

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL - 1957

OPINION NO. 57-236 PUBLIC EMPLOYEES RETIREMENT—Legislator who reaches retirement age and has sufficient service in a participating agency other than the State Legislature to entitle him to participate in the retirement benefits under the Public Employees Retirement Act, does not lose his right to such benefits by reason of the fact that he serves as a legislator for a period of more than five years, and elects thereafter to waive such legislative service as contributing toward the necessary time for benefits under the Act.

Carson City, January 16, 1957

Mr. Kenneth Buck, Executive Secretary, Public Employees Retirement Board, Carson City, Nevada

Dear Mr. Buck:

Under date of January 14, 1957, you have requested this office to give an opinion based upon the following statement of facts:

An individual is employed in "full-time" service for an employer participating in the retirement system. He then leaves such regular covered service and is a member of the Nevada Legislature for the ensuing eight years. He then returns to "full time" employment at the conclusion of the 8-year period and subsequently applies for retirement. Sec. 8.5(4) of the Retirement Act (Chap. 197, Stats. 1955) permits persons who have served as legislators, county commissioners, or city councilmen to waive such service at time of retirement and "elect to have their allowance computed in the same manner as other members of the system and under the same provisions applicable to other members of the system." Under Sec. 16(4) an employee shall "cease to be a member of the system (a) in the event that he is absent from the service of all employers participating in the system for a total of more than (5) five years during any six year period * * *."

You then ask the following specific question:

In the situation outlined would a waiver of legislative service operate to establish a lapse of more than five years in covered service and thus cancel service preceding legislative service?

OPINION

It is the opinion of this office that the guiding language is found in Sec. 16(4) of the Public Employees Retirement Act wherein it is provided that an employee shall cease to be a member of the system (a) in the event that he is absent from the service of *all employers participating in the system* for a total of more than five years during any six-year period * * *. (Italics ours.)

An individual who is employed by an employer participating in the system, who leaves such employment to become a legislator, leaves a participating member of the system to join another participating member of the system. Despite the length of his service, therefore, he is not absent from the service of an employer participating in the service.

This office feels that subparagraph 4 of Sec. 8.5 of Chap. 197 of the 1955 Stats. was made a part of the Act to protect those who, in a spirit of public service, leave a participating employer of the system to serve in the State Legislature, and to encourage such service by providing that they may waive service as legislators to participate on a more remunerative basis by electing to have their allowance computed on service with a participating agency whose salary or wage scale is higher than that afforded by legislative service.

It is therefore the opinion of this office that a legislator who reaches retirement age and has sufficient service in a participating agency other than the State Legislature to entitle him to participate in the retirement benefits under the Public Employees Retirement Act, does not lose his right to such benefits by reason of the fact that he serves as a legislator for a period of more than five years, and elects thereafter to waive such legislative service as contributing toward the necessary time for benefits under the Act.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

OPINION NO. 57-237 FISH AND GAME COMMISSION—Sale of game meat by cold-locker operators to cover processing and storage charges prohibited by Fish and Game Law.

Carson City, January 24, 1957

Mr. Frank W. Groves, Director, Fish and Game Commission, P. O. Box 678, 51 Grove Street,
Reno, Nevada

Dear Mr. Groves:

In your letter of January 8, 1957, you request our opinion on the following facts and questions:

FACTS

Game meat is left with cold locker plant operators for processing and sometimes for storage. The meat, after considerable time, remains unclaimed by its owner. The disposal of this meat gives rise to two questions:

QUESTIONS

1. Would the sale of such meat by the plant operator for an amount to cover the processing and storage charges constitute a violation of Fish and Game Law prohibiting the sale or purchase of game or game meat in this State?

2. Who would be liable for waste if the plant operator destroyed the meat?

Before statement of opinion it must be made clear that this office is concerned only with the questions of the violation of the Fish and Game Laws. Any legal questions involving bailments and liens arising from the contractual relationship between the plant operator and the person who left the meat for processing and storage are not questions involved in this opinion except as incidentally referred to hereinafter.

OPINION

The answer to question number one is yes.

This question was answered in an opinion of this office numbered 179, released on June 30, 1952, a copy of which is enclosed. However, inasmuch as the interest in this subject is so prolonged, we feel that our reasons should be more fully set forth in this present opinion.

Sec. 70 of the Fish and Game Law (Chap. 101, 1947 Stats.) provides as follows:

It is hereby made unlawful for any person to sell, or expose for sale, to barter, or trade, or purchase, or attempt to sell, barter, trade, or purchase any deer meat or any species of game animals, or any migratory birds or any other game birds protected by the provisions of this act.

It can be said with some cogency that the law prohibiting the sale of game should not be, and is not intended to be, applied to a sale by such plant operators to recover processing and storage charges; that this law is designed to take away the incentive for illegal destruction of game (24 Am.Jur. 389 "Fish and Game Laws," Sec. 24 for theory upon which such laws are justified); that it is the reason for the rule which dictates its application, and that there is no reason for the application of the rule in this case because this type of sale would in no way add to the incentive for illegal destruction of game.

Whether this is true or not, this office, in light of the fact that the transaction proposed would constitute a sale, and in light of the fact that the wording of the law prohibiting a sale is in such clear terms as to preclude interpretation, is required to conclude that such sale would be in violation of the law as above quoted.

Moreover, a price which would cover the processing and storage charges would include the original profit to be derived by the plant operators. This leads to the possibility of commercial enterprise for profit; thus establishing an incentive to the illegal killing of game. This the legislators, who studied this matter at the time of enactment, may, in their wisdom, have well considered. If a change in the law is now desirable, it should be done by and upon further consideration of the Legislature.

There is one further matter in connection with this first question which we consider must be discussed. Whatever methods of sale by auction which are available in this type of case under the lien or bailment laws of the State, we do not deem in any way alters our opinion. Such methods of sale would certainly not be those prohibited by the Fish and Game Law. Their very existence at the time of the enactment of the Fish and Game Law in 1947 would exclude them.

Concerning question number two, please be advised that the subject does not admit of a statement of opinion which would cover all cases of liability for waste. There are too many variable factual situations possible. For example, if the person first leaving the meat failed to redeem it because he could not pay the processing charges, and this circumstance combined with destruction of the meat by the plant operator because he finds no needy person or charitable institution that will take it at the time, and need for space requires the destruction, we would be faced with a circumstance wherein it would be difficult to charge anyone with waste as it is defined in Sec. 87 1/2 of the Fish and Game Law, cited above. There would, it appears in such case, not be a needless waste, and it is only waste which is needless, under that section of the law, which constitutes a misdemeanor. Each case, then, must, as we see it, be determined upon its own facts.

You have also asked one further question which we quote from your letter as follows:

Also, if said locker plant operator obtained a judgment through a small claims court against the individual and was given authorization by the court to dispose of the meat to cover processing costs, would this conflict with our law prohibiting the sale of fish or game?

We are unable to answer this last question other than to say that if the small claims court were to issue such an order or has already done so, it would properly be an order of execution on the judgment authorizing a sale at auction as prescribed in the law setting forth the procedure for the

execution of judgment. This type of sale is obviously not within the provision of the Fish and Game Law prohibiting the sale of game.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Deputy Attorney General

OPINION NO. 57-238 STATE WELFARE BOARD properly authorized under existing laws to determine and prescribe conditions, rules and regulations for placement of minor children within the State pursuant to Sec. 1061.02, N.C.L. 1931-1941 Supp.

Carson City, January 28, 1957

Mrs. Barbara C. Coughlan, State Director, Nevada State Welfare Department, P. O. Box 1331, Reno, Nevada

Dear Mrs. Coughlan:

In your letter of January 9, 1957 you request the opinion of this office on the following question:

QUESTION

Is the State Welfare Department of Nevada authorized under the law to require an agency, organization or an individual requesting placement of a minor child in the State for purposes of adoption, boarding home placement or placement with relatives, to sign an agreement as to future planning and responsibility for such child should the placement develop unsatisfactory?

OPINION

In answering this question we look first to Chap. 185, Stats. of Nevada 1939, being Sec. 1061.02 N.C.L. 1931-1941 Supp., reading as follows:

No person other than the parents or guardian of a child and no agency or institution in this state or from any other state may place any child in the control or care of any person, or place such child for adoption *without sending notice of the pending placement and receiving approval of the placement from the state welfare department.* (Italics supplied.)

In our opinion the italicized portion of the above section imports a more extensive meaning than what might be detected at first glance. The very fact that the State Welfare Department is specifically empowered to approve placement of a minor child within the State implies a like power to disapprove such placement. Any such disapproval would of necessity be for reasons specified by the Legislature or such as might be determined by the department. It appears from a careful reading of the above section and as the same is considered in conjunction with its purpose, that it was the intent of the Legislature that the department determine these reasons for itself. Where a statute is not explicit, necessary implications and intendments from the language

employed therein may be resorted to in order to ascertain the legislative intent. That which is implied in a statute is as much a part of it as that which is expressed. In 82 C.J.S. Sec. 327, p. 632, we find the rule well stated, thus: "A statutory grant of power carries with it by implication everything necessary to carry out the power or right and make it effectual and complete."

That it was the intent of the Legislature to give the department broad discretionary powers in determining conditions under which placements of minor children may be made in the State is further evidenced in subsequent legislation, namely, Chap. 327, Stats. of Nevada 1949, as amended. Under Sec. 8 thereof, defining the powers and duties of the welfare director, are the following:

(5) To set standards of service.

(15) To exercise any other powers necessary and proper for the standardization of state work, to expedite business, to assure fair consideration of applications for aid, and to promote the efficiency of the service.

And in Sec. 10(3) thereof it is provided that the State Welfare Department shall "Make rules and regulations for the administration of this act which shall be binding upon all recipients and local units."

In view of the foregoing statutes and authorities, this office is of the opinion that the State Welfare Board is properly authorized to prescribe all rules, regulations and conditions under which a minor child may be placed in this State including that specified in the hereinabove propounded question. We enclose herewith what we consider to be the proper wording for approval forms to be used by your department to effectuate the purposes herein mentioned.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Deputy Attorney General

OPINION NO. 57-239 SCHOOLS; SCHOOL FUNDS; SCHOOL TRUSTEES—1. No authority to use school district funds to pay premiums on health insurance for district employees. 2. Vacancies in office of school trustee to be filled by appointment for the unexpired term as set forth in statute, and not simply until next ensuing general election.

Carson City, January 29, 1957

Honorable Byron F. Stetler, Superintendent of Public Instruction, Carson City, Nevada

Dear Sir:

You request the opinion of this office on the following questions:

FIRST QUESTION

If group health insurance is contracted by the various county school districts for the benefit of the employees of such districts, can the county school district funds be used to pay a portion of the insurance premiums?

OPINION AS TO FIRST QUESTION

This office is unable to find authority, either express or implied, in our statutes for the expenditure of public funds for this purpose. Sec. 129, Chap. 32, 1956 Stats. (1956 School Law) provides the authorized uses of county school district funds. The proposed use is not there listed. Without such legislation, the answer to the first question must be in the negative.

SECOND QUESTION

If an appointment is made, under Sec. 72 of the 1956 School Law, to fill a vacancy in the office of school trustee, will the appointment be made for the unexpired term of the office, or until the next ensuing biennial election?

OPINION AS TO SECOND QUESTION

The Sec. 72 provides as follows:

Vacancies: Filled by Superintendent of Public Instruction. Any vacancy occurring in a board of trustees shall be filled for the unexpired term by an appointment by the superintendent of public instruction. Any person appointed to fill a vacancy shall have the qualifications provided in section 69.

We think that it cannot be contended that the office of school trustee is a state office. Therefore, the appointment to fill a vacancy in such office is not controlled by constitutional provision. The above quoted statutory provision is, then, the guide.

There is, as we see it, no ambiguity in the use of the words "unexpired term" in that provision. Heretofore the difficulty has been found in the use of such wording as "until the next general election." See: *Bridges v. Jepsen*, [48 Nev. 64](#), 227 P. 588; *Grant v. Payne*, [60 Nev. 250](#), 107 P.2d 307; *Brown v. Georgetta*, [70 Nev. 500](#), 275 P.2d 376. These cases have held that the term "general election," in such provision, means the election at which officers are elected who are by law authorized to be elected at that time. But this office is not aware of any interpretation having been placed upon the wording "unexpired term" other than its plain, ordinary meaning.

Thus, it is the opinion of this office that a vacancy in the office of school trustee is to be filled for the term corresponding with the schedule of terms of office of trustees set forth in Secs. 62 and 63 of the 1956 School Law, and not merely for a term to expire when a successor is elected and qualified at the next ensuing general election.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Deputy Attorney General

OPINION NO. 57-240 PUBLIC WELFARE—Authority not lodged in Welfare Department to offer or provide unsought service to abandoned or neglected children.

Carson City, February 7, 1957

Mrs. Barbara C. Coughlan, State Director, Nevada State Welfare Department, P. O. Box 1331,
Reno, Nevada

Dear Mrs. Coughlan:

The following is in answer to your letter of January 23, 1957, relating to the extent of your authority to provide what is termed as protective services for children.

We quote a portion of your letter as follows:

Protective services are those rendered to or in behalf of children who are abandoned, dependent or neglected, physically or emotionally, by their parents or guardians. Such service is usually initiated by an agency on the basis of a referral regarding the neglect or abuse of children. Protective services may be defined as casework service to parents not requesting help on behalf of their children, but whose children are not receiving minimum standards of care as determined by the community. Should such services be refused or be ineffective, the matter may be brought to the attention of the court.

When our agency receives complaints that certain children are neglected or abused, do we have the legal right to offer unsought help to the family involved? Does our agency have legal responsibility for the care of children who are neglected and abused? Does our agency have the responsibility to determine the plan of care, and to file petitions in court in those instances where parents cannot or will not improve the conditions surrounding a child?

We think that there is only one basic problem involved here, which is as follows:

Is your department required, and is it authorized, to render such service, or attempt to render such service, except when asked or otherwise authorized by the parties to do so?

OPINION

We think the answer is no. Such authority or requirement is not, insofar as we can find, express in the law. Nor do we think that such authority can be implied from what is express in the law.

It may be added that, with regard to the specific proposition of offering such service, while there may be nothing legally objectionable to making the offer, it should be remembered that the law, as we see it, does not require it nor sanction it. Thus, if a proud but poverty stricken parent should make physical objection to such a proffer, then the welfare worker, insofar as this office is concerned, is in the position of having been engaged in an activity (however meritorious he considers it) over and beyond his call of duty or scope of authority.

There is a further question in your letter which we quote as follows:

Does the Juvenile Court Law, Chapter 63, 1949 Statutes of Nevada, charge any agency with the authority and responsibility to provide protective services to children? Does the law provide for more than one agency assuming this responsibility?

The Juvenile Court Act does place such authority and responsibility. As will be observed in that Act, certain officers are designated to work with the court in this regard. The officer or officers designated by the Act are the individuals or bodies with whom the authority and duty is lodged, and with no others.

You state in your letter that you have federal money which can be used for the provision of this protective service. It should be added, by way of explanation, that if there is no objection by the federal people to the administration of these juvenile problems by the proper courts of our State, there surely should be a means of using the money for the purpose intended through the state agency properly authorized under state law.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

OPINION NO. 57-241 NEVADA STATE DAIRY COMMISSION.—It is only an indirect burden upon interstate commerce and not prohibited by the commerce clause of the United States Constitution, for out-of-state producers of fluid milk, consumed in Nevada, to be assessed as are in-state producers.

Carson City, February 12, 1957

Mr. A. J. Reed, Chairman, Nevada Dairy Commission, Fallon, Nevada

Dear Mr. Reed:

We have your letters of January 11 and January 21, 1957 requesting an opinion from this department upon facts and questions as hereinafter stated.

FACTS

A distributor in the city of Las Vegas is a producer of dairy products in the State of Utah. This distributor brings its milk to Nevada from its production facilities in Utah, in a form requiring only refrigeration and sale to the Nevada consumers, i.e., it is processed and is in cartons ready for delivery to the outlets, stores, restaurants and others. The Nevada Dairy Commission, created by Chap. 387, Stats. of 1955, p. 736, promulgated on March 29, 1955, a Stabilization and Marketing Plan for Western Nevada Marketing Area. This plan defines and limits the Western Nevada Marketing Area as meaning "all portions of the nine (9) western counties of the State of Nevada, namely, Washoe, Ormsby, Storey, Douglas, Lyon, Churchill, Humboldt, Pershing and Mineral, or such area as may hereafter be designated by the Nevada State Dairy Commission."

Article III of this Stabilization and Marketing Plan for Western Nevada Marketing Area, under the subtitle "Assessments," in part provides as follows:

Each distributor who sells or disposes of fluid milk and/or fluid cream within the Western Nevada Marketing Area, shall deduct, as an assessment from payments due producers for fluid milk, fluid cream, or both, including each distributor's own production, the sum of one-half cent (1/2¢) per pound milk fat on all milk fat contained in fluid milk, fluid cream, or both, or in the case of distributors who do not purchase or receive fluid milk in milk fat pounds, the sum of one and one-half cents (1 1/2¢) for each ten (10) gallons of fluid milk sold.

Each distributor who sells or disposes of fluid milk and/or fluid cream within the Western Nevada Marketing Area shall pay to the commission as an assessment upon distributors a sum equal in amount to that deducted as an assessment from payments due producers.

QUESTION

May the sums provided in the last two preceding paragraphs be required by the commission to be paid to the commission from contributions of the producer and distributor (in this case one and the same business unit) notwithstanding the fact that the fluid milk or fluid cream has been produced in another state?

OPINION

At the outset we detect a possible discrepancy in the geographic extent of the Western Nevada Marketing Area. For as it is defined and limited in the Stabilization and Marketing Plan, above set out, it does not include the county of Clark. Plainly then the county of Clark is not brought within the Western Nevada Marketing Area as promulgated and limited by the commission on March 29, 1955. That plan could have been amended by adding other territory including the county of Clark, or a Southern Nevada Marketing Area could have been created by the commission, upon the same plan as the Western Nevada Marketing Area, such southern area to include the county of Clark. Plainly one or the other of these procedures, or a procedure of like effect must be followed before any contributions can be required of Las Vegas distributors even with respect to Nevada produced fluid milk or fluid cream. This is not too difficult for the commission to meet the law in this respect, and assuming that this requirement has been met or will be met before any attempt is made to levy contributions in the Clark County area against distributors, we now proceed to answer the question squarely and pass upon this question of interstate commerce, and the police power of the State of Nevada. *See* "Footnote."

The power to regulate the manufacture and sale of food rests upon and is limited by the police power of the state. 22 Am.Jur. p. 805.

The importance of securing to the community at large cleanliness, wholesomeness, and purity in milk, has led to the very general enactment of regulations as to the standard of quality of milk sold, the care and feeding of milch cattle, and the sale of the product. Such regulations, although frequently assailed upon the ground that they deprive the dairyman and milk vendor of their property without due process of law or unjustly discriminate against them, have been sustained with practical unanimity, whether made by the state through the operation of a general statute or by the municipal council through ordinances enacted pursuant to powers conferred upon municipalities to regulate the sale of milk and dairy products. The universal use of these products as food and their peculiar liability to contamination and adulteration supports the strictest regulation in the interest of public health and safety, and statutes which tend to that protection are wholly within the proper exercise of the police power of the state. * * *. 22 Am.Jur. FOOD-Milk Section 59, p. 850.

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The importance of securing to the community at large cleanliness, wholesomeness, and purity in milk, has led to the very general enactment of regulations as to the standard of quality of milk sold, the care and feeding of milch cattle, and the sale of the product. Such regulations, although frequently assailed upon the ground that they deprive the dairyman and milk vendor of their property without due process of law or unjustly discriminate against them, have been sustained with practical unanimity, whether made by the state through the operation of a general statute or by the municipal council through local ordinances enacted pursuant to powers conferred upon municipalities to regulate the sale of milk and dairy products. The universal use of these products as food and their peculiar liability to contamination and adulteration supports the strictest regulation in the interest of public health and safety, and statutes which tend to that protection are wholly within the proper exercise of the police power of the state. * * *. 22 Am.Jur. FOOD-Milk Section 59 p. 850.

Footnote: Sections 66 and 67 of the Act make provision for the contributions that are hereinabove set out in the Stabilization and Marketing Plan. The plan for the Western Nevada Area requires contributions in the maximum

amount as authorized by the statute. These sections, however, are clear in the meaning that the contributions may be demanded of those distributors only who are subject to the provisions of a stabilization and marketing plan.

Milk control acts are widespread throughout the Nation. We quote from 22 Am.Jur. FOOD-Milk Section 60 p. 852, as follows:

Legislation for the control of the dairy industry is within the police power of the state, both to protect the industry from fraud and unfair competition and to enact laws for the control or regulation of the production and essential industry and protecting a necessary and essential food supply.

The power of the state to protect the milk industry as an industry "affected with a public interest" even to the point of regulating prices to be charged by the merchant has been upheld in a leading case. *See: Nebbia v. New York*, 291 U.S. 502, 54 S.Ct. 92. 78 L.Ed. 940, 89 A.L.R. 1469.

Respecting the power of the state in a proper field of action under the police powers of the state, to enact effective legislation which may as a consequence place an indirect burden upon interstate commerce, the Supreme Court in *Schechter v. United States*, 295 U.S. 495, 79 L.Ed. 1570, 55 S.Ct. 837, 97 A.L.R. 947, said:

In determining how far the Federal Government may go in controlling intrastate transactions upon the ground that they "affect" interstate commerce, there is a necessary and well-established distinction between direct and indirect effects. The precise line can be drawn only as individual cases arise, but the distinction is clear in principle. * * * But where the effect of intrastate transactions upon interstate commerce is merely indirect, such transactions remain within the domain of State power.

If the commerce clause were construed to reach all enterprises and transactions which could be said to have an indirect effect upon interstate commerce, the Federal authority would embrace practically all the activities of the people and the authority of the State over its domestic concerns would exist only by sufferance of the Federal Government. Indeed, on such a theory, even the development of the State's commercial facilities would be subject to Federal control.

And finally we have found a case nearly directly in point. *See: 110 A.L.R. 644:*

A State Milk Control Act imposing a tax or assessment upon milk imported into the State as well as upon that produced within the State, to cover the expenses of the milk commission and local milk board, was held in *Highland Farms Dairy v. Agnew* (1936; D.C.) 16 F.Supp. 575, not to be unconstitutional as imposing a burden upon interstate commerce, since the assessment was levied after the milk had reached its destination within the State.

We have therefore established that the Milk Control Act attempts to regulate an industry which is a proper field for the State to enter under its police powers as one "affected with a public interest;" that to levy the assessment against out-of-state producers without distinction to producers domiciled within Nevada will or could have an effect upon interstate commerce, but that the effect is indirect and not a burden prohibited by the commerce clause of the Constitution of the United States.

For the foregoing reasons we are of the opinion that the question stated must be and is answered in the affirmative.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: D. W. Priest
Deputy Attorney General

OPINION NO. 57-242 WELFARE DEPARTMENT; ADOPTION—Interpretation of adoption statute with reference to residence requirements of petitioners.

Carson City, February 18, 1957

Mrs. Barbara C. Coughlan, State Director, Nevada State Welfare Department, P. O. Box 1331, Reno, Nevada

Dear Mrs. Coughlan:

Your letter of February 7, 1957, requests an opinion from this office on the questions hereinafter stated with reference to adoption in this State and arising in connection with Secs. 3 and 6 of Chap. 332, Stats. of 1953, which reads as follows:

Sec. 3. Who May Petition. Any adult person or any two persons married to each other, may petition the District Court of any county in this state for leave to adopt a child. The petition by a person having a husband or wife shall not be granted unless the husband or wife consents thereto and joins therein.

Section 6. Residence of Petitioners; Adoption of Two or More Children. 1. The petition for adoption shall not be granted unless the petitioners have resided in the State of Nevada for a period of six months prior to the filing of the petition.

QUESTIONS

1. Do these provisions require that, when two persons married to each other petition to adopt, both the husband and wife must have resided in the State of Nevada for a period of six months prior to the filing of the petition? Or
2. Is it sufficient for either the husband or wife alone to have resided in Nevada for a period of six months prior to the filing of the petition?

OPINION

We look to the content of the above sections in finding the answer to these questions. It is noted from Sec. 3 that in addition to any adult person “any two persons married to each other, may petition * * * for leave to adopt a child.” This is followed in the same section by the provision that “The petition by a person having a husband or wife shall not be granted unless the husband or wife consents thereto and joins therein.” To us, the wording of the section as quoted leaves no doubt but that the husband or wife of the petitioning spouse must not only join in the petition but that such husband or wife becomes as much a petitioner as though he or she were the sole petitioner. It follows that what is required as a prerequisite to filing a petition by any one petitioner applies likewise to both.

Sec. 6 is so specific as to residence requirements of *Petitioners* for adoption as to present no doubt. The fact that the word “petitioner” is used in the plural makes it mandatory that both parties for an adoption must have been residents of the State of Nevada for the required period of six months as therein provided.

We believe that these sections of the Act are controlling over any other sections therein which are not so specific. Our Supreme Court has held that one section of a statute treating specifically of a matter will prevail over other sections in which incidental or general reference is made to the same matter. *State v. Hamilton*, [33 Nev. 418](#). Also, we interpret the wording of these sections with reference to the residence requirement to mean precisely what it says. The Supreme court has passed on that point and held that in construing a statute, words shall be given their plain meaning, unless to do so would clearly violate the evident spirit of the Act. *Ex Parte Zwissig*, [42 Nev. 360](#). It is a general rule of statutory construction to which our court has adhered that, where the meaning of a statute is clear, there is no occasion for construction. *In Re Hegartys' Estate*, [47 Nev. 369](#).

A rule which we deem to be of great import in determining the above questions is laid down in 2 C.J.S., Sec. 35(b) reading as follows:

In view of the fact that adoption statutes are in derogation of the common law, and that courts vested with the power to hear and determine adoption proceedings, in so acting are courts of limited jurisdiction, *a statute requiring the residence of the parties within the jurisdiction of the court granting the adoption is mandatory*, and an appearance by non-resident parties before the court is not sufficient to give jurisdiction. (Italics supplied.)

For the foregoing reasons, it is our opinion that question number one must be answered in the affirmative and question number two in the negative.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Deputy Attorney General

OPINION NO. 57-243 NEVADA INDUSTRIAL COMMISSION—Commission does not have authority under present Industrial Insurance Act to hire or appoint an attorney for compensation, in the absence of disqualification of the Attorney General and his deputies to act for such commission in legal matters.

Carson City, March 1, 1957

Honorable Thomas Godbey, Assembly Chambers, Carson City, Nevada

Dear Mr. Godbey:

You have addressed an inquiry to this office as to whether the Nevada Industrial Commission under present law has the authority to hire an attorney other than the Attorney General or one of his deputies to handle the legal work of that commission.

OPINION

[NRS 228.110](#) reads as follows:

1. The attorney general and his duly appointed deputies shall be the legal advisers on all state matters arising in each department of the state government.

2. No officer, commissioner or appointee of the State of Nevada shall employ any attorney at law or counselor at law to represent the State of Nevada within the state, or to be compensated by state funds, directly or indirectly, as an attorney acting within the state for the State of Nevada or any department thereof unless the attorney general and his deputies are disqualified to act in such matter or unless an act of the legislature specifically authorizes the employment of other attorneys or counselors at law.

3. All claims for legal services rendered in violation of this section shall be void.

It is apparent that if the appointment of an attorney by an officer, commissioner, or appointee, connected with the Nevada Industrial Commission is to be effective in view of the foregoing law, that one of two things must have occurred: (1) the Attorney General and his deputies must have been disqualified to act at the times of such appointment or (2) the Legislature must have specifically authorized the appointment of such an attorney by legislative enactment.

Is there any legislative authority in the Nevada Industrial Insurance Act which authorizes an officer, commissioner or appointee of the Nevada Industrial Insurance Commission to hire an attorney, in the absence or disqualification of the Attorney General and his deputies to act as legal advisors to such commission?

It is to be noted that compensation with state funds is only one of the prohibitions. Subparagraph 2 starts out by stating that no officer, commissioner or appointee of the State of Nevada shall employ any attorney at law or counselor at law to represent the State of Nevada within the State *or* to be compensated with state funds. The use of the word “or” rather than the word “and” denotes two prohibitions, (1) no attorney shall be appointed to represent the State of Nevada unless the Attorney General and his deputies are disqualified or unless an act of the Legislature specifically authorizes such appointment, and (2) no compensation shall be paid from state funds to an attorney representing the State of Nevada unless the Attorney General and his deputies are disqualified or unless the Legislature has specifically authorized such appointment. The two are separable and not conjoint.

Sutherland in his famous work on statutory construction (Vol. 2, Sec. 4923) says, “Where two or more requirements are provided in a section and it is the legislative intent that all of the requirements must be fulfilled in order to comply with the statute, the conjunctive ‘and’ should be used. Where a failure to comply with any requirement imposes liability the disjunctive ‘or’ should be used. One may be substituted for the other only if to do so would be consistent with legislative intent.”

It is the feeling of this office that it was the intent of the Legislature to prevent state departments from hiring their own attorneys unless the Attorney General and his deputies were disqualified or unless the Legislature had specifically authorized the hiring of such attorney by legislative enactment, and this regardless of where the funds arise for the payment of such remuneration.

This is entirely consistent with the theory of government which holds that central responsibility and authority should be lodged with the officers of government upon whom the people have imposed such duties and responsibilities, and who are directly responsible to the electorate.

The appointment or hiring of attorneys by various governmental departments without direct legislative authority only creates confusion and adds to the cost of government. In this regard the attorneys appointed without legislative authority have in the past given to the departments by which they are employed their interpretation of legislative acts which the Attorney General, upon request, has had to take exception to. Thus the appointment of such attorneys has not relieved the office of the Attorney General of the responsibility of interpreting the law for the various governmental departments using unauthorized attorneys, but has imposed on the Attorney General the grave responsibility of having to answer for their judgment without having control of their operations. This is not consistent with good government.

[NRS 616.035](#) defines “Commission” as meaning the Nevada Industrial Commission.

[NRS 616.040](#) defines “Commissioner” as meaning a member of the commission.

That the commissioners are appointees is demonstrated by [NRS 616.125](#) which reads as follows:

1. The Nevada industrial commission is hereby created.
2. The commission shall be composed of three commissioners, all appointed by the governor.
3. Each commissioner shall hold office for a term of 4 years from and after the date of his appointment, and until his successors shall be appointed and shall have qualified.
4. No commissioner shall serve on any committee of any political party.

Now we arrive at the question as to whether the law authorizes the appointment of an attorney, for compensation, by the Commission. [NRS 616.185](#) reads as follows:

1. The commission may employ a secretary, actuary, accountants, examiners, experts, clerks, stenographers, and other assistants, and fix their compensation.
2. The commission shall employ a safety inspector, and fix his compensation.
3. Employments and compensation shall be first approved by the governor and compensation shall be paid out of the state treasury.
4. Actuaries, accountants, inspectors, examiners, experts, clerks, stenographers, and other assistants shall be entitled to receive from the state treasury their actual and necessary expenses while traveling on the business of the commission. Expenses shall be itemized and sworn to by the person who incurred the expense and allowed by the commission.
5. No employee of the commission shall serve on any committee of any political party.

Is such authority to be construed as authorizing the employment of an attorney? We feel that most certainly it is not. We feel that the Legislature, wherever it has created a department of government, has intended for such department to follow the directions of [NRS 228.110](#), unless it has, as in such section specified, provided specifically for the appointment of the department’s own attorney.

For example [NRS 463.090](#) under the chapter on gambling licensing and control states, “The Nevada tax commission and the board are authorized to employ and fix the compensation of such attorney or attorneys deemed necessary by it to assist in carrying out the provisions of [NRS 463.010](#) to [463.360](#), inclusive.

