1936 Biennial Report, which held that a notice required for at least three weeks would require four publications.

In the case of *State v. Yellow Jacket Silver Mining Co.*, 5 Nevada 415, the Court held that a statute requiring publication once a week is complied with when the number of publications have been made.

The Legislature in 1949 adopted chapter 215, section 1 of which reads as follows:
“Whenever any notice is required by law to be given by publication, unless otherwise specified, such provision shall be satisfied by publishing the required notice at least once a week consecutively, for not less than the full period of time so required in a qualified, legal and competent newspaper.”

Owing to the varied interpretation of “at least” and “not less than” and “full period” it is advisable to adopt a safe margin of time and number of publications.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

928. Bonds—Huffakers School District No. 9—Valid.

CARSON CITY, June 12, 1950.

HON. GRANT ROBISON, *Secretary State Board of Finance, Carson City, Nevada*.

DEAR MR. ROBISON: We have examined the transcript of the record of the proceedings of the trustees of the Huffaker’s School district No. 9, Washoe County, State of Nevada, taken preliminary to and in the issuance and sale of its bonds for the purpose of erecting and furnishing school buildings and purchasing sites therefor, series of May 1, 1950, in denomination of \$1,000 each, in the aggregate principal sum of \$110,000, and find:

That each and every resolution, certificate of determination, and every notice required by state preliminary to, and in the issuance and sale of said bonds was duly made and given.

That the election to authorize the bonds was held according to law, and the bond issue duly authorized.

That all necessary steps and proceedings creating the bond issue were duly and legally taken and had.

That the total bonded indebtedness of the school district does not exceed 10 percent of the last valuation for county purposes of the taxable property situate within said school district. The copy of the proposed form of bond is in due and legal form.

We are of the opinion that the said bond issue creates a legal debt and binding obligation of the Huffaker’s School District No. 9, Washoe County, Nevada.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

929. Motor Vehicles—Application for Operator’s License May Be Refused on Basis of Suspension in Another State—Nevada License May Not Be Suspended Merely on Basis of Suspension in Another State.

CARSON CITY, June 12, 1950.

PUBLIC SERVICE COMMISSION, *Drivers License Division, Carson City, Nevada*.

GENTLEMEN: This will acknowledge receipt of your letter dated June 5, received in this office June 6, 1950.

You present the following questions:

No. 1. An applicant had his California driver's license suspended on May 28, in California, under a financial responsibility law. He applied for a Nevada operator's license on May 31, 1950.

If he is qualified for a Nevada driver's license in all respects other than the California suspension, is he eligible for a license in Nevada?

No. 2. You are in receipt of a letter from a California attorney advising that his client holds an unsatisfied judgment in California for an automobile accident, against two Nevada residents who hold Nevada drivers' licenses. The Nevada residents have had their driving privilege suspended in California under the financial responsibility Act. He inquires if your department can suspend the Nevada licenses under this State's safety-responsibility law or under the driver's license law.

You call attention to the provision in the Motor Vehicle Safety-Responsibility Act of this State that the same shall be interpreted and construed to make uniform the laws of those States which enact it, and request a general discourse on the subject of uniformity of interpretation.

We are of the opinion, in answer to your first question, that the Department, under the Act relating to the licensing of persons operating motor vehicles, may refuse to grant the application for license.

The answer to your second question, in our opinion, is that the Department or the Commissioner, under the Motor Vehicle Safety-Responsibility Act or the Operator's Licensing Act, has no authority to suspend such licenses.

Respecting the uniformity of interpretation of uniform law, we quote from Sutherland Statutory Construction, vol. 2, page 557:

The National Conference of Commissioners on Uniform State Laws has drafted numerous laws for adoption by the states for the purpose of standardizing the laws on particular subjects within the United States. To effect this result the courts will refer to decisions of other states and will construe the statute in accordance with the construction given the statute in other jurisdictions. If there is no harmony in the decisions of other jurisdictions on the construction of the statute the courts of the adopting state will adopt the construction which to it seems most reasonable.

This will not apply if the statute adopted contains many departures from the uniform Act.

The authority given the department to refuse to grant a driver's license is found in section 4442.09, N.C.L., 1931-1941 Supp., as amended by chapter 187, Statutes of 1943, and chapter 29, Statutes of 1949.

Section 10 defines the circumstances under which the Department shall not issue any license.

Subsection 3 reads as follows: "To any person as an operator or chauffeur, whose license has been suspended, during such suspension not to any person whose license has been revoked until the expiration of the period for which such license was revoked."

Subsection 8: "To any person when the administrator has good cause to believe that operation of a motor vehicle on the highways by such person would be inimical to public safety or welfare;"

Section 13 of the Act as amended by chapter 187, Statutes of 1943, provides that the application be on the form furnished by the department which shall contain certain information and be verified by the applicant. Among the requirements is a statement, whether any license issued to the applicant has been suspended or revoked. The application for license which was submitted with your letter, shows that the applicant is a person whose license is suspended.

The answer to the second question depends upon the construction of the Act relating to the licensing of persons operating motor vehicles and the Motor Vehicle Safety-Responsibility Act, which is supplemental to the Act to license operators of motor vehicles.

Section 4442.30, N.C.L. 1931-1941 Supp., provides that the Department is authorized to suspend or revoke the license of any resident of this State upon receiving notice of the conviction of such person in another State of an offense which, if committed in this State, would be grounds for the suspension or revocation of the license of the operator.

Conviction is defined by Chief Justice Marshall, 1 Wheat 461, 4 L.Ed. 132, as a technical term applied to judgment in a criminal prosecution. See Words and Phrases, Volume 9. The section refers to a criminal judgment and not one for damages.

The Safety-Responsibility Act of Nevada, although it provides that it should be construed to make uniform the laws of the States which enact it, does not substantially adopt the uniform Act as adopted by other States.

The draft of the uniform automobile liability security Act as adopted by several other States, Uniform Laws Annotated, Vol. 11, page 134, contains the following language: "If within fifteen days after it becomes final, any person fails to satisfy any judgment rendered against him by a Court of competent jurisdiction in this or any other state or the District of Columbia or any providence of the Dominion of Canada or by a District Court of the United States on account of personal injury or damage to property * * * his operator's license and all his certificates shall be forthwith suspended by the (Commissioner) upon receiving a certified copy of such judgment from the court in which the same was rendered * * *." It further provides that the license shall be suspended until such judgment is satisfied and until he has furnished proof of financial responsibility for future accidents.

The material variations in the Nevada Act are such that it cannot be considered an adoption of the uniform Act.

The Nevada Act relates to the deposit of security or other evidence of financial responsibility of "The operator of every motor vehicle which is in any manner involved in an accident within this state, * * *." See sections 3 and 4, chapter 127, Statutes of 1949. The Commissioner is authorized to suspend the license of the operator "involved in such accident" unless the security which the Commissioner shall determine is supplied.

The Act of Nevada does not substantially adopt the uniform Act so as to raise the presumption that the Legislature enacted it in the light of the construction that has been placed upon it by States which have substantially adopted the Act.

The conclusion, therefore, is that neither the Act relating to the licensing of operators of motor vehicles or the Safety-Responsibility Act of this State authorizes the Department or the Commissioner to suspend the license of the operators mentioned in your second question.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

930. Nevada State Historical Society—Certain Sections of Law Interpreted.

CARSON CITY, June 14, 1950.

HONORABLE VAIL PITTMAN, *Governor of Nevada, Carson City, Nevada*.

DEAR GOVERNOR PITTMAN: This will acknowledge receipt of your letter of June 2, received in this office June 5, 1950, requesting our opinion as to numerous questions concerning the Nevada State Historical Society.

At the outset we feel it essential to state that the legislation regarding the Historical Society is very meager and in order that it function more properly new legislation is certainly advisable.

We have thoroughly examined all of the statutes pertaining to the Society, the articles of incorporation and the constitution adopted by the Society, and by reading them all together, conclude as follows:

Your first inquiry is as follows:

1. How is the Board of Trustees created, and what is the procedure in filling vacancies?

In 1907 the Legislature passed an Act entitled, "Encouragement of Nevada Historical Society," which is found in the 1929 Nevada Compiled Laws, sec. 4680, etc. By this Act the Nevada Historical Society was recognized as a State institution, and the names of the officers were set out without designation. (Sec. 4680.)

The Constitution provides in section IV as follows:

The officers shall be president, a vice president, a secretary, a curator, a treasurer, and an executive council consisting of the foregoing officers and two other active members elected by the Society together with the ex presidents of the Society.

Therefore, vacancies in any of the offices would be filled as provided in this section of the Constitution. We would recommend that there be legislation, however, which could clarify this problem by creating a board of trustees and providing a procedure to fill vacancies when they exist.

Your second question is as follows:

2. Has the Board authority to pay a salary to a secretary, a curator, or other employee, and is it within the province of the Board to fix the salaries of such employees?

Chapter 125 of the 1949 legislative enactments provided by general appropriation \$23,000 for the support of the Historical Society.

We feel it is permissible for the officers to provide by general appropriation \$23,000 for the support of the Historical Society.

We feel it is permissible for the officers to provide out of this appropriation a salary for the employees of the Society and as there are no statutes setting the amount of the salary, it follows that the officers must determine this amount, being governed obviously by the appropriate statutes. Section 7549, N.C.L., 1943-1949 Supplement, establishes the salaries of various State employees, and if the employees of the Historical Society are within the class of those designated by this particular statute, their salary would be determined accordingly.

We might state again that through proper legislation this problem would be clarified. The purposes of the appropriation could be set forth and the salaries could be "earmarked" for the particular type of employee.

Your third inquiry is as follows:

3. Under the Law, could the trustees, in the event they so desire, move the library to a building owned by the University of Nevada or to any other location where the officers were not situated?

Section 4689, N.C.L. 1929, provides as follows:

The secretary of Nevada state historical society, which is recognized as a state institution and which holds a large, varied and invaluable collection of files, documents and records as trustee of the state, is hereby prohibited from permitting or allowing any of the files documents and records as trustee of the state, is hereby prohibited from emitting or allowing any of the files, documents or records of this society to be taken away from the building where its offices and rooms are or shall be located; provided, that the secretary in person, or by any duly authorized deputy, clerk or employee, make take any of these files, documents or records away from that building for use as evidence or for library or historical purposes temporarily; provided, further, that this shall not prevent the sale or exchange of any duplicates this society may have or obtain.

It is our opinion that under this section the officers could not move the library to a building owned by the University or any other location unless its officers are located in the same building other than for a temporary purpose. This problem could also be clarified by legislative action.

Your fourth question is as follows:

4. Is there any legal provision that would prevent the Board of Trustees from placing the library in one location and the museum exhibits in another place?

Section 4689, N.C.L. 1929, in our opinion adequately answers this inquiry.

It is our opinion that the intention of this section was to provide that all of the documents, records, etc., be kept in one building, and that building to be where the officers are located. If it is the desire of those concerned to separate the library and museum, it should be so provided by legislative enactment.

Your fifth question is as follows:

5. Is it necessary for the board of trustees of the Historical Society to advertise for bids if the job exceeds a certain amount? It is the intention of the board to have the books and papers fumigated; the estimated cost is over \$2,000. It is my understanding that, under the provisions of the law creating the Department of Buildings and Grounds, if the costs exceed \$500 it is necessary to advertise in a newspaper of general circulation.

It is our opinion that the answer to your fifty inquiry is governed by chapter 320, 1949 legislative enactments, and the applicable sections provide as follows:

SEC. 5. * * * All officers, departments, boards, commissions, and agencies shall make requisition upon him for any repairs or improvements necessary in the capitol building or in other buildings or parts thereof owned by or leased to the state, and occupied by said officers, departments, boards, commissions, or agencies.

SEC. 15. * * * provided, that any repairs to any of said buildings or water system, the estimated cost of which shall exceed five hundred dollars (\$500), the superintendent shall advertise for bids thereon and award the contract therefor to the lowest and best bidder. Such advertisement or notice to bidders shall be published in a newspaper of general circulation in the state for a period of two weeks. The duties, functions and funds of the board of control relative to state buildings and grounds are hereby transferred to the department of building and

grounds.

Therefore, if the costs exceed \$500, it would be necessary that the superintendent advertise for bids as provided in this section.

Very truly yours,

ALAN BIBLE, *Attorney General*.

By ROBERT L. McDONALD, *Deputy Attorney General*.

931. Corporations—Computation of Fees.

CARSON CITY, June 20, 1950.

HON. JOHN KOONTZ, *Secretary of State, Carson City, Nevada*.

DEAR MR. KOONTZ: This will acknowledge receipt of your letter dated June 8, 1950, received in this office June 8, 1950.

You submit a statement of documents offered for filing in your office by a foreign corporation under chapter 228, Statutes of Nevada 1949, together with a computation of fees to be charged and collected by your office under chapter 176, Statutes of 1949. The foreign corporation is qualified to transact business in this state.

You inquire if the method of computing fees as shown by your submitted statements is proper under the statute.

We are of the opinion that the method of computing the amount of the filing fees to be charged and collected for the class of documents submitted for filing is in accord with and authorized by the statute.

Chapter 228, Statutes of Nevada 1949, amends section 1841, N.C.L. 1929. The fourth paragraph of this section provides as follows: "Any foreign corporation qualified to transact business in this state shall, upon filing in the state of its creation of any paper, document or instrument amendatory of, supplemental to, or otherwise related to the instrument of its creation, and which, pursuant to the laws of the place of its creation are to be filed or recorded therein shall forthwith file with the secretary of state of this state a copy thereof, certified by the official with whom the same shall have been filed in the place of its creation, in the manner heretofore prescribed and set forth in this section." The following paragraph provides that upon failure to file the papers as required and pay the filing fee applicable, the Secretary of State shall refuse to file any papers thereafter submitted until compliance with the provisions of the section.

Chapter 176, Statutes of 1949, which amends section 1 of the uniform fee bill of the Secretary of State, defines the fees to be charged for services performed by the Secretary of State in matters relating to his official duties and the records of his office.

Paragraph 8 of this section (not numbered) defines the fee for filing a certificate of amendment increasing the authorized capital stock of a corporation, which refers to the foregoing paragraphs defining fees for filing articles of incorporation.

The fee determined in the statement submitted for this amendment, in our opinion, conforms with the statute.

The paragraph defining the fee for filing the other documents, if numbered would be paragraph 10, reads as follows: "The fee for filing an amended certificate of incorporation before payment of capital and not involving an increase of authorized capital stock, or a certificate of reduction of capital, or a certificate of retirement of preferred stock, shall be twenty dollars."

It appears from the foregoing that the filing fee shall be \$20 for any amendment to the articles of incorporation that does not involve an increase of capital stock, as well as a certificate of reduction or a certificate of retirement of preferred stock.

The 14 certificates of amendment as shown by your statement, in our opinion, require a filing fee of \$20 for each instrument.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

932. Public Schools—School in Elementary District Meeting Requirements for High School Entitled to State High School Apportionment—Swayne High School.

CARSON CITY, June 27, 1950.

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

DEAR MISS BRAY: This will acknowledge receipt of your letter dated June 19, 1950, received in this office June 20, 1950.

You request an opinion as to eligibility of the Swayne High School to receive a State high school apportionment under the statute. The school is in a regularly established elementary school district. It has never been established as a branch or district high school, but regular high school classes and courses are conducted and taught by properly certified high school teachers. The elementary school received State and county apportionments under the statute as other elementary districts.

We are of the opinion that the school is entitled to receive apportionments from the State High School Fund.

Section 31, chapter 63, Statutes of 1947, the School code, defines school districts. The second paragraph of subsection 9 reads as follows: "A high school within the meaning of this chapter shall be a school in which subjects above the eighth (8th) grade, according to the state course of study, may be taught."