It is, therefore, the opinion of this office that the Nevada Industrial Commission under the Nevada Industrial Act as it now stands does not have the right to employ an attorney to handle its legal matters, in the absence of disqualification of the Attorney General and his deputies. If the present Legislature so desires, it can provide authority for the Nevada Industrial Insurance Commission to hire its own attorney by so amending the law.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

OPINION NO. 57-244 NEVADA SCHOOL OF INDUSTRY AND NEVADA CHILDREN’S HOME—Funds received by either of these institutions from Social Security benefits for care of children committed thereto may be applied and used toward

and for the support, care, education and maintenance of such children. All moneys received from this source should be deposited in the State general fund.

Carson City, March 8, 1957

Mr. C. A. Carlson, Jr., Director of the Budget, Carson City, Nevada

Dear Sir:

In your letter of February 27, 1957, you inquire as to the proper disposition of Social Security checks, and use of the proceeds thereof, received by the Nevada School of Industry and the Nevada Children's Home on behalf of minors now in these institutions. Specifically you request the opinion of this office on the following questions:

QUESTIONS

1. May the state as a guardian force the child to pay his own way in the institution, in other words is the child expected to support himself in his "ward" status?
2. Should they (the checks) be absorbed in the general fund or into the general operating fund of the institution?

OPINION

Under the Common Law concept of *parens patriae* which the American States have adopted, the State of Nevada with reference to the person and property of minors stands in the same relationship. As such it is authorized to legislate for the protection, custody, care and maintenance of children within its jurisdiction. Also, the legislature is authorized to define the status of infants requiring guardianship and may enforce state control and education of those coming into this class. (27 Am.Jur., Sec. 101, p. 822.)

The State of Nevada has, in addition to establishing a compulsory public school system, established a separate school for the education and care of juvenile offenders, (Secs. 210.010-210.190 NRS), and a home for orphans and homeless children (Secs. 423.010-423.250 NRS). Children committed to either of these institutions become wards of the State insofar as their custody, control, care, education and maintenance is concerned. The state's position becomes analogous or equivalent to that of a guardian. Under general law applicable to guardian and ward, the guardian is authorized to use any property of the ward for offsetting expenses incurred for his education and support. We believe this law is likewise applicable where the State occupies the position and performs the duties of a guardian.

From a careful reading of the laws establishing the above-mentioned institutions and governing their operations, we deduct that it was the intent of the Legislature that all expenses to be incurred on behalf of a ward committed in either one, must be, if possible, paid from, by or through the source of commitment. In Sec. 210.180 NRS having to do with the Nevada School of Industry we find the following:

1. It shall be lawful for the courts to commit to the school those minor persons whom they have found to be delinquents as provided by law. In the case of a female minor, and upon the written request of the superintendent, the court may order her commitment to a school approved by the board outside of the State of Nevada.
2. The court may order, when committing a minor to the care, custody and control of the school, the expense of his support and maintenance be paid in whole or in part by his parents, guardian or other person liable for his support and maintenance. The moneys so ordered paid shall be paid to the superintendent, who

shall immediately deposit the sum in the state treasury to be credited to the general fund.

And in Sec. 423.210 NRS in connection with the Nevada Children's Home is the following provision:

2. The order of commitment shall require the parent or parents of the child to pay to the superintendent \$50 monthly for the care and support of each child committed; but when it shall appear to the district court that the parent or parents are unable to pay \$50 per month the order shall require the payment of such lesser amount as may be found to be reasonable, and the county where the child was committed shall then pay to the superintendent the difference between the amount so ordered paid and the sum of \$50, or, if the parents be found unable to pay anything, the county where the child was committed shall be liable for the whole amount of the support of the child.

We have found no law which prohibits using money derived from Social Security benefits for the support and education of the minor on whose behalf payments thereof are made. Were such payments made directly to the parent or guardian of a child not in an institution, it is certain they would be applied toward his education and support. The basis for such payments in the first place is the support and education of children whose means of support has terminated by reason of the death of their fathers. This purpose would not be served were it required that these payments be placed in a savings fund for the child. It must also be remembered that many of the state's wards who are beneficiaries under the Social Security laws had, before their commitment, only the payments received pursuant thereto as their sole means of support. In those instances where the parent or guardian can not or will not pay for the child's support at either of the above institutions as provided by the sections of the law above cited, no logical or legal reason can be advanced why the State should assume the burden when funds are available from Social Security payments for this purpose.

For the foregoing reasons it is the opinion of this office that the proceeds of Social Security checks received by either the Nevada School of Industry or the Nevada Children's Home for the care of a child committed therein may be applied toward the expense of his or her support, care, education and maintenance to the extent of the total amount incurred each month for such purposes.

We believe that with reference to funds derived from Social Security checks by the Nevada Industrial School, the law stated in Sec. 210.180 applies. It reads: "The moneys so ordered paid shall be paid to the superintendent, who shall immediately deposit the sum in the state treasury to be credited to the general fund." We interpret this to mean all moneys paid in from any source for the support of a child at that institution.

As to funds of this nature received for care of any child in the Nevada Children's Home, we are of the opinion that they likewise should be paid by the Superintendent thereof to the State Treasurer for deposit into the state general fund. Considerable legislation has been enacted in this State over the last several years providing that all fees, assessments, dues, and other moneys received by any state supported institution shall be paid into the state general fund.

For these reasons we are therefore of the opinion that Social Security checks coming into the hands of the Superintendent of either the Nevada Industrial School or the Nevada Children's Home should, to the extent necessary to pay the expenses of the child concerned, be paid into the state general fund.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Deputy Attorney General

OPINION NO. 57-245 CONSTITUTIONAL LAW; BOARD OF REGENTS OF UNIVERSITY OF NEVADA—Where the Legislature by legislation increases the membership of the Board of Regents of the University of Nevada, it cannot constitutionally elect or appoint such additional members to serve the interim period between passage of the Act and the next general election.

Carson City, March 8, 1957

Honorable Maude Frazier, Chairman, Education Committee, Assembly Chambers, Carson City, Nevada

Dear Miss Frazier:

You have directed to this office an inquiry as to whether it is within legislative power to provide that enlargement of the Board of Regents of the University of Nevada shall be by appointment by the Legislature rather than by election by the people.

You specifically cite Sec. 3 of [NRS 396.040](#) as amended by AB 342, said section reading as follows:

Notwithstanding the provisions of [NRS 396.060](#), the four vacancies in the offices of members of the board of regents created by section 2 of this act shall be filled by election by the legislature in joint convention immediately after the effective date of this act. The four persons so elected by the legislature to fill such vacancy shall hold office until the 1st Monday in January 1959. At the general election to be held in November 1958, in addition to the members of the board of regents to be elected as provided in subsection 1, two members of the board of regents shall be elected by the people for terms of 2 years each, and two members shall be elected by the people for terms of 4 years each. Thereafter, their successors shall be elected by the people for terms of 4 years each.

OPINION

The constitutional provision for a Board of Regents is found in Sec. 7 of Art. XI of the Constitution, which reads as follows:

Sec. 7. The governor, secretary of state, and superintendent of public instruction shall, for the first four years and until their successors are elected and qualified, constitute a board of regents, to control and manage the affairs of the university and the funds of the same, under such regulations as may be provided by law. But the legislature shall at its regular session next preceding the expiration of the term of office of said board of regents, provide for the election of a new board of regents, and define their duties.

It is noted that this section provides that the Legislature shall at its first regular session next preceding the expiration of the term of office of said Board of Regents provide for the election of a new Board of Regents and define their duties.

This procedure was followed and provision for the election of regular regents of the University of Nevada was provided for by Chap. LXXX, 1869 Stats. of Nevada, the pertinent provision of which is found in Sec. 1 which reads as follows:

The Board of Regents shall consist of three qualified electors of this State. They shall be elected by the Legislature in joint convention on the third Tuesday of the session, and shall hold their office for a term of four years, and until their successors are elected and qualified; provided, all vacancies occurring between sessions shall be filled by appointment of the Governor, and the person so appointed shall hold his office until the next session of the Legislature, when the vacancy shall be filled by election. The person so appointed or elected to fill a vacancy shall only fill the unexpired term of the person whose office was made vacant.

The Regents were so elected until 1887. On February 7, 1887, the Legislature passed Chap. XXXVII which provided that the Governor, Secretary of State and Superintendent of Public Instruction should constitute the Board of Regents until the first of January, 1889. The Act then provided for the election of three qualified electors at the next general election to be voted for the same as other state officers, and fixed their term of office.

In 1891 the Legislature passed Chap. LXV whereby the Board of Regents was to consist of the three elected members and the Governor and Attorney General as ex-officio members.

In the case of *State v. Torreyson*, [21 Nev. 517](#), the court held that the Act of 1891 contravened the constitutional provision calling for election by the people, and that the Attorney General was not entitled to the office, or to discharge the duties thereof by reason of the fact that he had not been elected to the position in the manner provided for by the Constitution, or under the Act of 1887.

The court pointed out that in the case of *Clarke v. Irwin*, [5 Nev. 92](#), where the Legislature had appointed county officers for White Pine County although the Constitution provided that they should be elected by the people, yet the Legislature having just created White Pine County an emergency existed, and that the Legislature had the power to name the county officers for the purpose of putting the new system in motion and providing for the election of their successors at the next general election.

The court pointed out that without such power being vested in the Legislature no new county could be organized, for officers must be appointed to make the necessary arrangements for holding the election within the boundaries of the newly created county.

In the case of *State v. Arrington*, [18 Nev. 412](#), the question before the court was as to the power of the Legislature to extend the terms of office of the incumbents from two to four years, and in stating that such was unconstitutional the Supreme Court differentiated from the Irwin case by pointing out that “there was no emergency or special occasion calling for extraordinary action on the part of the Legislature.”

In *State v. Torreyson*, supra, the Supreme Court concluded its learned decision by stating:

The respondent admits that “under the constitution the office of regent must be filled by an election by the people, but contends that the act in question created two new offices of regent, which as soon as created were vacant and proper to be filled provisionally by the legislative appointment, in order to set the new system of the state university government and discipline in operation.

By his admission that the constitution requires that the regents shall be elected by the people, it seems to us that the respondent virtually admits that he is not entitled to discharge the duties of regent; because by such admission he takes himself without the rule as laid down in the case of *Clarke v. Irwin*, and falls within the rule as announced in *State v. Arrington*; in this by increasing the number of regents from three to five the legislature was not inaugurating a new system of government for the university, but merely increasing the number of regents who were to administer the affairs of an institution which had theretofore been controlled by three; and there is nothing contained in the act of 1891 that would indicate or lead us to the conclusion that there was any emergency existing at the

date of the passage of the act, whereby it became necessary that the increased number should be inducted into office prior to their election by the people.

The same rule does not apply in the case under consideration that should be invoked in cases where the legislature had created new counties, new judicial districts or new state institutions. The act of 1891 did not create a new system, it merely created two new officers to assist three others who had been elected by the people to conduct the affairs of an institution which had been established and the system inaugurated years prior to 1891.

When new counties or judicial districts are created, or new state institution established, it becomes necessary that officers should be appointed to organize and put in motion the county government, the judge to preside in the district, and the officers to control the affairs of the institution under such laws as may be enacted for the government of the same; under these conditions an emergency exists and the legislature possesses the power to make provisional appointments to put the new system in motion.

We conclude therefore that the respondent is not entitled to discharge the duties of regent of the state university, by reason of the fact that he has not been elected to that position in the manner provided for by the constitution, or under the act of 1887, and the judgment of ouster must be entered.

Justice Bigelow in a concurring opinion writes:

This court concluded that the cases of *State v. Irwin*, supra, and *State v. Swift*, supra, presented some of the excepted instances, and the appointments there questioned were accordingly upheld. But as these exceptions are contrary to the language of the constitution, and only to be justified by the exigencies of the situation, this principle should not be extended farther than to the cases that reason forces us to conclude the constitution makers did not intend to be brought within the general rule, that the incumbent of the office must be elected. The exception should not be extended to the creation and filling of unnecessary vacancies, nor should the appointments so authorized be allowed to extend beyond the time when, in the regular course of elections, they can be filled by the people. * * *

This language undoubtedly states the law, and is decisive of the case in hand. The doctrine of *State v. Irwin* does not apply here, because, first, there was no special occasion or emergency that justified or called for the legislative appointment of a new regent. There was a board of regents already in existence, presumably at least, able and willing to discharge the duties devolving upon them. If it was proper, and the legislature had the power to increase the number of regents, still there could have been no crying necessity for its being done before the next election. The affairs of the university could in the meantime be attended to by officers elected by the people, and whom they must have thought when they elected them, fully capable of so doing. It is not the case of an office that must be filled before the public business can go on.

The same situation exists in the present instance. There is a Board of Regents consisting of five members. There is no emergency which would warrant the Legislature in electing any additional members to said board pending the next general election. While it may enlarge the membership of the Board of Regents by providing for the election of additional members at the next general election, the Legislature cannot, under the constitutional ruling of our Supreme Court in *State v. Torreyson*, [21 Nev. 517](#), appoint or elect members to serve in the period of time which must elapse between the time of the passage of the Act enlarging the membership of the Board of Regents and the next general election.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

OPINION NO. 57-246 PUBLIC SCHOOLS—Instruction in reading to classes exceeding 25 or more per year does not subject instructor to jurisdiction of Superintendent of Public Instruction if such school falls within purview of exemption (i) [NRS 394.020](#).

Carson City, March 12, 1957

Honorable Byron F. Stetler, Superintendent of Public Instruction, Carson City, Nevada

Dear Mr. Stetler:

You have propounded an inquiry involving several legal questions to this office. You preface your questions with this statement of facts:

A newspaper organized a subscription sales campaign in which it offered as a premium five or six lessons for the subscriber's child in remedial reading. This instruction is to be given by the newspaper's sales representative to a group of six or eight children at each lesson, at a scheduled time. There will be from thirty to forty children involved in the program. The instructor is paid by the newspaper directly, and indirectly by the subscriber through subscription fees.

You then request that the following two questions be answered:

1. Does this class or these classes come within the purview of [NRS 394.010](#) through 394.120, inclusive, dealing with standards and licensing of private schools, colleges and universities?
2. Would a person who tutors students, one at a time, or at least in groups of fewer than five, be subject to the provisions of [NRS 390.010](#) through 394.120, inclusive, if such person tutored twenty-five or more students during any one calendar year? (Please consider this question from the standpoint of elementary school, high school, and college level.)

OPINION

In order to answer these questions it is necessary to determine whether under the definitions of [NRS 394.010](#) the instruction set forth in your statement of facts constitute such instruction a "private school." Subparagraph 2 reads as follows:

"School" means any educational institution or class maintained or conducted for the purpose of offering instruction to five or more students at one and the same time or to 25 or more students during any calendar year, the purpose of which is to educate an individual generally or specially, or to prepare an individual for more advanced study or for an occupation, and includes all schools, colleges, universities and other institutions engaged in such education, except:

- (a) Schools maintained by the state or any of its political subdivisions and supported by public funds.
- (b) Schools or school systems for elementary, secondary and higher education operated or conducted by religious organizations.
- (c) Schools, colleges and universities specifically exempted by [NRS 394.020](#).

Accordingly unless an exemption could be found under [NRS 394.020](#) the teaching of either (1) classes of more than five students, or (2) instruction to 25 or more students during any calendar year, would bring such instruction within the definition of “school.”

However, this office feels that exemption (i) in [NRS 394.020](#) covers this situation. It reads: “(i) Schools which do not purport to be colleges or universities and which by nature are specialized and acknowledge completion merely by certificate of completion and not by granting of a degree.”

We are therefore of the opinion that if the reading instruction set forth in your statement of facts does not conflict with regular school hours, that it is subject to the exemption set forth above.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

OPINION NO. 57-247 COUNTIES; EFFECT OF SEPARATING OFFICES—Legislature authorized to enact laws providing for separating office of County Assessor of Ormsby County from Sheriff’s office, effective immediately, and County Commissioners of said county may make appointment to reestablished Assessor’s office until next general election.

Carson City, March 13, 1957

Honorable Cameron Batjer, District Attorney, Ormsby County, Carson City, Nevada

Dear Mr. Batjer:

In your letter of February 15, 1957, you state that plans are under consideration in Ormsby County for relieving the sheriff of said county of his duties as ex-officio county assessor and reestablishing the latter office as a separate and independent office. In that connection you request our opinion on a question substantially as follows:

QUESTION

Could such a division of office be made immediately, or did the Sheriff by reason of his election held in November 1954, become the County Assessor of Ormsby County, thereby prohibiting the abolishment or separation of that part of the elective office until the end of said Sheriff’s present term?

OPINION

The office of county sheriff is a constitutional office in Nevada, and as such, may not be abolished by an act of the Legislature. *State v. Douglass*, [33 Nev. 82](#). Other offices, including that of county assessor, not being provided for in the Constitution, may be so abolished, (*Moore v. Humboldt Co.*, [46 Nev. 220](#)) subject, of course, to Art. IV, Sec. 25, of the State Constitution requiring uniformity of the system of county government throughout the State. While the Legislature may not authorize a person holding a constitutional office to serve as an ex-officio officer in another constitutional office (*State Ex Rel. Howell v. La Grave*, [23 Nev. 373](#)), yet such person may be properly authorized by law to serve in such capacity in a nonconstitutional office. Instances of this latter situation are numerous in this State, and particularly in those counties where the sheriff has served or now serves as ex-officio county assessor.

Chap. 173, Stats. of 1945, consolidated the office of Ormsby County Assessor with that of county sheriff and made the said sheriff ex-officio assessor. However, this in nowise abolished the former office, nor was its identity affected. The Act, in effect, merely enlarged the scope of duties required of the county sheriff. Making a person ex-officio officer by virtue of his holding another office, does not merge the two into one. *State v. Laughton*, [19 Nev. 202](#).

Since the office of Ormsby County Assessor still exists, it may be reestablished independently of the sheriff's office as it formerly was. Such reestablishment would, in our opinion, be no more than a separation of two functions of county government, both of which, under the present law, are being administered by one and the same elective official. This brings us to a determination as to whether or not relieving the sheriff of certain duties connected with another office which he performs in his ex-officio capacity, is equivalent to terminating any part of his office before the expiration of the term for which he was elected.

It was not alone his election to office in November 1954, that designates the sheriff of Ormsby County as the proper person to perform the duties of county assessor. Instead, we believe such designation and the authority to so act exist primarily by reason of the provisions of Chap. 173, Stats. of 1945, as amended. Were he to die in office or resign therefrom, his ex-officio duties would readily pass to the person appointed as his successor, and this all without any election. Were the Act cited repealed, his duties as ex-officio assessor would cease to exist, although such repeal could have no effect toward terminating his duties as sheriff. He is ex-officio assessor by virtue of the fact that he holds another public office. In *Lobrano v. Police Jury of Parish of Plaquemines*, 90 so. 423, the term "ex-officio" is defined as follows:

"Ex-officio" means "from office; by virtue of office; officially. A term applied to an authority derived from official character merely, not expressly conferred upon the individual, but rather annexed to the official position; also used of an act done in an official character, or a consequence of office, and without any other appointment or authority than that conferred by the office."

As an ex-officio officer in the light of this definition, the Ormsby County Sheriff upon assuming office after the last general election, was not only obligated to perform the duties of his office as defined by law, but also those of county assessor as incidental thereto.

Reestablishing the county assessor's office independently of the sheriff's office through legislative act creates the necessity for fulfilling it with someone to perform the duties formerly performed by the sheriff. As to whether a vacancy exists in an elective office immediately when created or reestablished is a question upon which the authorities are not fully in accord. However, in *Clarke v. Irwin*, [5 Nev. 111](#), where the Legislature had just created White Pine County, the court in determining whether or not immediate vacancies existed in the offices of the new county, quoted with approval the language in an Indiana decision involving a similar situation where it was said:

We lay no stress on the declaration of the Legislature that there was a vacancy in the office of Circuit Judge of the new circuit. If there was a vacancy, it existed independent of that declaration. If there was no vacancy, that body could not create one by a declaratory enactment. The vacancy flowed as a natural consequence of their doing what they had a right to do—to create a new circuit. There is no technical nor peculiar meaning to the word "vacant," as used in the Constitution. It means empty, unoccupied; as applied to an office without an incumbent, there is no basis for the distinction urged, that it applies only to offices vacated by death, resignation or otherwise. An existing office without an incumbent, is vacant, whether it be a new or an old one. A new house is as vacant as one tenanted for years, which was abandoned yesterday. We must take the words in their plain, usual sense. (2 R.S. 223, 339, and 341.) The emergency which created the office would imply that the vacancy in the office of Judge in the new circuit should be filled immediately. The eighteenth section, article five, provides that the Governor shall,

by appointment, fill a vacancy in the office of Judge of any Court. We think this appointment well made under that section.

In addition to determining that a vacancy existed in the office of the newly created county, our court discussed at great length the various methods of filling the same with the ultimate conclusion that an emergency existed justifying the immediate appointment of officers to the vacancies rather than by vote of the people at the next general election nearly two years away.

In the instant matter an analagous situation exists. Assuming that the Legislature exercises its right to terminate the duties of the Ormsby County Sheriff as ex-officio county assessor and the latter office is reestablished as an independent office, then it is without an officer to administer its functions and affairs. A real emergency would exist for filling the office immediately. Under Sec. 245.170 NRS the county commissioners are empowered to fill any vacancy which shall exist or occur in a county office of this State until the next ensuing election.

By reason of the foregoing authorities, it is therefore the opinion of this office that the office of county assessor of Ormsby County may be reestablished pursuant to appropriate legislation, effective immediately, and the Board of County Commissioners of said county may then appoint someone to fill said office until the next general election.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Deputy Attorney General

OPINION NO. 57-248 Public Schools; Nonliability—Trustees of public schools not personally liable for fire loss to uninsured school property or for injuries resulting therefrom to either students or public.

Carson City, March 18, 1957

Mr. Paul A. Hammel, Insurance Commissioner, State of Nevada, Carson City, Nevada

Dear Mr. Hammel:

In your letter of March 13 you request the opinion of this office as to whether or not members of a district school board could be held individually liable in case of loss by fire to property under their control, or to third party liability claims for injury, if the school board failed or refused to carry insurance covering the property of the school district.

OPINION

Under the Nevada School Code it is provided that the board of school trustees of a school district (1) manage and control the school property within the district, and (2) have the custody and safekeeping of the district schoolhouses, their sites and appurtenances. As to insurance on school property, the code provides in [NRS 393.020](#), that:

1. The board of trustees of a school district shall have the power to insure for a reasonable amount the schoolhouses, furniture and school apparatus with some company authorized by law to transact business in the State of Nevada, and to comply with the conditions of the insurance policies.

A reading of the above-quoted section convinces us that the matter of insuring school property is a discretionary power of the board of school trustees rather than a mandatory duty. Failure to perform discretionary and quasi-judicial powers does not in general subject a public officer to personal liability as long as he is acting within the scope of his authority and jurisdiction (43 A.J., Sec. 278, p. 90). This rule has been followed in numerous decisions, and, in the absence of a statute to the contrary, expresses the law on this subject. Nevada having no law in opposition thereto, it is our opinion that members of school boards in this State are not personally liable for loss by fire of school property with they failed or refused to insure.

As to nonliability of school board members for injuries to persons upon school premises or in connection with school property not covered by insurance, there can be no doubt. Our School Code contains a section appearing in [NRS 386.010](#)(5) and reading as follows:

Each school district shall have the power to sue and may be sued, but this legislative declaration in no way constitutes a waiver of immunity to tort liability, express or implied.

This section is but declaratory of what is the general law as expressed by the courts on numerous occasions. In 1949 the Attorney General of this State, in his Opinion No. 806, stated that the University of Nevada falls within this rule. And it is generally held that all school districts or their governing boards are not liable for torts or injuries resulting from their negligence, unless such liability is imposed by statute (78 C.J.S. p. 1321 (a)).

We believe the rule is well expressed in *Wallace v. Laurel County Board of Education*, 153 S.W.2d 915 (Ky. 1941). There an injury arose in connection with the school's negligent operation of transportation facilities, and although the statute creating county boards of education also granted them the power to sue and be sued, the court held that such boards, nevertheless, do not become liable for torts committed by officers or agents in the performance of public duty. The court said:

A school district or a school board in the absence of a statute imposing it, is not subject to liability for injuries to pupils of public schools received in connection with their attendance thereat, since school districts or boards of education act as agents of the state in maintaining schools and perform a public or governmental duty, *nolle volens*, imposed on them by law for the benefit of the public, and for the performance of which they receive no profit.

The rule of immunity is applicable not only to students at the State University and pupils attending the public schools, but also to the public as well. It stems from the fact that since all public schools are a branch of the State they are entitled to the same immunity regardless of who is the injured party.

It is, therefore, our opinion that neither school district nor the trustees governing them are liable in tort actions for injuries sustained by either students, pupils or other persons while on or using school property not covered by insurance.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Deputy Attorney General

OPINION NO. 57-249 FISH AND GAME COMMISSIONERS—County Commissioners forbidden to vote upon contracts, not to be completed within commissioners' term.

Carson City, March 19, 1957

Mr. Daniel S. Evans, Assistant Director, State Fish and Game Commission, 51 Grove Street, Reno, Nevada

Dear Mr. Evans:

We have your inquiry of February 11, 1957 in which you advise as follows:

The Nevada Fish and Game Commission is attempting to conclude a lease with Pershing County over certain lands under their jurisdiction for a period of five years with option of renewal.

QUESTION

Do the County Commissioners of Pershing County have authority to lease land within the county for a term beyond the term of office of the members?

OPINION

Under the law of this State, county commissioner boards consist of three members. Two members are elected at each congressional election, one for short term (two years) and one for long term (four years). It therefore follows that, as to any board of county commissioners in this State, at any time, two of its members have two years or less to serve, and the third member has four years or less to serve. A lease of real property for five years would therefore extend beyond the term of office of all members of the board of county commissioners.

The board of commissioners of a county is a creature of statute and has only such powers as are expressly conferred upon it or necessarily implied from those expressly given. 14 Am.Jur. (Counties) Art. 28, p. 200.

Sec. 1942, N.C.L. 1931-1941 Supp., as amended by Chap. 363, Stats. 1953, p. 681, provides the powers and jurisdiction of the boards of county commissioners. We find no power therein or otherwise conferred, by the exercise of which the boards may lease real property by instrument to extend beyond the term of office of the members, and there is a definite prohibition as against the individual members of the board, respecting such contracts.

Sec. 244.320 NRS, in part reads as follows:

COMMISSIONER CANNOT VOTE ON CONTRACT EXTENDING BEYOND TERM. Except as otherwise authorized by law, no member of any board of county commissioners shall be allowed to vote on any contract which extends beyond his term of office.

In the various opinions rendered by this department, we find a number which hold that contracts for performance at a date beyond the term of office of two of the members, is not allowed in that such commissioners are forbidden to vote thereon. We find one opinion to the contrary. This was Opinion No. 118 of November 27, 1951. An attorney had been retained to perform certain work. At the time that the opinion was written it was not determined or could not be determined whether or not the work for which the attorney was employed would be completed during the term for which the commissioners were elected. Since the proposed contract was such that the work could be completed during the term of all three members, none of the members

would be forbidden to vote thereon. It was not a contract for a term of years, but was a contract to perform a job, which might be short or long.

To determine the matter in this manner is to tie the hands of the county officers, and this we fully realize. For as it has been said by a court as quoted in 14 Am.Jur., Art 41, p. 210:

* * * to hold contracts invalid because part or all of a board ceases to exercise public functions would be to put these corporations (counties) at an enormous disadvantage in making the contracts which are essential to the safe, prudent, and economical management of the affairs of a county.

This question then of relative advantage as distinguished from handicap, i.e., whether the protection against evil through the application of the statute outweighs the disadvantage to the county by tying the hands of its officers to enter into contracts of financial or other benefit to the county, is clearly a legislative matter and a problem for that department of government. So long as the statute remains as it is, our duty to advise is clear.

The answer to the interrogatory is in the negative.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: D. W. Priest
Deputy Attorney General

OPINION NO. 57-250 FINANCIAL RESPONSIBILITY ACT—Owner of motor vehicle who posts deposit on behalf of his employee, who while driving said vehicle injures a third party, does not escape liability for possible judgment against him in a pending action for the injury by transferring his business to a purchaser free and clear of all encumbrances. Deposit should not be released by commission until or unless certain conditions prescribed by the Act are fulfilled.

Carson City, March 27, 1957

Mr. R. A. Allen, Chairman, Public Service Commission, State of Nevada, Carson City, Nevada

Dear Sir:

Receipt is acknowledged of your letter of March 19, 1957, regarding a deposit of \$812.50 made to your office pursuant to the provisions of the Financial Responsibility Act of 1949, as amended, following an injury to a party near Elko, Nevada, on December 4, 1953, and allegedly caused by an automobile owned by Bud Kimball, dba Yellow Top Cab Company, while operated by one of his employees. Further information shows that subsequent to the deposit, an action by the injured party against Kimball and Truckers Insurance Exchange resulted in a judgment of non-suit for the said Insurance Exchange and which is now on appeal to the Nevada State Supreme Court. It also appears that the deposit in question was made on behalf of the aforementioned employee by Mr. Kimball who now requests its release by reason of a transfer of his cab business and conveyance of his certificate of public convenience to Tom Harrison on March 1, 1957. You submit the query hereinafter stated for the opinion of this office.

QUESTION

Since the deposit was made by Bud Kimball for one of his drivers, we desire your opinion as to whether or not the suit follows the present owner of the cab company since March 1, 1957, and if not, can the cashier's check on deposit with this commission be returned to Bud Kimball at this time?

OPINION

The Financial Responsibility Act was enacted as what might well be termed a substitute or compromise measure for what exists in many states as compulsory automobile liability insurance. Its chief purpose, of course, is to guarantee protection to one who is injured by an automobile not covered by any liability insurance.

Under [NRS 485.190](#), subsection 1 of the Act, the commissioner is required to determine and collect a deposit which in the opinion of said commissioner shall be sufficient "to satisfy any judgment or judgments for damages resulting from such accident as may be recovered from each *operator* or *owner*." Under subsection 2 of the above section, unless the *owner* or *operator* or *both* deposit the amount determined necessary as security within 60 days, they are liable to suspension of (1) the operator's license, and (2) the owner's registration of the automobile concerned. The fact that Kimball as owner is required to, and did, post a deposit on behalf of his employee, the operator of the vehicle, does not shift the liability for the injury from the owner to the operator. In fact, the owner of a motor vehicle, which, while driven by an employee, causes injury to a third person, is not excused from posting the deposit provided for in [NRS 485.190](#) unless certain conditions specified in [NRS 485.200](#) are met, viz:

1. That said owner carried a liability policy on the automobile involved.
2. That the employee operator of the automobile carried a liability policy or bond covering its operation.
3. That both or either the owner or employee were covered by any other form of policy or bond.

We see nothing in either of the sections above mentioned tending to supersede long established laws of liability applicable to the relationship of principal and agent. Where the relationship exists the principal is liable for the authorized acts of his agent performed within the scope of his duties. Applying this rule it follows that Kimball, the owner, whose status is that of principal, is liable for the acts of the operator of the vehicle involved as his agent. Unless that liability was transferred to the purchaser of Kimball's cab business, he is still liable. An examination and study of the terms of the transfer instrument executed on March 1, 1957, convinces us that the purchaser took free and clear of all encumbrances and in nowise assumed any liability existing by reason of the injury. Kimball's position has not changed because of the sale and he, therefore, remains liable for any judgment which may subsequently result against him in that connection. Likewise, the deposit securing any such judgment remains in full force and effect.

Conditions under which a deposit may be returned by the commissioner are provided in [NRS 485.280](#), those applicable being in substance as follows:

1. Upon satisfactory evidence that there has been a release from liability.
2. A final adjudication of non-liability to the owner.
3. A duly acknowledged agreement providing for an agreed amount in installments for all claims arising out of the injury.

We are, therefore, of the opinion the action pending against Kimball as former owner of the cab company did not pass to the purchaser by reason of the transfer agreement of March 1, 1957, and that the deposit made by Kimball to secure the payment of any judgment rendered against him on account of said action should not be released until some one or all of the three conditions prescribed in the preceding paragraph are fulfilled.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Deputy Attorney General

OPINION NO. 57-251 PUBLIC UTILITY required to pay interest on deposits made by customers and consumers at rate of 7 percent per annum from date of deposit until date of settlement or withdrawal, whether such deposit remains for a period of one year or more, or for less than one year.

Carson City, April 8, 1957

Public Service Commission, Carson City, Nevada
Attention: Mr. Noel A. Clark, Commissioner

Gentlemen:

Under date of March 27, 1957, you requested of this office an interpretation of [NRS 704.670](#), which is headed: "Public utility required to pay interest on deposits made by customers and consumers; penalty."

1. After March 28, 1933, every public service company, corporation or individual furnishing light and power, or water, or either of them, to the public shall be and they are hereby required to pay to every customer or consumer, from whom any deposit shall have been required, interest on the amount of the deposit shall have been required, interest on the amount of the deposit at the rate of 7 percent per annum from the date of deposit until the date of settlement, or withdrawal of deposit. Where such deposit remains for a period of 1 year or more and the person making the deposit continues to be a consumer, the interest on the deposit at the end of the year shall be either paid in cash to the depositor or applied on current bills for the use of power, light or water, as the depositor may desire.

2. Every firm, company, corporation or person who shall fail, refuse or neglect to pay the interest provided in subsection 1 shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding \$500, or by imprisonment in the county jail not exceeding 6 months, or by both fine and imprisonment.

Your specific query was: "In the event a customer terminates his service with a utility, what is the minimum period deposit may be held before interest becomes due to the customer?"

OPINION

It is the opinion of this office that under the law, interest on the amount of deposit at the rate of 7 percent per annum is payable from the date of deposit until the date of settlement or withdrawal of the deposit. If that date of settlement or withdrawal should occur prior to the termination of the first year of service, then the company would have to pay the depositor 7 percent per annum interest calculated on the basis that the time of use bears to the full year.

That section of the law which provides that where such deposit remains for a period of one year or more and the person making the deposit continues to be a consumer, that the interest on deposit at the end of the year shall be either paid in cash to the depositor or applied on current bills for the use of power, light or water, as the depositor may desire, is separate and distinct from that portion of the law governing use for a period of less than a year.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

OPINION NO. 57-252 LABOR; MINIMUM WAGE LAW FOR WOMEN—Women employees in the State who are (1) incapable or (2) physically handicapped, unless employed as domestics or by the State, city or county, come under minimum wage law to same extent as other women employees.

Carson City, April 11, 1957

Mr. D. W. Everett, Labor Commissioner, State of Nevada, Carson City, Nevada

Dear Sir:

The opinion of this office is requested on the question hereinafter set forth and arising out of the two following statements of fact pertaining to the employment of (1) incapable or unreliable women employees and (2) handicapped women employees, being as follows:

FACTS

(1) Under authority of licenses properly issued them, several businesses are operated in this State under the designation of Rest Homes, Convalescent Homes, Health Chateaux, etc., all of which render services and furnish accommodations conducive to improvement, protection and care of the health of their guests, and most of which employ both registered and practical nurses and also women performing services as nurses aides. These last mentioned employees are paid the minimum wage provided by law, and in some cases with board, room or both being furnished and applied as a part of the wage so paid. It is reported that great difficulty is faced in obtaining experienced or dependable persons for nurses aide work and in many cases it is felt that the minimum wage required therefor is far in excess of their actual earning ability.

(2) Certain organizations in the State assisting in the program for rehabilitation of handicapped persons are frequently confronted with the hesitancy of employers to employ such persons (women with handicaps) due to their physical inability, in many cases, to perform the work assigned them in an amount and to a degree of satisfaction equivalent to that performed by other women employees. Here, again, it is felt that this type of employees are unable to earn the minimum wage required by law.

QUESTION

Is the State's minimum wage law for women applicable to the two classes of employees described in (1) and (2) of the facts above stated to the same extent as it is to other women employees?

OPINION

The provisions of the law pertaining to employment of women in Nevada generally are found in [NRS 609.010-609.180](#), with those dealing with minimum wage requirements being [NRS 609.030](#) (3) (b) (c) and [NRS 609.040](#) (1) (2), and reading as follows:

609.030 3. (b) That not less than the rate of 75 cents for 1 hour, or \$6 for 1 day of 8 hours, or \$36 for 1 week of 6 days of 8 hours each, shall be paid such female workers under the age of 18 years in this state; and (c) That no less than the rate of 87.5 cents for 1 hour, or \$7 for 1 day of 8 hours, or \$42 for 1 week of 6 days of 8 hours each, shall be paid such female workers 18 years of age or over in this state.

609.040 1. It shall be unlawful for any person, firm, association or corporation or any agent, servant, employee, officer of any such firm, association or corporation to employ, cause to be employed, or permit to be employed, or contract with, cause to be contracted with, or permit to be contracted with, any female under the age of 18 years at or for a lesser wage than 75 cents per hour, or \$6 for 1 day of 8 hours, or \$36 for 1 week of 6 days of 8 hours each.

2. It shall be unlawful for any person, firm, association or corporation or any agent, servant, employee, officer of any such firm, association or corporation to employ, cause to be employed, or permit to be employed, or contract with, cause to be contracted with, or permit to be contracted with any female 18 years of age or older at or for a lesser wage than 87.5 cents per hour, or \$7 for 1 day of 8 hours, or \$42 for 1 week of 6 days of 8 hours each.

Under AB 182, Stats. of 1957, which becomes effective July 1, 1957, and which, we may add, gave rise to the question here presented, the sections above quoted are amended to make \$1 per hour the minimum wage for women over 18 years of age and \$0.87 1/2 the minimum hourly wage for those under the age of 18 years, except as to those employed as domestics or employed by the State, city or county. Where furnished by the employer, board may be applied as a part of the wage at the rate of \$1.55 per day, room at the rate of \$5 per week and board and room at the rate of \$2 per day.

A close scrutiny of the provisions of the statute setting and fixing a minimum wage convinces us that it is not subject to any exceptions other than as noted. Neither does the language employed suggest or imply that any other exceptions were intended. No ambiguities exist and we can accord it only the meaning which is clearly expressed therein. Our Supreme Court has held that 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](#).

The Legislature in fixing a minimum wage law failed to make allowance for the fact that women employees lacking the ability or inclination to perform work of an average standard, and those who are frequently prevented from doing so because of some physical handicap, are not capable of earning the minimum amount so fixed. We can only conjecture as to why the Legislature did not fix a lesser wage for this class of employees. Perhaps it was considered to be impossible in view of the fact that there are as many standards of performance as there are such employees. Since the employer has the right to select employees of the class here under discussion and to predetermine their capabilities, it is questionable whether or not the problem of their standard of performance is an appropriate legislative subject.

As the law now stands and admitting of no exceptions, except as hereinabove mentioned, to payment of the minimum wage required, women falling into either class of employee described in the facts above set forth are entitled to receive the same minimum wage as other women employees. And this is true regardless of the type of work they perform, unless employed as domestics of by the State, city or county. For the reasons stated, it is the opinion of this office that the question must be answered in the affirmative.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Deputy Attorney General

OPINION NO. 57-253 CITIES; MUNICIPAL CORPORATIONS; COUNTIES—Election separating combined city and county offices by the electorate of the city only is valid. No contract exists between people of city and county officers as ex officio city officers to pay ex officio salaries during term of county office.

Carson City, April 23, 1957

Honorable Cameron M. Batjer, District Attorney, Carson City, Nevada

Dear Mr. Batjer:

You ask the opinion of this office on the following questions:

1. Will the proposed Carson City election to be held May 6, 1957, and to determine whether the city and county officers are to be separated, be valid in light of the fact that the vote of the electorate of the entire county of Ormsby will not be included?
2. Did the election of the Ormsby County officers as ex officio Carson City officers create a contract between such officers and the people of Carson City which binds the payment of the ex officio salaries during the term of the county office?

OPINION

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

Chap. 284, Stats. of 1957, authorizes the election to be held among the electorate of Carson City.

Sec. 8, Art. VIII of the Nevada Constitution provides, "that the legislature may, by general laws, in the manner and to the extent therein provided, permit and authorize the electors of any city or town to frame, adopt and amend a charter for its own government, or to amend any existing charter of such city or town."

Chap. 284, 1957 Stats. amends the Carson City Charter for that city's government as authorized by the constitutional provision above referred to.

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

In the absence of constitutional provision to the contrary, there is no contractual obligation created between the people and a public officer elected by the people. *See* 42 Am.Jur. "Public Officers" Secs. 9, 11, 33, and cases cited therein.

We find no such constitutional provision concerning city officers or ex officio city officers.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Deputy Attorney General

OPINION NO. 57-254 FISH AND GAME—Sale of predators, fur-bearing animals, nongame birds, lawfully in possession, nor prohibited. Laws relating to establishment of commercial breeding grounds and the importation and movement of wild animals and birds interpreted; display of wildlife for the sale of the wildlife so displayed not prohibited.

Carson City, April 23, 1957

Mr. Frank W. Groves, Director, Fish and Game Commission, 51 Grove Street, P. O. Box 678, Reno, Nevada

Dear Mr. Groves:

You request the opinion of this office upon the following facts and questions. The facts are as stated in your letter and the accompanying letter of Al Jonez.

FACTS

Pet shop owner wants to buy and sell skunks and raccoons; to raise and sell pheasants and quail; to breed, raise and sell coti mundis; to handle cardinals purchased from a dealer in eastern United States; to keep harmless snakes and ground squirrels in the pet shop for display purposes only.

QUESTION

What laws will affect this owner and with what result?

OPINION

There does not appear to be a prohibition against buying fur bearing wildlife such as the raccoon or the predators such as the skunk and selling them. If, however, the raccoon is to be used for breeding purposes on a commercial basis a compliance with [NRS 504.240](#), relating to the establishment of commercial breeding grounds, would be required. This provision of the law appears to have no application to the breeding and selling of skunks. Moreover, in the case of either of these animals, if they are imported from out of state or moved from one locale in Nevada to another, a compliance with [NRS 503.070](#), as amended by Chap. 127, Stats. of 1957, is required.

We do not think that [NRS 503.590](#), relating to zoos and wildlife displays has any application to this case; nor do we think there is a conflict between the law relating to the establishment of commercial breeding grounds and that relating to wildlife displays. It would not be reasonable to conclude that by the interposition of the display of wildlife statute the owner of legally established commercial breeding grounds could not display to the public the products which he has for sale. We are of the opinion that the statute relating to the display of wildlife was not intended to prohibit the display of the very wildlife which is authorized to be sold by the statute relating to commercial breeding grounds.

To be consistent, we must conclude then, that in the instant case the display of the snakes and squirrels for no other reason than to create an attraction is prohibited.

Concerning the coti mundis, we are of the opinion that the only regulation applicable to it would be [NRS 503.070](#) relating to the permit requirement to import or move wild game. If, however, this animal is also classed as a food animal, then the law cited above relating to the establishment of commercial breeding grounds would be applicable.

Similarly with the cardinal bird, the only law which appears applicable and with which there must be a compliance is [NRS 503.070](#), as amended, relating to the importation and movement of wild birds.

Lastly, with regard to the pheasant and quail, we assume that [NRS 503.220](#), which prohibits the sale of game birds, is not involved. That is to say, that it is the intention that the product of breeding and raising of these game birds will be sold as authorized under [NRS 504.220](#), relating to the establishment of commercial breeding grounds. There would be under such circumstance a sale of that which had never been anything but private property and the only regulations applicable would be that relating to the establishment of commercial breeding grounds and possibly the law concerning the permit requirement to move the game from one locale in Nevada to another, although a compliance with this law would, perhaps, not be necessary in as much as a compliance with the terms of the commercial breeding ground law would authorize the movement at least after sale.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Deputy Attorney General

OPINION NO. 57-255 OLD-AGE ASSISTANCE; WELFARE—State claims against estates of deceased recipients of old-age assistance not in existence after July 1, 1957.

Carson City, April 23, 1957

Mrs. Barbara C. Coughlan, State Director, Nevada State Welfare Department, P. O. Box 1331,
Reno, Nevada

Dear Mrs. Coughlan:

Concerning the problem of claims against the estates of old age recipients, we quote the body of your letter containing the problem and your questions as follows:

We would appreciate your opinion with regard to Section 4 of Chapter 307, which was passed by the 48th Session of the Legislature and becomes effective July 1, 1957. Section 4 of this Act repeals [NRS 427.270](#), which provides that upon the death of a recipient a claim be filed against his estate for recovery of the total amount of old-age assistance paid. In view of the repeal of this section which provides for claim only upon the death of a recipient, would the State Welfare Department have the responsibility to place a claim in any instance of death of a recipient after July 1, 1957?

In the following instances, what would be the effect of Section 4, Chapter 307, 1957 Statutes of Nevada:

(1) Where the recipient died prior to July 1, 1957, but the estate is not administered upon until after that date, does the State Welfare Department have the responsibility to request that a claim be filed against the estate if the total value of such estate exceeds \$1,000?

(2) [NRS 427.270](#) provides that “no claim shall be enforced against any real estate of a recipient while it is occupied by the surviving spouse or dependent of the recipient.” Where real property of a deceased recipient is occupied at present by the surviving spouse or dependent of the recipient, does that property become subject to claim after July 1, 1957 should the dependent or spouse cease to occupy it after that date?

OPINION

Sec. 4 of Chap. 307, 1957 Stats., makes the simple clear statement that [NRS 427.270](#) “is hereby repealed.” This becomes effective July 1, 1957, and thereby eliminates any basis in the law for a claim against the estate of a recipient.

While we are well aware that it may be argued that those claims which have been once established are not intended to be defeated by this repeal, nevertheless, this office is of the opinion that, with no more direction of what the Legislature had in mind by this repeal provision than appears in Chap. 307 (above), the Legislature intended to sever all claims, pending or otherwise, as of July 1, 1957, and not to collect existing claims or place new claims.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Deputy Attorney General

OPINION NO. 57-256 COUNTIES; CITIES; FUNDS; BUDGETS—County, city and town officers not authorized to expend funds in excess of budget.

Carson City, April 23, 1957

Honorable R. E. Cahill, Secretary, Nevada Tax Commission, Carson City, Nevada

Dear Mr. Cahill:

Your questions are quoted from your letter of April 17, 1957, as follows:

1. May a local government expend more during a fiscal year than the total amount budgeted and appropriated by that government in its regularly adopted budget except by use of the emergency loan provisions found in [NRS 354.070-354.110](#) and [354.410-354.060](#)?
2. In the event the answer to the first question is negative, is the Tax Commission empowered to require a local government to hold in a suspense fund moneys collected from a source which was not budgeted and, hence, show that revenue as an opening cash balance the succeeding year?

OPINION

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

[NRS 354](#) provides for fiscal management of the local governments. The chapter calls for a budgetary system. [NRS 354.060](#) prohibits expenditure of county funds “unless the money for the payment thereof is in the county treasury and specifically set aside for such payment.” We are unable to conclude that from the context of this chapter there is any other way to “set aside” such money except through the budget as provided in that chapter.

Moreover the theory of the budget system, as it appears to be expressed in our statutes and in *Carson City v. County Commissioners*, [47 Nev. 415](#), 224 P. 615, calls for the limitation of expenditure beyond that covered by the budget.

In answer to question No. 2, we advise only that in the opinion of this office your proposed procedure appears to be the most reasonable; keeping in mind, however, that Chap. 406, 1957 Stats. (A.B. 162) in Sec. 2 thereof provides in part that the money to be distributed to the counties from gaming table tax is to be deposited in the general funds of the county. This latter is added in the event that it is this money which is referred to in question No. 2.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Deputy Attorney General

OPINION NO. 57-257 SCHOOLS; PUBLIC OFFICERS—School trustee not to be financially interested in contracts made by his board.

Carson City, April 24, 1957

Honorable E. R. Miller, Jr., District Attorney, White Pine County, Ely, Nevada

Dear Mr. Miller:

Facts presented by you are:

A member of the White Pine County Board of School Trustees is a local distributor for a large petroleum company, which has the contract to supply petroleum products to the local schools. The trustee delivers the petroleum and receives a commission for all petroleum delivered, as distributor for the company.

Your question as quoted in part from your letter is:

* * * would receipt of a commission, by a trustee, for petroleum delivered by his as distributor for a petroleum company be unlawful?

[NRS 386.400](#), appertaining to county school trustees, provides as follows:

No member of any board of trustees shall be financially interested in any contract made by the board of trustees of which he is a member.

The type of financial interest referred to here is that type of interest which produces a money benefit and which is at the same time creative of a conflict of interests. *See* 43 Am.Jur. "Public Officers," Sec. 294 and following.

This office is of the opinion that the position and activity of the school trustee in the present matter is clearly a type of position and activity which the law is designed to prevent, and [NRS 386.400](#) has been violated.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Deputy Attorney General

OPINION NO. 57-258 BRAND INSPECTION; LIVESTOCK—Brand Inspection Law applicable to transfer of ownership of livestock incident to the transfer of entire ranch property.

Carson City, April 24, 1957

Mr. Edward Records, Executive Officer, Department of Agriculture, 118 W. Second Street, P. O. Box 1027, Reno, Nevada

Dear Sir:

Your problem is quoted from your letter of April 23, 1957, as follows:

Section 565.100, Nevada Revised Statutes, reads in part as follows:

1. It shall be unlawful for any person to consign for slaughter or transfer ownership of any neat cattle, horses or mules by sale or otherwise within any brand inspection district created under the provisions of this chapter, until such neat cattle, horses or mules have been inspected by an inspector of the board and a brand inspection clearance certificate issued covering the same, or a written permit from the board or an authorized inspector of the board has been issued to him authorizing such consignment or transfer of ownership without brand inspection.

The question has been raised as to whether the above applies to the transfer of ownership of cattle and horses incident to the sale of a ranch when the deed or other transfer documents cover the ranch and all the livestock, the brand, the ranch equipment and all the supplies and other items appertaining thereto.

OPINION

We are of the opinion that it does apply.

Because the transfer is incident to the transfer of the ranch, it is not to say that the transfer of ownership of the livestock is not accomplished if the livestock are included in the contract of sale.

The wording of the statute is not subject to interpretation. It is clear to the effect that if ownership is transferred there shall be a brand inspection, or a permit to transfer ownership without inspection.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Deputy Attorney General

OPINION NO. 57-259 PUBLIC EMPLOYEES RETIREMENT BOARD—Employees of Regional Planning Commission, otherwise qualified, covered by State Employees Retirement Act.

Carson City, April 25, 1957

Mr. Kenneth Buck, Executive Secretary, Public Employees Retirement Board, Carson City,
Nevada

Dear Mr. Buck:

Reference is made to your letter of April 3, 1957, regarding the request of the Regional Planning Commission of Reno, Sparks and Washoe County to bring its employees under the State Public Employees Retirement System. Therein you cite Sec. 286.070 NRS which provides that "Membership in the system is limited to employees of the state, one of its agencies or political subdivisions, and irrigation districts created under the laws of the State of Nevada," and request the opinion of this office on the following question:

QUESTION

Is the Regional Planning Commission of Reno, Sparks and Washoe County a political subdivision within the meaning of this (the above) section?

OPINION

It is our opinion that this question should be answered in the affirmative.

Many definitions have been given the term "Political Subdivisions," but the one best stated and given wide acceptance is set out in *Commissioner of Internal Revenue v. Shamberg's Estate*, 144 F.2d 998, 1004. There the Court said:

The term "Political Subdivision" is broad and comprehensive and denotes any division of the state made by the proper authorities thereof, acting within their constitutional powers, for the purpose of carrying out a portion of the function of the state which by long usage, and the inherent necessities of government have always been regarded as public. The words "political" and "public" are synonymous in this connection. (Dillion Municipal Corporation, 5th ed., Sec. 34). It is not necessary that such legally constituted "division" should exercise all the functions of the state of this character. It is sufficient if it be authorized to exercise a portion of them.

The Reno-Sparks-Washoe County Planning Commission was organized pursuant to Chap. 110, Stats. 1941, as amended by Chap. 267, Stats. 1947, Sec. 4, and has for its purpose "the promotion of health, safety, morals, or the general welfare of the community." Furthermore, it is supported from funds raised through taxation in the same manner as other city and county agencies or functions. It is in every sense public in its nature. We believe it falls clearly within the definition above quoted and that it is for all intents and purposes a political subdivision to the extent of bringing its employees, otherwise qualified, under the Public Employees Retirement System.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Deputy Attorney General

OPINION NO. 57-260 NEVADA INDUSTRIAL INSURANCE; ATTACHMENT IN-DUSTRIAL INSURANCE; GARNISHMENT INSURANCE; CONSTITUTIONAL LAW; TAXES—State of Nevada, as one in position of garnishee, is subject to proceedings for levy and distraint by the Federal Government in exercise of its tax collecting power.

Carson City, May 1, 1957

Mr. Guy A. Perkins, Chairman, Nevada Industrial Commission, Carson City, Nevada

Dear Mr. Perkins:

Your question, as quoted from your letter, is “whether or not the Federal Government can attach any moneys payable from the Nevada Industrial Commission to its claimants in any form, i.e., actual monthly compensation or a final settlement.”

OPINION

The answer is in the affirmative.

As we understand it, the claims which the Federal Government are asserting arise from tax delinquencies as, for example, income taxes.

Congress in USCA 26, Sec. 6331, has provided a forceful method of collecting taxes, levy and distraint. Which, if the prerequisites are complied with, amounts to authority to seize and sell to cover the tax.

This law provides, in part: “it shall be lawful for the Secretary or his delegate to collect such tax * * * by levy upon all property and *rights to property*.” (Italics added.) The italic matter provides for the taking of property of the debtor which is in the hands of third parties. *U.S. v. Metropolitan Life Ins. Co.*, 130 F.2d 149.

This office is of the opinion that the Federal law is in nowise impeded or defeated by the fact that the State of Nevada is in the position of the third party debtor of the tax delinquent.

Art. I, Sec. 8, of the United States Constitution authorizes Congress to levy and collect taxes. Amendment 16 thereof authorizes the laying and collection of income taxes. These powers are paramount. *United States v. Doremus*, 249 U. S. 86, 63 L.Ed. 493; *Shambaugh v. Scofield*, 132 F.2d 345.

The State of Nevada is, as are the other states, subject to the authority of the Federal Government in respect to this power. *McCulloch v. Maryland*, 4 L.Ed. 579; *Shambaugh v. Scofield*. 132 F.2d 345.

This office is aware of the principle of the State’s immunity from taxation by the Federal Government. This principle, as first asserted in *Collector v. Day*, 11 Wall 113, recognizes the proposition that the sovereign function of the State cannot be impeded or curtailed through taxation by the central government. The principle is later greatly restricted in *Helvering v. Gerhardt*, 304 U. S. 405, and in *New York v. United States*, 326 U. S. 572. However, the former immunity of the State does not appear to be entirely gone. The court asserts in the last two cases that where the state’s function as a government is affected, or where the burden on the state is not speculative or uncertain, the power of the Federal Government to tax is restricted. However, there is no actual burden placed upon the State of Nevada by the exercise of the levy and distraint involved here. Nevada in this case is no more burdened by this procedure, which is a part of the exercise by the Federal Government of its taxing power, than is any other garnishee.

The fact that the State of Nevada may be named by the Federal Government as a party in the distraint proceedings is not a deterrent. State sovereignty is subject to the authority lodged in the Federal Government by the United States Constitution, cf. authorities cited above. Moreover, in a proper case wherein the United States sues a state, the state holds no sovereign immunity to such suit without its consent. *United States v. West Virginia*, 295 U. S. 463, 79 L.Ed. 1546.

The provision of the Nevada Industrial Insurance Act, [NRS 616.550](#), providing that compensation payable thereunder shall be exempt from attachment, garnishment or execution, is no deterrent to the power of the Federal Government in such case. *United States v. Ocean Accident & Guarantee Corporation*, 76 F. Supp. 277, citing matter of Rosenberg, 199 N.E. 206, in which certiorari denies, 298 U. S. 669.

We suggest, however, that care be taken to recognize such levy by the Federal Government only over such funds or claims for compensation as are actually due or liquidated or reduced to what would constitute a debt or obligation on the part of the State.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Deputy Attorney General

OPINION NO. 57-261 AID TO DEPENDENT CHILDREN; WELFARE; COUNTIES; TAXATION—Counties to levy ad valorem tax up to and including a maximum of 4 cents per \$100 of assessed property value, if necessary, to meet its share of expense for aid to dependent children.

Carson City, May 2, 1957

Mrs. Barbara C. Coughlan, Director, Nevada State Welfare Department, P. O. Box 1331, Reno Nevada

Dear Mrs. Coughlan:

You request an opinion on the following:

When may money from the State Aid to Dependent Children be used to supplement the county share of the expense of aid to dependent children?

Through an inadvertence there is a shortage of such fund in White Pine County.

Subparagraphs 1 and 2 of [NRS 425.180](#) provide as follows:

1. Each of the counties shall provide necessary and ample funds with which to pay assistance to dependent children as provided for in this chapter, and for that purpose the board of county commissioners of each county and all other officers in this state having duties regarding the assessment of property for the purposes of taxation and with the collection of taxes, shall levy, assess and collect annually an ad valorem tax on all the taxable property in their respective counties at a rate of not more than 4 cents on each \$100 of assessed valuation to pay all assistance to dependent children required to be paid by each county in compliance with the provisions of this chapter. If the amount of money collected from the tax herein provided for is at any time insufficient to pay the costs of assistance required in that county, the difference shall be paid from the state aid to dependent fund.

2. The proceeds of the tax so collected in each county shall be placed in a fund in the county treasury and shall be designated the aid to dependent children fund, out of which the county treasurer shall, for convenience and economy in administration and in auditing accounts, transmit to the state treasurer monthly or quarterly, at the time required by the rules and regulations of the department, the full amount necessary to pay 33 1/3 percent of the nonfederal share of assistance to

dependent children paid in that county pursuant to the provisions of this chapter and as certified to him by the county clerk of that county.

We think it clear it is intended that each county shall bear its burden of supplying one-third of the nonfederal funds insofar as it can do so by levying up to, but not in excess of 4 cents on each \$100 of assessed property value in the county.

It is also clear that it is only when the county share of the expense exceeds the revenue returned from said maximum tax levy that the state funds are to be expended to meet the county obligation.

Had it been the intention of the Legislature that each county, at the choosing of its officers, could meet its obligation by levying any minimum amount and letting the balance of the State foot the rest of its bill, it would have been so stated.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Deputy Attorney General

OPINION NO. 57-262 BANKS AND BANKING—Section 662.040 NRS providing that a borrower's total indebtedness shall not exceed 25 percent of capital and surplus, excludes his conditional sales contracts assigned to bank, creating a contingent obligation.

Carson City, May 3, 1957

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

Dear Mr. Robison:

We have your letter of March 26, 1957, requesting an opinion from this department upon the following statement of facts:

FACTS

Sec. 662.040 NRS, hereafter quoted, provides that the total borrowings of any one person, or entity, at any one time, shall not exceed 25 percent of the capital and surplus of the bank.

If a borrower in the aggregate has loans totaling a sum equal to that of 25 percent of the capital and surplus of the bank, and as a merchant sells merchandise to individuals, and signs the individuals upon conditional sales contracts, and thereafter conveys title to such chattels to the bank, and assigns the conditional sales contract to the bank, under a side agreement signed by the borrower reciting the following:

In consideration of your purchasing without recourse, contract by and between (name of the borrower company) covering the equipment described below, we hereby agree that upon demand any time within the next thirty-six months to purchase the equipment described below, at the price indicated, less any depreciation:

(Description and cost of equipment)

It is understood and agreed, however, that the purchase price of these items will be subject to depreciation at the rate of three percent, monthly.

(Signed by borrower)

QUESTION

Is such procedure and course of conduct on the part of lender and borrower an evasion of Sec. 662.040 NRS?

OPINION

Sec. 662.040 NRS reads as follows:

1. The total liability to any bank of any person, company, corporation or firm for money borrowed, including in the liability of any unincorporated company or firm the liabilities of the several members thereof, shall not at any time exceed 25 percent of the capital and surplus of such bank, actually paid in, but the discount of bills of exchange drawn in good faith against actual existing values, as collateral security, *and a discount or purchase of commercial or business paper, actually owned by the persons, shall not be considered as money borrowed.* (Italics supplied.)
2. (This section has application to obligations of the United States running to the bank, and provides that as to such transactions the above section shall not apply.)

The italicized portion of the first paragraph of Sec. 662.040 NRS appears to cover the question that is propounded. As we understand this portion of the section, it contemplates: (1) ownership of chattels by the borrower (merchant) for sale, (2) the sale by the borrower to a third party, and execution of contract under which the borrower retains title to the goods, pending full payment by the third party, and (3) conveyance of the title by borrower merchant to the goods to the bank, subject to the conditional sales contract, and assignment to the bank of such contract.

At the time the title to the chattel is transferred to the bank and conditional sales contract is assigned, for a consideration, thereby freeing the capital of the merchant for further activities, it is clear that there is no obligation of the merchant to the bank, except a contingent obligation. If all goes well and payments are met by the third party as scheduled to the financial institution, title to the chattel will vest in the third party upon final payment. In such event no further burden respecting such a contract is encountered by the merchant borrower. On the other hand, if payments upon the conditional sales contract are not met as scheduled, notice by the lending institution is given to the merchant borrower, under the provision above set out and the merchant borrower retakes title to the chattel(s) and asserts, if he so elects, the right to retake possession.

The obligation of the merchant borrower to repurchase the title to the chattel(s) and take reassignment of rights under the conditional sales contract is required by the lending institutions, in order that they may continue to confine their activities solely to the lending business. It is a natural requirement of the financial institutions, without which they could hardly engage in the financing of chattels sold upon conditional sales contracts.

This obligation of the merchant borrower is not "for money borrowed," and does not differ materially from his many other obligations, both fixed and contingent, which are necessary to and unavoidable in his business.

It is, therefore, the opinion of this office that the question must be answered in the negative.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: D. W. Priest

Deputy Attorney General

OPINION NO. 57-263 NEVADA STATE CHILDREN'S HOME—Where payments are received through Social Security for benefit of a child committed in State Children's Home and county from which commitment made having no knowledge thereof makes payments to home for child's support, is entitled to be reimbursed from any moneys accumulated to the child's credit from such Social Security payments.

Carson City, May 17, 1957

Mr. Jed S. Oxborrow, Superintendent, Nevada State Children's Home, Carson City, Nevada

Dear Sir:

In your letter of May 13, 1957, you state that by order of the district court in and for Nye County the release of a certain minor child from the State Children's Home has been ordered and that you have been directed to pay over certain funds received by you through Social Security payments for the child's benefit, to that county as reimbursement for moneys paid the home by said county for the child's support while under commitment. According to additional facts furnished us through the Nye County District Attorney, that county, pursuant to [NRS 423.210\(2\)](#), was compelled to pay to the State Children's Home the sum of \$50 per month for the support of the child concerned during the last several months of its commitment because its mother failed to make such payments. It appears also that the county officials were without knowledge prior to the child's release that Social Security payments were being received for its benefit. The opinion of this office is requested as to the proper action to be taken in the matter.

OPINION

By the way of explanation we wish to point out that anything we may say here is not intended by way of a review of the above mentioned court order. Only the appellate court is empowered to do that. It is rather with the view of suggesting the procedure necessary in this case similar cases which may arise in the future that we give this opinion.