Section 181.04 provides for the semiannual apportionment from the State High School Fund "among the several high schools of the state" according to the manner provided in the section.

The apportionment is not limited to district or branch high schools as defined by the School Code.

It therefore appears that a school which comes within the definition of a high school as defined in subsection 9 of section 31, and the trustees meet the requirement as to payment of minimum salary, such school is entitled to receive its apportionment from the State High School Fund.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

B933. Counties—Candidates for Commissioner Must Reside in District in Counties Divided Into Commissioner Districts.

CARSON CITY, July 5, 1950.

HON. JO G. MARTIN, *District Attorney, Lincoln County, Pioche, Nevada.*

DEAR MR. MARTIN: Reference is hereby made to your letter of June 30, 1950, wherein you propound the following queries:

1. In a county which has been legally divided into Commissioner's Districts, must a candidate to succeed a commissioner from a certain district be a resident of that district?
2. If a nominating paper is presented to the County Clerk by which a resident of some other Commissioner's District seeks to run as a candidate for County Commissioner representing a district in which he does not reside, would the County Clerk refuse to accept and file such nomination paper?

The context of your letter advises that pursuant to Chapter 27, 1929 Statutes, page 33, Lincoln County had been divided into County Commissioner Districts with provisions made with respect to the election of long- and short-term commissioners, who does not reside in the particular district, may file as a candidate for that particular district of which he is not a resident.

Both of your queries may be answered in the affirmative, provided that the county has been legally divided into Commissioner Districts. The queries present a question that no doubt raises a constitutional question, for the reason that if such county has not been legally divided into Commissioner Districts, then the commissioners would be nominated at large without reference to any particular locality. We rather apprehend there is a grave question as to whether the 1929 Act squares with the constitutional provisions relating to uniformity in county government.

Recently the Supreme Court had occasion to pass upon the exact question with respect to the districting of Washoe County and held that the Act districting Washoe County into Commissioner Districts, the same being Chapter 30, Statutes 1933, page 25, was unconstitutional. We are enclosing herewith a copy of the opinion of the Supreme Court in that case, which is entitled Joseph F. McDonald, Petitioner, v. Elwood H. Beemer, as County Clerk, Respondent.

Trusting this will answer your inquiry, I am

Very truly yours,

ALAN BIBLE, *Attorney General.*

B934. Public Schools—Lincoln County High School General Obligation Bonds, Series April 15, 1950, Legal.

CARSON CITY, July 7, 1950.

HON. GRANT ROBISON, *Secretary, State Board of Finance, Carson City, Nevada.*

DEAR MR. ROBISON: Pursuant to your request we have examined the transcript of the record of proceeding of the Board of County Commissioners of Lincoln County, Nevada, in the matter of the issue of Lincoln County High School general obligation coupon bonds, series of April 15, 1950, in the principal amount of \$180,000 in denomination of \$1,000 each.

We are of the opinion that all steps and proceedings taken preliminary to and in the issue of said bonds were duly and legally taken and had. That the total indebtedness of said county, including this bond issue, does not exceed any limit of indebtedness prescribed by the Constitution and laws of this State, and that said issue and sale of said bonds create a legal debt

and obligation of Lincoln County, Nevada. That the said bonds are within the statutes of this State defining proper and lawful investments of State funds.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

B935. Counties—Washoe County Commissioners De Facto Officers.

CARSON CITY, July 7, 1950.

HON. HAROLD O. TABER, *District Attorney, Washoe County, Reno, Nevada*.

DEAR MR. TABER: Reference is hereby made to your letter of July 5, 1950, wherein you request the opinion of this office with respect to the election of County Commissioners in Washoe County at the ensuing November election, in view of the recent decision of the Supreme Court of this State in *McDonald v. Beemer*, No. 3628, wherein it was held that Chapter 30, Statutes of 1933, providing Commissioner Districts in the county, was unconstitutional. You advise that by reason of said decision it will be necessary to elect the County Commissioners at the general election from the county at large, and that the question arises as to how many long- and short-term commissioners are to be elected pursuant to sections 1936 and 1985, N.C.L. 1929. You further state in your letter of inquiry as follows:

I have advised the County Commissioners that since the 1933 Act has been declared unconstitutional by the Supreme Court, they are now de facto officers and that unless their status as de facto officers is challenged they can serve until the first Monday in January, 1951.

As you know, Mr. Kleppe was elected two years ago as a long-term commissioner and would have two more years in office but for the chain of events which wrecked Washoe County's system. The County Commissioners have requested me to present the situation with reference to Mr. Kleppe to your office for confirmation, first, as to his status and second, as to whether or not it will be necessary for him to run at the coming general election.

In your opinion, dated March 21, 1950, to the District Attorney of Clark County, it was pointed out that section 1935, N.C.L. (1929), has been repealed in so far as the number of commissioners is concerned by section 1985, N.C.L. (1929).

It would therefore appear that if the other provisions of section 1935 have not been repealed, at the coming general election, three commissioners, one of whom shall be known as the long-term commissioner and two of whom shall be known as the short-term commissioners, shall be elected.

OPINION

First, we concur in your advice given to the County Commissioners "that since the 1933 Act has been declared unconstitutional by the Supreme Court, they are now de facto officers and that unless their status as de facto officers is challenged they can serve until the first Monday in January, 1951."

The law governing de fact officers is well settled in this State by the case of Walcott v. Wells, [21 Nev. 47](#). The court in the course of its opinion, at pages 57-58, said:

What constitutes a de facto officer? This court in Mallett v. Uncle Sam G. & S. M. Co., [1 Nev. 197](#), said that an officer de facto is on the one hand distinguished from a mere usurper of the office, and on the other hand from an officer de jure. In Meagher v. Storey Co., [5 Nev. 245](#), it was said that acts performed by a city recorder, as a committing magistrate, though the statute authorizing him to so act is unconstitutional and void, are to be regarded as the acts of a de facto officer, and valid as to third persons and the public. In State ex rel. Corey v. Curtis, [9 Nev. 338](#), we had occasion to examine and discuss, to a limited extent, the question as to what constitutes an officer de facto. The rules taken from the authorities were there announced as follows: (1) One who has the reputation of being the officer he assumes to be, and yet is not a good officer in point of law. (2) One who actually performs the duties of an office, with apparent right, and under claim and color of an appointment or election. (3) One who has the color of right or title to the office he exercises. (4) One who has the apparent title of an officer de jure.

The Court then quoted with approval the complete definition of a de facto officer as stated in the leading case on the question, State v. Carroll, 38 Conn. 471, 9 Am. Rpts. 409, stating that such definition had been referred to with approbation in State v. Blossom, [19 Nev. 317](#). The Court concluding its opinion said, at page 63:

From a review of the authorities bearing directly on the question, it clearly appears that it is sufficient if the officer claims and holds the office under some power having color to appoint, and that a statute, though it should be found repugnant to the constitution, will give such color.

The facts in the instant mater show that the office of County Commissioner in Washoe County was and is a de jure office created by constitutional statutes enacted pursuant to sections 25 and 26 of Article IV of the Nevada Constitution. See section 1935 et seq., N.C.L. 1929. There was and is no constitutional infirmity surrounding the office of County Commissioner itself. The infirmity with respect to the present board of commissioners arises from the special Act creating Commissioner Districts in the county, which Act was declared unconstitutional by the Supreme Court after the election to office of such board. We think that there can be no question but that the presently constituted board have such color of title to the office that brings the members well within the definition of de facto officers as defined in State v. Carroll, supra, i.e., "An officer de facto is one whose acts, though not those of a lawful officer, the law, upon principles of policy and justice, will hold valid, so far as they involve the interest of the public and third persons, where the duties of the office were exercise, * * * under color of an election or appointment by pursuant to a public unconstitutional law, before the same is adjudged to be such."

It is true that the Supreme Court, in McDonald v. Beemer, has held unconstitutional the special Act districting Washoe County into Commissioner Districts, which is the Act under which the present commissioners were elected. However, that case arose over an application for writ of mandamus to compel the County Clerk to accept the filing of a declaration of candidacy for the office of County Commissioner at large in the county. The County Clerk refused the filing unless the petitioner register as a resident within a particular district of the county. Upon finding the Act in question unconstitutional, the court entered its order as follows:

There are present here all the elements which, from considerations of public policy, and for the avoiding of public inconvenience, have been recognized as going to make up the character of de facto officers whose acts should be held valid as officers by virtue of an election as such under an act of the legislature,—reputation of being public officers, and public belief of their being such; public recognition thereof, and public acquiescence therein; and action as such unquestioned during a series of years, with no other body ready and willing to act as the board of supervisors. We are therefore of the opinion that this act of February 28, 1867, in relation to the board of supervisors of Wayne county, even if it be unconstitutional, was sufficient to give color of title; that the official board elected and acting under the law were officers de facto; and that their acts should be held valid so far as the public and third persons are concerned.

We are of the opinion and so hold that the members of the present Board of County Commissioners of Washoe County are de facto officers and that unless their status as de facto officers is challenged they can serve as such until the first Monday in January, 1951.

Second, with respect to Mr. Kleppe, the present long-term commissioner, we are of the opinion that he was and is a de facto officer as above set forth with respect to all of the members of the board, and may continue to serve as such, subject to challenge, until the first Monday in January, 1951. However, the special Act under which he was elected having been declared unconstitutional, and within a comparatively short time a general election will be held wherein the constitutional infirmity of the election of County Commissioners of Washoe County can be and no doubt will be removed, we are of the opinion that if he is desirous of continuing to serve on the board from and after the first Monday in January, 1951, that it is necessary that he become a candidate for such office at the ensuing election in 1950.

Third, with respect to section 1935, N.C.L. 1929, and the number of commissioners provided therein as changed and amended by section 1985, N.C.L. 1929, we are of the opinion that section 1985, N.C.L. 1929, did not repeal section 1935, or change the provisions thereof, save and except to strike therefrom the provisions relating to boards of commissioners of five members, and that sections 1935, 1936 and 1985 are to be construed in pari materia, as so construed we think it clear that where three commissioners are to be elected at the same election that then one long-term and two short-term commissioners are to be chosen.

We are of the opinion that the special Act, Chapter 30, Statutes 1933, providing County Commissioner Districts for Washoe County and pursuant to which the present commissioners were elected, being held unconstitutional creates a situation where in order to have an entire de jure board of commissioners it will be necessary to elect at the November election three commissioners, one for the long term and two for the short term, as provided in section 1935, N.C.L. 1929. There can be no excuse for a de facto board after the November election.

Respectfully submitted,

ALAN BIBLE, *Attorney General.*

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

B936. Counties—Method of Ballot Listing of Candidates for County Commissioners.

CARSON CITY, July 12, 1950.

HON. ROBERT E. JONES, *District Attorney, Clark County, Las Vegas, Nevada.*

DEAR MR. JONES: Reference is hereby made to your telephone inquiry of this date concerning the matter of placing the names of candidates for the respective positions for the Board of County Commissioners in Clark County on the primary election ballot at the coming election, in view of the fact that the Supreme Court has held unconstitutional statutes districting counties into Commissioner Districts and by reason thereof it is necessary to elect an entire board at the coming election.

This office has given considerable thought to the problem and in order to provide that which we hope is the most fair method of placing the names of candidates on the primary election ballot, the following methods can well be pursued.

First, there is no trouble about segregating the names of candidates for long-term commissioner as that is only one position to be filled on the board and the candidates for that position can well be designated on the primary ballot under the designation, "Long-Term Commissioners—Vote for One."

Second, in view of the necessity of electing two short-term commissioners at the November election and in order to, insofar as possible, advise the voters of the positions for whom they are voting for candidates, can well be designated as follows, "Short-Term Commissioner—Regular Term—Vote for One," and then list the names of candidates for such position under such designation.

Third, in view of the fact that it is necessary to select a second short-term commissioner at the November election, we think that the designation on the primary election ballot can well be as follows, "Short-Term Commissioner—New Term—Vote for One," and then list the candidates desiring that position under such designation.

As an alternative proposition, we think that candidates for short-term commissioner may all be listed under the following designation, "Short-Term Commissioner—Vote for Two." This designation would require the listing of all short-term candidates under one designation with the necessity of voting for two thereof.

It is our opinion that either of the above methods can well be used, with a leaning toward the first proposition mentioned.

Respectfully submitted,

ALAN BIBLE, *Attorney General.*

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

B937. Welfare—Conformity of Agreement on Adoption and Foster Home Service for Indian Children to State Laws.

CARSON CITY, July 14, 1950.

MR. BARBARA C. COUGHLAN, *State Director, Nevada State Welfare Department, P.O. Box 1331, Reno, Nevada.*

DEAR MRS. COUGHLAN: This will acknowledge receipt of your letter dated July 6, 1950, received in this office July 7, 1950, enclosing a copy of the proposed agreement between the Commissioner of Indian affairs and the Director of the Nevada State Welfare Department, wherein the Department agrees under conditions named in the agreement to provide the services incidental to the adoption and foster home licensing for Indian children of Nevada. You request

our review of the proposed agreement as to its conformity with the laws of the State.

We are of the opinion that such an agreement is within the authority of the State Welfare Department, and that the contract is authorized by U.S. Statutes 48, 596; United States Code, Title 25, section 452.

Chapter 327, Statutes of Nevada 1949, defines the purposes of the State Welfare Department.

Section 1 includes the provision that the State assents to such additional Federal legislation as is not inconsistent with the purposes of the Act.

Section 10 authorizes the State Welfare Department to administer aid to dependent children, general assistance, and child welfare services. The extent of such services depends upon appropriations.

Section 9, subsection 9, provides a duty of the State Welfare Director to cooperate with Federal and State governments for the more effective attainment of the purposes of the Act.

Subsection 1 of this section authorizes the State Welfare Director to execute in the name of the State Welfare Department any contact or agreement with the Federal government or its agencies.

My remarks on the numbered points submitted are as follows:

(1) The limitation of the agreement on a yearly basis would enable both parties to make adjustments deemed necessary as the result of practical application of the service.

(2) The authority of the State Welfare Department and the Director could be cited as Chapter 327, Statutes of Nevada 1949.

(3) The limitation could be in accord with the pencil wording in the margin, if agreeable to the Commissioner on Indian Affairs.

(4) An estimate of the number of children who might be under foster care appears to be a provision requiring mutual agreement. An average monthly payment per child appears to be contrary to the provision in the agreement, as such payments are made after services rendered upon proper vouchers.

(5) There is no apparent objection to paragraph (d) on page 2 of the agreement, as the Welfare Department could only perform the services to children under legislative authority. Aid to dependent children depends upon appropriation for such purpose by the Legislature.

The parties to the agreement are competent and the various provisions must meet the mutual assent of the parties.

We are returning herewith the proposed form of agreement.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

B938. Bonds—Purchase by State Limited to Those Bonds Classified in Statute.

CARSON CITY, July 14, 1950.

HON. GRANT L. ROBISON, *Secretary, State Board of Finance, Carson City, Nevada*.

DEAR MR. ROBISON: This will acknowledge receipt of your letter enclosing copies of ordinances of the city of Las Vegas authorizing the issue of bonds for the Las Vegas Meadows Addition Sanitary Sewer Improvement Bonds. You request an opinion as to whether the State

may legally purchase these bonds in the amount of \$46,631.87 of the \$71,661.51 advertised, without requesting the city to readvertise the sale of the bonds it now wishes to sell.

The question as to the authority of the State to purchase the bonds ranks first in the inquiry. I am not expressing an opinion as to the validity of the bonds or the authority of the city to issue the same.

In view of the character of the bonds, it is my opinion that they are not eligible under the Nevada statute for the investment of State funds.

Chapter 191, Statutes of 1943, designates the various classes of bonds and other securities in which funds of the State and its various departments may be invested.