In Opinion No. 244, dated March 8, 1957, furnished by this office at the request of the Director of the Budget, State of Nevada, we stated what we believed to be the law relative to the disposal of funds paid the Nevada State Children's Home through Social Security for the benefit of children committed to the home. There we expressed the view, which still prevails, that in those cases in which the parent or guardian fails or refuses to pay for the support of a child committed thereto and for whose benefit Social Security payments are received, such payments belong to the State to be applied to said child's support. We believe that the situation involved here is no different in principle. Payments made through Social Security for the benefit of a minor child whose father is deceased are primarily for the child's support. Such is the use to which they are put before commitment to the home, and nothing appears in the law that this office has found which would authorize their use for any other purposes merely because he is under commitment in the home.

Doubtlessly the Nye County officials would not have made the payments for the child's support had they been aware of the existence of funds for that purpose through Social Security payments. For that reason the said county deserves to be reimbursed. Since the accumulation from these payments is no part of any state fund but is held in the child's property, you are authorized to pay it to said county to apply as reimbursement for the moneys expended for the child's support while committed in the home.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. TAPSCOTT
Deputy Attorney General

OPINION NO. 57-264 NEVADA INDUSTRIAL COMMISSION—Silicotic law, Sections 617.460-617.480 NRS, as amended by Chapter 219, Statutes of 1957, construed.

Carson City, May 21, 1957

Honorable Guy A. Perkins, Chairman, Nevada Industrial Commission, Carson City, Nevada

Dear Mr. Perkins:

We have your letter of April 16, 1957 respecting Senate Bill Number 49, which has become Chap. 219, Stats. of 1957, and Assembly Bill Number 140, which has become Chap. 387, Stats. of 1957, and the effect of such amendments upon the administration of the Occupational Disease Act, more specifically the silicosis provisions thereof. The specific questions will appear hereafter, and to resolve those questions a showing of the indefiniteness, ambiguity and uncertainty of the Stats. of 1957.

In the construction of this statute (Chap. 218—1957) we have a heavy assignment, for without question we must avoid the legislative function, and also without question it is our duty to ascertain the legislative intent, and must give that intent force and effect insofar as the provisions of the statute may be harmonized. Without question, this department has no authority to declare the statute void or unconstitutional by reason of indefiniteness. If we were authorized to take such a short cut out we would be tempted to follow it, for the statute, in manners to appear hereafter, is most confusing.

The statute of 1957 formerly cited, is amendatory of Sec. 617.480 NRS. The former of these statutes (617.460 NRS) was the original Silicosis Act, of 1947, as amended from time to time, whereas the latter statute cited (617.480 NRS) of 1955, was a special Silicosis Act, more or less of a temporary nature, set up to take care of those cases that were not able to qualify under the earlier Act.

In order that we may clearly see the changes by the amendments of 1957, we first set out the NRS statute and then the Stat. of 1957.

Sec. 617.460 NRS reads as follows:

617.460 Silicosis as an occupational disease; compensation and claims.

1. Silicosis shall be considered an occupational disease and shall be compensable as such when contracted by an employee and when arising out of and in the course of the employment.

2. Claims for compensation on account of silicosis shall be forever barred unless application shall have been made to the commission within one year from total disability or within 6 months after death.

3. Nothing in this chapter shall entitle an employee or his dependents to compensation, medical, hospital and nursing expenses or payment of funeral expenses for disability or death due to silicosis in the event of the failure or omission on the part of the employee truthfully to state, when seeking employment, the place, duration and nature of previous employment in answer to an inquiry made by the employer.

4. No compensation shall be paid in case of silicosis unless, during the ten years immediately preceding the disablement or death, the injured employee shall have been exposed to harmful quantities of silicon dioxide dust for a total period of not less than 4 years in employment in Nevada, some portion of which shall have been after July 1, 1947.

5. Compensation, medical, hospital and nursing expenses on account of silicosis shall be payable only in the event of temporary total disability, permanent total disability, or death, in accordance with the provisions of chapter 616 of NRS, and only in the event of such disability or death resulting within 2 years after the last injurious exposure; provided that:

(a) In the event of death following continuous total disability commencing within 2 years after the last injurious exposure, the requirement of death within 2 years after the last injurious exposure shall not apply.

(b) The maximum compensation payable, exclusive of medical and funeral benefits for death or disability due to silicosis, shall not exceed \$7,000.

(c) Hospital, nursing and medical benefits shall be limited to an amount not exceeding \$1,250.

Sec. 617.460 NRS, as amended by Chap. 219, Stats. of 1957, reads as follows:

617.460 1. Silicosis shall be considered an occupational disease and shall be compensable as such when contracted by an employee and when arising out of and in the course of the employment.

2. Claims for compensation on account of silicosis shall be forever barred unless application shall have been made to the commission within 1 year after total disability or within 6 months after death.

3. Nothing in this chapter shall entitle an employee or his dependents to compensation, medical, hospital and nursing expenses or payment of funeral expenses for disability or death due to silicosis in the event of the failure or omission on the part of the employee truthfully to state, when seeking employment, the place, duration and nature of previous employment in answer to an inquiry made by the employer.

4. No compensation shall be paid in case of silicosis unless, during the 10 years immediately preceding the disablement or death, the injured employee shall have been exposed to harmful quantities of silicon dioxide dust for a total period of not less than 4 years in employment in Nevada, some portion of which shall have been after July 1, 1947.

5. Compensation, medical, hospital and nursing expenses on account of silicosis shall be payable only in the event of temporary total disability, permanent total disability, or death, in accordance with the provisions of chapter 616 NRS, and only in the event of such disability or death resulting within 2 years after the last injurious exposure; provided, that:

(a) In the event of death following continuous total disability commencing within 2 years after the last injurious exposure, the requirement of death within 2 years after the last injurious exposure shall not apply.

(b) The maximum sum payable, including compensation, medical, nursing and hospital benefits for death or disability due to silicosis shall not exceed \$11,250. Compensation shall be payable in sums provided by chapter 616 of NRS. The sum payable to a claimant may be used for any or all of the following items: Compensation, hospital, medical or nursing benefits. The commission shall not allow the conversion of the compensation benefits provided for in this section into a lump sum payment notwithstanding the provisions of [NRS 616.620](#). Payment of benefits and compensation shall be limited to the claimant and his dependents during the claimant's lifetime only.

Sec. 617.480 NRS reads as follows:

617.480 Special silicosis fund: Payment of compensation; conditions.

A separate fund of \$100,000, to be known as the special silicosis fund, is hereby created by transferring that amount from the state insurance fund of the commission, to be used for payment of compensation in case of silicosis arising under the following conditions.

1. No compensation shall be paid in case of silicosis, as defined in [NRS 617.140](#), out of the special silicosis fund unless during the 20 years immediately preceding March 29, 1955, the injured employee shall have been exposed to harmful quantities of silicon dioxide dust for a total period of not less than 4 years in employment in mines in Nevada.

2. Compensation, medical, hospital and nursing expenses on account of silicosis shall be payable only in the event of permanent total disability, in accordance with the provisions of chapter 616 of NRS; provided:

(a) That the maximum compensation payable, exclusive of medical, hospital and nursing benefits for permanent total disability due to silicosis, shall not exceed the sum of \$5,000; and

(b) That hospital, nursing and medical benefits shall be limited to an amount not exceeding the sum of \$1,250.

3. Claims for compensation provided by this section on account of silicosis shall be forever barred unless application shall have been made within 6 months after March 29, 1955.

4. Where the employee is eligible to receive other compensation under this section, he shall not be entitled to compensation, medical, hospital and nursing expenses or payment of funeral expenses out of the special silicosis fund. No employee who has received the full benefits as provided under this chapter shall be entitled to any further benefits under this chapter.

5. No person shall qualify for any benefits under this section unless he shall have actually and physically resided in the State of Nevada for an uninterrupted period of at least 20 years immediately preceding March 29, 1955.

6. When the time for filing claims for compensation under this section has expired, any moneys remaining in the special silicosis fund shall immediately revert and shall be placed to the credit of the state insurance fund.

Sec. 617.480 NRS, as amended by Chap. 219, Stats. of 1957, reads as follows:

617.480 Notwithstanding the provisions of [NRS 617.460](#), compensation shall be paid from the state insurance fund in cases of silicosis arising under the following conditions:

1. No compensation shall be paid in case of silicosis, as defined in [NRS 617.140](#), out of the state insurance fund unless during the 20 years immediately preceding the effective date of this amendatory act, the injured employee shall have been exposed to harmful quantities of silicon dioxide dust for a total period of not less than 4 years in employment in mines in Nevada.

2. Compensation, medical, hospital and nursing expenses on account of silicosis shall be payable only in the event of permanent total disability, in accordance with the provisions of chapter 616 of NRS; provided, that the maximum sum payable, including compensation, medical, nursing and hospital benefits for death or disability due to silicosis shall not exceed \$11,250. Compensation shall be payable in sums provided by chapter 616 of NRS. The sum payable to a claimant may be used for any or all of the following items: Compensation, hospital, medical or nursing benefits. The commission shall not allow the conversion of the

compensation benefits provided for in this section into a lump sum payment notwithstanding the provisions of [NRS 616.620](#). Payment of benefits and compensation shall be limited to the claimant and his dependents during the claimant's lifetime only.

3. Claims for compensation provided by this section on account of silicosis shall be forever barred unless application shall have been made to the commission within 6 months after the effective date of this amendatory act.

4. Where the employee is eligible to receive other compensation under this chapter, he shall not be entitled to compensation, medical, hospital and nursing expenses or payment of funeral expenses for silicosis out of the state insurance fund. No employee who has received the full benefits as provided under this chapter shall be entitled to any further benefits under this section.

5. No person shall qualify for any benefits under this section unless he shall have actually and physically resided in the State of Nevada for an uninterrupted period of at least 20 years immediately preceding the effective date of this amendatory act.

6. If any person dies prior to receipt of maximum compensation and benefits allowed pursuant to subsection 2, the difference between the amount of compensation and benefits actually paid to or on behalf of such person and the maximum compensation and benefits payable pursuant to subsection 2 shall be placed in a special fund to be paid out as provided in subsection 7.

7. Notwithstanding the provisions of subsection 2, any moneys in the special fund created pursuant to subsection 6 shall be available for payment of compensation and medical, hospital and nursing benefits on a pro rata basis, to or on behalf of persons who have theretofore received the maximum compensation and benefits allowed pursuant to subsection 2.

Any moneys remaining in the special silicosis fund created pursuant to the provisions of [NRS 617.480](#) prior to its amendment by this amendatory act shall revert to the state insurance fund.

This act shall become effective upon passage and approval.

(The Act amending the original Silicosis Act, and the special Silicosis Act, became effective on March 25, 1957.)

Sec. 616.625 NRS has reference to payment of benefits to permanently disabled persons, widows and dependents, and reads as follows:

616.625 Compensation payments after June 30, 1955 to permanently totally disabled persons, widows and dependents.

1. All compensation payments after June 30, 1955, to permanently totally disabled persons, widows and dependents, by reason of injuries or death arising out of and in the course of employment of employees under the provisions of this chapter shall be paid currently according to the *rates* provided by this chapter, *as amended from time to time*, whether the injury or death occurred before or after June 30, 1955, and the commission shall adjust current and lump sum payments accordingly.

2. The rates of compensation shall not operate retroactively for any period before June 30, 1955, except in commutation of lump sum payments.

(Italics supplied.)

Sec. 616.615 NRS, in sec. 1, subparagraph 1, thereof, respecting funeral allowances to be accorded by the commission, has been amended by Assembly Bill Number 140, which became Chap. 387, Stats. of 1957.

As so amended this Sec. 1, subparagraph 1, reads as follows:

1. Burial expenses. In addition to the compensation payable under this chapter, burial expenses not to exceed \$500. When the remains of the deceased employee and the person accompanying the remains are to be transported to a mortuary or mortuaries, the charge of transportation shall be borne by the commission, subject to its approval, provided, such transportation shall not be beyond the continental limits of the United States.

Chap. 387, Stats. of 1957 became effective April 1, 1957.

Sec. 41 of the Occupational Disease Act (Stats. of 1947, Chap. 44) has given all of the rights, benefits and immunities under the O. D. Act, that exist under the Nevada Industrial Insurance Act, to employers, employees and dependents of employees. This provision has become Sec. 617.240 NRS and reads as follows:

617.240 Rights and liabilities of employers and employees.

Every employee and the dependent or dependents of such employee and the employer or employers of such employee shall be entitled to all of the applicable rights, benefits and immunities and shall be subject to all the applicable liabilities and regulations provided for injured employees and their employers by chapter 616 of NRS unless otherwise provided in this chapter.

Conversations with you, subsequent to the letter of April 16, 1957, have brought to us information respecting the administration of the Silicotic Acts. These facts assist us in determining the extent of the inquiry, i.e. in determining the specific questions that must be answered to clear the road for the administration of the Silicotic Acts as amended. You have informed us of the following significant facts:

1. That after the passage of the initial Occupational Disease Act in 1947, which included provisions for aid to certain workmen suffering from silicosis, it was found that the qualifying requirements under the original Act, excluded certain long term Nevada resident silicotics.

2. The Legislature then enacted Chap. 433, Stats. of 1955, p. 904, commonly referred to as the "special silicosis act." The earlier Act as amended became Sec. 617.460 NRS. The later Act became Sec. 617.480 NRS.

3. That under the provisions of 616.625 NRS, payments to widows and dependents of deceased silicotics have in certain cases been paid heretofore, and are being paid to date.

4. That under the provisions of 617.460 and 617.480 NRS certain of the claimants survive, but have been removed from the benefit rolls by reason of having received the maximum sums available under the statutes.

5. That under the provisions of 617.460 and 617.480 NRS, benefits to widows and dependents of deceased silicotics fall into three groups, viz:

(a) Widows and dependents of silicotics who received before death all of the benefits, then authorized, and who were removed from the rolls before death.

(b) Widows and dependents of silicotics who had not received all of the benefits authorized to them at the time of death, which then brought dependents to the position of receiving benefits, which benefits were fully consumed before March 25, 1957.

(c) Widows and dependents of silicotics who had not received all of the benefits authorized to them, at the time of death, which then by death of the silicotic placed the dependents in the position of receiving benefits, which benefits were not fully consumed on March 25, 1957.

6. Then, too, there is the case of the silicotic formerly placed on the benefit rolls under on [one] or the other of the statutes, who had not consumed the amounts allowed to him on March 25, 1957, and who survived that date.

7. That there is an amendment to Sec. 616.615 NRS, changing the burial allowance from \$350 to \$500, as provided by Chap. 387, Stats. 1957.

From the foregoing difficulties, ambiguities and uncertainties you have propounded certain questions, as follows:

QUESTIONS

1. (a) If the silicotic, who before March 25, 1957, was qualified, upon the commission records as a beneficiary, was living on that date and had not received the total sum authorized under the earlier applicable statute, what are the present rights of the silicotic?

(b) After his death what are the rights of his widow and dependents?

2. (a) If the silicotic, who before March 25, 1957, was qualified upon the commission records as a beneficiary, was living on that date, and had received the total sum authorized under the earlier applicable statute, what are the present rights of such silicotic?

(b) After his death what are the rights of his widow and dependents?

3. If the silicotic, who before March 25, 1957, was qualified upon the commission records as a beneficiary, and thereafter received the total sum authorized under the applicable statute, and thereafter died, before March 25, 1957, what are the present rights of the widow and dependents?

4. If the silicotic, who before March 25, 1957, was qualified upon the commission records as a beneficiary, and before March 25, 1957, died, without receiving the total sums authorized under the applicable statute, after which the widow and dependents qualified as beneficiaries, and on March 25, 1957, had not received the total sum authorized under the applicable statute, what are the present rights of the widow and dependents?

5. If the silicotic, who before March 25, 1957, was qualified upon the commission records as a beneficiary, and before March 25, 1957, died, without receiving the total sums authorized under the applicable statute, after which the widow and dependents qualified as beneficiaries, and had before March 25, 1957, received the total sum authorized under the applicable statute, what are the present rights of the widow and dependents?

6. If the silicotic makes application for benefits on or after the date March 25, 1957, qualifies and receives benefits, under either statute;

(a) What are the rights of the silicotic while living?

(b) What are the rights of the widow and dependents of the silicotic, after his death?

7. What are the rights of the personal representative of a deceased silicotic, respecting the allowance for burial expenses?

(a) What sums are allowable?

(b) Are sums allowable supplemental to the maximum total sums designated under the appropriated statute, or are they included within such designated sums?

8. With reference to subsecs. 6 and 7 of Sec. 617.480 NRS, as amended by Chap. 219, Stats. of 1957, how may such special fund be set up and disbursed, in compliance with the intent of the provisions of these sections, in view of the fact that the sums available for distribution are constantly changing, by reason of deaths, and disbursements, to qualified beneficiaries, and the number of persons qualified to receive the distribution from said funds, is constantly changing, by reason of deaths?

OPINION

A close inspection of Secs. 617.460 and 617.480 NRS as amended by Chap. 219, Stats. of 1957, shows clearly this:

1. That the amendments were intended by the Legislature to be liberalizing process, and were intended to give greater amounts in certain cases.

2. That as to some claimants, some or all of those of record on March 25, 1957, or in those cases to be filed after that date, the maximum sums to be obtainable under 617.460 were increased from \$8,250 (funeral benefits perhaps in addition) to \$11,250; and the maximum sums obtainable under 617.480 were increased from \$6,250, (perhaps funeral benefits in addition) to \$11,250.

3. That as to some claimants, some or all of those of record on March 25, 1957, or as to those cases to be filed after that date, death of the claimant, was to terminate benefits (perhaps with the exception of funeral benefits thereafter) and no unused benefits were to continue to the widow or dependents.

4. That under the provisions of Sec. 617.480, as amended by Chap. 219, Stats. of 1957, (the special Silicosis Act), subpars. 6 and 7 thereof, it was intended in some way, to make unused benefits of silicosis cases, where death has prevented the receipt by claimant of the maximum amount authorized, available to claimants who have survived after receipt of the maximum authorized amounts.

We are clearly of the opinion that the amendments are prospective and not retrospective in construction; and that it was not the intention of the Legislature to divest widows and orphans of rights theretofore secure to them.

General rule is that statutes are prospective only unless it clearly, strongly and imperatively appears from the act itself that legislature intended that it should be retrospective in operation. *State Ex Rel. Progress v. Court*, [53 Nev. 386](#), 2 P.2d 129.

The court will not adopt a construction which produces disastrous results. *Davis v. Davis*, [54 Nev. 267](#), 13 P.2d 1109.

Sec. 616.625 NRS appears at first glance to make the statutory provisions of 1957, heretofore quoted, retroactive. Upon close scrutiny, however, it is observed that it is intended by this provision that the retroactive effect is confined to "rates," "as provided from time to time." It is not provided that statutes shall be retroactive that reduce or enlarge other vested rights. It is not provided or suggested that a statute may divest widows and orphans of vested rights. Under the provisions of this statute it is the rates (perhaps monthly contributions or the total maximum contribution) that are contemplated to be changed from time to time, and not a change from liability to nonliability by the commission to a widow.

We have in mind a case in which a silicotic qualified for benefits under the applicable statute, died without receiving the total sums authorized under the statute, whose widow thereafter was duly qualified to receive benefits, without exhausting all sums allowed and was still receiving benefits on March 25, 1957. If it be urged that she is entitled to benefits under the schedule and in the total amount authorized under the Stat. of 1957, we are not in accord, for if the Stat. of 1957 affects her respecting the total sums or increased monthly sums the statute also affects her respecting the provision by which widows are cut off and receive nothing. If she is affected by the Stat. of 1957 respecting benefits, e.g. the amounts of total benefits, she is also affected by the statute respecting the elimination of benefits to widows. The correct construction as to the given case theretofore becomes one in which the rates of monthly benefits, and the total sums payable, cannot be increased by virtue of the Stat. of 1957, neither can these fixed sums be eliminated. The Stat. of 1957 has no effect upon such a case, despite the provisions of Sec. 616.625 NRS.

We are not able to bring ourselves to the belief that it was the intention of the Legislature to take from widows and orphans, that, which from the time of the death of the silicotic, appeared definite in amount, precise and certain, upon which plans could be built with confidence.

We are not able to bring ourselves to the belief that the Legislature intended, upon 5 days notice, (which could have been one day if the bill had been signed into law on March 30, 1957) that the commission would understand the law to provide a duty to cut off widows and orphans from checks theretofore due on the first of each month, and would so discontinue payments to them.

We prefer not, at the stroke of a pen, to render widows and orphans destitute, upon doubtful construction of a statute, which construction if adopted renders a legislative body niggardly in the extreme. We reflect upon the fact that men while dying an agonizing death, by oxygen starvation literally, with no mental impairment whatever, may and in many cases doubtless did have last minute directions and assurances to the wife and children, respecting among other things financial matters. We have no desire to disturb that which seemed assured, upon which plans were built.

We are not able to believe that a generous Legislature intended to take from widows and orphans of silicotics, whose rights and benefits appeared secure, precise and definite, sums theretofore secure to them, in order to have additional sums available to silicotics still living. We prefer to believe that the Legislature intended that the sums secure to widows and orphans on March 25, 1957, should remain secure, and as to silicotics then living the total sums available should be increased, and in partial consideration for that increase, no unused portion thereof should be available to widows and orphans or other dependents after the death of the silicotic.

Such is our determination.

With reference to the burial expense statute, heretofore quoted as amended, by Chap. 387, Stats. of 1957, effective April 1, 1957, (Sec. 616.615 NRS, Sec. 1, subpar. 1 thereof) it is our opinion that the sum of \$500 has been made available under the amendment provisions for either general silicotics or special silicotics, for deaths occurring on or after April 1, 1957.

We feel that the Legislature intended burial benefits to be in addition to specified maximums, for otherwise in the course of events, in certain cases, a man might die during the month in which he received the last monthly payment, under maximum provisions, and except for the construction that we have adopted, nothing would be available for authorized burial benefits. Nothing in the law would authorize the commission to cut off monthly benefits when total amounts disbursed are \$500 (or \$350) short of the authorized maximum figure for benefits. Nothing in the law makes the burial benefits payment contingent upon whether or not the maximum benefit allowance was or was not paid during the lifetime of the beneficiary.

We are also of the opinion that the provisions of Sec. 617.480, as amended by Chap. 219, Stats. of 1957, in subpars. 6 and 7 thereof, providing that in some manner moneys, not used under maximum provisions by silicotics who die before receipt of the maximum sum available, are to be set apart in a fund and distributed to silicotics who live after receipt of the maximum sums, provided by statute, are unworkable, under the provisions and regulations provided. From time to time and at unpredictable times, sums would accrue to the fund, and from time to time, and at unpredictable times, the numbers of persons legally qualified to receive from the fund, would change, through (1) exhaustion of funds from their original account and (2) death. Nothing less than statute making would permit the commission to set up a variable schedule, for the disbursement of such funds. We therefore recommend and advise that the commission set up on account constituting the "special fund" as provided in subpar. 6, and that the commission hold that "special fund" without drawing anything therefrom, for any purpose, until the Legislature will be able at its next regular session, to provide for the disposal thereof.

SPECIFIC QUESTIONS ANSWERED

Bases upon the conclusions that we have reached, heretofore stated, the questions propounded are answered as follows:

Question No. 1.

(a) The silicotic has a right to a benefit schedule based upon \$11,250 as the total sums receivable, taking into account the sums heretofore received, payments thereunder to continue during the remainder of his life, unless earlier consumed.

(b) They will have no rights to benefits.

Question No. 2.

(a) The silicotic has a right to be reestablished as a beneficiary, as of March 25, 1957. Such a benefit schedule so reestablished would entitle him to a total of \$11,250 maximum. Monthly payments would continue during the remainder of his life, or until total authorized sum of \$11,250 had been paid, inclusive of all sums heretofore paid.

(b) They will have no rights to benefits.

Question No. 3.

They will have no rights to benefits.

Question No. 4.

The widow and dependents have a right to a continuation of benefits, under the law in force at the time the benefits to widow and dependents were established. Maximum amounts formerly provided control in this case. The amendatory law enacted by the 1957 Legislature does not touch this case.

Question No. 5.

They will have no rights to benefits.

Question No. 6.

(a) He is entitled to a benefit schedule as provided by law, for a maximum of \$11,250.

(b) They will have no rights to benefits.

Question No. 7.

(a) The sum of not to exceed \$500, for deaths occurring on or after April 1, 1957.

(b) Such burial allowances are supplemental to designated total maximums.

Question No. 8.

These provisions respecting the disbursal of a "special fund" are totally unworkable, except if the commission should authorize itself to legislate. This it has no disposition or power to do.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: D. W. Priest
Deputy Attorney General

OPINION NO. 57-265 SCHOOLS; DISTRICT SCHOOL FUND—Teachers' contracts of employment.

Carson City, May 21, 1957

Honorable George M. Dickerson, District Attorney, Clark County, Las Vegas, Nevada

Dear Mr. Dickerson:

Reference is made to your letter of May 16, 1957, requesting the opinion of this office on the following:

QUESTION

1. Would it be legal for a school district to participate in a joint participation health insurance program for employees of the district and contribute a percentage of the monthly premium from district funds?
2. If such *direct* participation is allowable, would it be legal to include such a provision within the contract of employment as either a mandatory or a voluntary condition of employment?

OPINION

As to question number one, we wish to advise that in Attorney General's Opinion No. 239, January 29, 1957, released from this office to the Superintendent of Public Instruction, where an almost identical question was involved, we gave as our opinion that county school district funds, under existing law, may not be used to pay any portion of the premiums on health insurance covering employees of any school district. A further study of the law reaffirms our conclusion there made. The uses for which such funds are authorized are specifically enumerated in [NRS 387.205](#). We believe this is exclusive and will not admit any other uses thereof. That the uses which may be made of such funds are so limited becomes more apparent by the use of the word "shall" preceding the enumeration. Had the Legislature intended other uses to be made of this fund, it would have so directed by specifically listing them or by allowing for such by use of general terminology. This, it failed to do, and we find no authority for reading into the law something for which the Legislature made no provision, either specifically or by implication.

As to question number two, the law does not sanction the doing of any act indirectly which it forbids directly. Neither is it provided, insofar as the research into the law by this office reveals, that a teacher's contract may contain any provisions other than those pertaining to his or her employment. [NRS 391.120](#)(1) specifies the conditions to be embodied in a teacher's contract, viz., that the teacher is legally qualified, salary to be paid and length of term for which employed. Pursuant to [NRS 385.210](#)(3), authorizing him to do so, the Superintendent of Public Instruction has prepared a contract form containing these conditions which is available to school boards. It is our opinion that the inclusion of any other conditions or terms of employment in a teacher's contract is beyond the scope of the legislative intent and therefore unauthorized, either on a mandatory or voluntary basis.

The fact that [NRS 391.150](#)(2) authorizes boards of trustees to deduct from teachers' salaries, insurance premiums for group insurance when requested in writing by a teacher to do so, is quite a different thing than including such provision in the teacher's contract. Authority to withhold such premium is dependent upon the teacher's written request which is entirely voluntary upon his or her part and which may be discontinued at any time the teacher sees fit. As a condition in a contract of employment it would remain in full force and effect during the life of such contract.

For the reasons stated, it is our opinion that both of the foregoing questions must be answered in the negative.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Deputy Attorney General

OPINION NO. 57-266 PROFESSIONS; BASIC SCIENCES; MEDICINE—Applicant for certification by Basic Science Board must be a citizen of United States or Canada. First papers do not qualify person as citizen.

Carson City, May 22, 1957

Donald G. Cooney, Ph.D., Secretary-Treasurer, Board of Examiners in the Basic Sciences,
University of Nevada, Reno, Nevada

Dear Sir:

In your letter of May 17, 1957, you request our ruling on the present status of noncitizens as regards eligibility for certification by the Basic Science Board. As you state, your immediate problem concerns a doctor born in Syria who has taken out first papers for citizenship in the United States of America.

[NRS 629.060](#) formerly provided, in pertinent part, as follows:

No certificate shall be issued by the board unless the person applying for it submits evidence, satisfactory to the board: 1. That he is a citizen of the United States, or a citizen of Canada and has declared his intention of becoming a citizen of the United States.

The foregoing provision of the law was amended by Chap. 322, 1957 Stats. The provision as it now reads is identical except that the words "and has declared his intention of becoming a citizen of the United States" have been deleted.

It appears clear to us that even as the provision formerly read, a Syrian would have had to become a citizen before attaining eligibility. There appears to be no question under the present law but that such a person would have to become either a citizen of the United States or of Canada first. Citizenship as far as the United States is concerned is not completed by obtaining first papers.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Deputy Attorney General

OPINION NO. 57-267 PUBLIC EMPLOYEES RETIREMENT BOARD—Effect of disability retirement upon beneficiaries rights determined. Sections 286.610-286.620, 286.590-286.650 NRS, construed.

Carson City, May 23, 1957

Honorable Kenneth Buck, Executive Secretary, Public Employees Retirement Board, Carson City, Nevada

Dear Mr. Buck:

We have your letter of April 24, 1957 stating an impending situation that is confronting your office, which is hereinafter fully stated, and asking a construction of the law, upon certain precise questions, as will appear hereinafter.

Under the provisions of Sec. 286.610 NRS a member of the retirement system with 25 years or more of covered service may elect to protect a beneficiary under the provisions of options 2 or 3 of Sec. 286.590 NRS.

Thereafter, after obtaining such protection, it is believed that this member will apply for a disability retirement allowance under the provisions of Sec. 286.620 NRS, for which it is believed he will qualify.

QUESTIONS

Question No. 1. Will protection of a member under the provisions of Sec. 286.610 NRS, disqualify the individual from later qualifying for a disability allowance under the provisions of 286.620 NRS?

Question No. 2. If the answer to question number one is in the negative, would the later qualification for a disability allowance render void and inoperative the beneficiary protection provided by Sec. 286.610 NRS?

You have also propounded further questions, which by reason of the conclusions that we have reached, it will not be necessary to answer.

OPINION

Briefly and generally it may be said that the retirement system of the State of Nevada, for the benefit of the public employees, both local and state, is set up in such a manner as to provide full retirement benefits, excepting only those members of the system that are disabled during service, only to those who have met the statutory requirements, as to both age and years of service. Recognizing individual differences, as to health, property accumulated, needs, etc., of the member and his family, and rewarding long service (25 years or more), prior to eligibility for regular retirement, by reason of age, members of the system have been protected by the Legislature, by provisions which have afforded to them certain elections, by the exercise of which they are enabled to afford certain protection to their dependents and create certain benefits in favor of their designated beneficiaries. Behind all of these facts however, it is clear that the mathematical and actuarial elements are always present, as in all pension plans or for that matter all insurance. The provisions of the statutes reflect this actuarial element, and process of balancing of benefits, to the end that no permitted elections of any members will reflect undue advantage, to the injury of the system or of the other members.

The options referred to, which are available to a member of the system, after 25 years of service, not yet eligible to regular retirement by reason of age, are set forth in Sec. 286.590 NRS, and may be summarized as follows:

Option No. 1—This option contemplates and provides for a reduced service retirement allowance to the member and at the time of his death a payment to his designated beneficiary, in a lump sum cash payment, equal to the difference between the accumulated contributions at the time of retirement, and the amount actually paid to the member after retirement.

Option No. 2—This option provides for a reduced service retirement allowance to the member during his lifetime, with provision that the same monthly sum shall be payable to the beneficiary during lifetime of beneficiary, should the beneficiary survive him.

Option No. 3—This option provides for a reduced service retirement allowance to the member during his lifetime, with provision that one half of that monthly sum be paid to the beneficiary during the lifetime of beneficiary, should the beneficiary survive him.

An examination of options 2 and 3 will quickly show that between the two options, a member who elects option number 3 will receive during his lifetime a greater monthly service retirement allowance than if he elects option number 2.

An examination of all three options will quickly convince that for an ill member to elect options 2 or 3, as distinguished from his election of option number 1, places a greater burden

upon the system, than if such election had been made by a member, who enjoys health, all other things being equal.

We now analyze Sec. 286.610 NRS. As formerly suggested, in consideration of his long service (25 years or more) and in contemplation that he will continue service to retirement age, a member is afforded an opportunity to elect options 2 or 3 and file the election of record, thus affording a degree of protection to his designated beneficiary. More specifically this section provides the following:

(1) A member with 25 years of service, but not yet eligible for retirement by reason of age, may elect to protect a beneficiary under options 2 or 3, above.

(2) The protection to the beneficiary shall be calculated upon the member's condition of service and average salary obtaining when form of elected protection is filed with the board.

(3) Should the member die before the election becomes effective, the benefits payable shall consist of a refund to designated beneficiary under the provisions of [NRS 286.660](#). Should the member die after the election has become effective, the election shall become operative in favor of the beneficiary upon the date when the member would have reached the age of retirement. If the beneficiary is on that date not living the contributions of the deceased member shall be payable to his estate. Years of service credited at the time of the death of the member shall determine the anticipated retirement age, for purposes of fixing the date at which the contributions to beneficiary are to begin.

(4) Should the member die (not retired) after the effective date of protection, the amount payable to the designated beneficiary, under the elected option, shall be recalculated, considering the condition of service and average salary obtaining at the time of death.

(5) If the beneficiary dies during the continued employment of the member, the member may designate a beneficiary under the provisions of [NRS 286.660](#) who would receive the full contributions in case of death prior to actual retirement.

(6) Protection under option 2 or 3 may be extended to only one person prior to actual entry into retirement status.

(7) If member enters into actual retirement within 12 months of the effective date of the protection to a beneficiary, the election of option shall control, but the allowance payable shall be recalculated, based upon the condition of service and salary obtaining at the date of retirement, making a reduction for protection previously received.

(8) If member enters into actual retirement more than 12 months after the effective date of the protection, he may hold to the terms and conditions of the plan previously selected or he may be permitted to designate another beneficiary. The benefits shall be recalculated upon basis of conditions of service and salary obtaining upon the date of retirement. The recalculation shall take into account the protection previously received.

We now analyze Sec. 286.620 NRS, respecting disability retirement allowance. In substance it provides:

(1) A member of the system with 10 years or more of continuous service and becomes totally unable to work, for either mental or physical reasons, will receive a disability allowance, if

(a) He is in the employ of a participating member at the time of the incapacitation, and

(b) If he shall have been in such employ for a period of not less than 6 months prior to such incapacitation.

(2) If such member shall have been in such employ for a period of not less than 6 months prior to such incapacitation, it shall not be required that such incapacitation shall have arisen out of and in the course of employment.

(3) Such disability shall be 50 percent of the average monthly salary for the five highest salaried years in the last 10 years. Such allowance, however, shall not exceed \$200 per month.

(4) If the service record is under 20 years, but is 10 years or more, the disability allowance shall be prorated on the basis of 20 years.

(5) No payment of disability retirement allowance shall be paid for the first 90 days.

(6) We quote "Should death occur during a period of disability any beneficiary named by the member shall receive the surplus of retirement contributions made by the member over the benefits received by the member."

(7) The monthly disability retirement allowance shall not exceed \$200.

Under subdivision (6) above it will be noted that the rights of a beneficiary, of a member retired by reason of disability are clearly provided. It is our opinion that the provision is exclusive.

Sec. 286.630 NRS, makes provision for the medical examination that is requisite to qualification for the receipt of a disability allowance.

Sec. 286.640 NRS, makes provision for the cancellation by the board of a disability retirement allowance, and Sec. 286.650 NRS, delineates the rights of such a member if he reenters service of a public employer, and his rights if he does not so reenter public employment.

Sec. 286.650 NRS, provides as follows:

Whenever a member shall return to employment of a participating employer after having received a disability retirement allowance, such person, if he should enter into service retirement within 2 years after such return, shall receive the unmodified service retirement allowance and *shall not be permitted an election of optional plans except as to option 1.* (Italics supplied.)

The italicized portion above, providing that a member who has qualified for and received a disability allowance, who later returns to work and thereafter within 2 years receives an unmodified service retirement allowance "shall not be permitted an election of optional plans except as to option 1," is inconsistent with the idea that such a member might continue to hold option 2 or 3, if after obtaining the elected option, he applies for and receives a disability allowance. In the one case after the disability allowance the member has returned to work, and if he fully retires, upon basis of age and years of service, within 2 years thereafter he can obtain only option 1. Certainly then such a retired member cannot hold options 2 or 3, when his retirement is based upon fewer years of service and upon the same ground of incapacitation. The case envisioned by the statute is a stronger case than the case under study as to retention or acquisition of options 2 or 3.

The reason for the provisions is clear, namely, that one retired for ill health, either mental or physical, is not a good actuary risk.

We conclude from the facts given that the member having served over 25 years is entitled to reserve before applying for retirement the benefits of option 2 or 3. He is entitled to this protection, having earned it, until he applies for retirement, for any cause, either a regular retirement, combining age and years of service, or a disability retirement, requiring proof of incapacitation.

We conclude that this member may apply for separation allowance upon the basis of mental or physical incapacitation, for having protected his family was in no way a guaranty to the retirement board that his health would always remain such as to carry on his usual employment, until retirement age. Neither is the board injured by such an election, for the protection afforded

is to be taken into account, under the provisions of the statute, in determining the monthly allowance, and a charge is to be made for such protection.

We also conclude that if this member applies for and is approved by the board for disability allowance under the provisions of 286.620 NRS, that from the time of such approval by the board he has rendered inoperative his election of option 2 or 3, has voided such election, and that the board is removed from liability respecting such elected option, from that date, and that from that date his rights, respecting survival benefits, are limited to the provisions of Sec. 286.620 NRS, and subdivision (6) thereof.

For the foregoing reasons we conclude that question number one must be answered in the negative, and question number two is answered in the affirmative.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: D. W. Priest
Deputy Attorney General

OPINION NO. 57-268 PUBLIC UTILITIES; UTILITIES; PUBLIC SERVICE COMMISSION; LIENS—Public Service Commission to determine permissibility of public utility to contract with customer whereby lien in favor of utility is created to secure payment of service charges.

Carson City, May 24, 1957

Honorable Noel A. Clark, Commissioner, Public Service Commission of Nevada, Carson City, Nevada

Dear Mr. Clark:

Your letter of May 20, 1957, informs us that utility companies under your jurisdiction file with the Public Service Commission rules and regulations containing such clauses as “Any unpaid bill of the customer constitutes a lien upon the premises” or “A guarantor who guarantees payment agrees and consents that any unpaid bill of the customer constitutes a lien upon the premises of the owner when the customer is the owner, or if the customer is not the property owner, than upon the premises of the guarantor.”

Your question as quoted from your letter is as follows:

Should the commission reject this portion of any utility company’s rules and regulations when submitted for approval to the commission? Would the commission be in error in rejecting any such clause that may have been filed in the past?

OPINION

Liens, with the exception of the common law possessory lien and with which we are not here concerned, are of two types. First, those liens created by statute, and second, those created by contract either expressly or impliedly between the applicable parties. *See* 33 Am.Jur., “Liens.”

Except for certain carriers’ liens, this office is aware of no statutory lien allowed to public utilities against a customer’s property, or any other property, as a security for the payment of service charges. *See* NRS 108.

The lien, if created, must arise as a result of agreement between the customer, or someone acting in his interest, and the utility.

It is elementary that if the utility is possessed of the power to enter into such an agreement, the agreement creating the lien is a foregone conclusion for the reason that the utility would hold the whip. The customer, in most instances, can trade nowhere else.

The decision to permit such an agreement appears to be lodged with the commission under its broad powers of regulation over the utilities. NRS 704.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Deputy Attorney General

OPINION NO. 57-269 SOIL CONSERVATION—Districts not authorized to borrow money from either Farmers Home Administration or elsewhere.

Carson City, May 27, 1957

MR. GRAHAM HOLLISTER, Chairman, Nevada State Soil Conservation Committee, Genoa, Nevada

Dear Mr. Hollister:

Reference is made to your letter of April 2, 1957, regarding authority of your organization to obtain loans, and also to the meeting in this office on May 13 at which time the subject was extensively discussed. Based thereon you have requested the opinion of this office on the following:

QUESTION

Are soil conservation districts in this State authorized to secure loans from or through the Farmers Home Administration for equipment reconditioning, repair and purchase?

OPINION

Soil conservation districts in this State were provided for under the Act of March 30, 1937. Amendments were made thereto in the Statutes of 1945, 1947, 1951 and 1955. In Attorney General's Opinion, No. 730, March 7, 1949, this office was confronted with almost exactly the same question as that hereinabove submitted. There it was stated that under the law as amended to that time, no authority existed for the obtaining of loans by any soil conservation district.

We have carefully studied all particulars in which amendments have been made to the original Act but find nothing pertinent to our immediate question. Succinctly stated, the law has never, nor does it now either by express terms or by implication, authorize soil conservation districts to obtain loans for any purpose whatever. A principle of law applicable to interpretation of statutes of this kind is, that public bodies have only such powers as are expressly granted in the law or such implied powers as can be said to flow from the express powers. Although these districts are, under the provisions of Sec. 8 of the Act as it now reads, constituted governmental subdivisions of the State, and public bodies corporate and politic, exercising public powers, the Legislature

apparently intended to limit their powers to only those expressly stated. That the authority of any district to borrow money was never intended seems to be indicated with almost positive certainty in Sec. 8(4) of the Act which includes in the powers provided, the following: "To cooperate, or enter into agreements with, and *within the limits of appropriations duly made available to it by law * * **." We believe the portion in italics was intended as a restriction upon any district against obtaining or spending any funds other than those appropriated by the Legislature.

In view of our previous opinion and the present law pertaining to soil conservation districts, it is our opinion that said districts are not authorized to borrow money from the Farmers Home Administration or from any other source.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Deputy Attorney General

OPINION NO. 57-270 SUPERINTENDENT OF PUBLIC INSTRUCTION—It is within the power of county school boards to suspend married women students from school attendance upon the ground of pregnancy.

Carson City, May 28, 1957

Honorable Byron F. Stetler, Superintendent of Public Instruction, Carson City, Nevada

Dear Mr. Stetler:

We are in receipt of your inquiry of April 18, 1957, requesting an opinion of this office, upon the following question:

QUESTION

Can the board of trustees of a county school district suspend a married woman pupil from attendance of any school under its jurisdiction who has become pregnant, on the sole ground of her pregnancy?

OPINION

At the outset, let us make clear that the discussion and distinctions herein made, are applicable only to the public elementary and high schools of Nevada. No inquiry has been made respecting private schools or regarding the institution of higher learning in Nevada. As so such schools and such institution we express no opinion.

Secondly, the opinion written by a district attorney of Nevada upon this question is a scholarly work. We are impelled to the belief however that the facts set forth in the question do not portray an isolated case, and that such cases are more or less frequent in Nevada; that they tend to increase if encouraged, and that a statewide policy of uniform application would therefore be wholesome and for the best interest of Nevada schools. We therefore review this question which has been carefully studied and passed on thoughtfully by an able district attorney.

A STATEMENT OF POLICY: One of the former high school boards has stated the policy that formerly existed, with these words:

The policy of the former high school board was that the fact of pregnancy was the major consideration and that it was not within the jurisdiction of the board to determine time or extent, not to inquire as to actual facts unless proof of pregnancy existed through physical appearance or admission of fact by the student in question or through inability to participate in any part of the school program because of pregnancy. When the fact of pregnancy was established by the administration the student was required to leave school and prohibited from attending classes with her classmates. The administration, however, always made every effort to help the student to continue with her classwork on the outside, and in one case, the girl in question was enabled to graduate at the end of the year even though she did not attend regular classes in the school.

In Opinion No. 44 of this office, dated April 18, 1951, the question presented was respecting the right of a school board to ban from attendance at school, students who are married while attending school.

In the course of the opinion, denying such power, Judge Annand said:

Only such powers can be exercised by the trustees in the establishment of rules as are clearly comprehended within the language of the statute.

The legislature has conferred upon school boards powers to make reasonable regulations that will promote the efficiency of the school system, and to attain the ends for which public schools are established.

The right to attend school is a civil right that cannot be denied to one who will submit to ordinary and reasonable rules of order and discipline.

He then concluded that school authorities could not ban such students from public school attendance upon the sole ground that at the time of attendance they are married persons.

A great deal could be said about emancipation of a woman upon marriage, as for example, rights gained, duties assumed and privileges lost, but such would hardly make clear the effect of the legislative provisions, respecting the power of the school boards to make reasonable regulations upon this subject matter.

[NRS 386.350](#), being Sec. 80 of the School Code of 1956, reads as follows:

Sec. 80. General Powers of Board of Trustees. Each board of trustees is hereby given such reasonable and necessary powers, not conflicting with the constitution and the laws of the State of Nevada, as may be requisite to attain the ends for which the public schools are established and to promote the welfare of school children.

[NRS 386.360](#), being Sec. 81 reads as follows:

Sec. 81. Rules of Board of Trustees. Each board of trustees shall have the power to prescribe and enforce rules, not inconsistent with law or rules prescribed by the state board of education, for its own government and the government of public schools under its charge.

We have found no authorities directly passing upon this question.

In *McLeod v. State Ex Rel. Miles*, (Miss. 1929) 63 A.L.R. 1161, it was held that a rule barring a married woman from public school attendance (there being no question of pregnancy) was unreasonable. The court also held:

Court will not interfere with exercise of discretion of school trustees in matters confided by law to their discretion, unless there is a clear abuse of discretion or violation of law.

The court also held:

Presumption is always in favor of reasonableness and propriety of any rules made by school trustees, * * * to maintain successful management and good order and discipline in schools.

Also: Reasonableness of such rules is a question of law for the courts.

We are of the opinion that under Sec. 80 hereinabove quoted the powers of the board of trustees to exclude or suspend a student are not limited to cases involving wrongful conduct and physical illness of the student, but must also be held to include such measures as in the sole discretion of the trustees tend "to attain the ends for which public schools are established and to promote the welfare of school children." We are of the opinion that under this broad power, the authority exists to establish the rule in question.

We are also of the opinion that the rule in question is not inconsistent with the provisions of Sec. 81, hereinabove quoted, that only the reasonableness of the rule could be reviewed by a court of competent jurisdiction, and that presumptions of reasonableness are all in favor of the board.

The question is therefore answered in the affirmative.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: D. W. Priest
Deputy Attorney General

OPINION NO. 57-271 LABOR COMMISSIONER—Sections [NRS 610.010](#)-610.190 construed, respecting liability to voluntary apprentice, injured while attending classes of related and supplemental instructions.

Carson City, May 29, 1957

Honorable D. W. Everett, Labor Commissioner, State of Nevada, Carson City, Nevada

Dear Mr. Everett:

We have your letter of May 17, 1957, requiring an opinion from this department upon a question hereinafter stated.

You have stated certain facts pertaining to this question as follows:

FACTS

Under Sec. 610.150 NRS, the apprentice is required to take not less than 144 hours per year in related and supplemental instruction.

Under Sec. 610.120 NRS, part 2, the administration and supervision of this related and supplemental instruction is the responsibility of state and local vocational education boards.

In some of these classes, the apprentice is required to use hazardous machinery and there is always the possibility of serious injury.

There are several types of apprenticeship programs in existence. Some programs are with individual employers, and some of these employers carry industrial

insurance on the apprentice while he is attending class by carrying him on his payroll during that time, although these classes are not held during regular working hours. Other employers do not carry the apprentice on the payroll during this time and, therefore, do not carry industrial insurance on him.

Some of the programs are with local apprenticeship committees, and under Sec. 610.170 NRS, the programs are with the local unions. In each of these programs, the committee and the union do not act as the employer, but place the apprentice with an employer in his particular trade, although the apprentice is indentured to the local joint committee or to the union.

Some of the local joint apprenticeship committees and some of the local unions carry industrial insurance on their apprentices.

On the majority of apprentices registered with the State Apprenticeship Council, there is no accident insurance carried, and we would like to know, in case of an accident, which one of the many agencies or individuals involved in his training, could be held liable.

QUESTION

In the event an apprentice, registered with the State Apprenticeship Agency, is injured while attending classes in the related and supplemental instruction he is required to take, who would be liable?

OPINION

Your question involves a great deal of law, including inter alia, the apprenticeship statutes, the common law of negligence, the common law of apprenticeships and the function of state industrial commissions. Upon these subjects we will touch briefly.

The law of apprenticeship, before statutory modification, is ancient. It existed before labor organizations, and in its pure and unadulterated form contemplated a master of an art or craft and a minor, the latter being placed under the tutelage and in the home of the master craftsman, by written instrument, termed an "indenture," executed by the craftsman, the child and the father or guardian of the child, and providing for the former to teach the latter an art or trade, therein stated. In this form it was regarded in law as of mutual advantage, afforded the rights and duties of each as provided in the indenture, and entitle the minor to protection and care. The master was liable for injuries resulting from his negligence.

Under the law of apprenticeship as contained in the Nevada statutes (Sec. 610.010 to 610.190 NRS), a number of sponsoring organizations are authorized to severally or jointly sponsor apprenticeship programs, as employers or otherwise, the supplemental instruction to be under the state and local vocational educational boards. Nowhere in the statutes referred to is there provision that the apprentice shall be compensated for the 144 hours minimum required to be taken in class attendance in related and supplemental instruction. Nowhere in the statutes cited is there a provision that the apprentice shall be insured with the Nevada Industrial Commission or otherwise, while in attendance in this related and supplemental instruction. In the statutes referred to it is clear that the rights of the apprentice are as specifically provided in the apprentice indenture. It is therefore clear that for the apprenticeship indenture to provide for insurance and/or compensation by the regular employer during the hours spent in related and supplemental instruction would not be in violation of the statute.

The law permitting a recovery from another by one injured as a result of the negligence of the other, is founded upon "duty" of the one to care for, protect or refrain from injuring the other. This "duty" arises in a number of manners, including relationships in which there is a mutual profit or advantage, such as employment, and otherwise. An action based upon negligence, must, in any event, show more than injury, and negligence on the part of the party charged with liability; it must also show a duty to protect, care for or refrain from injuring, and show that the injury was the proximate result of the negligence. An employee, at common law, and before the

advent of the state compensation laws, in a suit to collect for injuries, arising out of and in the course of his employment, alleged and proved the employment (thereby showing the duty) the negligence as the proximate cause of the injury, and the injury incurred in the line of employment. Certain defenses, at common law, were permitted in such actions, including assumption of risk, contributory negligence, fellow servant doctrine, etc.

The workmen's compensation laws of the states are modifications of the common law, enacted for the protection of and reduction of the burdens of the employee. They are based upon the principle that all workmen (with minor exceptions) in the more hazardous industries shall be insured by the employer, and that upon injury, in the line of employment (with minor exceptions) compensation shall be paid. The common law defenses in such cases are cut off. Such laws are of incalculable benefit to the injured workman.

However, such statutes being modifications of the common law rules mentioned, are to be strictly construed, and no burdens, or duties upon persons other than the workman are to be imputed, other than those expressly provided. In short there is no duty upon persons to provide such insurance unless they are clearly brought within the provisions of the statute.

As you have pointed out in your letter, these apprenticeship programs now in existence are brought about in a number of ways, viz:

(1) There is the apprenticeship with an individual employer. He carries the apprentice upon the payroll, for attendance of the related and supplemental instruction. If injured in such instruction, he is covered by the workman's insurance provided by the Nevada Industrial Commission. No problem in this case, particularly if the apprenticeship indenture provides for such coverage, which is highly desirable in all cases.

(2) Some apprenticeships are with local apprenticeship committees and under the sponsorship of local unions. Such committees and unions are not the employer, although the apprentice is indentured to them. They place the apprentice with an employer. Some of these carry the insurance with the commission, and some do not. As to those that do carry the insurance there is no question. As to those that do not, they are not in violation of the law, for we find no provision requiring them to do so. On the other hand they could be under obligation to carry such insurance by a provision in the apprenticeship indenture. This is most desirable. If not under such obligation by the provisions of the indenture, we are of the opinion that a suit would not lie against the local apprenticeship committee, based upon negligence, for injuries. We doubt that the duty to protect the indentured apprentice can be established against the local apprenticeship committee, by reason of the fact that under [NRS 610.120](#) the related and supplemental instruction is the responsibility of the state and local vocational educational boards. In any event if such an action for injury were commenced against the local apprenticeship committee or local union, any or all of the common law defenses heretofore set out could be invoked by the defendant(s).

For the reasons heretofore given, in view of the manner in which these apprenticeship programs are set up and sponsored, as provided by law, we are of the opinion, that unless the apprenticeship indenture provides for such insurance coverage or provides for the assumption of the risk by the sponsoring entity, in the absence of the risk being carried by the employer of the apprentice, by carrying him on the payroll or by voluntary payment of the premium to the commission, covering such time, that an apprentice who is injured while engaged in supplemental and related instruction, under the requirements of the law, has no cause of action for liability against anyone or any entity.

Two manners of correcting the danger are apparent, namely: (1) statutory amendment, or (2) full placing of burden and responsibility and as to carrying industrial insurance, in the apprenticeship indenture.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: D. W. Priest
Deputy Attorney General

OPINION NO. 57-272 SURVEYOR GENERAL—Contracts with state for purchase of land entered into after March 28, 1957, never less than \$3 per acre.

Carson City, May 31, 1957

Honorable Louis D. Ferrari, Surveyor General, Carson City, Nevada

Dear Mr. Ferrari:

We have your inquiry of May 27, 1957, requesting an opinion of this office upon facts and question hereinafter stated.

FACTS

A citizen of the United States applied through your office a number of years ago to get the State to exchange certain lands owned by the State, for certain lands owned by the United States, under the provisions of Sec. 8 of the Taylor Grazing Act (Chap. 865, U. S. Stats. at Large, 73rd Congress, Second Session, p. 1269, effective June 28, 1934) with a view to purchasing the lands from the State, under the statute respecting sale of lands by the State to an individual, after acquisition by the State of title to the desired land. Application was made to the Secretary of the Interior, by the State for the transfer of title to the respective parcels, the one parcel from the State and the other parcel to the State.

The Legislature of 1957 passed Assembly Bill Number 456, which was signed into law on March 28, 1957, providing in Sec. 4, subdivision 2 thereof, that the state land, upon contracts to be let after April 1, 1957, should not be sold for less than \$3 per acre, whereas the law in force at the time the citizen requested the negotiations to begin to lead to the transfer contemplated, as before set out, was a price of \$1.25 per acre.

The application filed before the passage and approval of Assembly Bill Number 456, Legislature of 1957, for the exchange of lands by the State and the National Government, has been rejected by the Secretary of the Interior, and the desired exchange denied.

The citizen who started the negotiations and application for this exchange now desires to purchase from the State the state-owned land, the subject matter of the application mentioned.

QUESTION

Under the facts recited, may this citizen enter into a contract for the purchase of this land, under the provisions of Sec. 321.130 NRS, at the price of \$1.25 per acre?

OPINION

The answer to the question is in the negative.

Under the provisions of Chap. 320, Stats. 1957, (Assembly Bill Number 456) under Sec. 4, subdivision 1, the effective date of the Act was April 1, 1957. Under subdivision 2 thereof, if the State Land Register deems it in the best interest of the State that a parcel of land be sold to private ownership, he may cause the same to be sold at public auction or upon sealed bids, for cash or contract of sale, at not less than the appraised value and in no case less than \$3 per acre. Subdivision 3 thereof provides for appraisal. Subdivision 4 thereof provides for the manner and time of publication notice of intent to sell and provides for the content of the notice.

The Taylor Grazing Act heretofore cited, has no bearing upon this problem, under the circumstances. Under subdivision 8 thereof, provision is made for transfer by a private individual or by the State of lands owned by either of them for lands owned by the United States. An unsuccessful effort was made to effect such an exchange, as formerly stated.

Any application to purchase the land now will fall under the statute of 1957, for in no way is it shown that the interest of the private citizen, which has existed for a number of years, is of contractual status. More clearly, the individual could have before March 28, 1957, applied for and could probably have received a contract respecting the state owned land, and would have paid in full for the land or would have made a deposit thereon, thus securing for himself the price of \$1.25 per acre. Although the land would have been under contract, he and the State Land Register could have joined in an application to the Secretary of the Interior for an exchange as contemplated under Sec. 8 of the Taylor Grazing Act. Then had the application for exchange been approved, his rights to the exchange land would have attached. Being not approved he would have retained his right, under his contract, with adequate consideration, and would now be entitled to complete his contract under base figure of \$1.25 per acre. This is covered by subsection 8 of Sec. 4 of the Act of 1957, which reads as follows:

Nothing in this amendatory act shall apply to affect any pending contract or application for the purchase of land from the State of Nevada, whether title thereto is in the state or the state is in the process of acquiring title thereto under any method of exchange or selection between the state and the United States or any department or agency thereof.

Up to this date it appears that the applicant has no contractual interest in the land that he now desires to purchase. The former negotiations therefore do not fall within the statute and the question propounded is therefore answered in the negative. Application by this private citizen now to purchase the land in question, will be governed by the provisions of Chap. 320, Stats. of 1957, sometimes referred to herein as Assembly Bill Number 456.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: D. W. Priest
Deputy Attorney General

OPINION NO. 57-273 TAXATION; COUNTIES—Leasehold or possessory interests at Boulder City not exempt from property taxation by Chapter 263, 1957 Statutes.

Carson City, June 4, 1957

Honorable George Dickerson, District Attorney, Clark County, Las Vegas, Nevada

Dear Sir:

According to your letter of May 10, 1957 you have advised the county assessor of Clark County that Chap. 263 (AB 16) 1957 Stats. of Nevada does not prevent the imposition of taxes upon the leasehold interests in Boulder City, and have asked our affirmance or non affirmance of your conclusion.

Chap. 263, referred to above, is a 1957 addition to [NRS 361.035](#), which, as a part of the property tax law, defines the term real estate, and provides, in pertinent part, as follows:

For the purposes of this chapter, “real estate” shall not include leasehold or other possessory interests in land owned by the Federal Government on which land the Federal Government is paying taxes to the State of Nevada or is, pursuant to contractual obligation, paying any sum in lieu of taxes to the State of Nevada.

If it is assumed, for the purpose of this opinion, that the area presently occupied by Boulder City is a part of the Boulder Canyon Project and is federally owned property upon which leasehold or possessory interests are held, has the State of Nevada, by reason of the provision quoted above, exempted the leasehold or possessory interests in the area of Boulder City from real property taxation?

The quoted wording certainly leaves no doubt that the exclusion of the property in question from the status of taxable real property hinges upon the condition that the Federal Government is paying money in lieu of taxes. There is, in our opinion, no room for construction. *State v. Jepsen*, [46 Nev. 193](#), 209 Pac. 501.

It is understood, of course, that payments are made annually by the Federal Government to the State of Nevada under the Boulder Canyon Project Adjustment Act, 43 U.S.C.A. 618. Whether such payments are made “in lieu of taxes” is a question determinable by interpretation of the federal law involved.

That federal law is the Boulder Canyon Project Act, 43 U.S.C.A. 617, and the Boulder Canyon Project Adjustment Act, 43 U.S.C.A. 618. The specific question of whether, under the federal law, these payments are made in lieu of taxes was before the First Judicial District Court of Nevada in *Clark County v. State*, Number 13403. That court held that the payments so made were not made and were not intended by Congress to be made in lieu of taxes. This decision was unanimously affirmed by the Nevada Supreme Court in *Clark County v. State*, [65 Nev. 490](#), 199 P.2d 137. The Legislature, moreover, is presumed to be aware of this applicable court decision at the time of enactment of the above quoted law. *Hoyt v. Paysee*, [51 Nev. 114](#), 269 Pac. 607.

Thus, the area presently occupied by Boulder City, is, under our Supreme Court decision, not land on which the Federal Government is paying a sum in lieu of taxes, and the leasehold or possessory interests thereon are not, by the 1957 addition to the Nevada law excluded as real property.

This office agrees with your conclusion.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Deputy Attorney General

OPINION NO. 57-274 STATE WELFARE; OLD-AGE ASSISTANCE; AID TO THE BLIND—Inclusion of allowance (of federal funds) for medical care in payments to individuals for old-age assistance and aid to the blind not affected by Chapters 255 and 307, Statutes of Nevada 1957.

Carson City, June 5, 1957

Mrs. Barbara C. Coughlan, State Director, Nevada State Welfare Department, P. O. Box 1331,
Reno, Nevada

Dear Mrs. Coughlan:

In your letter of May 21, 1957 you request an opinion as to whether old age assistance payments to the individual, on and after July 1, 1957, may include allowance for medical care or must the provision for medical care be made only through the fund established under Sec. 3, Chap. 307, 1957 Stats. of Nevada.

Subsection 1 of the section cited above provides as follows.

The old-age assistance medical and remedial care fund is hereby created in the state treasury. Moneys made available to the state of the Federal Government and by the state for the purpose of providing medical care or any type of remedial care to recipients shall be deposited in the fund.

As we understand it, there are or will be, two methods of disbursing the funds for assistance to the aged, which are: (1) Assistance payments directly to the recipient. (2) Payments to whoever serves the recipient with medical or remedial care. The problem is whether in computing the amount of payment of the individual such payment can include an amount for medical care, and which would be in addition to what may be expended for medical and remedial care from the new fund.

The Federal Government as the major contributor to the old-age assistance program through its Department of Health, Education and Welfare in State Letter No. 282 dated December 20, 1956, has stated the following:

Since the beginning of the public assistance programs under the Social Security Act it has been permissible to include the costs of medical care in determining the amounts of money payments. Beginning with October 1950 Federal financial participation has also been available, within individual matching limitations, for payments in behalf of recipients for medical services. This matching provision will remain in effect until the \$6-\$3 matching provisions of the public assistance amendments of 1956 become effective on July 1, 1957. Separate matching on vendor payments for medical care costs paid by the agency will then be available on an average basis. *Medical needs may still be included in determining the amounts of money payments under applicable maximums for those payments.* (Italics supplied.)

We are informed by your good office that under the italicized portion of this federal letter payments to be made to the individual may continued to include money for medical care, but that the money from the Federal Government for such purpose cannot be placed in the medical and remedial care fund as created under Chap. 307, 1957 Stats., above quoted.

If this be true, it follows and this office considers that such money is not available to the State to be placed in the new fund for medical or remedial care purposes as contemplated by Sec. 3, Chap. 307, quoted above.

This does not mean, however, because such money is not available to the State to be placed in the new fund for medical care purposes, that we are also of the opinion that it was the intention of the Legislature that such money will not be acceptable to the State. We are of the opinion that the exact opposite is true.

Thus we conclude that the inclusion of an allowance (of Federal money) for medical care in the old-age assistance payments to the individual is not affected by Sec. 3, Chap. 307, 1957 Stats., and that such inclusion, insofar as the 1957 State Legislature is concerned, shall continue.

You also raise an identical question and inform us that an identical problem exists with respect to assistance to the blind under Chap. 255, 1957 Stats. of Nevada. Our conclusion with respect to such problem is identical to the conclusion reached with respect to the same problem involving assistance to the aged.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Deputy Attorney General

OPINION NO. 57-275 MOTOR VEHICLES—A new motor vehicle purchased in foreign state for use in Nevada need not be registered in such foreign state unless required by that state's laws.

Carson City, June 6, 1957

Richard A. Herz, Director, Motor Vehicle Department, Public Service Commission, Carson City, Nevada

Dear Mr. Herz:

You have requested of this office an interpretation of the language of Chap. 305 of the 1957 Stats., and particularly Sec. 2 thereof.