Section 1 defines such bonds. Quoting the language of that part of the section deemed relevant, it reads as follows: "Bonds and certificates of the United States, bonds of federal agencies where underwritten or payment guaranteed by the United States, or bonds of this state or other states of the Union, bonds of any county of the State of Nevada or of other states, *bonds of incorporated cities in this state or in other states of the Union * * **" (Emphasis supplied.) The remainder of the section names general obligation bonds of irrigation districts, bonds of power and/or water districts having a population of not less than 200,000 persons and first mortgages on agricultural lands in the State.

The provision in section 77½, as added by amendment to the Act incorporating the city of Las Vegas, Chapter 132, Statutes of 1949, which provides that in the event the Special Fund created by the proceeds of the special assessment shall be insufficient to pay said bonds and interest as they become due, shall be paid out of the General Fund, does not provide for a levy of a general tax in the event of the liability of such fund to meet the possible requirement.

The bonds are, therefore, not a debt of the municipality and do not constitute bonds of an incorporated city.

The authority given in the law is express, the bonds are not in any class mentioned in the law, and there is no room for implied authority. If it is desirable that this class of bonds be purchased by the State, it is a matter to be submitted to the Legislature.

I am returning herewith the papers submitted.

Very truly yours,

ALAN BIBLE, *Attorney General.*

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

B939. Taxation—Oil Production in State Subject to Taxation Under Statutes Providing for Taxation of Net Proceeds of Mines.

CARSON CITY, July 20, 1950.

HON. C.J. McFADDEN, *District Attorney, White Pine County, Ely, Nevada.*

DEAR MR. McFADDEN: This will acknowledge receipt of your letter dated July 17, received in this office on July 19, 1950.

You write that you have advised the County Assessor that oil produced in this State would be subject to taxation under the provisions of the Act to provide for the assessment and taxation of the net proceeds of mines, under sections 6578-6591, N.C.L. 1929, as amended.

The Assessor has requested you to secure an opinion from this office.

We concur in your opinion to the County Assessor in that the net proceeds of an oil well

come within the provisions of the present statutes providing for the taxation of net proceeds of mines.

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

B940. Orphans Home—Appropriated Funds Not Usable for Support in Private Homes.

CARSON CITY, July 27, 1950.

MRS. BARBARA C. COUGHLAN, *State Director, Nevada State Welfare Department,*
P.O. Box 1331, Reno, Nevada.

DEAR MRS. COUGHLAN: This will acknowledge receipt of your letter dated July 20, received in this office July 21, 1950.

You request an opinion from this office on the following question: "Could the appropriation for the support of the State Orphans' Home be used to pay cost of care in private boarding homes for children committed to the State Orphans' Home?"

We are of the opinion that there is no authority granted in the statutes to pay the cost of care in private boarding homes for children committed to the State Orphans' Home, out of the appropriation for the support of the State Orphans' Home.

The appropriation for the State Orphans' Home is set apart for the salary of the superintendent, the salary of the matron, salary of the employees, traveling expenses, office supplies, general support, general repairs, and equipment.

Section 6931, N.C.L. 1929, provides as follows:

The sums appropriated for the various branches of expenditure in the public service of the state shall be applied solely to the objects for which they are respectively made, and for no others.

The State Orphans' Home was established by statute, and provision was made for the construction of a building for such Home.

Section 7583, N.C.L. 1929, empowers the board of directors to erect such additions to the building occupied as the Home (with the appropriations made biennially for its support) as may be necessary for the proper care and accommodation of the inmates.

Section 7585, N.C.L. 1929, declares all orphans duly admitted to the Home to be wards of the State. The State, for the care, protection, and guardianship of all such wards, is entitled to their services, and has the right to train and educate them for useful places in society, and such rights of the State are superior to the claims of any and all relatives or persons, resident or nonresident.

The appropriation for the general support of the Orphans' Home is an appropriation for the Home as established by the statute.

There is no language in the Act for the government and maintenance of the State Orphans' Home to authorize the placing of orphans, committed to the Home, in private boarding homes or foster homes.

The appropriation must be applied solely to the object for which appropriated, and no other.

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

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

B941. Elections—Required Number of Electors to Sign Initiative Petition is 10 Percent of Total Vote Cast at Last General Election for Justice of Supreme Court.

CARSON CITY, August 2, 1950.

HON. JOHN KOONTZ, *Secretary of State, Carson City, Nevada*.

DEAR MR. KOONTZ: This will acknowledge receipt of your letter dated July 20, received in this office on July 21, 1950.

You request an opinion as to the required number of qualified electors that should sign an initiative petition which is proposed to be presented to the 1951 Legislature, under the provisions of section 3, Article XIX, of the Constitution of the State of Nevada, and section 11, Chapter 68, Statutes of 1921.

We recognize that there is considerable conflict as to the number of signers required on an initiative petition, and there is no decision in our Supreme Court on this subject. However, we are of the opinion that the safest method to follow is that upon which there could be no possible question as to the sufficiency, and to require that the number of qualified electors necessary in the signing of such petition be at least 10 percent of the sum of the votes cast for the office of Justice of the Supreme Court at the last general election.

According to the printed copy of the returns of the General Election held in 1948, candidates for Justice of the Supreme Court received respectively, 27,872 and 28,170 votes. The whole number of votes cast for the office was a total of 56,042.

Section 3, Article XIX, of the Constitution, relating to initiative and referendum, quoting that part deemed relevant, contains the following language:

The first power reserved by the people is the initiative, and not more than ten percent (10%) of the qualified electors shall be required to propose any measure by initiative petition, and every such petition shall include the full text of the measure so proposed. Initiative petitions, for all but municipal legislation, shall be filed with the secretary of state not less than thirty (30) days before any regular session of the legislature; * * *.

The basis on which the number of signers is counted is found in the following language:

The whole number of votes cast for justice of the supreme court at the general election last preceding the filing of any initiative petition shall be the basis on which the number of qualified electors required to sign such petition shall be counted.

Chapter 68, Statutes of 1921, section 11, the same being section 2580, N.C.L. 1929, contains the same words as those last quoted above.

The law as written uses the term, "the whole number of votes cast."

Webster's Dictionary defines the word whole as a totality, sum, or entirety; a complete assemblage or organization of parts or elements.

Glaze v. Hart, 36 S.W.(2) 684, held that total means as whole, undivided, complete in degree, utter, absolute.

See Words and Phrases, Vol. 45, for definitions of whole or total.

Each qualified elector receives his ballot at the election, which ballot contains the names of

the candidates for office.

Section 2480, 1929 N.C.L., 1931-1941 Supp., explains how ballots are prepared by the voter and contains the following language: "He shall prepare his ballot by stamping a cross or X in the space, and in no other place, after the name of the person for whom he intends to vote for each office. * * *."

The votes cast at the last general election for Justice of the Supreme Court were, unexpired term, 27,872, and for the six-year term, 28,170. The whole number of votes cast for Justice of the Supreme Court would therefore be the aggregate of the two numbers of votes cast.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

B942. Elections—Party Affiliation of Candidate for Public Office Must Be Same as That Registered at Last General Election.

CARSON CITY, August 9, 1950.

HON. ROBERT E. JONES, *District Attorney, Clark County, Las Vegas, Nevada*.

DEAR BOB: This will acknowledge receipt of your letter dated August 3, received in this office August 7, 1950, wherein you ask whether or not the name of Owen Woodruff should be placed on the ballot for the September primary election as a Republican candidate for Congress.

The name of Mr. Woodruff has been transmitted to the County Clerk of each of the counties as a person for whom nomination papers have been filed and who is entitled to be voted for in such county at the primary election pursuant to the provisions of section 10 of the primary election law.

You now state that the facts are that at the general election of 1948, Mr. Woodruff was registered as a member of the Progressive Party and voted as such. Subsequently registered as a member of the Republican Party and thereafter filed a declaration of candidacy in which he stated in part as follows: "that I am a member of the Republican Party; that I have reregistered and changed the designation of my political party affiliation on an official registration card since the last general election; * * *."

Section 2408, N.C.L. 1929, as amended by Chapter 145, Statutes of 1947, the same being section 5 of the primary election law, provides under subdivision (a) as follows: "Every candidate for any elective office, not less than 50 days prior to the primary, shall file a declaration or acceptance of candidacy in substantially the following form." The form as set out in the section contains the following language: "* * * that I have *not* reregistered and changed the designation of my political party affiliation on an official registration card since the last general election." (Italics ours.)

The declaration of candidacy filed by Mr. Woodruff shows on its face that it was not substantially in the form required by the statute. By marking out the negative term "not" the declaration of candidacy specifically and clearly failed to meet one of the material requirements of the statute.

Although the facts in this case are slightly different than those previously submitted by you on a comparable problem on March 28, 1950, it is our opinion that the question is directly governed and controlled by the opinion of this office on that question, which opinion was sent to

you on March 30, 1950. The opinion of March 30, 1950, held that the Nevada statute prohibited a candidate for public office from changing political party affiliations since the last preceding general election for the purpose of becoming a party candidate of a different party. The authorities cited in this opinion clearly sustain the validity of such political party requirement.

The difficulty of the problem is that the name has already been certified by the Secretary of State to the various County Clerks. This office does not have the authority to correct such ballots. In our opinion we believe the remedy in this particular situation is found in section 27 of the primary election law, which is section 2431, N.C.L. 1929, and reads as follows:

Any error or omission occurring or about to occur in the placing of any name on the official primary election ballot, or any error, omission, or wrongful act occurring or about to occur by reason of any act of any judge or clerk of a primary or any other officer having to do with election, registration, or canvassing, may be corrected by application of any qualified elector, upon affidavit, to any district court, or to the supreme court or any justice thereof. Notice of the hearing of said proceeding shall be given to the officer or person interested, and said hearing shall take precedence over any other business.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

B943. Public Officers—Quo Warranto Against Person Unlawfully Holding Public Office Not Maintainable Unless Person Can Be Named in Complaint.

CARSON CITY, August 18, 1950.

HON. ROBERT E. JONES, *District Attorney, Clark County, Las Vegas, Nevada*.

DEAR MR. JONES: This will acknowledge receipt of your letter of August 10, 1950, which was received in this office on August 14, 1950, together with copies of Mr. Leo McNamee's letter to you as well as the proposed complaint in quo warranto.

We are fully cognizant of the fact that there is considerable confusion concerning the election of County Commissioners in your county at this particular election. As we have previously indicated, in both telephone conversations and in letters to you, we believe that the Supreme Court's decision in the Washoe County Commissioner District case likewise governs Clark County. We have furnished you with a letter as to our opinion on the exact status of the commissioners under such an unconstitutional Act.

You may rest assured that this office stands ready to do everything legally possible to be of assistance in clearing up the perplexing problem raised by the apparent unconstitutionality of your local County Commissioner district Act. However, it is our opinion that a quo warranto can be successfully maintained only when we are able to show the name of some person who claims to be entitled to the office. Section 9208, N.C.L. 1929, specifically provides:

When the action is against a person for usurping, intruding into, or unlawfully holding or exercising an office, the complaint shall set forth the name of the person who claims to be entitled thereto, with an averment of his right thereto * *

In our opinion this is a condition precedent and it would be mandatory upon us to meet the

requirements thereof.

Recognizing as we do that there is the possibility of a dispute as to the proper person to hold the new or holdover term of the present long-term County Commissioner, nevertheless, we do not feel that a quo warranto proceeding can be successfully maintained until after the election and attempted qualification of the commissioner who seeks the office. At that time we will do everything possible to assist you in clarifying your commissioner situation, if necessary.

The Office of County Commissioner is a de jure office. The officers were elected to that office pursuant to a statute before a similar statute was adjudged to be unconstitutional, and under the decision in *Walcott v. Wells*, 21 Nevada 47, such officers are de facto officers.

We have been cited to no authority whatever and, after a very careful and extensive research in this office, we are unable to find any authority which would permit the bringing of such an action at this time under statutes similar to those in Nevada. Although, in our opinion, the Nevada statutes are clear and subject to no other construction, your attention is respectfully directed to the following cases which are likewise of assistance in determining the correct solution:

State ex rel. *Corey v. Curtis*, [9 Nev. 339](#); *People v. Muche*, 300 P. 829; *State v. Stack*, 162 N.E. 670; *Redout v. State*, 30 S.W.(2) 255; *Jones v. Oates*, 57 N.W. 296.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

B944. Taxation—Individuals Producing, Selling and Delivering Poultry Exempt From License Tax as Traveling Merchant.

CARSON CITY, August 23, 1950.

HON. RICHARD L. WATERS, JR., *District Attorney, Ormsby County, Carson City, Nevada.*

DEAR MR. WATERS: This will acknowledge receipt of your recent letter in which you request our opinion as to whether or not one who purchases young chicks, raises them to commercial size and delivers them dressed to persons ordering them, is subject to a county license tax pursuant to the Ormsby County General Business License Ordinance, which was enacted pursuant to section 1942, 1929 N.C.L., 1941 Supp.

The answer to your inquiry is in the negative.

Section 6711, 1929 N.C.L., 1941 Supp., provides as follows:

The term "traveling merchant" whenever used in this act, shall be taken and deemed to mean all merchants entering into business at any place within the State of Nevada for a period of less than six (6) months; all persons vending from freight cars standing on side tracks or from motor trucks or other vehicles; all hawkers, street vendors, peddlers and traveling manufacturers. However, the provisions of this act shall not apply to persons engaged in the disposal of the products of the soil, poultry, eggs, live stock, honey or dairy products if the vendor is a bona fide producer or grower thereof, and transports such products of the soil, poultry, eggs, live stock, honey or dairy products from the place of production or growing to the place of sale in a vehicle owned by and standing in his name.

As you know, the Legislature is vested with the power to require licenses and to impose

license fees or taxes upon professions, trades, occupations, etc., and this privilege is unlimited with only those restrictions found in the State or Federal Constitutions. The Legislature, in the above-quoted section, has specifically exempted those engaged in the disposal of the products of the soil, poultry, eggs, etc., from the license requirement and it is our opinion that the county cannot require a license for something the Legislature has exempted.

We might further add that we are assuming in this opinion that the person in question has the other requirements for exemption as set forth in this particular statute.

Very truly yours,

ALAN BIBLE, *Attorney General*.

By ROBERT L. McDONALD, *Deputy Attorney General*.

B945. Fish and Game—Members of Armed Services Resident for Six Months Eligible for Resident Hunting and Fishing License.

CARSON CITY, August 28, 1950.

FRANK W. GROVES, *Director, Fish and Game Commission, P.O. Box 678, Reno, Nevada.*

DEAR MR. GROVES: This will acknowledge receipt of your recent letter of August 15, 1950, received in this office August 16, 1950, in which you request the opinion of this office as to the following question:

May a member of the Armed Services, stationed in Nevada for period longer than six months, obtain resident hunting and fishing licenses?

The answer to this question is in the affirmative.

Section 50, Chapter 146 of the 1949 legislative enactments, provides as follows:

The licenses shall be issued at the following prices:

First—To any citizen of the United States, who has been a bona fide resident of the State of Nevada for six months, upon the payment of three and one-half (\$3.50) dollars for a fishing license, three and one-half (\$3.50) dollars for a hunting license, and one (\$1) dollar for a trapper's license; provided, that fishing and hunting licenses shall be furnished free of charge to all citizens of the State of Nevada who have attained the age of sixty years or upwards in accordance with the provision of chapter 159, Statutes of Nevada 1935.

Therefore, it is our opinion that if a member of the Armed services has resided in the State for a period of six months, he may obtain a resident hunting or fishing license.

Very truly yours,

ALAN BIBLE, *Attorney General*.

By ROBERT L. McDONALD, *Deputy Attorney General*.

B946. Taxation—Cigarette Taxes Not Refundable.

CARSON CITY, September 11, 1950.

H.S. COLEMAN, *Supervisor, Cigarette Tax Division, Nevada Tax Commission,* Carson City, Nevada.

DEAR MR. COLEMAN: Reference is hereby made to your letter of September 8, 1950,

reading as follows:

The Cigarette Tax Division of the Nevada Tax Commission has been asked to refund the tax, less the discount allowed on, an amount of cigarettes that manufacturer wishes returned to them be destroyed.

These cigarettes did not sell in this area and have become so old that the manufacturer wants them off the market.

Under our cigarette law is there any way we can refund the amount of tax paid?

OPINION

The general rule of law followed in this State, to the extent that it has become axiomatic, relative to the refund of taxes and license fees, is that unless the statute fixing the tax or license fee contains a provision that refunds thereof may be made pursuant to conditions set forth in the statute, there is no authority vested in any officer or department to make a refund of such tax or license fee.

An examination of the Cigarette Stamp Tax Act fails to disclose any provision whereby the refund can be made to the manufacturer of the cigarettes as stated in the above letter.

We, therefore, hold that such a refund cannot legally be made.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

B947. Fish and Game—Minimum Fine for Violation of Act to Regulate Wildlife, \$50.

CARSON CITY, September 12, 1950.

FRANK W. GROVES, *Director, Fish and Game Commission, P.O. Box 678, Reno, Nevada.*

DEAR FRANK: This will acknowledge receipt of your recent letter in which you request the opinion of our office as to the minimum allowable fine for violations of the fish and game laws, and as to whether or not a Justice of the peace has the legal authority to give a suspended sentence. You have informed this office that some of the Justices of the Peace have been fining violators less than \$50 plus a suspended sentence of a specified number of days.

Section 3035.90, 1929 N.C.L., 1949 Supp., is the section relating to penalties for the violation of the Act entitled, "An act to regulate wildlife." The applicable portion of this section reads as follows:

Every person who shall do any act or thing or attempt to do any act or thing, in this act declared to be unlawful, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than fifty (50) dollars nor more than five hundred (\$500) dollars, or by imprisonment in the county jail for a period of not less than twenty-five days nor more than six months, or by both such fine and imprisonment. In addition to such fine or imprisonment, the court, upon conviction, may cause to be confiscated all wild animals, wild birds, or fish taken or possessed by the violator, and may in its discretion confiscate any fishing or

hunting equipment used in any unlawful taking of fish and game. All confiscated fish and game shall be placed in the hands of the county game management board of the county in which the conviction is had, for disposal to the needy, or destruction.

As there is nothing in this section or any other part of the Act providing for a lesser fine, or for a suspended sentence, it is our opinion that the minimum fine is \$50 as so provided.

It is very possible that this section of the Act is not familiar to all of the Justices of the Peace and therefore we would advise a letter from your office informing them of the section and further advising them of your opinion in this matter.

Very truly yours,

ALAN BIBLE, *Attorney General*.

By ROBERT L. McDONALD, *Deputy Attorney General*.

B948. Nevada Hospital for Mental Diseases—Procedure Following Investigation of Conditions.

CARSON CITY, September 19, 1950.

MR. JEFF SPRINGMEYER, *Legislative Counsel, Carson City, Nevada*.

DEAR MR. SPRINGMEYER: This will acknowledge receipt of your recent letter to this office in which you enclosed various transcribed statements and notes of conversations with employees and patients at the Nevada Hospital for Mental Diseases.

In your letter you have requested the opinion of this office “indicating possible future action and procedure incumbent upon the said Bureau consistent with the law and the facts and the results thereof.”

We have carefully read and considered the various statements and notes from conversations you have submitted to us and have concluded as follows:

The governing board for the Nevada Hospital for Mental Diseases as you know is a board of commissioners consisting of the Governor and four members appointed by the Governor. As matters such as this are primarily administrative problems, it should be presented first to this governing board for their consideration and whatever action they deem proper. It is our understanding resulting from conversations with you that the entire proceedings were submitted to the board of commissioners and that as a result thereof the hospital chef was released.

Secondly, the Legislative Counsel Bureau should report their findings to the Legislature as provided in section 7289.09, 1929 N.C.L., 1949 Supp., which reads as follows:

The legislative counsel shall prepare a report on the results of his survey and his recommendations, which report shall be made available to the members of the legislature at least thirty (30) days prior to the opening of the regular legislative session, together with periodical reports on the progress to the members of the legislative counsel bureau.

As stated above, we have very carefully considered the documents you have furnished you have to us and it appears that you have made a very thorough investigation.

It is our opinion that the investigation resulted in nothing more than hearsay and conjecture and that there is not the type of competent evidence present to warrant a conviction.

It should be pointed out, however, that where the charge involves a violation of law by a

State officer, he is subject to the same laws and judicial inquiry as a private citizen, and if your Bureau so desires they have a perfect right to present the matter to the District Attorney of Washoe County for his determination.

Very truly yours,

ALAN BIBLE, *Attorney General*.

B949. Fish and Game—Length of Hunting Season Upland Game Birds Determinable in Each County by the County Game Management Board.

CARSON CITY, September 25, 1950.

STARLE W. TERRELL, *Secretary, Game Management Board, Nye County, Tonopah, Nevada.*

DEAR MR. TERRELL: This will acknowledge receipt of your recent letter in which request is made for the opinion of this office as to the following question:

Whether or not section 20 of the Fish and Game Laws of Nevada give the State Fish and Game Commission the authority to refuse closure of a recommendation of the county boards to the hunting of upland game birds in that respective county.

The answer to your question is in the negative.

Subsection (7) of section 20 reads as follows:

Providing supervision and control throughout this state over all orders closing the open season temporarily or permanently on the score of emergency imperiling the preservation and conservation of fish, or otherwise, and requiring the approval of all such orders by the state fish and game commission before they become effective.

It should be noted that this particular section refers only to fishing and although it does give the authority to the commission to disapprove recommendations from the county board regarding the closing of fishing season, it does not grant the same authority in regard to hunting.

Section 63 of the Act, which reads as follows, is controlling in regard to hunting:

The state fish and game commissioners are hereby authorized to divide the State of Nevada into such district as they may find expedient with reference to hunting or fishing, and fix the dates for hunting or fishing in each of said districts within the limits provided in this act; provided, that the county game management board of any county in this state may shorten or close the season entirely, except as to migratory birds, and it shall be unlawful for any person to hunt in any such district or county on any day or days other than may be designated by the fish and game commissioners or the said county board. The county game management board of each county shall fix the open season in such county within the limits provided in this act not less than sixty (60) days before the date specified in this act for the opening of such season; provided, that in the event an unforeseen emergency shall arise after any season shall have been declared open, and the county game management board shall determine that the interests of conversation so require, said board may declare such season closed, giving reasonable notice of such action, which notice shall be not less than one day. The state fish and game

commission, or any county game management board within its county, may, in the interest of conservation, close to hunting or fishing designated areas in each county, in which event the county game management board shall post notice of such closing on the closed area, and give further notice thereof by publication.

Therefore, it is our opinion that the recommendation by the County Game Management Board as to upland birds must be followed.

As you undoubtedly know, sections 20 and 63 of the act are conflicting in many respects, which this office pointed out in an opinion released January 10, 1950, a copy of which we enclose herewith, and it is our recommendation that these sections be clarified by legislation.

Very truly yours,

ALAN BIBLE, *Attorney General*.

By ROBERT L. McDONALD, *Deputy Attorney General*.

B950. Fish and Game—State Courts Hold Jurisdiction Over Violations by Non-Indians on Indian Reservations—Commission Authorized to Promulgate Rules Identical to Tribal Council Ordinances—Boating on Pyramid Lake Controlled by Indians.

CARSON CITY, September 29, 1950.

MR. FRANK W. GROVES, *Director, Fish and Game Commission, P.O. Box 678, Reno, Nevada.*

DEAR MR. GROVES: This will acknowledge receipt of your recent letter in which you request the opinion of this office as to various problems pertaining to the Pyramid Lake Indian Reservation.

Your first question is, in substance, as to whether or not the State Wardens can go upon the Pyramid Lake Indian Reservation and arrest non-Indians for violation of State laws and have them tried in State courts.

The answer to this question is in the affirmative. The case of *Ex Parte Crosby*, [38 Nev. 389](#), clearly establishes this particular point. The Court said on page 393:

That the state courts have jurisdiction over offenses committed by parties other than Indians on Indian reservations is, we think, well established; and this general rule is not affected by a provision in the enabling act of a state taking account of Indian lands or Indian reservations within the territory or providing that such Indian lands should remain under the absolute jurisdiction and control of the Congress of the United States. (*Draper v. United States*, 164 U.S. 240, 17 Sup. Ct. 107, 41 L.Ed. 419.)

Secondly you ask us, in substance, as to the appropriate action needed in order to enforce ordinances violated by non-Indians, that will be enacted by the Tribal Council.

Section 20 (6) of the Fish and Game Act gives to the Fish and Game Commission the authority to promulgate rules and regulations for the conservation of fish in the State of Nevada. Under this section the Commission has the right to promulgate rules and regulations that are identical to the Tribal Council's ordinances, and these regulations in our opinion will have the same force and effect as law, it being understood, however, that the Fish and Game Commission does not have the authority under this section, or any other section to promulgate rules and regulations that conflict in any way with an existing State statute. Nor does this section give

them the right to establish rules and regulations that are broader than the section itself.

Section 20 (6) provides as follows:

Exercising such control on state and county levels through regulations of the state commission and the respective county game management boards as may in the judgment of the said bodies best conserve the fish resources of the state as a whole and of the respective counties and promote the equitable distribution of fish and fishing opportunities among the people of the respective communities of this state;

In your letter you also inquire as to the boating regulations on Pyramid Lake. As a result of our meeting of September 28, 1950, we think it is understood by all those concerned that the Indians will have complete control over boating and regulations regarding thereto.

We might add that you are correct in assuming that non-Indians going upon the reservation to hunt or fish are required to obtain permission from the Indian authorities, and that nothing in the agreement with the Tribal Council or State law alters this fact.

Although your inquiry is limited to the Pyramid Lake Indian Reservation, we believe it applies to other Indian reservations within the State which have been similarly created.

Very truly yours,

ALAN BIBLE, *Attorney General*.

By ROBERT L. McDONALD, *Deputy Attorney General*.

B951. Counties—Commissioners Authorized to Grant Funds to Civic Organizations for Advertising Purposes.

CARSON CITY, October 2, 1950.

HON. ROBERT E. JONES, *District Attorney, Las Vegas, Nevada*.

DEAR MR. JONES: This will acknowledge receipt of your recent letter in which you ask the opinion of this office as to whether or not it is within the jurisdiction and authority of the County Commissioners to make a grant of county funds to civic organizations such as the Junior Chamber of Commerce or the Exchange Club, for the purpose of enabling them to send delegations to their conventions and other functions which undoubtedly have an advertising value.

A very similar problem was presented to this office in January of this year, and we are enclosing a copy of the opinion written in answer thereto. You will note that the answer is in the affirmative, assuming that the County Commissioners proceed according to law, such procedure being set forth in the enclosed opinion. Although the specific means of advertising varies in your problem, it is our opinion that the sending of delegations to conventions such as those of the Junior Chamber of Commerce and the Exchange club may be considered as advertising within the purview of the applicable statutes, and, therefore, our answer is in the affirmative.

Very truly yours,

ALAN BIBLE, *Attorney General*.

By ROBERT L. McDONALD, *Deputy Attorney General*.

cc: Letter dated January 30, 1950, to Board of County Commissioners, and Hon. A.L. Puccinelli, District Attorney, Elko County.

B952. Public Schools—County Board of Education not Authorized to Expend School Funds to Rent City Park Area to Provide Football Field.

CARSON CITY, October 3, 1950.

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

DEAR MISS BRAY: This will acknowledge receipt of your letter dated September 27, 1950, received in this office September 28, 1950.

You request an opinion as to the authority of a County Board of Education to provide a football field and make other improvements of a permanent nature in the city park in the city where the county high school is located. It appears from your letter that the Mayor and City Council approve of the construction. They are not willing to transfer title to the property to the county high school, but are willing to execute a long-term lease of the city park to the school.

We are unable to find statutory authority for the expenditure of school funds for the purpose as outlined in your letter.

Section 171 of the School Code provides that the Board of School Trustees or Board of Education of each county or school district may use the money from the county school funds to purchase sites, buildings, or rent schoolhouses.

As a general principle of law city parks are held in trust for the benefit and use of the public, and there is no authority to lease a public park for purposes which in fact may amount to the ouster of the public.

Very truly yours,

ALAN BIBLE, *Attorney General.*

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

B953. Public Schools—Trustees Have no Authority to Expend Funds Secured by a Bond Issue for any Portion of Work Less Than the Entire Plan.

CARSON CITY, October 3, 1950.

HON. A.L. PUCCINELLI, *District Attorney, Elko County, Elko, Nevada.*

DEAR AL: Reference is hereby made to your letter of September 20, 1950, wherein you request the opinion of this office concerning the allocation of funds from bond issues with respect to the construction of new high school buildings and a gymnasium for Elko County High School No. 2 at Wells, Nevada.

In your letter of inquiry you point out that in 1946, at the general election thereof held in November, the question was put to the voters of Elko County for the issuance of \$250,000 in bonds for the construction, furnishing, heating equipment and fixtures for the Elko County High School at Wells, Nevada. You inquire as follows:

1. In view of the language used in the question submitted to the qualified electors, is it possible to construct a gymnasium and not a new school building and not a new gymnasium?
2. Can the \$250,000 presently available be used for new construction and presently for the remodeling and reconstruction of existing buildings?

3. Can the new facilities proposed for construction be constructed in such a manner so that it can be used by the grammar school which presently adjoins the high school (this refers to a heating system which will service both the grammar school and the high school).

OPINION

In Opinion No. 424, dated February 28, 1947, found at page 126. Report of Attorney General for the biennium July 1, 1946, to June 30, 1948, it was held that school trustees had no authority to expend funds secured by a bond issue for any portion of work less than the entire plan. We are of the opinion that such Opinion No. 424 is controlling in the instant matter. The question with respect to whether the issuance of bonds in 1946, together with a proposed issue of 1950, will permit a division of the matter so as to permit the construction of a gymnasium alone or new school buildings alone must be answered in the negative.

The bond issue which was created in 1946 apparently carried with it no definite time in which the new school buildings and gymnasium were to be commenced and/or completed insofar as the proposition placed on the ballot in 1946 discloses.

It is true that the retirement dates of the bonds were fixed in the proposition and apparently we must assume that the bonds are being retired in accordance with the instructions contained on the ballot.

It now appears that the bond issue of \$250,000 was not sufficient in the minds of the responsible boards to construct the buildings in question and that at the present time it will be necessary to augment such amount to the extent of \$175,000, which amount is to be authorized by the issuance of bonds in accordance with the proposition stated on page 2 of the letter. Here again we find no specified date on which the buildings are to be commenced or completed.

It would seem that if, in fact, the first bond issue was not sufficient to cover the cost of construction of the buildings in question and that it was determined additional money is necessary, that if the second proposition is carried by the voters of Elko County, this in itself simply provides a means of obtaining sufficient money for the proposed construction, which is the same in each proposition, that is, new school buildings and a new gymnasium for Elko County High School No. 2 at Wells, Nevada.

In our opinion the second proposition will be legal proposition and its effect will be to add to the sum necessary to construct the buildings in question.

We note that three questions are propounded on page 2 of your letter and in our opinion such questions should be answered as follows:

1. That the requirements of the propositions are that new school buildings and a gymnasium be constructed and that the authorization for the issuance of the bonds does not permit a division of the matter so as to permit the construction of the gymnasium alone or a new school building alone.