The section reads as follows:

2. An application shall be made upon the appropriate form furnished by the department and shall contain:

- (a) The signature of the owner.
- (b) His residence address.

(c) A brief description of the vehicle to be registered, including the name of the maker, the engine, identification or serial number, whether new or used, and the last license number, if known, and the state in which issued, and upon the registration of a new vehicle, the date of sale by the manufacturer or enfranchised and licensed dealer in this state for the make to be registered to the person first purchasing or operating such vehicle.

Your inquiry is whether subsection (c) above requires a new vehicle, not previously registered, and purchased in a state other than Nevada, to be registered where purchased before entering Nevada, or whether it may enter Nevada as an unregistered vehicle and then be registered here.

OPINION

The jurisdiction of Nevada law does not extend to other jurisdictions, and therefore the law of the state in which the new vehicle is purchased governs. If such state law requires registration of a new vehicle prior to its removal to Nevada, a purchaser must comply with that law. On the other hand if the law of the state in which the vehicle is purchased permits the removal of the newly purchased vehicle to this State, upon a permit or other basis, without prior registration, there is nothing in Chap. 305, Stats. of 1957, to prevent this. Registration will then be made in Nevada.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

OPINION NO. 57-276 PUBLIC SERVICE COMMISSION—[NRS 484.470](#), as amended 1957, places “chains” and “snow tires” upon an equality, affording the motorist an election.

Carson City, June 6, 1957

Honorable Robert A. Allen, Chairman, Public Service Commission, Carson City, Nevada

Dear Mr. Allen:

We have your letter of May 9, 1957, asking for a construction of Assembly Bill Number 430, Chap. 243, Stats. of 1957, amendatory of [NRS 484.470](#).

The section as amended reads as follows:

It shall be unlawful for any person to operate a motor vehicle, whether the same be an emergency vehicle or otherwise, without tire chains or snow tires upon any street or highway, under icy or snowy conditions, when the highway is marked or signed for the requirement of chains or snow tires.

QUESTION

If the highway sign or marker recites “Conditions warrant the use of chains,” would such comply with the law or must the marker show that the requirement is chains or snow tires?

OPINION

We are of the opinion that the answer is the latter, and that the marker must show that chains or snow tires are required. The Legislature has placed “chains” and “snow tires” upon a position of equality, and whenever icy or snowy conditions require marking or posting the highway, a person who uses chains or snow tires, is in compliance with the law. A sign that would designate only chains would not notify the motorist that he is in compliance with the law if he has snow tires. Also a sign merely designating that chains are required, being not a sign or notice as required by the law, would not render driving “unlawful” if a motorist without either chains or snow tires, progressed beyond the point of the marker. We also feel that it is much more desirable for the marker to recite “Chains or snow tires required,” than for it to recite “conditions warrant use of chains or snow tires.”

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: D. W. PRIEST
Deputy Attorney General

OPINION NO. 57-277 DEPARTMENT OF AGRICULTURE—Auxiliary plant chemicals need not be registered.

Carson City, June 10, 1957

Mr. Harry E. Galloway, Agricultural Inspector Supervisor, Department of Agriculture, State of Nevada, 118 West Second Street, P. O. Box No. 1027, Reno, Nevada

Dear Mr. Galloway:

We have your inquiry of April 26, 1957, requiring an interpretation of the Nevada Fertilizer Control Act, [NRS 588](#). You propound the following question:

QUESTION

Are “auxiliary plant chemicals” as defined in [NRS 588.030](#), required to be registered under the Act?

OPINION

The answer is in the negative.

Sec. 588.030 NRS, defines “auxiliary plant chemicals.” Sec. 588.020 NRS, defines “agricultural minerals.” Sec. 588.050 NRS, defines “commercial fertilizers.”

Sec. 588.170 NRS, provides in part as follows:

1. Each brand and grade of commercial fertilizer or agricultural mineral shall be registered with the state department of agriculture before being offered for sale, sold or distributed in this state.

We find no section in which it is provided that “auxiliary plant chemicals” are to be registered before being offered for sale or sold. The enumeration of those fertilizers and minerals that are required to be registered, is exclusive and the item “auxiliary plant chemicals” not being mentioned is intended not to be registered.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: D. W. Priest
Deputy Attorney General

OPINION NO. 57-278 AIRPORTS—Counties authorized to trade county-owned lands for those privately owned and suitable for airport purposes.

Carson City, June 11, 1957

Honorable Cameron M. Batjer, District Attorney, Ormsby County, Carson City, Nevada

Dear Mr. Batjer:

Reply is here made to your inquiry of May 31, 1957, as to whether or not under the provisions of [NRS 495.010](#) authority exists for Ormsby County to trade certain county-owned lands for privately owned lands which are desirable for airport purposes.

OPINION

The portions of [NRS 495.010](#) pertinent to the question here presented are as follows:

1. Any city, county, town or any municipal corporation in the State of Nevada, is authorized and empowered:

(a) To acquire, by purchase, condemnation, donation, lease *or otherwise*, real or personal property * * * upon which any such * * * county * * * may erect and maintain * * * hangers, moorings, masts, flying fields and all places for flying, takeoff and landing of aircraft * * *. (Italics supplied.)

Among the powers delegated counties in the foregoing section in connection with acquiring land for airport purposes, that of making such acquisition through trading is not specifically included. However, following the enumeration of methods of acquisition which are specifically listed are the words “or otherwise.” We believe the answer to the question before us depends upon the meaning of these words. It must be assumed that the Legislature, in including said words in the law enacted intended that they not be regarded idly but that they serve some useful purpose. Among rules of statutory interpretation is the well known doctrine of “Ejusdem Generis,” designed to solve the meaning of statutes of this type. In *Orr Ditch Co. v. District Court*, [64 Nev. 138](#), 147, it is stated thus:

General and specific words in a statute which are associated together, and which are capable of an analogous meaning, take color from each other, so that the general words are restricted to a sense analogous to the less general.

Under the rule, such terms as other, others, otherwise, etc., when preceded by a specific enumeration, are commonly given a restricted meaning and limited to articles of the same nature as those specifically described. We therefore proceed to examine into the meaning of those powers which the Legislature specifically conferred in the section of our statute here under discussion. The term “purchase” has been defined by the lexicographers as meaning the obtaining of anything by paying money or its equivalent, and as applied to real estate, the acquisition of lands or tenements by any means other than by descent or purchase. Webster’s New International Dictionary, Second Edition. The word “exchange” which is synonymous with “trade,” has been held by the courts to be a purchase or sale within the statute of frauds, thereby requiring that an agreement authorizing a broker to “exchange” properties be evidenced by a memo. *Keeler v. Murphy*, 2 P.2d 950 (Cal.).

We therefore deduct from these and other authorities that the word “purchase” is broad enough to include “trade” or “exchange.” Also, we conclude that when the Legislature specifically enumerated certain methods by which counties may acquire property to which was added the words “or otherwise,” these words, under the rule of ejusdem generis were intended as an additional method of acquisition, viz, by exchange or trade.

Respectfully submitted,

Harvey Dickerson
Attorney General

By: C. B. Tapscott
Deputy Attorney General

OPINION NO. 57-279 LEGISLATURE; LAWMAKING POWERS—Legislature empowered under the Constitution of Nevada to enact any Act not in contravention or conflict with or prohibited by said constitution, including Act providing for payment of

benefits from employees retirement fund to widows of former public employees qualified to receive retirement at time of death but having designated no surviving beneficiary.

Carson City, June 14, 1957

Mr. Kenneth Buck, Executive Secretary, Public Employees Retirement Board, Carson City, Nevada

Dear Sir:

Your letter of May 23, 1957, refers to Chap. 399, Stats. of 1957, wherein the Public Employees Retirement Board is directed to set aside the sum of \$3,600 from any moneys in the public employees retirement fund from which payments of \$75 per month are to be made to each Mrs. Dorothy B. Post and Mrs. Evelyn Marriage during the 1957-1959 biennium. We understand that at the time of their deaths each of the husbands of the above named recipients had been an employee of the State of Nevada or a subdivision thereof in excess of 25 years, but that neither had exercised his right of option, under then prevailing law, to provide for payment of an allowance to any surviving beneficiary. The questions hereinafter stated have been submitted for the opinion of this office.

QUESTIONS

1. May the Legislature set aside portions of the public employees' retirement fund for payments to individuals who are not qualified to receive such payments under applicable retirement laws?
2. Is the said Chap. 399, Stats. 1957, in violation of Sec. 21, Art. IV, of the State Constitution inasmuch as other persons throughout the state have been, are now, and will be in similar positions insofar as retirement is concerned?
3. Shall the retirement board make the payments as directed by Chap. 399?

OPINION

The pertinent portions of the 1957 Stats. here in question read as follows:

Section 1. The legislature hereby determines that the facts set forth in the preamble hereof are sufficient to constitute cases of hardship requiring alleviation thereof. For the biennium commencing July 1, 1957, and ending June 30, 1959, the public employees' retirement board is hereby ordered and directed to set aside from any moneys in the public employees' retirement fund the sum of \$3,600 as a hardship fund to be disbursed by the public employees' retirement board for the purposes enumerated in section 2 of this act.

Sec. 2. During the biennium commencing July 1, 1957, and ending June 30, 1959, the public employees' retirement board is directed to pay from funds in the hardship fund:

1. The sum of \$75 a month to Mrs. Dorothy B. Post of Reno, Nevada.
2. The sum of \$75 a month to Mrs. Evelyn F. Marriage of Carson City, Nevada.

Sec. 3. If Mrs. Dorothy B. Post dies or remarries during the biennium commencing July 1, 1957, and ending June 30, 1959, then the payments to her authorized in section 2 of this act shall cease. If Mrs. Evelyn F. Marriage dies or remarries during the biennium commencing July 1, 1957, and ending June 30, 1959, then the payments to her authorized in section 2 of this act shall cease. Any moneys remaining in the hardship fund on June 30, 1959, shall revert to the public employees' retirement fund.

In seeking an answer to these questions we find it necessary to inquire into how far the power of the Legislature to enact laws extends. The problem has on numerous occasions found expression through the Courts and the Nevada Supreme Court has given its ruling thereon in several cases, the first being *State v. Arrington*, [18 Nev. 412](#) (1884) where the Court said:

We admit, also, that the legislature can perform any act not prohibited by the constitution; that, outside of constitutional limitations and restrictions, its power is “as absolute, omnipotent, and uncontrollable as parliament.

Again, in *Cauble v. Beemer*, [64 Nev. 77](#), 96, the Court passed upon the matter in the following language:

The legislature, and not the courts, is the supreme arbiter of public policy and of the wisdom and necessity of legislative action. This court has repeatedly upheld the constitutionality of special or local acts of the legislature, passed in some instances, because the general legislation existing was insufficient to meet the peculiar needs of a particular situation, and, in other instances, for the reason that facts, and circumstances existed, in relation to a particular situation, amounting to an emergency which required more speedy action and relief than could be had by proceeding under existing general law. (Cases cited.)

And, finally, in *King v. Regents*, [65 Nev. 533](#), 542, the court pointed out certain well recognized rules of construction to which it had always adhered, as follows:

* * * that state constitutions are limitations of the law-making power and that the legislature is supreme in its field of making the law so long as it does not contravene some expressed or necessarily implied limitation appearing in the constitution itself; that matters of policy or convenience or right or justice or hardship or questions of whether the legislation is good or bad are solely matters for consideration of the legislature and not of the courts; that courts must proceed with greatest of caution before striking a solemn act of the legislature; that every presumption is in favor of its constitutionality and every doubt must be resolved in its favor.

Applying the rules laid down in these decisions, after a careful examination of the statute with which we are here concerned, we are unable to find that it contravenes or is in any way prohibited by any provision of our State Constitution, including Art. IV, Sec. 21, cited in question No. 2 hereinabove stated.

The Legislature of the State created the retirement system, and, according to overwhelming weight of authority, has the power to modify it or repeal it entirely. The authorities also point out that a pension or retirement system does not impose a contractual obligation on the grantor, and further, that no right vests in the employee until fulfillment of the condition prescribed for participation of benefits, unless specifically provided by the statute in question. 40 Am.Jur. 982, Sec. 24.

We express no opinion as to rights of public employees in this State should the Legislature repeal the retirement Act entirely. Neither do we wish to imply any views as to the wisdom of this type of statute, as only the Legislature is qualified to do that. In view of the applicable law as we interpret it, it is our opinion that questions Nos. 1 and 3 must be answered in the affirmative, and question No. 2 in the negative.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Deputy Attorney General

OPINION NO. 57-280 SOIL CONSERVATION DISTRICTS (NEVADA)—Petitions to withdraw lands from Nevada Soil Conservation Districts, may not be entertained more frequently than once in five years.

Carson City, June 17, 1957

Mr. James G. Jensen, Chairman, Board of Supervisors, Tonopah Soil Conservation District,
Tonopah, Nevada

Dear Mr. Jensen:

We have your letter of May 29, 1957, requiring an opinion from this office.

You advise that “in Fish Lake Valley there are persons occupying land upon which filings have not been allowed by the Bureau of Land Management. Other persons are occupying lands upon which filings have been made pursuant to law.”

Question No. 1. Are the persons described in the former group “occupiers of land” in accordance with the provisions of the Nevada Soil Conservation District Law?

You advise that “some two years ago this Board of Supervisors disapproved a petition by a group in Fish Lake Valley to secede from this district and form one of their own. They are again requesting the same.”

Question No. 2 How often should a board be required to consider a matter of this type?

OPINION

We first consider Question No. 1.

An “occupier of land” is defined in [NRS 548.060](#), upon which persons other provisions of the statute confer certain rights and privileges, as “any person, firm or corporation who shall hold title to, or shall be in *possession of*, any lands lying within a district organized under the provisions of this chapter, whether as owner, lessee, renter, tenant, or otherwise.” The definition is very broad and inclusive, and means that an “occupier of land” is one in actual possession of land, whether he has been permitted to file on it by the Bureau of Land Management or not. (Italics supplied.)

We now consider Question No. 2.

Petitions to include ([NRS 548.515](#)), or to exclude ([NRS 548.520](#)), lands within an established district, or for discontinuance ([NRS 548.525](#)) of a soil conservation district are filed with the State Soil Conservation Committee.

Under the provisions of [NRS 548.540](#), none of such petitions may be filed or considered by the State Soil Conservation Committee more frequently than once in five years.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: D. W. Priest
Deputy Attorney General

OPINION NO. 57-281 SCHOOLS; PUBLIC OFFICERS; CONTRACTS—Law preventing financial interest of public officer as a member of a board or body in any contract made by the board of which he is a member requires that the interest must exist at the time the contract is made in order that violation occur or that contract be avoided.

Carson City, June 17, 1957

Honorable Byron F. Stetler, Superintendent of Public Instruction, Carson City, Nevada

Dear Mr. Stetler:

You requested an opinion of this office in February of this year. The request has not been complied with because of the further request that the answer be delayed until a check could be made to determine whether the question had been disposed of by the district attorney of the county from which the question arose.

Upon further development we learn that White Pine County is the county involved and that the question set forth in your letter has not been disposed of by the district attorney of that county and we now make answer to your letter of February 7, 1957.

Therein you make a statement of fact as follows:

A newly elected member of the board of county school trustees is the distributor for an oil company. The district had a contract with the oil company before the trustee filed for office or was elected. Also, the contract was the result of calling for bids.

In this connection you ask the following question:

Does the contract with the oil company violate the provision in the statutes which prohibits trustees having a financial interest in contracts?

You also made a further statement of fact and asked a further question as follows:

A member of a board of trustees is the distributor for an oil company, and as such supplies gasoline to service stations. The distributor has no connection with the station other than to supply the gasoline.

Would this business relationship constitute a violation of Sec. 85, 1956 School Code?

OPINION

[NRS 386.400](#), appertaining to county school trustees, provides as follows:

No member of any board of trustees shall be financially interested in any contract made by the board of trustees of which he is a member.

This type of restriction is common. It is to prevent a personal interest which may come in conflict with the duty which the officer owes to the public. 67 C.J.S. 406 (Corpus Juris Secundum).

Concerning the validity of the contract between the Board of Trustees and the oil company, the general law on this problem is to the effect that a contract will not be invalidated because made with a person who became an officer after the contract was executed. *See* 63 C.J.S. 559; *Beaudry v. Valdez*, 32 Cal. 269. We think that for the purpose of determining this question the problem is the same even though the board member himself did not enter into a contract with the

board, but rather, through his position as an agent of the oil company, or through his contractual obligation with the oil company, he has an indirect interest in the contract between the school board and the oil company.

It appears that the reason for the rule, which is the prevention of possible corruption, necessitates the conclusion that the interest (here the financial interest) must exist at the time the contract is made.

In *Collingsworth v. City of Catlettsburg*, 32 S.W.2d 982, the court in quoting from 44 C.J. 95, stated: "The interest must exist at the time the contract is made. If at the time a contract is executed no officer of the city has a pecuniary interest in it, it is valid and it will not be invalidated merely because an officer subsequently acquires an interest therein, provided there is no evidence of any conspiracy or criminal understanding between the contractor and the city officer at the time the principal contract was entered into." See also *Henschen v. Board of School Inspectors*, 267 Ill. App. 296; also C.J.S. 559.

In the instant case the fact is stated to be that the school board member was not a member at the time the contract was made.

This office does not have knowledge of what the terms of the contract between the board and the oil company are. However, in the absence of terms therein which would permit an advantage to be gained by the oil distributor in the performance of those terms by reason of his becoming a board member, or in the absence of some collusive arrangement concerning which we have no knowledge, the relationship between the contracting oil company and its distributor who is also a school trustee, whether the distributor is an agent of the oil company or otherwise, does not in any way invalidate the contract.

We think the following question so naturally follows from the question of the validity of the contract that it should be considered here:

In becoming a member and thereafter performing as a member of the board of trustees, is the distributor in violation of the above quoted provision of the Nevada law?

We think the same reasoning applies to this question. That is to say, the reason for the law is to prevent fraudulent practice by the official. If the rights under the contract were fixed at the time of its making and there was nothing objectionable at that time, there would, in our opinion, be nothing objectionable in the distributor, even though he may be in the position of an agent of the oil company becoming a member of the board of trustees.

This office does not wish to be understood to say that, if any questions arise as to the renewal of this contract by the board members or even any questions touching such contract over which the board members must assert some decisive discretion, that the distributor's membership on the board, even if he takes no part in the particular subject, would be free from objection as being violative of the law.

Concerning the second question set forth in your letter, this office is unable to discern a violation of the law, or any application of the above quoted provision of the Nevada law, under circumstances wherein a member of the board of trustees who also as distributor for an oil company supplies gasoline to service stations.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Deputy Attorney General

OPINION NO. 57-282 AGRICULTURE; PUBLIC HEALTH; INSURANCE—Mandatory public liability and property damage insurance required of licensees to make custom application of insecticides, fungicides and herbicides, in Nevada in an amount

determinable by the director of the division of plant industry of the State Department of Agriculture.

Carson City, June 18, 1957

Mr. Lee M. Burge, Director, Division of Plant Industry, Department of Agriculture, P. O. Box 1027, Reno, Nevada

Dear Sir:

Relative to Chap. 394, 1957 Stats. of Nevada (AB 322), in your letter of June 7, 1957, you request our advice on the following:

1. What is meant by the 1957 amendment to [NRS 555.320](#) providing that the director be designated by the applicant as agent for service of process, and what would be the proper form to fulfill this requirement?
2. Does the director, under the 1957 amendment to [NRS 555.330](#), have authority to set the amount of public liability insurance to be obtained by the applicant?

The amendment involved in the first question authorizes the designation or appointment of the director to act as agent for the applicant to receive personal service of summons to appear in court as a defendant. This appointment is a condition precedent to the granting of the license.

The form should be substantially as follows:

Pursuant to [NRS 555.320](#), I hereby consent to, designate and appoint the director of the division of plant industry of the Nevada State Department of Agriculture as my agent for the single purpose of receiving and admitting personal service of process involving any court action arising from my custom application of insecticides, fungicides or herbicides within the State of Nevada.

Answer to question 2:

The pertinent portion of [NRS 555.330](#) provides as follows:

1. The director shall require from each applicant for an operator's license proof of financial responsibility, including public liability and property damage insurance in an amount not less than \$10,000, nor more than \$200,000.

This office is of the opinion that the above quoted section contemplates not only the authority lodged in the director, but a duty placed upon him to require such financial responsibility in the applicant including the said insurance coverage as will meet the exigencies of civil damage as nearly as such damage can be estimated in light of the extent of the particular license or operation involved. Thus, it will be noted that under [NRS 555.320](#) the license to perform may be limited by the director according to the applicant's qualifications. The extent of the operation licensed is, we think, the guide to the extent of financial responsibility required by the director before a license is granted.

The stated purpose of this chapter of the law is found in [NRS 555.270](#) which is to regulate, in public interest, custom application of insecticides, fungicides and herbicides which, although valuable for crop control, is dangerous to the health of man and animals—a health regulatory measure. This is significant to our problem inasmuch as the tenor of the whole chapter recognizes that the larger the operation the more possible the health hazard which in turn is regulatory of the financial responsibility required of the applicant to meet possible damage to members of the public.

Moreover, the wording of the above quoted provision does not admit of any other construction. Proof of financial responsibility being required to be submitted to the director, it

follows that it is the director's province and duty to decide the sufficiency of the financial responsibility.

We conclude, then, that the director must require, in any event, \$10,000 insurance and may require any amount above \$10,000 to and including \$200,000, if, in his judgment, the extent of the license or possible operation under the license warrants it.

With regard to your concern over the constitutionality of this provision, the law is valid until determined to be otherwise by the courts. At this point, there appears no basis for a determination of this point by this office.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Deputy Attorney General

OPINION NO. 57-283 FOOD AND DRUG, WEIGHTS AND MEASURES DEPARTMENTS—Neither [NRS 590.130\(2\)](#) nor Chap. 360, Stats. 1957, authorizes construction of building for use of this department.

Carson City, June 18, 1957

Mr. E. L. Randall, Commissioner and State Sealer, Food and Drug, Weights and Measures Departments, P. O. Box 719, Reno, Nevada

Dear Sir:

In your letter of May 28, 1957, you refer to [NRS 590.130\(2\)](#) (Chap. 157, Stats. 1955, Sec. 13(2)), and to Chap. 360, Stats. 1957, and inquire whether under either of these laws you could build a building suitable for your needs under a contract to be amortized by the rental over a period of years.

OPINION

[NRS 590.130\(2\)](#) above mentioned, being a part of the Nevada Petroleum Products Inspection Act, reads as follows:

All revenues derived under the authority of this act shall be used for the enforcement thereof, *and any moneys remaining in the fund at the end of a budgeted biennium shall be used to procure and maintain suitable office quarters for the state sealer.* (Italics supplied.)

Only the portion of the above section as is italicized is pertinent in answer to the inquiry here submitted, and we fail to find that those words alone could be considered or regarded as sufficient to authorize construction of a building for the purposes and under the conditions mentioned. In neither the section above quoted nor elsewhere in the Nevada Petroleum Products Inspection Act, do we find any provision as to the method or manner of obtaining or amortizing the necessary loan for such building. Nor does the Act specify or designate the officer, or officers, board or body who or which is empowered to enter into the required negotiations. We believe that the portion of the section as italicized was not intended by the Legislature to confer any authority for construction of a building for use by the Food and Drug, Weights and Measures

Departments, but rather as a direction that any moneys remaining in the inspection fund after meeting expenses for enforcement of the Act, should be used or applied toward rental of suitable quarters. The amount that is available at the end of any biennium, over and above enforcement expenses, is far from ample to construct a building, or to meet rental expenses on a building. It is not certain that any sum at all will remain after these expenses. Anticipating this situation, the Legislature has at both the 1955 and 1957 sessions, made appropriations sufficient to cover the rentals anticipated for office space to be used by the department.

Chap. 360, Stats. of 1957, as we interpret it, was enacted primarily for the purpose of authorizing the University of Nevada Regents to issue and sell revenue certificates in a limited amount as a means of obtaining and amortizing loans for the construction of certain buildings therein specified, and which may be leased for revenue purposes as the said regents may determine. However, we are unable to find anything therein which authorizes the regents to construct any type of building other than those specified or by any other means than that provided.

It is a well established rule in statutory interpretation that boards, commissions and agencies performing state functions, have only such powers as are specifically given them by legislative acts or those which are reasonably or necessarily implied therefrom. Applying this rule to the laws cited in the inquiry hereinabove submitted, it is the opinion of this office that the construction of any building for your department is not authorized under existing law.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Deputy Attorney General

OPINION NO. 57-284 NEVADA STATE HOSPITAL—[NRS 433.120](#)(13) construed to the effect that superintendent may lease hospital land with the advice and consent of the hospital board.

Carson City, June 27, 1957

Sidney J. Tillim, M.D., Superintendent, Nevada State Hospital, P.O. Box 2460, Reno, Nevada

Dear Dr. Tillim:

We have your letter of June 15, 1957, supplying to us certain information and asking that we render an opinion upon the problems presented. Among other things you state:

The manager of the Reno radio station KDOT, has inquired about the possibility of leasing a location for the relocating of his tower, and a small housing. This may involve about an acre of land.

QUESTION

Does the superintendent of the hospital have the authority to enter into a lease contract with this company for this purpose?

OPINION

[NRS 433.120](#) sets forth the powers and duties of the superintendent of the Nevada State Hospital. Paragraph 13, thereof, reads as follows:

13. To lease, with the advice and consent of the board, all or any part of any land known or presumed to belong to the State of Nevada for the use of the hospital for such consideration and upon such terms as the superintendent and the board may deem to be in the best interests of the hospital and the State of Nevada. Any moneys received from any such lease shall be remitted by the superintendent to the state treasurer who shall deposit the same in the state treasury to the credit of the general fund.

The authority for the proposed lease, therefore, appears clear, and the answer to the question is in the affirmative. Let the records of the board show that you have clearly and strictly complied with the provision quoted, and that the board has consented to the specific contract that you propose to enter into.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: D. W. Priest
Deputy Attorney General

OPINION NO. 57-285 NEVADA INDUSTRIAL COMMISSION—[NRS 616.190](#), respecting medical referee board, must be strictly followed as to number required to constitute.

Carson City, June 28, 1957

Honorable Guy A. Perkins, Chairman, Nevada Industrial Commission, Carson City, Nevada

DEAR MR. PERKINS:

We have your letter of June 12, 1957. In the letter you inform us that an insured claimant received an award of permanent partial disability, rated by the commission at 7 1/2 percent. Claimant refused to accept the award and appealed to the Medical Referee Board. Two members of the Medical Referee Board considered the appeal, and reduced the award to nothing.

Thereafter on June 6, 1957, the workman wrote to the Governor protesting the procedure followed, stated that to close the controversy he would be willing to accept the rating of 7 1/2 percent of disability, permanent as to time, which had been awarded to him by the commission, asked that the Governor refer the matter to the Attorney General's Office for an official opinion upon the two contentions raised by him.

CONTENTIONS

(1) That every claimant has a right to have his appeal heard before the board as clearly set out by the statute and that two physicians do not constitute the board any more than nine persons can constitute a jury.

(2) That the board has no power to reduce a Commission award but only to rule on the controversy within the limits of the Commission's and the claimant's contentions.

OPINION

[NRS 616.190](#) provides as follows:

1. The chairman of the commission annually shall request the Nevada State Medical Association to select and establish a list of three licensed physicians in good professional standing, which physicians when so chosen, shall be and constitute a medical board for the purposes mentioned in this chapter.
2. The jurisdiction of the medical board shall be limited solely to the consideration and determination of medical questions and the extent of disability of injured employees referred by the commission. The findings of the medical board or a majority of the members thereof shall be final and binding on the commission.
3. Each member of the medical board shall receive as compensation for his services a sum not to exceed \$25 per day when actually engaged upon the investigation and determination of such referred cases.
4. Each member of the medical board shall be entitled to reasonable and necessary traveling expenses incurred while actually engaged in the performance of his duties.

We are of the opinion that the first contention raised by the claimant is sound. In this respect we are of the opinion that the board must be constituted as provided in the statute, which is to be strictly followed, both as to the manner in which the physicians obtain membership upon the board and as to the number requisite to constitute the board. The Legislature has set out the procedure and requirements and the commission is without power to reduce the requirements and thus make the procedure and functioning of the board less onerous.

It follows that the recommendations of the partial board, or findings of the partial board are not binding upon the claimant. He is entitled to have his case considered by the full board, if he wishes to have it. It also appears to us that since the reference to the Medical Reference Board was obtained by reason of the request of the claimant workman, that he could now properly, should he elect to do so, withdraw his request of reference to the board, and that should he do so, he would be bound by and entitled to receive the benefits of the award made by the commission, namely 7 1/2 percent disability, permanent as to time.

Having arrived at the conclusion that we have reached upon contention number 1, it becomes unnecessary to consider the second contention raised by the claimant.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: D. W. Priest
Deputy Attorney General

OPINION NO. 57-286 MOTOR VEHICLE REGISTRATION—Interpretation of Chapter 251, Statutes of 1957, and other laws in relation thereto.

Carson City, June 28, 1957

Mr. Richard A. Herz, Public Service Commission, Motor Vehicle Division, Carson City, Nevada

Dear Sir:

In your letter of June 26, 1957, you call attention to A.B. 428, being Chap. 251, Stats. of 1957, which the last Legislature passed and which requires all owners of a house trailer not operated on the highways of the State and used as a residence or dwelling to apply for a registration certificate sticker therefor on or before July 1, 1957. You inquire as to whether or not failure to comply with this law by the time therein specified will subject the owner to the penalty provided in [NRS 482.515](#).

OPINION

In the opinion of this office the failure of an owner of a house trailer not used on the state highways, but as a residence or dwelling instead, who fails to apply for a registration sticker therefor by July 1, 1957, as provided for in Chap. 251, Stats. of 1957, is not subject to the \$3 penalty provided in [NRS 482.515](#), nor to any other penalty.

The \$3 penalty provided for in the above-mentioned section is applicable only to trailers or other vehicles operated upon the highway, whereas the trailers covered by Chap. 251, above mentioned, include only those not so operated and which are used as a residence or dwelling. Heretofore the law did not require registration of trailers or other vehicles unless it was intended that they be used upon the highways. Chap. 251, Stats. of 1957, amends the Motor Vehicle Act by adding a new section adding to the list of vehicles for which registration is required, all house trailers used as a residence or dwelling even though not used on the highways.

Neither do we believe that failure to comply with the requirement to obtain a registration sticker on a trailer of this class by July 1, 1957, constitutes a misdemeanor as provided for in [NRS 482.555](#). Although that section makes it a misdemeanor to violate any of the provisions of the chapter covering the motor vehicle laws (unless such violation is otherwise made a felony), yet the offenses against registration are specifically set out in [NRS 482.545-482.550](#). We deem it to have been the intent of the Legislature to exclude all other acts as not coming into the category of offenses of this nature.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Deputy Attorney General

OPINION NO. 57-287 NATURALIZATION, COURTS OF—Fees received by court clerks in naturalization, go, part to the United States, and remainder to county in which petition is filed.

Carson City, July 2, 1957

Honorable George G. Holden, District Attorney, Lander County, Battle Mountain, Nevada

Dear Mr. Holden:

We have your letter of June 5, 1957 requesting an opinion of this office upon the following question:

QUESTION

Respecting fees, derived under the naturalization statutes, and with particular attention to the statutes affecting Lander County, do such fees go to the county as in other cases?

OPINION

The answer to the question is in the affirmative, insofar as Lander County is concerned. We have not checked out the statutes respecting county clerk's fees in the other counties however, and as to some of them it is not impossible that the applicable statute would permit the retention of such fees by the county clerk.