2. In our opinion it should be answered in the negative. The proposition voted in 1946 and that to be voted in 1950 specifically provides for a new gymnasium and new school buildings and not for the remodeling and reconstruction of existing buildings.

3. We are inclined to the view that if the heating system of the new construction is sufficiently large and within the contract price so as to furnish an additional amount of heat, there would be no good reason why the excess heat could not be furnished to the grammar school which adjoins the Wells High School. We are of the opinion that this would be within the law,

particularly for the purpose of conserving the public funds so far as possible and not depart from the specific provisions included in the proposition already voted and that to be voted at the 1950 election.

It is noted that you request a further opinion as to whether, if the \$175,000 in bonds were voted in 1950 but only \$100,000 were needed, the Board of County Commissioners would sell only \$100,000 needed for the complete construction, the Board of County Commissioners would not be required to sell over \$100,000 in bonds.

Very truly yours,

ALAN BIBLE, *Attorney General*.

B954. Public Schools—Contract for Employment of Teacher Creates Binding Obligation.

CARSON CITY, October 6, 1950.

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

DEAR MISS BRAY: This will acknowledge receipt of your letter dated September 8, 1950, received in this office September 11, 1950.

From the statement of facts submitted, it appears that a teacher was hired under contract as provided by the School Code to teach in a certain school district for the school term beginning September 5, 1950. The board of trustees have refused to provide transportation for the six children living within the district who are about forty miles distant from the present schoolhouse.

The parents of these children are now requesting the establishment of a new school district from a portion of the presently established district. Consequently, there are no children in attendance at the school in which the teacher was employed to teach. The teacher was not notified of the condition prior to September 5, 1950, and arrived in time to take up her duties as teacher and is willing and qualified to perform her part of the contract.

The question presented is, is the teacher entitled to the salary provided in the contract for the present school year?

This will confirm or oral opinion given you last week.

We are of the opinion that if the teacher is ready, qualified and willing to complete her contract, and has not committed any breach thereof sufficient to terminate the same, the contract is a subsisting obligation against the district and she is entitled to pay for the full period of the contract according to its terms.

Although contracts between school trustees and school teachers are necessarily made in the light of existing laws and such laws are, by implication of law, a part of the contract, it appears that the school was discontinued by refusal of the trustees to exercise powers authorized by law.

It appears that the closing of the school was not made compulsory by law, but by action of the trustees who, notwithstanding the conditions known to them, contracted with the teacher for her employment. Contracts with school teachers are made at a time when there is a demand for such services and the teacher has an opportunity by contract to meet the demand for teachers and the opportunity to be employed becomes unseasonable.

Section 274 of the 1947 School Code empowers the trustees of school districts to employ 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.

Section 319 provides that school boards shall notify teachers in their employ on or before the 1st day of May of each year concerning the reemployment of a teacher for the ensuing year. In case the board shall fail to notify its teachers who have been so employed shall be deemed elected on the same terms as for the then closing school year.

Section 356 provides a penalty that may result in the suspension of the teacher's certificate for a period of one year, if such teacher fails to comply with the provisions of her contract.

The rule of law as expressed in 12 Am. Jur. 977, under voluntary disability to perform a contract, is that a party to a contract who has destroyed the subject matter or disabled himself so as to make performance impossible, his conduct is equivalent to a breach of the contract although the time for performance has not arrived, citing *Roehm v. Hosrt*, 178 U.S. 1.

The principles governing contracts generally are applicable to contracts for the employment of teachers. Thus a contract is considered one for personal services, and, where entered into for a definite period, is an entire contract for the period covered. 47 Am. Jur. page 377.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

B955. Counties—County Recorder Required to Record Any Instrument Affecting Title to Real Property When Properly Acknowledged.

CARSON CITY, October 6, 1950.

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

DEAR MR. BLAISDELL: This will acknowledge receipt of your recent letter in which you request the opinion of this office as to the following two questions:

1. Does the County Recorder have authority to decline to accept for record, a quit-claim deed (which omits words of conveyance) given by a person in possession of real estate, who is assessed for taxes, and who claims ownership of the real estate described in the deed?

Section 2112, N.C.L. 1929, as amended by Chapter 65, Statutes of 1949, provides as follows:

Each of the county recorders of this state must, upon the payment of the statutory fees for same, record, separately, in a fair hand, or typewriting, or by filing or inserting a microfilm picture of photostatic copy thereof, in large well-bound separate books as hereinafter alphabetically indicated, either sewed books or an insertable leaf, which then placed in the book cannot be removed.

Instruments Specified. (a) Deeds, grants, transfers, and mortgages of real estate, releases of mortgages of real estate, powers of attorney to convey real estate, and leases of real estate which have been acknowledged or proved.

The act of recording is purely a ministerial duty of the County Recorder and it is our opinion that in view of the above-quoted section he does not have the authority to decline to accept for record the instrument described in question 1.

Question 2. Does the County Recorder have authority to record any written instrument on a jurat only, or, in the absence of a jurat, with one or more witnesses?

Section 1493, N.C.L. 1929, provides as follows:

A certificate of the acknowledgement of any conveyance or other instrument in any way affecting the title to real or personal property, or the proof of the execution thereof, as provided in this act, signed by the officer taking the same, and under the seal of such officer, shall entitle such conveyance or instrument with the certificate or certificates aforesaid, to be recorded in the office of the recorder of any county in this state; provided, however, that any state or United States contract or patent for land may be recorded without any such acknowledgement or proof.

Therefore it is our opinion that the County Recorder must record any instrument affecting the title to real property if acknowledged, but does not have the authority to record an instrument that is not acknowledged and is only signed by one or more witness.

Very truly yours,

ALAN BIBLE, *Attorney General.*

By ROBERT L. McDONALD, *Deputy Attorney General.*

B956. Counties—County Treasurer Must Publish Entire Delinquent Tax List in one Newspaper.

CARSON CITY, October 9, 1950.

HON. ROBERT E. JONES, *District Attorney, Clark County, Las Vegas, Nevada.*

DEAR MR. JONES: This will acknowledge receipt of your recent letter in which you request the opinion of this office as to whether or not the County Treasurer has the authority to divide the delinquent tax list and print part in the Boulder City newspaper and part in the Las Vegas paper.

The answer to this inquiry is in the negative.

The applicable portion of section 6447, as amended by Chapter 177 of the 1947 Statutes, provides as follows:

Such notice shall be published *in a newspaper, if there be one in the county*, at least once a week from the date thereof until the second Monday in September, and if there be no newspaper in the county, such notice shall be posted in at least five conspicuous places within the county; * * *. (Italics ours.)

It is our opinion that the Legislature intended that the notice be published in only one newspaper in the county and not divided and published in more than one, and this is indicated by the use of the portion of the statute italicized.

In addition to the above, we might state that there is nothing in the applicable statutes that would prevent the County Treasurer from publishing the delinquent tax list in one newspaper in the county one year and a different newspaper in the county the following year.

Very truly yours,

ALAN BIBLE, *Attorney General.*

By ROBERT L. McDONALD, *Deputy Attorney General.*

B957. Elections—Residence Qualifications—Method of Challenging Voter—Penalties.

CARSON CITY, October 10, 1950.

HON. GROVER L. KRICK, *District Attorney, Minden, Nevada.*

DEAR MR. KRICK: This will acknowledge receipt of your recent letter in which you enclosed a letter from the Sheriff of Douglas County. You have requested this office to give our opinion as to the various questions set forth by Sheriff Farrell in his letter to you.

The first inquiry is as follows:

Who may challenge a voter on election day? On what grounds may he be challenged. Where and by what method should this be done?

To answer your first inquiry it is essential that we quote the applicable sections of the law.

Section 12 of the General Election Law reads as follows:

SEC. 12. A person offering to vote may be orally challenged by any elector of the precinct upon the ground that he is not the person entitled to vote as claimed, or has voted before on the same day, in which the inspector or one of the judges shall tender him the following oath: "You do swear (or affirm) that you are the person whose name is entered upon the registry list of this precinct." In case such person refuse to take oath so tendered he shall not be allowed to vote, and the clerks of the election shall write the word "Challenged" opposite the name of each person challenged upon the register.

Section 16 of the Primary Election Law reads as follows:

SEC. 16. Any elector desiring to vote at any primary election shall give his name and address to the ballot clerk who shall immediately announce the same, but no ballot shall be delivered to any elector except such as has the right to vote as herein provided; such elector's right to vote may be challenged by any elector upon any of the grounds now allowed by law, or that he does not belong to the political party designated upon the register, or that the register does not show that he designated his politics or the political party to which he belongs. All challenges shall be disposed of in the same manner as provided by law for general elections. The voter shall be instructed, if necessary, by a member of the board as to the proper method of marking and folding his ballots and he shall then retire to an unoccupied booth and without delay stamp the same with a rubber stamp provided for that purpose. If he shall spoil or deface a ballot he shall at once return the same to the ballot clerk, who shall cancel the same and deliver to him another ballot.

No elector shall be entitled to vote a party ballot at primary elections unless he has theretofore designated to the registry agents his politics or political party to which he belongs and has caused the same to be entered upon the register by such registry agents; provided, however, that no elector shall be denied the right to vote a nonpartisan ballot for judicial and school offices at such primaries.

At the outset it should be noted that section 12 above sets forth only two grounds for challenge, namely, that the person offering to vote is not the person entitled to vote as claimed, or, secondly, that he has voted before on the same day. This challenge can be made by an elector of the precinct and at such time the judges shall tender to the person challenged the oath as set out in the section.

However, section 23 of the Registration Law as above quoted gives to the judges the right to ask additional questions over and above those provided for in section 12 of the General election Law. In other words, in the event the judges deem it proper, they may ask any question that will determine a person's eligibility to vote. Such as his residence, whether or not he has ever been

convicted of a felony and there has not been a restoration of civil rights, or any other question that would indicate his disqualification under the law. The answers to the questions propounded must be under oath and can be asked only after a challenge has been made by an elector. The inspectors obviously are to be considered electors.

Section 16 of the Primary Election Law does set forth the following additional grounds for challenge, making special reference to the same grounds allowed by the General Election Law:

1. That the elector has not registered.
2. The elector's name does not appear upon the register as required by law.
3. That he does not belong to the political party designated upon the register.
4. That the register does not show that he designated his politics or the political party to which he belongs.

In direct answer to your question, it is our opinion that any elector may challenge a person desiring to vote upon any grounds that would disqualify one as a voter under the laws of this State. The specific disqualifications are as follows:

1. Conviction of treason or a felony in any state or territory of the United States and not restored to civil rights.
2. Not a citizen of the United States.
3. Not a resident as defined by section 1 of the Registration Law and section 1 of Article II of the Constitution.
4. Has not registered.
5. Name does not appear upon the register as required by law.
6. That he does not belong to a political party designated upon the register.
7. That the register does not show that he designated his politics or the political party to which he belongs.
8. That he not the person entitled to vote as claimed.
9. That he has voted before on the same day.

It is our further opinion that the challenge should be made at the voting and the challenge may be made orally as provided by law.

The second question is as follows:

What is the penalty, if any for:

- (a) A person attempting to vote who is not properly qualified; or
- (b) A person who by force, threats, or any other means of intimidation, attempts to influence any elector in giving his vote, or to deter him from giving the same.

The answers to both (a) and (b) above are covered by statutes.

Section 32 of the Registration Law provides as follows:

SEC. 32. If any person offering to vote at any election be challenged by an inspector or any qualified elector at said election as to his right to vote thereat, an oath shall be administered to him by one of the judges that he will truly answer all questions touching his right to vote at such election, and if it appears that he is not a qualified elector, his vote shall be rejected; and if any person whose vote shall be so rejected shall offer to vote at the same election, at any other polling place, he shall be deemed guilty of a misdemeanor.

Section 33 of the Registration Law provides as follows:

SEC. 33. Any person who shall, either for himself or another, wilfully make

false answer or answers to questions propounded to him by the registrar or deputy registrar touching the information called for by the registry card or whose registration affidavit shall be wilfully false in any particular, or who shall violate any of the provisions of this act, or knowingly encourage another to violate the same, or any public officer or officers or other persons upon whom any duty is imposed by this act, or any of its provisions, who shall wilfully neglect such duty, or shall wilfully perform it in such way as to hinder the objects and purposes of this act, shall, excepting where some other penalty is provided by the terms of this act, be deemed guilty of a gross misdemeanor, and, if such person be a public officer, shall also forfeit his office.

Section 51 of the General Election Law provides as follows:

SEC. 51. Any person who shall vote, or offer to vote, at any election mentioned in this act, but who shall not be a qualified elector to vote, in the name of any other registered elector, may be deemed guilty of a felony, and on conviction thereof before any court of competent jurisdiction shall be punished by imprisonment in the state prison for not less than one or more than three years; and any person who shall wilfully cause, or endeavor to cause his name to be registered in any other election district than that in which he resides, or will reside prior to the day of the next ensuing election; and any person who shall cause or endeavor to cause his name to be registered, knowing that he is not a qualified elector, or will not be a qualified elector on or before the day of the next ensuing election in the election district in which he causes or endeavors to cause such registry to be made; and any other person who shall induce, aid, or abet any such person in the commission of either of such acts in this section enumerated and described shall be deemed guilty of a misdemeanor, and, upon conviction thereof before any court of competent jurisdiction, shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by confinement in the county jail for not less than one month nor more than six months, or by both such fine and imprisonment, in the discretion of the court.

Section 59 directly answers subsection (b) of question 2, and provides as follows:

SEC. 59. Every person who by force, threats, menaces, bribery, or any corrupt means, either directly or indirectly, attempts to influence any elector in giving his vote, or to deter him from giving the same, or attempts by any means to awe, restrain, hinder, or disturb any elector in the free exercise of the right of suffrage, or furnishes an elector wishing to vote, who cannot read, with a ticket, informing or giving such elector to understand that it contains a name written or printed thereon different from the name which is written or printed thereon, or defrauds any elector at such election by deceiving and causing such elector to vote for a different person or any office than he intended or desired to vote for, or who, being inspector, judge, or clerk of any election, while acting as such, induces or attempts to induce, any elector either by menace or reward, or promise thereof, to vote different from what such elector intended or desired to vote, shall be guilty of a felony, punishable by a fine not exceeding one thousand dollars, or imprisonment in the state prison not exceeding five years, or by both such fine and imprisonment.

Question 3 contained in the letter from Sheriff Farrell is subdivided into three parts and the questions will be answered in the order they are asked.

As you undoubtedly know, the question of residence is very vague and each particular case must be answered solely on the facts involved. The Nevada statutes do not seem to distinguish between residence and domicile and in fact there are numerous cases which in effect hold that the terms are synonymous when used in connection with voting. *State ex rel. Suthre v. Moodie*, 258 N.W. 558. However, there are some very direct and explicit statutes and constitutional provisions regarding the subject in this State, and we feel they are sufficient to answer the questions set forth above. It should also be pointed out that it is the general rule that the question of residence is determined largely by the intent of the particular person involved, and to determine one's intent it is essential that all of his acts indicating his intent be considered. For example, if one owns property in Nevada, buys automobile plates in Nevada, buys resident fishing license, etc., in all probability his intent is to be a resident of Nevada and assuming he can comply with applicable statutes he should so be considered.

Question 3, subdivision (a) reads as follows:

3. Is a person qualified to vote in the State of Nevada for seven months of the year but as a temporary residence in the State of California for five months, and is residing in said temporary residence on election day, although working full time in the State of Nevada even during the time of the temporary residence in California.

The following sections regarding residence are found in the Registration Law and are applicable to all of the inquiries regarding residence.