The jurisdiction is vested in the district courts of the State of Nevada, to hear and determine petitions for naturalization by Sec. 1421 (a) of Title 8, U.S.C.A., which reads as follows:

(a) Exclusive jurisdiction to naturalize persons as citizens of the United States is conferred upon the following specified courts: District courts of the United States now existing, or which may hereafter be established by Congress in any State, District Courts of the United States for the Territories of Hawaii and Alaska, and for the District of Columbia and Puerto Rico, the District Court for the Virgin Islands of the United States, and the District Court of Guam; also all courts of record in any State or Territory now existing, or which may hereafter be created, having a seal, a clerk, and jurisdiction in actions at law or equity, or law and equity, in which the amount in controversy is unlimited. The jurisdiction of all the courts herein specified to naturalize persons shall extend only to such persons resident within the respective jurisdiction of such courts, except as otherwise specifically provided in this subchapter.

Section 1455, Title 8, U.S.C.A., contains the fiscal provisions respecting naturalization, and provides that the clerk shall collect and account for certain fees, enumerating the items and designating the amount of fees for each.

Subsection (c) thereof makes provision for the distribution of fees in those cases wherein the petition is filed in the state court, and provides in essence the following:

One-half of all fees collected under \$6,000, and all of the fees collected in excess of \$6,000, for the preceding fiscal year, shall be paid over to the Clerk of the United States District Court.

The foregoing briefly explains how fees are received into the custody of the clerks of the state district courts of the State of Nevada, and the method of their disbursement.

Chap. 185, Stats. of 1957, p. 266, being the statute fixing the salary of Lander County officers, subsection 6 thereof, respecting the county clerk, reads as follows:

The county clerk shall receive an annual salary of \$4,800, which salary shall be compensation in full for all services rendered.

From the foregoing provision it would appear that the fees received by the county clerk and ex officio clerk of the court would go to the county treasury rather than be retained by the clerk. However to the contrary it might be urged that the clerk in doing work in naturalization is not operating as county clerk but clerk of a court operating under a federal statute in naturalization and is therefore not bound by the provision quoted.

This matter was considered, and such a contention made, in *State of Indiana Ex Rel. United States v. Killigrew*, et al, 117 F.2d 863. It was held that the defendant collected the naturalization fees solely in the capacity of clerk of the Indiana court by reason of the authority bestowed by Congress, and that it was immaterial whether or not the State of Indiana had expressly recognized such authority.

We therefore conclude that since the county clerk sits as clerk of the court in naturalization, only because of being the incumbent county clerk, and that since under the state statute the county clerk is to receive the sum mentioned "which shall be compensation in full for all services rendered," that all sums received in the office of the clerk, not required to be disbursed under the

statute to the Clerk of the United States District Court, are the property of the county to be deposited in the general fund of the county.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: D. W. Priest
Deputy Attorney General

OPINION NO. 57-288 PUBLIC SCHOOLS—School buses may be used to transport school children from one place in a school district to another place in that district to attend a course of instruction in swimming during the summer vacation months.

Carson City, July 3, 1957

Honorable Byron F. Stetler, Superintendent of Public Instruction, Carson City, Nevada

Dear Mr. Stetler:

In your letter of June 18, 1957 you request the opinion of this office upon the following facts and question:

FACTS

Within one of Nevada's school districts provision is being made to transport children from one community to another to permit them to attend a course of swimming instruction given by the Red Cross in conjunction with the PTA. The county school board intends to adopt the course as part of its school program.

QUESTION

1. Can the school buses be used to transport the children to such a course of instruction during what is normally the summer vacation?

OPINION

In the opinion of this office the proposed use of the school buses is authorized. [NRS 392.360](#) provides as follows:

Use of school vehicles to transport public school pupils to and from school activities.

1. A board of trustees of a school district shall have the power to permit school buses or vehicles belonging to the school district to be used for the transportation of public school pupils to and from:

- (a) Interscholastic contests; or
- (b) School festivals; or
- (c) Other activities properly a part of a school program.

2. The use of school buses or vehicles belonging to the school district for the purposes enumerated in subsection 1, shall be governed by rules and regulations made by the board of trustees, which rules and regulations shall not conflict with

regulations of the state board of education. Proper supervision for each vehicle so used shall be furnished by school authorities, and each vehicle shall be operated by a driver qualified under the provisions of [NRS 392.300](#) to [392.410](#), inclusive.

As we read and understand the above-quoted provision, the proposed swimming program is just such an activity as was contemplated by the Legislature in the use of the wording "other activities properly a part of the school program." Certainly, to our minds at least, no one would question the proposition that a program of instruction in swimming is as properly a part of the school program as certain interscholastic contests or school festivals.

It will, of course, be necessary for the county school board to adopt the course as a part of its own program, and all of the requirements necessary to the operation of a school function will, of course, be attendant upon that adoption.

The fact that this program will be carried on during the summer months which are normally the vacation months is no deterrent. It is quite likely that if the program is to be carried on at all it could only be carried on during the warm weather. Moreover the school year is in no way limited to certain months out of the year, but rather encompasses the whole year. [NRS 388.080](#).

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Deputy Attorney General

OPINION NO. 57-289 UNIVERSITY OF NEVADA; FOOD AND DRUG AND PETROLEUM PRODUCTS INSPECTION DEPARTMENTS—Payment of claims should be as designated by statute, subject to inspection by Board of Regents of University.

Carson City, July 12, 1957

Mr. Perry W. Hayden, Comptroller, University of Nevada, Reno, Nevada

Dear Mr. Hayden:

This office is in receipt of a request from you relative to the submission of claims for the Food, Drugs and Cosmetics Division and the Petroleum Products Inspection Division of the University of Nevada.

The question has arisen as a result of the failure of the Legislature to separate these entities from the University of Nevada. Feeling that an act to accomplish such purpose would pass, the Board of Regents submitted a separate budget from that of the University proper.

OPINION

In order to arrive at a logical conclusion it is necessary to study and analyze the relevant provisions of the Constitution and Statutes of Nevada. This we will attempt to do.

Art. XI, Sec. 7 of the Constitution of Nevada reads as follows:

The governor, secretary of state, and superintendent of public instruction shall, for the first four years and until their successors are elected and qualified, constitute a board of regents, to control and manage the affairs of the university and the funds of the same, under such regulations as may be provided by law. But the legislature

shall at its regular session next preceding the expiration of the term of office of said board of regents, provide for the election of a new board of regents, and define their duties.

It will be noted that the power and authority to control and manage the affairs of the University *and the funds of the same*, under such regulations as might be provided by law, clearly expresses the intent of the founding fathers to hold the Board of Regents responsible for the disposition of moneys accruing to that institution.

The statutory sources of finances as they affect the problem at hand are contained in [NRS 396.370](#). After setting forth the sources of revenue for the operation of the University of Nevada in the first section, Sec. 2 provides: "Additional state maintenance and support of the University of Nevada shall be provided by direct legislative appropriation from the general fund, upon the presentation of budgets in the manner required by law."

[NRS 396.380](#), which follows, reads as follows:

1. The board of regents of the University of Nevada are the sole trustees to receive and disburse all funds of the university for the purposes provided in [NRS 396.370](#).
2. The board of regents shall control the expenditures of all moneys appropriated for the support and maintenance of the university and all moneys received from any source whatever.

The next question that arises is as to whether the Food, Drugs and Cosmetic Division and the Petroleum Products Inspection Division of the State Government are arms of the University of Nevada.

[NRS 396.670](#) provides:

As provided in the Nevada Food, Drug and Cosmetic Act contained in chapter 585 of NRS, the president and the board of regents of the University of Nevada shall designate and appoint, for the enforcement of the Nevada Food, Drug and Cosmetic Act, a commissioner and such other agent or agents as they may deem necessary.

That the Petroleum Products Inspection Division is an arm of the University is then determined by reading [NRS 396.680](#), which reads:

As provided in chapter 581 of NRS, the commissioner of food and drugs appointed by the president and the board of regents of the University of Nevada is designated and constituted ex officio sealer of weights and measures, and shall be charged with the proper enforcement of the provisions of chapter 581 of NRS. He may appoint, subject to the approval of the board of regents, such deputy or deputies as he may deem necessary therefor.

Then turning to [NRS 590.100](#) we find that the State Sealer of Weights and Measures is charged with the proper enforcement of the Petroleum Products Inspection Act. It therefore follows, as the night the day, that the Board of Regents has control of this division of State Government also.

But here the problem becomes complex by reason of the conflict between the methods provided for the submission of claims. [NRS 396.390](#) provides the method and procedure for presenting claims for all University activities, including the Food, Drugs and Cosmetics Division. It reads:

1. Before payment, all claims of every name and nature involving the payment of money by or under the direction of the board of regents from funds set aside and appropriated shall be passed upon the state board of examiners.

2. The board of regents shall, with the approval of the governor, require all officers and employees of the University of Nevada whose duties, as prescribed by law, require such officers or employees to approve claims against any public funds to file such claims in the office of the board of regents at the University for transmittal.

It must also be noted that [NRS 396.410](#) provides:

On or before the last day of each month, the state controller shall report to the board of regents of the university the detail of all income received for university purposes from any source whatever.

Budgeted money as well as money received from the sources set forth in [NRS 396.370](#) is included in this statutory admonition, and it must be clear that the Legislature had in mind the purpose of having the State Controller make this disclosure so as to keep the University informed as to its financial standing month by month.

The 1957 Legislature, by the enactment of Chap. 391 of the 1957 Stats., appropriated \$4,821,276 for the University of Nevada proper and \$127,504 for the support of the Food and Drug Control and Weights and Measures Public Service Departments of the Public Service Division of the University of Nevada. As to the submission of claims thereunder, there can be no question but that [NRS 396.390](#) governs.

Where the complexity arises is that [NRS 590.130](#) provides for the deposit of fees received for petroleum products inspection in a revolving fund with the State Treasurer to be known as the petroleum products inspection fund, and then in Sec. 3 provides:

3. Vouchers for all expenses of whatever nature incurred by the state sealer of weights and measures in carrying out and enforcing the provisions of [NRS 590.010](#) to [590.150](#), inclusive, when approved by the state sealer of weights and measures, shall be forwarded monthly to the state board of examiners for audit and approval, and when audited and approved shall be certified to the state controller, who shall draw warrants upon the state treasurer for such expenses, specifying that the warrants are to be paid from the petroleum products inspection fund. The state treasurer shall thereupon pay such expenses out of the petroleum products inspection fund.

While the revolving fund created by the accumulation of inspection fees meets the cost of operation of the Petroleum Products Inspection Department, and while the law above-quoted provides that the State Sealer of Weights and Measures shall forward vouchers incurred in the operation of the petroleum products inspection to the State Board of Examiners, this office feels that in view of the control of this department remaining with the Board of Regents of the State University, that such vouchers for expenses incurred should reach the Board of Examiners by way of the Board of Regents, or their designated agent, as in the case of other University claims. In view of the Legislature's designation of the manner and procedure for paying such claims, once they have reached such Board, this office concurs in the method of payment, although feeling that the method of paying the University claims should, as far as possible, be made uniform by the next Legislature.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

OPINION NO. 57-290 UNIVERSITY OF NEVADA—Board of Regents of the University may not be divested of its executive control by legislative enactment purporting to confer the authority elsewhere.

Carson City, July 23, 1957

Honorable Minard W. Stout, President, University of Nevada, Reno, Nevada

Dear Dr. Stout:

We have your letter of July 18, 1957, propounding a certain question, hereinafter stated, and requiring an official opinion of this office. In order to make clear a controversy, as we understand it, we recite certain facts relevant to the determination here made.

FACTS

The Legislature of 1957 enacted Assembly Bill No. 462, which became Chap. 360, Stats. of 1957, p. 638, approved on April 1, 1957. The measure is one designed to authorize the governing board of the University of Nevada to obtain funds from the United States or instrumentality thereof, without in any way pledging the credit or expending the moneys of the people of the State of Nevada; such funds to be invested in student housing and other facilities, to be operated upon a self-liquidating basis, to repay the federal agency the sums obtained, plus interest.

The statute by the provisions of Sec. 2.5 thereof purports to confer a power upon the State Planning Board respecting planning, design and construction of such facilities, in accordance with the provisions of Chap. 341 NRS.

The statute recites in Sec. 12 thereof that it is severable, and that if any provision thereof is held invalid, the remainder thereof shall nevertheless remain valid and effectual.

The Legislature of the State of Nevada, under Chap. 341 NRS, does not attempt to create a duty of the State Planning Board to serve the state departments, boards or commissions of the State of Nevada, unless such state departments, boards or commissions are expending moneys appropriated by the Legislature. Neither does the Legislature under the provisions of Chap. 341 NRS attempt to require any such state departments, boards or commissions to use such services, unless money appropriated by the Legislature is involved.

However, under Sec. 2.5, Chap. 360, Stats. 1957, as will hereafter be shown, it appears clear that the provision is intended to have a dual effect, i.e., it is a mandate to the Planning Board to serve, and it is a mandate to the Board of Regents of the University of Nevada to accept the services of the Planning Board.

Certain buildings have heretofore been constructed, during 1956, by the use of funds not derived from taxation, such as the agricultural and home economics buildings, through funds derived from the estate of a benefactor, the late Max C. Fleischmann, without the assistance of the State Planning Board.

The Board of Regents of the University of Nevada has at its service professional men of the engineering and architectural fields able and qualified to accept the responsibility required of the Planning Board by the said Sec. 2.5 of Chap. 360, Stats. of 1957.

Time is short and moneys are available from the United States to the University of Nevada for this purpose through the Federal Housing and Home Finance Agency.

QUESTION

Despite the provisions of Sec. 2.5, Chap. 360, Stats. 1957, may the Board of Regents of the University of Nevada proceed under the provisions and authority of said chapter without the services of the State Planning Board?

OPINION

We have concluded that Sec. 2.5 of the statute neither creates a duty on the part of the State Planning Board to serve, nor a duty on the part of the Board of Regents to accept the service of the said board in the projects enumerated in the said Chap. 360.

The said Sec. 2.5, Chap. 360, Stats. 1957, reads as follows:

All phases of the planning, design, construction and equipment of any project provided for in this act shall be subject to supervision by the state planning board in accordance with the provisions of chapter 341 of NRS.

Sec. 341.150 NRS in part reads as follows:

(1) The state planning board shall furnish engineering and architectural services to all state departments, boards or commissions charged with the construction of any state building, *the money for which is appropriated by the legislature*. All such departments, boards or commissions are required and authorized to use such services. (Italics supplied.)

When one reflects upon the fact that no part of the money that is provided to be disbursed in providing structures under the provisions of the said Chap. 360 is to come from public funds, it at once becomes apparent that the buildings cannot be built and supervised by the Planning Board under the provisions of Chap. 341 NRS, for Planning Board activity under Chap. 341 NRS does not touch buildings to be built from funds not appropriated by the Legislature.

However, a stronger reason to support the conclusion reached is based upon the construction of Sec. 2.5, in that it purportedly is a grant of power by the Legislature to the Planning Board, authorizing the board to perform duties, which, in the absence of such provision, would clearly fall within the powers appertaining to the constitutional body, the Board of Regents of the University. To state it otherwise, the Legislature has attempted to grant a power to the Planning Board, and by the grant remove that power from the Board of Regents. This it has no constitutional power to do.

King v. Board of Regents, [65 Nev. 533](#); 200 P.2d 221.

The court quoted with approval from another authority, as follows:

The board of regents and the legislature derive their power from the same supreme authority, the constitution. Insofar as the powers of each are defined by that instrument, limitations are imposed, and a direct power conferred upon one necessarily excludes its existence in the other, in the absence of language showing a contrary intent. P. 553.

The court quoted with approval another authority and said:

So we find the people of the state, speaking through their constitution, have invested the regents with the power of management of which no legislature may deprive them. That is not saying that they are the rulers of an independent province or beyond the lawmaking power of the legislature. But it does mean that the whole executive power of the university having been put in the regents by the people, no part of it can be exercised or put elsewhere by the legislature. * * *.

In *State v. Douglass*, [33 Nev. 82](#), 110 P. 177, the court said:

It is well settled by the courts that the Legislature, in the absence of special authorization of the Constitution, is without power to abolish a constitutional office or to *change, alter or modify* its constitutional powers and functions. (Italics supplied.)

It therefore follows from the authority cited that the power of the Legislature to divest the Board of Regents of powers constitutionally entrusted to it, and to confer that power upon a board of its choosing, does not exist, and that Sec. 2.5 of Chap. 360, Stats. 1957, is a nullity; but the statute being severable, and entirely intelligible and complete in the absence of Sec. 2.5, remains otherwise full effectual.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: D. W. Priest
Deputy Attorney General

OPINION NO. 57-291 NEVADA INDUSTRIAL COMMISSION—Increased benefits as contained in Chapter 48 of the 1957 Statutes apply only to temporary total disability and are applicable only to such disability arising after July 1, 1957. Modified by Opinion No. 295.

Carson City, July 23, 1957

Honorable T. L. Hutchings, Commissioner, Nevada Industrial Commission, Carson City, Nevada

Dear Mr. Hutchings:

This office is in receipt of a letter from your commission concerning the effect of changes in [NRS 616.585](#) as such changes are affected by AB 70 of the 1957 Legislature, which became Chap. 48 of the 1957 Stats. of Nevada.

[NRS 616.585](#), as amended, reads as follows:

Every employee in the employ of an employer, within the provisions of this chapter, who shall be injured by accident arising out of and in the course of employment, or his dependents as defined in this chapter, shall be entitled to receive the following compensation for temporary total disability:

1. During the period of temporary total disability, but in no event more than 100 months, 65 percent of the average monthly wage; and, if there be one or more persons residing in the United States dependent upon the workman during the time for which compensation is paid, an additional 15 percent for each dependent, but no more than 90 percent of the average monthly wage.

2. Any excess of wages over \$250 a month shall not be taken into account in computing such compensation.

OPINION

It is apparent that this amended law refers only to temporary total disability as specifically set out in [NRS 616.585](#). This answers your first question as to what sections of NRS, Chap. 616, are affected by the amendment.

Your second question as to the effective date of the legislation is answered by stating that only such disability as arises after July 1, 1957, would be entitled to the increased benefit.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

OPINION NO. 57-292 CONSTITUTIONAL LAW; INSANE PERSONS—Section 2 of Chapter 101 of 1957 Statutes of Nevada unconstitutional. Commitment of insane persons without due legal procedure repugnant to the Constitution of Nevada.

Carson City, July 24, 1957

Honorable A. D. Jensen, District Attorney, Reno, Nevada

Dear Mr. Jensen:

You have inquired of this office as to the constitutionality of Sec. 2 of Chap. 101 of the 1957 Stats. of Nevada. The section reads as follows:

Sec. 2 [NRS 433.240](#) is hereby amended to read as follows:

433.240 Temporary commitment to the hospital may be made under the following circumstances:

1. At such times as the district judge for a particular county may not be available, the emergency hospitalization of a person who suddenly becomes acutely ill mentally, from any cause other than as a result of excessive use of alcohol, habituating drugs or opiates, may be authorized by two physicians within the county, who shall certify under oath the need for immediate admission and commitment of the patient as an emergency patient for a period of not more than 10 days. The certificate committing any person who is a patient in a general hospital shall be accompanied by a clinical abstract including a history of illness, diagnosis, treatment and the names of relatives or correspondents. A copy of such certificate shall forthwith be delivered to the county clerk. No person charged with a crime shall be committed pursuant to this subsection.

OPINION

In order to approach this highly important problem from a legal viewpoint, it becomes necessary to ascertain whether the Constitution of Nevada provides for the commitment of mentally ill persons. We need seek no further than Art. VI, Sec. 6, of the Constitution of Nevada, citing the pertinent provision, it reads:

Section 6. The District Courts in the several judicial districts of this State shall have original jurisdiction in all cases in equity; * * * also, in all cases relating to the estates of deceased persons, and the *persons* and estates of minors and insane persons; * * *. (Italics supplied.)

It becomes apparent then that the power to commit insane persons is, by the Constitution, delegated to the judicial branch of our State Government. The wisdom of this must be at once apparent, for submission of such matters to the judiciary throws about the person sought to be committed a protective cloak which meets the due process provisions of the State and National Constitutions. It arose as a result of great abuses which stem from the dark ages—the commitment of completely sane persons to institutions by unconscionable relatives in order that their fortunes or their estates might fall into the hands of those gaining their commitment. The establishment of legal procedures for commitment through judicial channels, with the necessity of competent medical proof, and with opportunity for the person sought to be committed to refute through evidence and testimony, the charge of insanity, has relegated such practices to the limbo of the star chamber and the torture rack.

It is only necessary to make a cursory study of the cited section to discover the absence of those legal procedures which would bring the Act within the four corners of the Constitution. There is no provision for filing a petition for commitment; there is no provision for notice or even transmission to the person to be committed the knowledge that the commitment is sought; there is no provision that the procedure called for by the Act is preliminary to subsequent legal proceedings; there is no provision whereby the alleged mentally ill person could establish his or her sanity; there is no provision that the examining physicians are to be licensed doctors of medicine in Nevada; it makes no provision for any court procedure nor does it require a court order for commitment. In short, the Legislature has removed, by this legislation, the safeguards that have been thrown around those sought to be committed for insanity, and has delegated judicial powers to those having no judicial standing.

Art. III, Sec. 1 of the Constitution provides:

Section 1. Three Separate Departments; Separation of Powers. The powers of the government of the State of Nevada shall be divided into three separate departments,—The legislative,—the executive, and the judicial; and no persons charged with the exercise of powers properly belonging to one of these departments shall exercise any functions pertaining to either of the others except in the cases herein expressly directed or permitted.

It thus becomes clear that the legislative branch of our government has, by the Act in question, delegated the exercise of functions pertaining to the judiciary to persons, who by the nature of the Act, become quasi-executives of the executive arm of the State Government. This it cannot do.

The rule is well settled that the judicial power cannot be taken away by legislative action. Any legislation that hampers judicial action or interferes with the discharge of judicial functions is unconstitutional. It is the general rule that the Legislature is powerless to confer judicial duties on nonjudicial officers where the State Constitution divides the powers of government into distinct departments. (*Denver v. Lynch*, 92 Colo. 102, 18 P.2d 907). It is also well settled that ministerial officers are incompetent to receive grants of judicial power from the Legislature, and their acts in attempting to exercise such powers are nullities. (*Denver v. Lynch*, supra.)

In the case of *Meagher v. Storey County*, [5 Nev. 244](#), the Supreme Court declared unconstitutional an Act which attempted to give to County Recorders the powers and duties of committing magistrates. The court in its opinion pointed out:

But section thirty-eight of the law referred to unmistakably gives to the several recorders of the state all the authority of the committing magistrate; the jurisdiction and right to examine and hold to answer all offenders upon charges for the violation of the general criminal laws of the state—a jurisdiction entirely beyond that which the Constitution authorizes the Legislature to confer upon them. * * * Such being the case, it follows that he can derive no advantage from such law, for an unconstitutional law is no law at all. It is, so far as he is concerned, as if it had never been adopted by the Legislature.

The Act commented on in the Meagher Case, and the present Act, are analogous to the degree that the powers therein sought to be delegated by the Legislature were beyond its constitutional power to delegate.

But it seems to this office that the provision of the Constitution of Nevada (Art I, Sec. 1) which provides that all men are, by nature free and equal, and have certain inalienable rights, among which are those of enjoying and defending life and liberty * * *, is seriously threatened, if not in fact nullified, by the legislation here in question.

It also enters the minds of free men that the Fifth and Fourteenth Amendments to the Constitution of the United States and Art. I, Sec. 8, of the Constitution of Nevada, providing that persons may not be deprived of life, liberty or property, without due process of law, would be violated by the procedure contemplated in the Act. Due process of law, as adopted in the United States Constitution, and as understood in the Common Law of England, and by inheritance, the common law of the several states, means that a person shall have his day in court, an opportunity to be heard, and a trial of the right claimed by the person charging and controverted by the person charged, with the right of each to introduce evidence to sustain his position in the controversy.

In the case of *In Re Michael Gannon*, 5 LRA 359 (Rhode Island 1889), a case which supports the view of this office, the guardian of Gannon petitioned the Supreme Court of Rhode Island for a writ of habeas corpus to obtain the latter's release from the Butler Hospital for the insane. Gannon had been committed at the instigation of his wife and under a Rhode Island law which provided that commitment could be had on the certification of two physicians of good standing that such person was insane. The petition alleged that the law was void because it was in conflict with Art. I, Sec. 10 of the Constitution of Rhode Island and the Fourteenth Amendment to the Constitution of the United States.

The court stated that the only safeguard against improper commitment contained in the Act in question was the certificate of two practicing physicians, which certificate could be given *ex parte* (as under the Nevada law). The court stated that it might not be prepared to say the law was void if it were intended for temporary detention, preliminary to or pending a proper judicial inquiry. But in the Rhode Island Act, as in the Act here in question, no such provision was made. The court concluded, "Our conclusion is that the provisions under which the said Michael Gannon is held are unconstitutional, and that the writ should issue."

This office strongly feels that legislation of the type in question is an open invitation for the involuntary commitment of persons who may or may not be mentally ill. It raises serious legal questions as to the legal responsibility of one who takes into custody a person so adjudged insane and delivers him or her into the hands of the authorities at the State Hospital, and the legal responsibility of one who accepts such person from the delivering authorities.

For the reason heretofore set forth, it is the opinion of this office that Sec. 2 of Chap. 101 of the 1957 Stats. of Nevada is unconstitutional.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

OPINION NO. 57-293 FISH AND GAME COMMISSION—Individual Commissioners have authority to incur travel and per diem expenses prior to submission to executive board. Executive board has power to check and pass on such expenditures.

Carson City, July 26, 1957

Mr. Frank W. Groves, Director, State Fish and Game Commission, 51 Grove Street, Reno, Nevada

Dear Mr. Groves:

You have requested of this office an opinion as to the authority of individual Fish and Game Commissioners to incur expenses attendant upon their official duties without first submitting such proposed expenditures to the executive board of your commission.

OPINION

It is necessary in arriving at a conclusion to first peruse and study the applicable provisions of the Nevada Revised Statutes. How are the members of the Fish and Game Commission selected? The pertinent statutes which fully explain this procedure are 501.120, 501.125 and 501.130.

501.120. State board of fish and game commissioners: Creation; composition. There is hereby created the state board of fish and game commissioners, which shall consist of 17 members, one from each of the counties of the state.

501.127. Qualifications of members. Each member shall be a citizen of the State of Nevada, and an actual, bona fide resident of the county from which he is selected.

501.130. Election and terms of nonpartisan members.

1. At the general election in 1948, there shall be elected in each county of the state, on a nonpartisan ballot, one person as state fish and game commissioner.

2. The term of office of each commissioner first elected at the 1948 general election shall be:

(a) From the counties of Elko, Lincoln, Nye, Esmeralda, Lyon, Eureka, Pershing and Washoe, 2 years.

(b) From the counties of White Pine, Clark, Mineral, Douglas, Lander, Churchill, Ormsby, Humboldt and Storey, 4 years.

3. After the expiration of the terms designated in subsection 2, the term of office of each commissioner shall be 4 years.

These men then are elected officials, responsible to the voters of their county. It is to be presumed that a duly elected official will carry out the duties of his office in the manner prescribed by law, and according to the dictates of his conscientious opinion as to what those duties entail.

We next turn to that provision of the statutes which provides for the compensation and expenses of the elected commissioners. [NRS 501.135](#) was amended by Chap. 119 of the 1957 Stats. It reads:

501.135. Members shall serve without salary, but shall be allowed per diem expense allowances and travel expenses as fixed by law.

Who is to determine the necessity for incurring the per diem and traveling expenses set forth in the foregoing statute. We think it plain that it must be the individual commissioner. He has only concurrent jurisdiction with the other 16 commissioners, it is true, but matters must necessarily come to his attention which he might well believe warrants an "on-the-spot" investigation. The time required to contact the executive board and to receive its permission to proceed might well bring about a failure of the proposed investigation.

We feel that the executive board has, under [NRS 501.170](#), a check-rein on unwarranted expenditures. It reads:

501.170. Approval of expenditures by executive board. All accounts for expenditures made or incurred by the commission, the executive board, or by any member of the commission pursuant to the provisions of this Title shall be approved by the executive board. Upon being further approved by the state board of

examiners, warrants for the respective amounts shall be drawn on the state treasurer.

It is clear that under this provision the executive board could deny a voucher submitted by individual commissioners for expenses incurred in travel and per diem. In view, however, of the elective status of the commissioner, such power should be exercised only in clear and palpable violations of the intent of the law.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

OPINION NO. 57-294 STOCK COMMISSIONERS, STATE BOARD OF—Stock inspector or detective and brand inspector are distinct offices and not to be combined in one person.

Carson City, July 29, 1957

Mr. Edward Records, Executive Officer, State of Nevada, Department of Agriculture, 118 West Second Street, P. O. Box 1027, Reno, Nevada

Dear Mr. Records:

We are in receipt of your letter of July 23, 1957, requesting an opinion of this office upon questions hereinafter presented.

The statutes (pertinent portions hereinafter quoted) provide that stock inspectors and detectives may make arrests, but do not provide that brand inspectors may make arrests.

QUESTIONS

Question No. 1. Are brand inspectors authorized under the law to make arrests?

Question No. 2. If the preceding question is answered in the negative, may brand inspectors be also appointed as stock inspectors and detectives, and thus be authorized to make arrests?

OPINION

A careful study of the pertinent sections has led to the conclusion that both questions must be answered in the negative.

Chap. 561 NRS, is entitled "State Board of Stock Commissioners." Generally, it provides for the creation of the State Board of Stock Commissioners, and defines their duties. Generally, the provisions of this chapter may be summarized as protective of the livestock industry.

561.220. Inspectors: Appointment; bonds; compensation.

1. The board shall appoint such inspectors as may be necessary. Such inspectors shall be paid from the stock inspection fund.

2. Before entering upon the duties of his office, each inspector shall file a bond with the board in the sum of \$1,000, payable to the state and conditioned for the faithful performance of his duties. The bond shall be approved by the board.

561.230 provides as follows:

561.230. Stock inspectors, detectives: Appointment; powers. The board may appoint such stock inspectors and detectives as are necessary for the protection of the livestock interests of the state, and such inspectors and detectives shall have the same power to make arrests as any other peace officer, but must not receive any fee or emolument therefor as such from the state or any county.

Chap. 565 provides the manner of brand inspection, it creates districts, provides for brand inspectors and defines their authority. The provisions of this chapter are also under the administration of the State Board of Stock Commissioners.

565.050 NRS provides as follows:

565.050. Inspectors: Appointment; compensation; expenses; bonds.

1. The board may appoint such properly qualified inspectors and deputies as it deems necessary for carrying out the provisions of this chapter and fix their compensation upon a salary, per diem or other equitable basis.

2. Such inspectors and deputies may also be allowed traveling and subsistence expenses necessary to their official duties.

3. Any inspector so appointed shall, before entering upon his duties, file a surety bond, in the sum of \$1,000, payable to the state for the faithful performance of his duties, with and to be approved by the board. In case of emergency, deputy inspectors to work under the supervision of regularly appointed and bonded inspectors may be employed for a period of not to exceed 10 days without being so bonded.

4. All salaries, wages or other compensation and expenses of inspectors and deputies allowed under the provisions of this section shall be paid from the stock inspection fund.

From the content of the statutes, it is clear that the answer to the first question is in the negative, for by a study of the chapter of duties the brand inspectors are clear, and the manner in which those duties are to be performed, is clearly provided.

The brand inspectors have such powers as are enumerated and those reasonably necessary to carry out the enumerated powers, and none other. *See: First National Bank of San Francisco v. Nye County*, [38 Nev. 123](#); 145 P. 932. *State v. McBride*, [31 Nev. 57](#), 99 p. 705. *State v. Boerlin*, [30 Nev. 473](#), 98 P. 402.

The conclusion as to question No. 2 is more difficult.