SECTION 1. Every citizen of the United States, twenty-one years of age or over, who will have continuously resided in this state six months and in the county thirty days and in the precinct ten days next preceding the day of the next ensuing election, shall be entitled to vote at such election; provided, he or she is duly registered as hereinafter provided.

SEC. 4. If a person remove to another state, territory, or foreign country, with the intention of establishing his domicile there, and making it his home, he shall lose his residence in this state.

SEC. 5. If a person having a fixed and permanent home in this state, break up such home and remove to another state, territory, or foreign country, the intent to abandon his residence in this state shall be presumed, and the burden shall be upon him to prove the contrary; and the same rule shall obtain when a person, in like circumstances, and in like manner, shall remove from one county to another within the state, or from one precinct to another within the county.

SEC. 6. If a man have a family residing in one place and he does business in another, the former must be considered his place of residence, unless his family be located there for temporary purposes only; but if his family reside without the state, and he be permanently located within the same, with no intention of removing therefrom, he shall be deemed a resident.

SEC. 7. If a person remove to another state, territory, or foreign country, with the intention of remaining there for an indefinite time, and as a place of residence, he shall lose his residence in this state, notwithstanding that he may entertain the intention of returning at some uncertain future period; and an occasional return,

either for business purposes or pleasure, to the place of his former abode in this state, shall not be sufficient to preserve his residence therein.

It is apparent from the above-quoted sections that question 3, subdivision (a), should be answered in the affirmative and that is our opinion.

The person has been in the State continuously for six months and when he departed from the State it was his intention from the facts stated to return at a future definite time, and consequently he did not abandon his residence previously established.

Subsection (b) of question 3 reads as follows:

Resides in and is employed in the State of Nevada for five months of the year, and is so residing at election time, but who resides in and is employed in the State of California for the other seven months of the year.

For the purpose of answering this question it is essential to assume that the person involved established his Nevada residence by residing in the State for six months prior to the date he initially moved to California, as obviously he could not be considered a Nevada resident if he has never resided in the State for six months. In the event this be true, it is our opinion that he may at the present time be considered a Nevada resident, applying the same reasoning as set forth above in answer to question 3 (a), and assuming, however, that he does not vote in California nor perform any other act that would indicate his intention to make California his legal residence.

Question 3, subsection (c) reads as follows:

(c) Resides in California the year around approximately 60 feet to 1 mile from the Nevada state line, but works full time each working day on the Nevada side of the state line. Buys Nevada car license plates each year. Buys Nevada resident hunting and fishing licenses. Buys non-resident California hunting and fishing licenses. Pays personal property tax and poll tax in Nevada. Does majority of trading and shopping in Nevada. Has voted each election in Nevada for many years last past.

Section 1 of Chapter 158, which is sec. 6405, N.C.L. 1929, reads as follows:

SECTION 1. The legal residence of a person with reference to his or her right of suffrage, eligibility to office, right of naturalization, right to maintain or defend any suit at law or in equity, or any other right dependent on residence, is that place where he or shall have been actually, *physically and corporeally* present within the state or county, as the case may be, during all of the period for which residence is claimed by him or her; provided, however, should any person absent himself from the jurisdiction of his residence with the intention in good faith to return without delay and continue his residence, the time of such absence shall not be considered in determining the fact of such residence. (Italics ours.)

Section 1 of the Registration Act reads as follows:

SECTION 1. Every citizen of the United States, twenty-one years of age or over, who will have continuously resided in this state six months and in the county thirty days and in the precinct ten days next preceding of the day of the next ensuing election, shall be entitled to vote at such election; provided, he or she is duly registered as hereinafter provided.

It is apparent that the person referred to in this question is not a Nevada resident as he cannot qualify under the above-quoted sections, as he has not been physically corporeally present in the State for a period of six months, which is necessary to establish his residency. If we were to

assume that the person did initially reside in Nevada for six months prior to his move to California, as we did in question 3 (b), it would still be our opinion that he is not qualified to vote in this State, basing this answer on the exact facts quoted by the sheriff.

Section 7 quoted above specifically answers this inquiry which we quote again at this time.

SEC. 7. If a person remove to another state, territory, or foreign country, with the intention of remaining there for an indefinite time, and as a place of residence, he shall lose his residence in this state, notwithstanding that he may entertain the intention of returning at some uncertain future period; and an occasional return, either for business purposes or pleasure, to the place of his former abode in this state, shall not be sufficient to preserve his residence therein.

Although the facts do not so state, if this particular person's family resided in Nevada he could be considered a Nevada resident under section 6 above quoted.

Very truly yours,

ALAN BIBLE, *Attorney General*.

By ROBERT L. McDONALD, *Deputy Attorney General*.

B958. Insurance—Capital Defined—Assets, Fair Market Value of.

CARSON CITY, October 13, 1950.

HON. JERRY DONOVAN, *Insurance Commissioner, Carson City, Nevada*.

Attention: G.C. Osburn, Deputy.

DEAR SIR: This will acknowledge receipt of your letter dated September 22, 1950, received the same date in this office.

You submit a report of a joint examination with the State of Utah of a domestic life insurance company in which it is shown that the admitted assets of the insurance company, which is a stock company, are less than its capital plus all other liabilities, resulting in a deficit which has impaired its capital to the amount of such deficit shown in the report.

The officers of the company contend that under section 22 of the Insurance Act the capital which is to be maintained at all times is the minimum sum named in the statute this class of life insurance company is required to establish before commencing business and is not the actual capital resulting from the sale of stock at par value. The company also takes exception to the items in the report set out as assets not admitted.

We are of the opinion that the capital to be maintained at all times, as required by statute for such a stock company, is the actual paid up capital out of the amount authorized in its articles of incorporation. The minimum capital named in the statute is but a measure that such a company must meet before it may commence business. The paid-up capital is the actual amount received from the sale of stock at par value. When the minimum requirement is attained it ceases to be a measure of capital, and the actual paid-up capital then becomes the amount that must be maintained without impairment.

We are of the opinion that the objections by the company to items listed in the report as assets not admitted are not well taken, for the reasons given in the report, except the objection to the value of the real estate.

We are of the opinion that the normal market value of the real estate should be admitted as an asset rather than the actual cost of such real estate.

When the admitted assets, under the standards for the examination of such companies, are less than the capital, according to our interpretation of the statute, plus the total liabilities the result is a deficit which results in an impairment of the capital to the extent of such deficit.

Section 12, Article 2 of the Insurance Act, which is section 3656.11, 1929 N.C.L., 1941 Supp., provides for the incorporation of stock or mutual insurance companies in this state. Subsection 5(a) contains the following language: "A stock company shall have the power to open books, to receive subscriptions to its capital stock, to keep them open until the whole of such stocks, or so much thereof as may be necessary to satisfy the minimum requirements, has been subscribed for, * * *." The section authorizes the formation of insurance corporations and provides that they shall not commence business until certain specified things are done. The specified requirement in subsection 5(a) is that subscription to its capital stock need not be the whole of the authorized capital, but must be so much thereof as necessary to satisfy the minimum requirements for the particular class of insurance. The result of all stocks subscribed and paid in represents the par capital and is the paid-up capital required by the Insurance Act to be maintained.

Section 13 of Article 2 (Section 3656.12, 1929 N.C.L., 1941 Supp.) contains the following language: "A stock company organized under this article shall have and at all times maintain a paid-up capital of the amount set forth in its articles of incorporation, which amount shall not be less than the minimum capital requirement applicable to the class and clause or clauses of section 5 describing the kind or kinds of insurance which it is authorized to write, as set forth in the following table: * * * (b) Class 1(a) and (b) one hundred twenty-five thousand (\$125,000) dollars * * *." This is the class applicable to the company in question.

That part of the amount set forth in its articles subscribed and paid in is its paid-up capital which cannot exceed the amount of authorized capital stock, but in any event cannot be less than the minimum fixed in the section applicable. The paid-up capital required is not the amount set forth in its articles, but is that part of such amount subscribed and paid in. This appears to be the intent of the Legislature. To hold otherwise would indicate that a company, such as the type of the company in question, could have stock subscribed and paid to the amount of a million dollars, if authorized in its articles, and the only amount of a million dollars, if authorized in its articles, and the only paid-up capital accounted for and to be added to its other liabilities in its report would be a fixed sum of \$125,000.

Section 22 of Article 2 (Section 3656.21, 1929 N.C.L., 1941 Supp.) relative to procedure when insufficient assets are possessed by a company, quoting that part deemed relevant, reads as follows: "Whenever the commissioner shall find from the financial statement made by any stock company subject to the provisions of this article or from a report of examination of any such company that the admitted assets of a stock company subject to the provisions of this article are less than the minimum capital required of such company by law and all other liabilities, he shall give written notice to the company of the amount of such impairment and shall require that the impairment be made good * * *."

As we interpret the statute the minimum capital required by law is the actual paid-up par capital and the minimum capital mentioned is the least or smallest amount required to continue operations.

ASSETS NOT ADMITTED

The market value property is the price which the property will bring in a fair market, if reasonable efforts have been made to find a purchaser who will give the highest price for it.

McCallister v. Sappingfield, 144 P. 432, 38 C.J. 1262.

The fair market value of the real estate should be an admitted asset and not the initial cost of such real estate in determining assets.

From an examination of standard forms used in a number of States, including the State of Illinois, from which State the Insurance Act was copied, the other not admitted assets listed in the report of examination of the company in question appear to be proper according to the reasons given in the report.

Section 3656.51, 1929 N.C.L., 1941 Supp., defining property authorized for excess funds investments, subsection (5), reads as follows: "The capital stock of any solvent corporation organized and carrying on business under the laws of this or any other state, or of the United States or of the District of Columbia, when such stock has a market value at date of investment which is not less than its purchase price or the amount loaned upon its security."

The corporation in which such investment may be made must be a solvent corporation, and such stock must meet the requirements of the above-quoted section in order to be an admitted asset.

We are returning herewith the Report of Examination.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

B959. Public Schools—Nevada Day Observance.

CARSON CITY, October 13, 1950.

MR. RABY J. NEWTON, *Deputy Superintendent, Fourth Supervision District,*
Department of Education, Carson City, Nevada.

DEAR MR. NEWTON: This will acknowledge receipt of your letter dated October 6, received in this office October 9, 1950.

You inquire as to the status of October 31—"Nevada Day"—insofar as the dismissal of school is concerned, and request an opinion as to what would be considered participation as set forth in section 30 of the Nevada School Code.

We are of the opinion that participation as used in the statute means being engaged in, rather than mere presence in community exercises held on Nevada Day.

Interference with such community exercises, by keeping school open on this day, is a question of fact to be determined as to the particular school.

Section 3306.01, N.C.L. 1931-1941 Supp. provides as follows:

All days declared by the governor to be legal holidays shall be observed by the closing of all state and county offices, the courts, state university and public schools and banks, unless all or part thereof are specially exempted therefrom.

Section 3306.02, N.C.L. 1931-1941 Supp. reads as follows:

All days declared by the governor to be legal holidays shall be observed by the closing of all state and county offices, the courts, state university and public schools and banks, unless all or part thereof are especially exempted therefrom.

Section 428 of the 1947 School Code incorporates the Act of 1939, section 3308.01, N.C.L. 1931-1941 Supp. This Act designates October 31 of each year as Nevada Day, and provides that

all State, county and municipal offices and the State University shall close on this day. The Governor is authorized and directed to issue annually a proclamation requesting the people of the State to observe this day by appropriate exercises commemorating the admission of the State into the Union.

Section 430 of the School Code contains the following language, quoting only that part deemed relevant:

* * * provided that this shall not be construed so as to interfere with the participation by schools in community exercises held in the observance of such days.

Participate, according to Webster, means to have a share in common with others.

Participate means to take part in and connotes to the average person meaning and effect of engaged in rather than mere presence. *Martin v. Mutual Life Ins. Co.*, New York, 71 S.W. (2) 694.

Participation in the moving or transportation of a thing requires action, effort, or direction. *Prinsen v. Traveler's Protection Ass'n. of America.* 65 F(2)841.

See Words and Phrases, Vol. 31.

Whether the closing of a school would interfere with the participation in community exercises held in observance of the day is a question of fact to be determined by the educational and other departments involved.

Very truly yours,

ALAN BIBLE, *Attorney General.*

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

B960. Travel Allowance—Sheep Commission not Authorized to Fix Amount.

CARSON CITY, October 17, 1950.

MR. FORREST M. BIBB, *Director of the Budget, Carson City, Nevada.*

DEAR MR. BIBB: This will acknowledge receipt of your recent letter in which you request the opinion of this office as to whether section 3873, 1929 N.C.L., 1949 Supp. (Chap. 54, Stats. 1945, sec. 3) gives to the Sheep Commission the authority to set their own travel and subsistence expenses, in view of Chapter 247 of the 1949 Statutes.

The answer to this inquiry is in the negative.

The second paragraph of section 3873 reads as follows:

The board is authorized and empowered to maintain an office at some point within the state and to employ a secretary and such inspectors and other employees as it may find necessary in carrying out the provisions of this act; to prescribe their duties and to fix their compensation and travel and subsistence expenses and to require such bonds in the case of its inspectors as it sees fit. All accounts for salaries and expenses provided for herein shall be periodically audited by the board.

Section 2 of the 1949 Act reads as follows:

When any district judge, state officer, commissioner, representative of the state, or other state employee, shall be entitled to receive his necessary traveling expenses in the transaction of public business within the state, such person shall be paid a per diem allowance not exceeding eight dollars (\$8) for any one calendar

day and for any period of less than a full calendar day such person shall receive a subsistence allowance of one dollar and twenty-five cents (\$1.25) for each full six-hour period such person is on travel status, and in addition shall receive a lodging allowance of three dollars (\$3) for each night his duties require him to remain in travel status, and also an allowance for transportation * * *. (Italics ours.)

As you undoubtedly know, section 3873 has not been amended since 1945, whereas, Chapter 247 is a 1949 Act. The Board of Sheep Commissioners, as stated in the Act itself, is a State board and obviously all those employed by the commission are to be considered as State employees. This is further evidenced by section 3887, N.C.L. 1929, which provides that the State Controller will draw a warrant in favor of the inspector when he fills out the proper voucher. It is a general rule of statutory construction that when two statutes are in conflict the one later in time is controlling. *State v. Nevada Tax Commission*, [38 Nev. 112](#), 145 P.905.

It is, therefore, our opinion that since the 1949 Act is later in time, the sheep inspectors are employees of the State and their travel and subsistence is determined by the 1949 Act.

We might further state, however, that Chapter 247 of the 1949 Act is not exactly applicable to the present problem, as obviously men in this particular type of the State employment are difficult to locate and do not travel by the same method as most other State employees. Therefore, we suggest that there might be additional legislation to provide adequate travel and subsistence for members of the Sheep Commission. In all probability this could be taken care of by the next Legislature, which will be in session within the next few months.

Very truly yours,

ALAN BIBLE, *Attorney General*.

By ROBERT L. McDONALD, *Deputy Attorney General*.

B961. Fish and Game—Penalties Fixed by Law To Be Applied.

CARSON CITY, October 26, 1950.

HON. JO G. MARTIN, *District Attorney, Lincoln County, Pioche, Nevada*.

DEAR JO: This will acknowledge receipt of your recent letter in which you request the opinion of this office as to the proper procedure to be followed by the Justice of Peace against defendants when it is alleged they violated section 3035.86, 1929 N.C.L., 1949 Supp.

You state in your letter that this section provides that the Fish and Game Commissioners have the right to deny a similar deep permit in any succeeding year in the event the holder of the permit violates any of the provisions of this section. This is in addition to the other penalties provided in the Act.

It is our opinion that the violation that is within the jurisdiction of the Justice of the Peace should be presented to him and that the question of the right of the Fish and Game Commission at a subsequent date is immaterial. It is also our opinion that the additional penalty provided is not an exclusive penalty, but is cumulative in the event the Fish and Game Commission so desires to exercise the right given to the Commission by statute. In other words, we feel that what future action might or might not be taken by the Commission is of no concern at this time, and even if it were, it would not prevent the Justice of the Peace from setting forth the penalty as provided by law in the event defendants are found guilty.

Very truly yours,
ALAN BIBLE, *Attorney General*.
By ROBERT L. McDONALD, *Deputy Attorney General*.

B962. Elections—Wives of Servicemen May Acquire Voting Residence.

CARSON CITY, October 27, 1950.

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

DEAR MR. BLAISDELL: This will acknowledge receipt of your letter dated October 24, 1950, received in this office October 26, 1950. You request an opinion on the following question:

May the wife of a serviceman acquire a legal voting residence in the State of Nevada when the husband is in military service, through induction, enlistment or commission from another State, and establishes a home on a military reservation in Nevada with his wife for more than six months, during all of which time he is in the military service of the United States? This question presupposes no prior residence or domicile in Nevada of either husband or wife.

We are of the opinion that the wife of the serviceman, if a citizen of the United States, twenty-one years of age or over and has been continuously resided in the State of Nevada six months and in the county thirty days next preceding the general election, and is not in the military service of the United States, is entitled to vote at such election.

Article II, section 1 of the Constitution of Nevada, reads as follows:

All citizens of the United States (not laboring under the disabilities named in this constitution) of the age twenty-one years and upwards, who shall have actually, and not constructively, resided in the state six months, and in the district or county thirty days next preceding any election, shall be entitled to vote for all officers that now or hereafter may be elected by the people, and upon all questions submitted to the electors at such election; provided, that no person who has or may be convicted of treason or felony in any state or territory of the United States, unless restored to civil rights, and no idiot or insane person shall be entitled to the privilege of an elector. There shall be no denial of the elective franchise at any election on account of sex.

The next section contains the provision that no person for the purpose of voting 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. The later provision was incorporated in the election laws under section 2361, N.C.L. 1929.

The husband, for the purpose of voting, may not establish a legal residence for the reason that the Constitution and statute denies him that right. There is nothing in the law to prohibit him from establishing a home or domicile for his wife and children.

The rule applied in arriving at decisions which hold that persons in the military service cannot establish a residence because such residence cannot be permanent in character, for the reason that they may not freely exercise an intention of remaining, does not apply in respect to such persons' wife and family. He may be transferred to remote localities, but he can freely exercise the intention that his wife and family remain at the domicile he has established.

Residence may have different connotations in different statutes and situations. U.S. v. Rubinstein, 166 F(2) 254.

For general purposes the domicile of the wife is determined to be that of the husband. The wife may, however, under certain conditions acquire a domicile apart from her husband. “The rule is that she may acquire a separate domicile whenever it is necessary or proper that she should do so.

The right springs from the necessity for its exercise, and endures as long as the necessity continues.” Cheever v. Wilson, 9 Wall 108, 19 L.Ed. 604.

Residence and domicile cannot be construed under the various statutes as synonymous. A person may have a legal residence in this State while he is domiciled in another.

The right of suffrage is granted the wife independent of such right in the husband.

Although the right to vote is a mere political privilege and not an inherent and unqualified right, the statutes providing for election privileges should be liberally construed. “It is well settled that election laws are to be liberally construed to enable the largest participation in all elections by qualified electors.” Turner v. Fogg, [36 Nev. 406](#).

We cannot read into the election statute the rule that the domicile or residence of the wife is determined by that of the husband.

You also inquire, if our opinion is in the affirmative, would it be possible for such a one to have her name placed on the official register at the coming election?

Section 27 of the Act regulating the registration of electors, section 2386, 1929 N.C.L., 1941 Supp., provides as follows:

Any elector whose name is erroneously omitted from any precinct register may apply for and secure from the county clerk a certificate of such error, stating the precinct in which such elector is entitled to vote, and upon the presentation of such certificate to the judges of election in such precinct, the said elector shall be entitled to vote in the same manner as if his name had appeared upon the precinct register. Such certificate shall be marked “Voted” by the judges and shall be returned by them with the precinct register.

If the elector appeared before the County Clerk during the time when registration was open for the election; was qualified to subscribe to the statements on the registration card, but was refused the right to so register, it was error, and her name was erroneously omitted from the register by reason of such action.

As held by the Supreme Court in State v. State Board of Examiners, [21 Nev. 67](#), “Registration is not an electoral qualification, but is only a means for ascertaining and determining in a uniform mode whether the voter possesses the qualifications required by the constitution, and to secure in an orderly and convenient manner the right of voting.”

Thus, the statute should have a reasonable construction calculated to secure and facilitate, rather than to subvert or impede, the exercise of the right to vote.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

B963. Taxation—Free Port Act—Consignment Defined.

CARSON CITY, November 1, 1950.

NEVADA TAX COMMISSION, *Carson City, Nevada*.

Attention: R.E. Cahill, Secretary.

GENTLEMEN: Reference is hereby made to your recent letter, together with two letters of inquiry directed to you concerning the provisions of Chapter 77, Statutes of 1949, which provides for the tax exemption of property in transit.

Purportedly the inquiries are directed to the proposition of whether a foreign corporation which has headquarters in a sister State, with sales offices in other States, may acquire a Nevada warehouse staffed and operated by the corporation and therein receive merchandise shipped directly to its form sources outside of Nevada and there held pending shipping orders received by the corporation to points outside the Nevada State boundaries. Particularly, an opinion is requested concerning the definition of the term "consigned to a warehouse," which appears in section 3 of the statute in question, it being suggested that the term "warehouse" applies to a public warehouse and not one that is privately owned. Inquiry is also made relating to the conditions which must be met in order to properly qualify under the "no situs" provisions of the statute.

OPINION

In our opinion the statute in a question was not intended to relate to, and neither does it relate to, a public warehouse exclusively. It is to be noted that in section 3 the language relating to personal property is "moving in interstate commerce through or over the territory of the State of Nevada, or (2) which was consigned to a *warehouse* within the State of Nevada from outside the State of Nevada for storage or assembly in transit to a final destination" which must be without the State. It is our opinion that by use of the article "a" the Legislature intended any warehouse in which in transit property was stored would be considered the warehouse meant by statute.

With respect to the other inquiry relating to the conditions which must be met in order to properly qualify under the no situs provision, that is to say, where a manufacturer maintains a warehouse in Nevada to which he ships goods from his factories outside Nevada and which goods are to be used to fill orders from his customers on the West Coast, but outside of Nevada, could such manufacturer maintain his own warehouse for such purpose.

In our opinion such a warehouse could be utilized for the no situs purpose provided always that the manufacturer so maintaining such warehouse keeps the finished goods claimed under the no situs provision separate and apart from any finished goods he may store therein for sale in the State of Nevada. In our opinion, if he commingled such goods without clearly designating the no situs goods, then the whole of such goods is subject to taxation in this State. Such is the effect of our Opinion No. 775, dated July 12, 1949.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

B964. Public Employees Retirement—Computation of Average Monthly Salary.

CARSON CITY, November 3, 1950.

MR. KENNETH BUCK, *Executive Secretary, Public Employees Retirement Board,*
Carson City, Nevada.

DEAR MR. BUCK: This will acknowledge receipt of your recent letter in which you request

the opinion of this office as to the following questions:

1. In view of the limitations of sec. 14 of the Public Employees Retirement Act may sums of money received in any calendar month in excess of \$400 be used in computing the “average monthly salary” of sec. 19?
 2. If the answer to Question 1 is in the affirmative shall any differentiation be made for months of prior service and months of current service; i.e., for months wherein contributions have not been paid and months wherein contributions have been paid?

The answer to your first inquiry is in the affirmative.

Section 14 of the Retirement Act provides in part as follows:

The objective of this act shall be to provide each employee who is a member of the system a disability retirement allowance of the amount hereinafter provided for and a total service retirement allowance of one-half his average salary during his last five years of service for police officers and firemen with twenty or more continuous years of credit in the system and who have reached the age of 55 years, and for other employees with 20 or more continuous years of credit in the system and who have reached the age of 60 years. Notwithstanding the foregoing provisions, the monthly retirement allowance shall not exceed two hundred dollars (\$200.)

Each employee who is a member of the system shall contribute 5% of the gross compensation earned by him after July 1, 1498, as a member of the system; provided, that no employee shall be required to contribute on any amount in excess of four hundred dollars (\$400) per month.

This particular section does place a limitation of \$200 as the maximum amount one may receive upon retirement and also limits the amount to \$400 on which contributions will be paid. It does not, however, in any manner limit the amount to be used as a basis of determining the average salary for the last five year period.

Section 18 (3) provides as follows:

On and after July 1, 1953, a police officer and firemen who has completed thirty years of continuous service or any other employee who has completed thirty years of continuous service and has attained the age of fifty-five shall be retired upon acceptance by the board of his written application to retire. If such police officer and fireman having thirty years of continuous service retires or any other member with thirty years of continuous service retires at fifty-five, he shall receive a service retirement allowance which will be 50% of his average salary for the last five years.

Section 19 provides as follows:

Upon retirement from the service of the state or one of its political subdivisions after twenty or more years of continuous service at retirement age, a member of the retirement system will receive a “monthly service retirement allowance” which will be 50% of the average monthly salary during the last five years of public employment payable during his lifetime. If the total years of service at retirement is ten years or more, but is less than twenty, the retirement allowance shall be prorated on the basis of twenty years. In order to be eligible for the above, a police officer or fireman must have attained the age 55 and every other member the age of 60.

Notwithstanding the foregoing provision, the monthly retirement allowance shall not exceed two hundred dollars (\$200.)

None of the above sections or any other section limit the amount to \$400 as the maximum salary to be used in determining the average salary for the five years preceding retirement.

It is a general principle of law that where the meaning of a statute is clear, there is no occasion for construction. In *Re Hagarty's Estate*, [47 Nev. 369](#). The same principle being followed in *State v. Beemer*, [51 Nev. 192](#), wherein the Court said on page 199:

Where the language of a statute is plain, the intention of the legislature must be deduced from such language, and the Court has no authority to look beyond it, or behind it, or to the proceedings of the legislative body to ascertain its meaning.

In view of the above it is our opinion that sums received in any calendar month in excess of \$400 may be used to determine the average monthly salary.

The answer to your second inquiry is in the negative for the same reasons as set forth above.

It will be necessary that there be legislation in order to base the average salary on a maximum of \$400 per month.

Very truly yours,

ALAN BIBLE, *Attorney General*.

By ROBERT L. McDONALD, *Deputy Attorney General*.

B965. Elections—No Provision for Challenge of Absent Voter's Ballot on Day of Election.

CARSON CITY, November 6, 1950.

HON. GROVER KRICK, *District Attorney, Minden, Nevada*.

DEAR GROVER: This will confirm our telephone conversation as to the challenging of absent voters ballots on election day.

We have carefully studied the absent voters law, as well as other registration and general election laws, and we are unable to find therein any procedure by which an absent voters ballot can be challenged on the day of election.

The absent voters law specifically provides that upon receipt of an application for an absent voters ballot, "*if the county clerk shall determine that such applicant is entitled to vote at such election, the clerk shall immediately mail the official absent voters ballot to the applicant.*"

(Italics ours.)

It is clear from this law that a duty is placed upon the County Clerk to determine whether or not the applicant is entitled to vote at the election. In addition to this requirement, the same section of the absent voters law requires the applicant to swear to an affidavit likewise attesting to his residence.

Ample opportunity is afforded to those who desire to challenge any registered voters prior to the election day by following the provisions of subdivision 6, section 21 of the registration law. This subdivision of section 21 authorizes the filing of affidavits, questioning the residence of registered voters, and provides for personal notice to the challenged voter, with full opportunity given to him to file counter-affidavits, documentary evidence, or oral testimony under oath, in order to satisfy the County Clerk as to his residence.

This provision of the law should be followed prior to the election day if there are those registered whose residence is questioned.

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

B966. Public Schools—Trustee May Vote on Contracts for Services Which Extend Beyond Term of Trustee.

CARSON CITY, November 8, 1950.

MR. RABY J. NEWTON, *Deputy Superintendent, Fourth Supervision District,
Department of Education, Carson City, Nevada.*

DEAR MR. NEWTON: This will acknowledge receipt of your letter dated November 1, 1950, received in this office November 2, 1950, enclosing a letter from a school district, and copies of two contracts with an architect for the performance of certain services for the school district.

The question submitted is that of the validity of these contracts, the performance of which extend beyond the term of one of the trustees making the contract.

We are of the opinion that the School Code does not prohibit a trustee of a school district voting on such a contract which extends beyond his term of office.

Subsection 11 of section 274 of the 1947 School Code empowers the board of trustees to contract for the employment of teachers. Such power is limited by the following language: “* * * provided, that the trustees shall not have the right to employ teachers for any school year commencing after the time for which any member of the board of trustees was elected or appointed.”

Section 296 of the School Code provides that no member of any school board shall be financially interested in any contract made by the school board of which he is a member. Section 300 of the School Code forbids the employment of any relative of any member of such school board when such relative is within a specified degree of consanguinity or affinity.

Section 287 of the Code requires the awarding of contracts to the lowest and best bidder, when the expenditure for erection, addition or repairs to any school building, or upon the purchase of school furniture, is more than five hundred dollars.

This office in Attorney General’s Opinion No. 400, 1946-1948 Biennial Report, held that a statute requiring bids for the expenditure of money more than the amount specified in the statute did not apply to services belonging to a profession such as that of law, civil engineering or architecture.

The School code enumerates certain contracts which are beyond the powers of the school trustees to make which, under the rule of construction, excludes all other cases.

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

B967. Taxation—Exemption of Church Property not to Extend to Such Property When Used for Other Than Religious Worship.

CARSON CITY, November 13, 1950.

HON. A.L. PUCCINELLI, *District Attorney, Elko, Nevada.*

DEAR MR. PUCCINELLI: This will acknowledge receipt of your letter dated November 3, received in this office November 8, 1950.

You write that you have an inquiry from the L.D.S. Church wherein they have advised that they contemplate the purchase of a ranch to be owned and operated by the church and the commodities which are raised on the ranch are to be used for the benefit of their church members.

You have advised them that in your opinion the real and personal property would be tax exempt, based on the Constitution of the State. You request our thought relative to this question. Section 1, Article X of the Constitution, providing for taxation, contains the following language: “* * * and there shall also be excepted such property as may be exempted by law for municipal, literary, scientific or other charitable purposes.”

Section 6418, 1929 N.C.L., 1943-1949 Supp., being section 5 of the revenue Act as amended by Statutes of 1949, page 6, third subdivision, reads as follows: “Churches, chapels other than marriage chapels, and other buildings used for religious worship, with their furniture and equipment, and the lots of ground on which they stand, used therewith and necessary thereto, owned by some recognized religious society or corporation, and parsonages so owned; provided, that when any such property is used exclusively or in part for any other than church purposes, and a rent or other valuable consideration is received for its use, the same shall be taxed.”

The statute provides in detail what property belonging to a recognized religious society shall be exempt and to what degree the exemption applies.

A ranch owned and operated by a church and the commodities raised on the ranch would not be such property as defined by law under the Constitution and the statute.

Very truly yours,

ALAN BIBLE, *Attorney General.*

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

B968. Elections—Compensation Paid Election Officers.

CARSON CITY, November 22, 1950.

HON. W.O. JEPPSON, *District Attorney, Lyon County, Yerington, Nevada.*

DEAR MR. JEPPSON: The following is submitted in reply to your inquiry as to the opinion you rendered the commissioners of your county on October 7, 1946, respecting the compensation paid election officers serving at election precincts during an election.

Your opinion to the County Commissioners was given before the amendment to section 2468, N.C.L. 1929, and was based on the general definition of per diem or calendar day. Section 2468 before amendment contained this language: “There shall be allowed out of the county treasury of such county to each inspector and each clerk of election five dollars per diem * * *.”

The above section was amended by the Statutes of 1949, Chapter 40, to read in part as follows:

“There shall be allowed out of the county treasury of such county to each inspector and each clerk of election six dollars per day or shift (except that precinct foremen when and if appointed under section 2 of this act as amended by chapter 144, page 474, statutes of 1947, shall each receive six dollars per shift for two shifts), * * *.” The amendment uses the terms shift or day in place of per diem.

Section 2439, N.C.L. 1929, as amended by Chapter 144, Statutes of 1947, and Chapter 15,

Statutes of 1949, in addition to providing for a voting and a counting board in precincts having 200 or more registered voters, provides that the County Commissioners may designate an election precinct foreman who shall serve on both boards and shall receive compensation for two shifts and in addition shall receive the sum of five dollars. The additional five dollars appears to be compensation for attending school conducted to enable the foreman to become acquainted with the election laws and to impart the same to the election boards. The section provides that each member of the voting and counting board shall receive compensation for one shift or day. The shift of the voting board is service from the opening to the closing of the polls. The counting board takes over when the polls are closed and shall proceed to count the ballots and perform the other duties is determined by the opening and closing of the polls, the shift of the counting board is not determined by the section in hours but by shift or day.

Section 2450, N.C.L. 1929, provides that as soon as the polls shall be closed the inspectors shall immediately proceed to canvass the votes and continue without adjournment until completed. The shift of the counting board would continue until the votes are counted.

Since the amendment to section 2468 changed the wording from per diem to per day or shift, it appears that the boards, in the election precincts having two boards, each work a shift, one from the opening to the closing of the polls, and one shift as a counting board.

A shift may be any part of the 24 hours in a day, but the words "or day" would limit a shift to 24 hours. This appears to be the only reason that section 2468 contains the provision, "but in no case to exceed twenty dollars for all services required by law to be performed by each of them at any one election."

The shift of a single board would include service while the polls were open and the counting of the votes immediately thereafter. It appears that when such shift extended beyond 24 hours the officers would be entitled to compensation for an additional shift, otherwise they would be paid for but one shift.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

B969. Motor Vehicles—Application of Statute Defining Contract Motor Carrier of Passengers.

CARSON CITY, December 4, 1950.

PUBLIC SERVICE COMMISSION, *Carson City, Nevada*.

Attention: Lee S. Scott, Secretary.

GENTLEMEN: this will acknowledge receipt of your letter enclosing a copy of a letter outlining a proposal to lease a motor vehicle on a monthly basis for the purpose of transporting a group of employees of the State of Nevada on daily trips between Reno and Carson City. You request advice as to the legality of this agreement under the public utility Act and motor carrier Act.

We are of the opinion that the operation of a motor vehicle under the agreement as outlined in the letter comes within the definition of terms under section 4437.01, 1929 N.C.L., 1949 Supp., subsection (f), defining the term contract motor carrier of passengers, and would require a permit under section 4437.08a, 1929 N.C.L., 1949 Supp.

Section 4437.01, 1929 N.C.L., 1949 Supp., subsection (f), reads as follows:

The term “contract motor carrier of passengers” when used in this act shall be construed to mean any person engaged in the transportation of passengers for hire a particular persons or persons to or from a particular place under separate agreement or agreements and not operating as a common carrier of passengers.

The second paragraph of subsection (g) reads:

The term “person” when used in this act shall be construed to mean any person, firm, association, partnership, corporation, lessee, trustee, receiver, or company engaged in or intending to engage in the operation of any motor vehicle in any of the carrier services hereinbefore denied.

The facts submitted indicate that a group of persons will enter into a rental agreement for the use of a motor vehicle in transportation members of the group, the number of which may vary from time to time, to and from a particular place.

The price to be paid for the use of the automobile is a flat rate per month plus actual expenses for its use.

It appears that the group is an association intending to engage in the operation of a motor vehicle within the carrier service defined as “contract motor carrier of passengers.” The agreement between the members of the group is a contract among them to pay the price for the use of the motor vehicle for the services in transportation that each receive.

According to Webster the word “hire” means the price paid for the use of a thing or place, for personal services, also let, lease. The group is an association of persons intending to become a lessee for the purpose of the transportation of a particular persons to or from a particular place.

The case of Baltimore and Annapolis Railroad Co. v. Lichtenberg, 4 A(2) 734, has a relation of likeness to the above facts. In this case complaint was made to the Public Service Commission by the Lichtenberg to enjoin enforcement of an order of the Commission stopping operation of certain motor trucks carrying passengers without required permits. The United States intervened as a party plaintiff and the railroad company as a defendant. The Federal Government was engaged in constructing buildings at sites near Annapolis, some near the railroad and others beyond the railroad stations. There was no adequate supply of workmen nearby and the government made contracts with the owners of the trucks to transport the men to and from work. The owner of the trucks had no course of business in transportation of passengers. Payment was made on a day basis. It was expressly provided that the contractors should comply with the law, obtaining all required permits and license, and should carry liability insurance. But owners of the trucks, appellees, made no attempt to qualify as carriers of passengers by obtaining the license required. Upon passage of those of the Commission’s order the government advertised for bids, but those received from the railroad company and others were unsatisfactory. The government returned to its exiting contract and entered the equity proceeding to preserve it.

The statute in question was similar to that of Nevada. The duties of common carriers were expressly excepted from the effect of the section, which as the court held indicated clearly enough that those using the roads with vehicles for hire were private contract carriers. The Court held, “Unless, therefore, some part of the constitution of the State or the United States forbids, private contract carriers for hire using the roads on fixed schedules or between fixed schedules or between fixed termini they are controlled by the statute.” The Court in the interpretation of “fixed termini” held that: “Conveyance on the morning and the evening of every working day between

Baltimore and the several naval grounds about Annapolis would seem to conform to these definitions.”

The complete stoppage of the truck service as the Court held “could be grounded only on failure to comply with the requirements for use of the roads previously specified (for hire).” The question was raised that there was an interference with performance of an essential governmental function, but the Court held that there was no such interference as is prohibited to the State by the United States Constitution. The decision of the Court reserved the holding of the lower Court to the end that appellees shall discontinue the service as ordered by the Commission unless and until they comply with the law concerning the use of the roads by motor vehicles for hire. The rule applied by the Court was that regulations in statutes requiring private contract carriers for hire using roads on fixed schedules or between fixed termini for carrying of passengers to procure permits are reasonable requirements for safeguarding use of highways for gain. The case was appealed to the United States Supreme Court and appeal dismissed in 308 U.S. 525.

It therefore appears from the facts as stated in your inquiry to this office that the arrangement will come within the provisions of the public Act and motor carrier Act.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

B970. Public Schools—Board of Education Union School District Empowered to Accept Conveyance of Title to Property With Title Vesting in Particular District of Union.

CARSON CITY, December 6, 1950.

HON. ROBERT E. JONES, *District Attorney, Clark County, Las Vegas, Nevada*.

DEAR MR. JONES: This will acknowledge receipt of your letter dated November 30, 1950, received in this office December 4, 1950. You request an opinion upon the following facts.

Sometime in 1942 the Board of Education of Las Vegas Union School District, acting for and on behalf of the Las Vegas Grammar School District No. 12, entered into a purchase-lease agreement with the Housing and Home Finance Agency of the Federal Government wherein, after a certain number of years, title to school facilities was to pass to the school district. Under Public Law 815 of the 81st Congress consideration is now being given to the transfer of such facilities from the Federal Government.

The question arises as to whether the transfer should be made to the Union School District or to the Grammar School District No. 12.

OPINION

After an examination of the statutes we find that the Board of Education of the Union School District, as the governing body of the district, should accept the transfer and the conveyance should be to the Las Vegas Grammar School District No. 12.

The Board of Education of a union district has the control and government, as an administrative function, of all the districts in the union. Property acquired for school sites, school buildings and furnishings for such buildings are owned by the district in the union under the separate identity of the particular district.

Clark County, by a special Act of the Legislature, was divided into three educational districts and provision was made for a Board of Education for each district. Educational District No. 2 provided that the Board of Education should have all the powers and duties of any board of trustees of a school district and of the Board of Education of a union school district, or either of them. This Act is incorporated in the School Code under sections 109 to 119, inclusive.

We are informed that Las Vegas Grammar School District No. 12 is within the Clark County Educational District No. 2. This will place the union school in such district under the general provisions of the School Code. Chapter 63, Statutes of 1947, comprises the School code. Section 75 of the Code is section 6084.85 N.C.L., 1943-1949 Supp. The section provides that the control and government of all high and elementary schools in a union district shall be vested in a Board of Education.

Section 80 of the Code, section 6084.90 N.C.L., 1943-1949 Supp., contains the following language: "The separate identify of each of the particular districts, which united to form said union school district, shall be and the same is hereby retained for the purposes of the conduct of school bond elections therein, the issuance of bonds on behalf of such particular school district, and the certification, levy and collection of taxes therein for the payment of the principal and interest of such bonds, all as hereinabove provided in this chapter."

Section 6084.216, N.C.L., 1943-1949 Supp., section 206 of the School Code, authorizes school districts to issue bonds for the purpose of erecting and furnishing school buildings and sites on which to erect such buildings. It appears, therefore, that school buildings and facilities acquired by a district within a union district, whether acquired by bond issue or other liability of the district, would be and remain the property of the particular district in its separate identity.

This interpretation of the section is supported by section 81 of the code, section 6084.91, N.C.L. 1943-1949 Supp., which provides that any Union School District organized under the provisions of the Code of Consolidated School Districts. Section 6084.81, N.C.L., 1943-1949 Supp., under the chapter relating to the dissolution of consolidated school districts, provides that any specific property contributed by a component district shall be returned to that district upon dissolution.

The authority of a school board to accept a grant is found in section 6084.285 N.C.L., 1943-1949 Supp., which defines the powers and duties of school trustees. Subsection 12 reads, "To accept on behalf of and for the school district any gift or bequest of money or property for a purpose deemed by said board to be suitable; and to utilize such money or property for the purpose so designated."

The authority of a school board to accept a grant is found in section 6084.285 N.C.L., 1943-1949 Supp., which defines the powers and duties of school trustees. Subsection 12 reads, "To accept on behalf of and for the school district any gift or bequest of money or property for a purpose deemed by said board to be suitable; and to utilize such money or property for the purpose so designated."

The powers and duties of the Board of Education in Educational District No. 2 of Clark County, as shown by section 110 of the Code, section 6084.120 N.C.L., 1943-1949 Supp., are the same as those of the trustees of any school district.

Chapter 61, Statutes of Nevada 1949, empowers the State Board of Education to make rules and regulations under which contracts and agreements may be made with the Federal Government for funds, services, commodities or equipment to be made available to public school systems, and such agreements shall be entered into in accordance with such regulations. This

Act, however, is not retroactive and would not affect a contract or agreement entered into before the passage of the Act.

We conclude, therefore, that the Board of Education of the Las Vegas Union school District, acting for the Las Vegas Grammar School District No. 12 has authority to accept the transfer under the purchase-lease agreement with the Housing and Home Finance Agency of the Federal Government, resulting in a conveyance that will vest title in the Las Vegas Grammar District No. 12 in its capacity of a separate district within the union district.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

B971. Public Schools—Minimum Age Requirement for Enrollment Mandatory.

CARSON CITY, December 7, 1950.

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

DEAR MISS BRAY: This will acknowledge receipt of your letter dated December 4, 1950, received in this office December 5, 1950, in which you request an opinion upon the following question.

FACTS SUBMITTED

A child, whose birth date is February 25, 1945, attended kindergarten last year and has been enrolled in the first grade of a California school district since September 1, 1950. The parents have moved to a Nevada School district and are seeking to enroll the child in the first grade of that school district, presenting a transcript of the child's work in the first grade of the California school during the past three months. The school district in which the child is now located in Nevada does not have mid-term promotions.

The question presented for opinion is, may this child be admitted during the present school term in this district?

OPINION

Section 1 of the School Code, section 6084.11 N.C.L., 1943-1949 Supp., which deals with compulsory attendance at school by children of certain ages, contains the following language:

Each parent, guardian or other person in the State of Nevada, having control or charge of any child between the ages of seven (7) and eighteen (18) years, shall send and be required to 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; 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 six (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 (6) years of age * * *.

The section contains certain exceptions under which attendance at school shall be excused, but there are no additional exceptions relative to admission to the first grade. The language of the section is plain and does not contain an ambiguous quality.

“Where the language of a statute is plain and the meaning unmistakable, there is no room for construction, and the courts may not search for the meaning beyond the statute itself.” State v. Jepson, [46 Nev. 193](#); Walters Estate, [60 Nev. 172](#).

The part of the section quoted above contains this language, “otherwise such child shall not be admitted until the beginning of the immediately following school term.”

Where an existing right or privilege is subject to regulation by statute in negative words, the mode so prescribed is imperative. Walser v. Moran, [42 Nev. 111](#).

The Legislature has declared a certain age as the basis for admission to the first grade in public schools, and we cannot determine the meaning beyond the plain language of the statute.

Therefore, we are of the opinion that there is no authority within the statute to admit the child in question to the district school during the present school term.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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

B972. Public Utilities—Supplying Water to an Individual not a Required Service of Railroad Company.

CARSON CITY, December 21, 1950.

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

GENTLEMEN: This will acknowledge receipt of your letter dated November 28, 1950, received in this office the same date.

You submit the following statement of facts and request an opinion from this office:

FACTS SUBMITTED

A railroad company for some time past has sold and delivered about two tank cars of water a year to an individual living some forty miles distant from a city. Prior to the installation of a central train control system over the division, there existed a spur track where these cars were spotted for unloading. After the installation of the centralized train control system the spur was removed in 1948. The railroad company has advised this individual that it can no longer furnish him water in this manner.

The question presented, is this railroad company required to furnish water to the individual, under the provisions of the statutes of this State regulating public utilities?

We are of the opinion that although the railroad company is a public utility, it is not a water furnishing public utility as defined by statute, and that the Public Service Commission has no jurisdiction to require the railroad company to sell water to the individual.

Section 6106, N.C.L. 1929, defines the term “Public Utility.”

Section 6112, N.C.L. 1929, authorizes the Commission to prescribe convenient and serviceable standards for the measurement of quality, pressure, voltage or other conditions pertaining to the supply of the product of service rendered by any public utility. The same

section contains a restriction as to the installation of mechanical water meters.

The following section relates to the fixing of rates, tolls and charges and schedules and the posting in station or office of common carriers.

A railroad company as a common carrier comes within the definition of a public utility, but it is not a company engaged in the business of delivering water to a number of users as contemplated by the statute. The service of delivering water in the case presented is not a service dedicated to the public or a portion thereof, or to persons in a certain area, which would support a demand for such service without discrimination. The facts presented negative any express or implied dedication of supplying water to the public.

A water company is a public utility when it holds itself out expressly or impliedly, as engaged in the business of supplying water to the public as a class, not necessarily to all of the public, but to any limited portion of it, such portion, for example, as can be served by its system, as contradistinguished from one holding itself out as serving or ready to serve only particular individuals, either as a matter of accommodation or for other reasons peculiar and particular to them.

Trask v. Moore, 104 P.2d 73. Words and Phrases, Vol. 35.

Therefore, the railroad company operating as a public utility for transportation of persons and property, is not a public utility engaged in the business of supplying water to any city, town, municipality, community or territory, and is not a water utility as comprehended by the statutes.

Your correspondence files are returned herewith.

Very truly yours,

ALAN BIBLE, *Attorney General*.

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