The qualifications of "stock inspectors and detectives" are not clearly set out; neither are the qualifications of brand inspectors clearly set out, but by a study of the provisions of the entire statute we apprehend the legislative intent that the officers formerly mentioned are essentially police officers in qualification and that their principal duty is to discover crime as to the livestock industry; whereas, the officers lastly mentioned are essentially stockmen with knowledge of brands and the control of livestock.

We also observe and point out, that upon an inspection of brands, provision is made for the approval of movement of that portion of the herd that may properly be approved, and provisions are made by which that portion of the herd that may not be approved, will be returned to the possession of the person entitled thereto.

We also point out that both types of inspectors are employed by and render reports to the State Board of Stock Commissioners, which is in effect a clearing house, by which the detectives may be alerted, to make a further investigation of any suspicious circumstances that may have been discovered by the brand inspectors.

We also point out that the brand inspectors are usually called to an appointment for brand inspection, by the owner, or someone more or less permanently located within a community, and that if he is attempting to break the criminal laws, respecting livestock, he is not so likely to float away with the full speed of a motor car, as are others that might be apprehended by the detectives.

From the foregoing, showing that the qualifications, training, duties, and manner of operation of the two sets of officers are not identical by any means, it follows, as a matter of statutory construction, that the Legislature did not intend that one individual could be appointed in both capacities. Nothing in the many regulatory provisions indicates that it was intended that one person could be so authorized.

For the foregoing reasons, we therefore answer the second question in the negative also.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: D. W. Priest
Deputy Attorney General

OPINION NO. 57-295 MODIFIES OPINION NO. 291, NEVADA INDUSTRIAL COMMISSION—Employees injured by accident arising out of and in the course of employment, who are temporarily totally disabled and whose disability had not exceeded 100 months on July 1, 1957, are entitled to increased benefits under Chapter 48 of 1957 Statutes.

Carson City, July 31, 1957

Honorable Guy PERKINS, Chairman, Nevada Industrial Commission, Carson City, Nevada

Dear Mr. Perkins:

A review of this office's opinion No. 291 convinces us that in the interests of the general welfare and in view of principles of statutory construction which impose a liberal construction on statutes affecting the public health or morals, that the opinion should be modified to the extent of bringing those injured by accident arising out of and in the course of their employment, who were drawing benefits for temporary total disability prior to July 1, 1957, and whose period of such disability had not run as to the 100-month period provided for in [NRS 616.585](#), within the purview of AB 70 of the 1957 Legislature. (Chap. 48 of the 1957 Stats.)

A review of this legislation, and a discussion of its purpose with its authors, convinces the Attorney General that the Act falls within a statutory construction which supports the intent of the Legislature.

A strict or liberal interpretation will depend upon a combination of many factors. Broadly speaking, a strict or liberal interpretation will be made with reference to four differing elements. They are: (1) With reference to former law; (2) With reference to the person and rights affected; (3) With reference to the letter and language of the statute, and (4) with reference to the purposes and objects of the statutes.

With reference to the former law the wording of the first paragraph of the amendment does not change from that of the original Act. Sunderland, in his work on statutory construction, points out that those provisions of the original Act or section repealed in the amendment are retained. Therefore, the words "who shall be injured" are not prospective but refer to any person who has or shall be injured, for that was the meaning of the original section.

As to the person or rights affected, we are dealing here with workmen's compensation, and therefore with individuals subjected by the nature of their employment to hazards and dangers not comparable to those encountered in other professions. The courts have held that often the rights of individuals are of such great importance that an interpretation favoring such rights will be preferred.

The letter and language of the statute make it clear that its purpose is to increase benefits to those persons eligible to receive benefits under [NRS 616.585](#). It would seem unjust, upon due reflection, for a person injured on June 30, 1957, facing perhaps 100 months of temporary total disability, to receive the benefits under 616.585 before amendment, when a coworker injured the next day would receive the increased benefits.

An extremely important phase of statutory interpretation is that of adapting new legislation into the existing scheme. It is primarily through the Legislature that the legal system is now able to keep pace with the new and changing social and economic conditions. An interpretation in concord with legislative intent is therefore important if the legislation met constitutional requirements. The intent of the Legislature by the enactment of AB 70 was to increase benefits to all presently temporarily totally disabled.

Workmen's compensation statutes were enacted for the purpose of providing security to the laboring man and his dependents by distributing the economic loss resulting from injuries and death in the course of employment upon industry and the consuming public. In practically all jurisdictions, the courts have become committed to a liberal interpretation of workmen's compensation laws so that the humane and beneficial purposes of legislation may be accomplished.

From the legal viewpoint there is no constitutional objection to a retroactive statute which makes a reasonable change in remedy. As was pointed out in *Henry v. McKay*, 3 P.2d 145, remedial legislation is valid if it cuts off no vested right, and statutes providing new remedies are valid as statutes providing new remedies, and there is no rule against applying them to past transactions. Where the statute affects inchoate rights or is remedial in nature, it will be construed retroactively if the legislative intent clearly indicates that retroactive action is intended.

But here there would be no retroactive action so far as the amount of the award is concerned. Those deriving benefits for temporary total disability prior to July 1, 1957, and whose period of disability had not run, would be subject to the \$200 limitation of [NRS 616.585](#) up to and including June 30, 1957, but would, commencing with July 1, 1957, be subject to the \$250 limitation of the 1957 Amendment known as Chap. 48 of the 1957 Stats.

MODIFIED OPINION

It is therefore the opinion of this office that Attorney-General's Opinion No. 291, dated July 23, 1957, should be modified so as to provide:

1. That employees who are temporarily totally disabled by injury arising out of and in the course of their employment and who were injured prior to July 1, 1957, but who have not exhausted the term for which benefits run, should draw benefits based on the \$200 limitation of [NRS 616.585](#) up to and including June 30, 1957, and then for the term of their benefits extending beyond June 30, and commencing July 1, 1957, draw benefits based on the \$250 limitation of Chap. 48 of the 1957 Stats.

2. That all employees who are temporarily totally disabled as a result of injury arising out of and in the course of their employment which injury occurs subsequent to June 30, 1957, shall be entitled to benefits based upon the \$250 limitation contained in Chap. 48 of the 1957 Stats., for the term not to exceed 100 months.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

OPINION NO. 57-296 DISTRICT JUDGES—Pensions. The amount of pension to which a retiring district judge is entitled is based upon the combined salaries paid him for services as both a district judge and an ex officio circuit judge.

Carson City, August 5, 1957

Honorable Peter Merialdo, State Controller, State of Nevada, Carson City, Nevada

Dear Sir:

We acknowledge receipt of your letter of July 26, 1957, requesting the opinion of this office as to the amount of pension to which a retiring district judge is entitled under the provisions of [NRS 3.090](#). Specifically, your inquiry is as follows:

QUESTION

Is the amount of two-thirds the sum received as salary for his judicial services during the last year therefor, predicated on the salary of district judge or on the salary as district judge and circuit court judge combined?

OPINION

District courts of this State are constitutionally created, subject to the power of the Legislature, to determine the number of districts and judges necessary therefor, and also fix the geographical boundaries of each. Constitution of Nevada, Art. VI. The powers and duties of the judges who preside over these courts are provided for both under the Constitution and by statute, as well as those certain inherent powers appertaining to all courts.

In addition to the usual duties performed by district judges, they are also required under the provisions of [NRS 3.040](#) to serve as ex officio circuit judges, said section reading as follows:

1. The district judges provided for in [NRS 3.010](#) shall also serve as ex officio circuit judges, and in that capacity shall perform such judicial duties as may be designated by the chief justice of the supreme court as hereinafter provided.
2. The chief justice of the supreme court shall seek to expedite judicial business and to equalize the work of the district judges, and shall provide for the assignment of any district judge to another district court to assist a court or judge whose calendar is congested, to act for a district judge who is disqualified or unable to act, or to sit and hold court where a vacancy in the office of district judge has occurred.
3. From July 1, 1955, until the 1st Monday in January 1959, the district judges of the state, for their services as ex officio circuit judges, shall receive the following annual salaries:

First judicial district.....	\$6,000
Second judicial district	7,800
Third judicial district	7,800
Fourth judicial district.....	6,000
Fifth judicial district	6,600
Sixth judicial district.....	6,000
Seventh judicial district	6,000
Eighth judicial district.....	5,000

4. Money to pay the salaries of the district judges for their services as ex officio circuit judges shall be provided by direct legislative appropriation from the general fund and shall be deposited in the district judges' salary fund. Such salaries shall be paid in the same manner as salaries are paid for services as district judges. After the 1st Monday in January 1959, the district judges shall receive no salaries for their services as ex officio circuit judges.

It is noted from the above-quoted Act that the duties therein required of district judges as ex officio circuit judges are no different by nature or otherwise than those they had, previous to passage of the Act, performed as district judges in the State since its admission. In fact, they are some of the very duties formerly required of all district judges in the State and which are now placed in a separate classification. Not only are the duties performed by an ex officio circuit judge of the same nature as those he performs as a district judge, but his salary is paid from the same fund. This section does not set up another type of court in our already constitutionally provided for judicial system, but, instead, evinces the clear intent of the Legislature to confine or limit the duties of district judges to those arising within their own districts, and to bring all of those they are assigned to perform in other districts under the category of additional duties.

According to good authority, the Legislature, except as limited by the State Constitution, has power to enact laws imposing additional duties on a judge during his term of office which he is obliged to perform. *Moore v. Nation*, 103 P. 107 (Kans.). We find no constitutional obstacle to such legislation in this State, and feel that it was within the legislative power to assign the newly classified duties to district judges to be performed as additional duties in their capacities as ex officio circuit judges. But one serving in an ex officio capacity does so by virtue of the fact that he holds another office. 15A Words and Phrases 392. Consequently, despite the fact that district judges are required by law to perform additional duties in another judicial district in the capacity and under the designation of "Circuit Judges," they nevertheless, as we see it, remain and continue to be district judges.

However, the above construction is not alone sufficient to answer the question hereinabove presented. Certain provisions contained in other sections must also be construed. [NRS 3.090](#), which sets up the basis for computing the amount of annual pension to be paid retiring district judges, reads as follows:

1. Any judge of the district court who has served as a justice of the supreme court or judge of a district court in any one or more of those courts for a period or periods aggregating 20 years and shall have ended such service shall, after such service of 20 years and after reaching the age of 60 years, be entitled to and shall receive annually from the State of Nevada, as a pension during the remainder of his life, a sum of money equal in amount to two-thirds the sum received as salary for his judicial services during the last year thereof, payable in monthly installments out of any fund in the state treasury not otherwise appropriated.

2. Any judge of the district court who has served as a justice of the supreme court or judge of a district court in any one or more of those courts for a period or periods aggregating 15 years and shall have ended such service shall, after such service of 15 years and after reaching the age of 60 years, be entitled to and shall receive annually from the State of Nevada, as a pension during the remainder of his life, a sum of money equal in amount to one-third the sum received as salary for his judicial services during the last year thereof, payable in monthly installments out of any fund in the state treasury not otherwise appropriated.

3. Any judge of the district court who desires to resign pursuant to the terms hereof shall do so by notice in writing to the governor, and shall file forthwith with the state controller and the state treasurer an affidavit setting forth the fact of his resignation, the date and place of his birth, and the years he has served in either or both of the courts above mentioned, and thereafter shall file with the state controller, prior to receiving his monthly warrant, an affidavit stating that he is a resident of this state.

4. Upon resigning as above provided and the filing of the affidavits mentioned, by any person entitled so to do pursuant hereto, the state controller shall draw his warrant, payable to the individual who has thus resigned, upon the state treasurer for the sum due such person, and the state treasurer shall pay the same out of any fund not otherwise appropriated.

5. The faith of the State of Nevada is hereby pledged that this section shall not be repealed or amended so as to affect any judge of the district court who may have resigned pursuant hereto.

Under paragraphs (1) and (2) of said section as quoted, this amount is based upon a fraction of the salary received during the last year of *judicial services*. It readily becomes apparent that the meaning of the term underscored is essential to make a final determination of this amount. And the problem becomes more complex when it is considered that a definite part of said salary is received for services as a district judge and a definite part for services as a circuit judge. Specifically, the question resolves itself into a determination as to whether the amount of pension to be paid is based upon only one or both of these salaries.

We have found no definition of the term “judicial services” which is applicable here, although numerous definitions have been given to each of the words constituting it. “Judicial” has been defined as “pertaining or appropriate to courts of justice; or to a judge thereof, as judicial power; a judicial mind.” Webster’s New International Dictionary (Second Edition). “Of or belonging to a court of justice; of or pertaining to a judge; pertaining to the administration of justice; judicial act; an act involving the exercise of judicial power.” Century Dictionary. “Whatever emanates from a judge as such, or proceeds from a court of justice is judicial.” *Harding v. McCullough*, 19 N.W.2d 613.

“Services” has been defined as “The deed of one who serves; labor performed for another; duty done or required; office.” “Performance of official duties for a sovereign or state; official function; as public or secret service.” Webster’s New International Dictionary (Second Edition).

Combining these definitions as applicable here, we deduct that “judicial services” consist of the performance of any act or acts which the law requires of a judge in performing the duties of his office. Tested by this definition, it is obvious that the acts of a district judge in performing the duties of his office as required by law in his capacity as both a district judge and as an ex officio circuit judge constitute and are judicial services, and we believe that the Legislature so intended.

It becomes important also to keep in mind the general rule that laws creating the right to pension must be liberally construed with the view of promoting the objects of the lawmaking body, and that their force and effect are not to be confined to the literal terms of the statute. 70 C.J.S. 425.

It is, therefore, the opinion of this office that the amount of annual pension, subject to monthly payments, to which a retiring district judge is entitled upon attaining eligibility therefor, is either two-thirds or one-third, as the case may be, of the combined maximum salary received during his last year in office for services as both a district judge and an ex officio circuit judge.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Deputy Attorney General

OPINION NO. 57-297 MOTOR VEHICLE DEPARTMENT—New and used vehicle dealers. Dealers in used vehicles may not advertise “new vehicles” or “new cars” in the absence of a franchise from the manufacturer or proper certification from a franchised dealer in new cars that the used car dealer is an associate or subdealer.

Carson City, August 8, 1957

Mr. Richard A. Herz, Director, Department of Motor Vehicles, Carson City, Nevada

Dear Mr. Herz:

You have directed to this office an inquiry as to whether a used car dealer in Nevada may advertise new cars for sale. The motor vehicle laws of this State are extensive in their ramifications and the question posed requires a careful analysis of the Act and of the intent of the Legislature in enacting it before this office can arrive at the proper answer.

Under Chap. 355 of the 1957 Stats. of Nevada, powers over motor vehicles and watercraft once exercised by the Public Service Commission are transferred to the Motor Vehicle Department. This includes vehicle licensing and registration, and the power to promulgate rules and regulations. The Chairman of the Public Service Commission is established under the new law as ex officio director of the Department of Motor Vehicles until July 1, 1959.

After specifying the manner and procedure for the registering and licensing of motor vehicles to private owners ([NRS 482.205](#)-482.315, as amended by Chap. 305, 1957 Stats.) the law concerns itself with the issuance of special plates to dealers and manufacturers. It is apparent that in applying for a dealer's license and plate the person or corporation of company or association so applying must show on his application that he is either a used car dealer or a new car dealer. Aside from this the contents of the application are the same for used car dealers and new car dealers; the issuance of license plates and their display, the issuance of temporary permits and the posting of bond, apply alike to both. (See [NRS 482.320](#)-482.345, as amended by Chap. 305, 1957 Stats.)

But the application of a new car dealer for a dealer's license plate has to be accompanied by an instrument from the manufacturer certifying that the applicant has a franchise to sell the manufacturer's brand of motor vehicle. [NRS 482.350](#), as amended by Chap. 305, 1957 Stats., reads:

1. A dealer license plate or plates shall not be applied for by, or furnished to , any dealer in new vehicles, trailers or semi-trailers unless the dealer shall first furnish the department an instrument executed by or on behalf of the manufacturer certifying that the dealer is an authorized dealer for the make of vehicle concerned.
2. As associate or subdealer, not operating under direct appointment or authorization by the manufacturer, shall furnish the department with an instrument executed by or on behalf of a dealer certified as provided in this section, the instrument certifying that the associate or subdealer is an authorized associate or subdealer for the make of vehicle concerned.

[NRS 482.360](#)(1) provides:

1. Any manufacturer of or dealer in vehicles in this state qualified to receive a dealer's license and general distinguishing number or symbol under the provisions of [NRS 482.320](#) to [482.350](#), inclusive, shall be entitled to register new vehicles of the make for which he is a licensed and franchised dealer in his name upon the payment of only the registration and licensing fee as provided in this chapter without being subject to the payment of personal property taxes; but not more than five vehicles may be so registered.

This clearly distinguishes that the Legislature provided a line of legal demarcation which separates the used car dealer and the new car dealer. One could, of course, be both a new car dealer and a used car dealer, if the Motor Vehicle Department determined that the used car dealer had a franchise to sell new cars, or if the used car dealer had a certificate from a franchised dealer to act as an associate or subdealer in the sale of new cars under the new car dealer's franchise.

The reason for this line of demarcation must be apparent upon due reflection. A dealer in new cars must satisfy the manufacturer of his financial responsibility and his general reputation for integrity, before the manufacturer will grant him a franchise to sell its product. A new car carries

with it certain guaranteed services which must be carried out and performed by the new car dealer if he is to retain his franchise. He is put to the expense, in most instances, of maintaining service and parts departments. He must maintain show rooms and a staff to exhibit and sell the manufacturer's product. All these things place him in a position where he must maintain the manufacturer's price in order to realize a profit.

None of these requirements as to the furnishing of dealers' license plates or the registration of vehicles used by franchised new vehicle dealers applies to used car dealers. Their operation is entirely dissimilar from that of dealers in new vehicles. They, for the most part, exhibit cars on open lots; they are not franchised by the manufacturer; they can set the price of their cars at any amount depending on their individual determination of the profit to be derived from the sale; and their financial success is determined by day-to-day transactions which cause fluctuation in the used car market which has no preordained stability as in the case in the new car field where established retail prices must be sustained.

The public has a right to depend on "new car" advertisements as meaning a car that has not been driven and as a car coming from a dealer franchised by the manufacturer. It has the right, under the law, to expect that the Motor Vehicle Department has issued new car dealer license plates only to such franchised dealers.

It is, therefore, the opinion of this office that a dealer in used cars, unless he can furnish the instrument required by [NRS 482.350](#) certifying that he is an authorized dealer, subdealer or associate for the make of vehicle concerned, should not be furnished by the Motor Vehicle Department with a dealer's license plate as required by [NRS 482.350](#), as amended by Chap. 305, 1957 Stats., and that the advertising of "new cars" by used car dealers, in the absence of the furnishing of such dealer's license plates by the Motor Vehicle Department, is a violation of the law.

Suitable rules and regulations in accordance with this opinion should be adopted and distributed by the Motor Vehicle Department, and a reasonable time given to comply therewith, before legal action is taken to punish violators.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

OPINION NO. 57-298 Insurance, Department of—Contracts termed "warranty" or "guaranty" respecting automobiles, issued by company not dealer, are contracts of insurance, and company is under jurisdiction of State Department of Insurance.

Carson City, August 20, 1957

Mr. Paul Hammel, Insurance Commissioner, State of Nevada, Carson City, Nevada

Attention: Mr. Lawrence G. Means, Chief Deputy Commissioner.

Dear Mr. Hammel:

Your inquiry of June 25, 1957, later documented with certain literature and photostatic copies of contracts, requests an opinion of this department respecting the applicability of the insurance laws and supervisory jurisdiction of the insurance department of the State of Nevada, upon two companies that are now and for a number of months have been doing business in the State of Nevada.

The two companies involved are the United Service Guarantee Corporation, incorporated under the laws of the State of California, and Auto Warranty Company, incorporated under the

laws of the State of Georgia. Both foreign corporations, we understand, are doing business as hereinafter more fully described in the Las Vegas area.

Under the provisions of [NRS 80.010](#) it is provided that foreign corporations before entering this State for the purpose of doing business herein shall qualify as there provided. As of August 5, 1957, an examination of the records of the Secretary of State fails to disclose that either of the two designated corporations have qualified to do business in Nevada. [NRS 80.210](#) provides penalties for failure to comply with the qualification requirements. Assuming, however, that the two named corporations will qualify in the manner required by law, we next turn to the details of the operation preliminary to answering the question under consideration.

QUESTION

Are the contracts that are issued by these corporations, although termed “warranties” and “guaranties,” actually contracts of “insurance” within the meaning of the insurance laws of the State of Nevada?

OPINION

As to each corporation detailed written contracts are issued, by dealers in new and used automobiles, to the purchasers of those automobiles, which seek in individual cases to indemnify the purchaser of the automobile from loss for repairs, replacements and labor, as to certain enumerated parts of the car purchased, under limitations as to the use of the car and as to the period of time that the protection shall remain effectual. The relationship between dealer and corporation is one in which the corporation from time to time inspects the motor vehicles that are offered for sale and designates to the dealer those cars upon which it offers to enter into a written contract, running to the purchaser of the car. Upon sale of the car a temporary “warranty” is issued by the dealer as to Auto Warranty Company and a temporary “guarantee” is issued by the dealer as to United Service Guarantee Corporation. The dealer then communicates the information respecting the sale to the corporation and pays the premium, which “guarantees” or “warrants” as aforesaid, and in due time (except as to those that are refused protection) the detailed contract showing the coverage and limitations is issued and transmitted to the buyer of the car. The dealer is also authorized, in certain instances, to issue the temporary “warranty,” or “guarantee,” without a previous inspection of the car, and the coverage, as formerly, is of a temporary nature. The confirmation to reduce the temporary protection to a detailed contract for an extended period of time must come from the company.

As applied to a sale of personalty, a “warranty” in a contract of sale is an undertaking, forming part of the transaction of sale, but collateral to it. *Great Atlantic and Pacific Tea Co. v. Walker*, 104 S.W.2d 627, at 632.

A “warranty” is a statement or representation made by the seller of goods, contemporaneously with and as a part of the contract of sale, though collateral to the express object of it, having reference to the character, quality or title of the goods, and by which he promises or undertakes to insure that certain facts are or shall be as he then represents them. *Hawkins v. Haynes*, 150 S.E. 442, at 443.

Where there is no privity of contract, there ordinarily is no warranty. In *Hegglblom et al v. John Wanamaker*, New York, 36 N.Y.S.2d 777, the court said: “Warranty is an incident of sale and there can be no ‘warranty’ where there is no privity of contract.” There is an exception to this rule in the case of chattels that are imminently or inherently dangerous, by which doctrine the warranty may go beyond the immediate grantee. *MacPherson v. Buick Motor Co.*, (New York 1916) 111 N.E. 1051. However, as to warrantor, it is always the seller, for a “warranty” in an incident to a sale. It would follow that the obligation for breach of warranty is that of the seller, for the sale is a transaction involving the buyer and seller only. This is not to say that a seller could not insure against risks incident to a warranty.

Likewise if the contingent obligation arises from a “guaranty,” the same persons are involved, and rights thereunder are necessarily limited to those in privity of contract.

For purposes of this opinion the terms may be regarded as synonymous. In *Commonwealth Cotton Oil Co. v. Lester*, 9 P.2d 738, the court said: “Originally the words ‘warranty’ and ‘guaranty’ were identical in signification and effect, and at the present time they are sometimes used interchangeably and with the same effect * * * in that each is alike an undertaking by one party to another to indemnify or make good the party assured against some possible defect. * * *.”

The terms “insurance contract,” and “doing an insurance business,” are defined by [NRS 682.050](#). The section reads as follows:

682.050. “Insurance contracts,” doing an insurance business” defined.

1. Except as provided in subsection 2, “insurance contract,” as used in this Title, shall be deemed to include any agreement or other transaction whereby one party, herein called the insurer, or company is obligated to confer benefit of pecuniary value upon another party, herein called the insured or the beneficiary, dependent upon the happening of a fortuitous event in which the insured or beneficiary has, or is expected to have at the time of such happening, a material interest which will be adversely affected by the happening of such event. A fortuitous event is any occurrence or failure to occur which is, or is assumed by the parties to be, to a substantial extent beyond the control of either party.

2. A contract of guaranty or suretyship is an insurance contract, within the meaning of this Title, only if made by a guarantor or surety who or which, as such, is doing an insurance business within the meaning of this Title.

3. “Doing an insurance business,” with the meaning of this Title, shall be deemed to include:

(a) The making, as insurer, or proposition to make, as an insurer, of an insurance contract; and

(b) The making, as guarantor or surety, of any contract of guaranty or suretyship as a vocation and not as merely incidental to any other legitimate business or activity of the guarantor or surety; and

(c) The doing of any kind of business, including a reinsurance business, specifically recognized as constituting the doing of an insurance business within the meaning of this Title; and

(d) The doing of or proposing to do any business in substance equivalent to any of the provisions of this Title.

4. In the application of this Title, the fact that no profit is derived from the making of insurance contracts, agreements or transactions, or that no separate or direct consideration is received therefor, shall not be deemed conclusively to show that the making thereof does not constitute the doing of an insurance business.

We call attention to subsection 3(b), respecting what may constitute “doing an insurance business.” It is clear that neither of these companies incurs an obligation under the contract as an incident to selling the motor vehicle, for the companies do not sell the motor vehicle. It is also clear that any warranty that the dealer may make respecting the motor vehicle that he sells, and any obligation that he may incur respecting a warranty, is incidental to the making of the sale. It is also clear that from the time the written contract takes effect, as to either company, the items there enumerated create a contingent obligation not of the dealer, but of the company. It is also clear that any warranty that the dealer may make at the time of the sale, if any, is a warranty upon items not covered in the written contract of the company, i.e., it is additional to those items set out in the written contract, upon which immediate coverage is afforded.

The contracts issued by the companies under study are contracts to indemnify against certain enumerated contingent losses, which contingent losses are to a substantial extent beyond the control of either party, the buyer of the car or the company.

An unconditional promise of indemnity is insurance. *State v. Western Auto Supply Company*, 16 N.E.2d 256.

The law looks beyond the title or name given to legal instruments, and looks to substance, to discover the true classification.

It is, therefore, our opinion, irrespective of whether the title of “warranty” or “guaranty” be used by the company, that such contractual obligations as here under study are in truth and fact contracts of insurance, and the companies are insurance companies under the supervisory jurisdiction of the Department of Insurance of the State of Nevada.

The question as stated is therefore answered in the affirmative.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: D. W. Priest
Deputy Attorney General

OPINION NO. 57-299 STATE FUEL TAX—Gasoline or other petroleum product shipped from point outside Nevada to storage tanks in Nevada loses its interstate character when it comes to rest in storage tanks, and is then subject to police and taxing powers of Nevada.

Carson City, August 22, 1957

Mr. Wm. H. Schmidt, Fuels Tax Supervisor, Nevada State Tax Commission, Carson City, Nevada

Dear Mr. Schmidt:

For the purpose of ascertaining when the fuel tax on certain petroleum products becomes effective you have asked this office to give you an opinion as to when fuel transmitted by pipelines from another state into Nevada loses its interstate aspect.

In order to more clearly present the problem, you have outlined the following facts: An oil company turns over certain gasoline gallonage to a railroad carrier’s pipeline in California for transmission to a point inside Nevada. Upon arrival in Nevada the gasoline is placed in storage tanks assigned to the oil company, where it is held until the trucks of the oil company, or common carrier trucks employed by the oil company, pick it up from the tanks for distribution. During the interval between the time the fuel is placed in the tanks and the time it is withdrawn the oil company pays terminal and storage fees to the railroad company.

Your exact question is as follows:

1. When does the interstate character of the shipment cease so that the fuel becomes a part of the oil company’s inventory:

- (a) On receipt into the tanks reserved for the oil company’s products, or
- (b) When the fuel is withdrawn from the tanks by the oil company for distribution?

OPINION

The term “interstate commerce” as defined under the National Petroleum Act is as follows: “715. A(3) The term ‘interstate commerce’ means commerce between any point in a state and any point outside thereof, or between points within the same state but through any place outside thereof, or from any place in the United States to a foreign country, but only insofar as such commerce takes place within the United States.”

There can be no doubt, therefore, as to the interstate nature of the transaction which places the fuel in the transmission pipes in California at one point and the transmission of such fuel to point

of destination in Nevada. The difficulty, if any, lies in determining when the interstate nature of the shipment terminates.

In the case of *Hall v. Nashville & C. R. Co.*, Fed. Cases No. 5940, 3 Am.Law 7, Rep. U. S. Cts. 79, it is stated that delivery of goods by a carrier is completed when there is nothing left to be done to finish the transportation.

In *Tad Screen Advertising v. Oklahoma Tax Commission*, 126 F.2d 544, it was held that when an article that has been transported in interstate commerce has arrived at a destination, and is there held for use or disposal, it passes under the protection of state law, and becomes subject to the taxing and police power of the state.

The facts here are not dissimilar in any major respect to those found in *American Steel & Wire Co. v. Speed*, 192 U.S. 500, where goods were shipped interstate for storage in a warehouse in a city selected as a distribution point, where the goods were then taken, assorted and delivered by a local transfer company as agent for the shipper. The court held that the state had the right to impose a merchant's tax on the nonresident manufacturing company because the goods stored in the warehouse had reached their destination, and were held in the state for sale. Of like import are the cases of *Lehigh and Western Coal Co. v. Junction*, 66 A. 923, and *Fleming v. Jacksonville Paper Co.*, 128 Fed.2d 395.

The leading case, however, and one exactly in point with the cited instance is *Atlantic Coast L. R. Co. v. Standard Oil Co.*, 275 U. S. 257, 72 L.Ed. 270. In this case the Standard Oil Company entered into yearly contracts for the delivery of its products to customers in the interior of Florida. Based on these needs the company shipped oil into Port Tampa, Tampa and Jacksonville, Florida, where it was stored in tanks. At different places in Florida, Standard Oil had bulk tanks with sufficient capacity to supply the immediate needs of its local customers. As the supply in these tanks became depleted they were refilled from the large tanks at Port Tampa, Tampa and Jacksonville. The oil was shipped by boat from outside Florida to the three designated cities, and after storage of an undetermined period was shipped in part via Atlantic Coast Line Railroad Co. to various points in Florida. The railroad had nothing to do with the boatload shipments. The Standard Oil Co. sought to enjoin the railroad company from charging interstate rates for shipments from the tanks to places in Florida, claiming that intrastate rates should apply. (Note that this is exactly the opposite of the position taken by that oil company in the present instance.)

Justice Taft, after stating the facts, went on to clearly establish the law in this, and in similar cases. He wrote:

It seems very clear to us on a broad view of the facts that the interstate or foreign commerce in all this oil ends upon its delivery to the plaintiff into the storage tanks or the storage tank cars at the seaboard, and that from there its distribution to storage tanks, tank cars, bulk stations and drivein stations, or directly by tank wagons to customers, is all intrastate commerce. This distribution is the whole business of the plaintiff in Florida. There is no destination intended and arranged for with the ship carriers in Florida at any point beyond the deliveries from the vessels to the storage tanks or tank cars of the plaintiff. There is no designation of any particular oil for any particular place within Florida beyond the storage receptacles or storage tank cars into which the oil is first delivered by the ships. The title to the oil in bulk passes to the plaintiff as it is thus delivered. When the oil reaches these storage places along the Florida seaboard, it is within the control and ownership of the plaintiff for use for its particular purposes in Florida. The plaintiff is free to distribute the oil according to the demands of its business, and it arranges its storage capacity to meet the future variation in its business needs at Tampa, Port Tampa, or Jacksonville, or St. Johns river terminal.

In further commenting on the distinction which established the transaction as one in interstate commerce only to the point where the oil was stored in the tanks, ready for removal by Standard Oil, Justice Taft stated:

The important controlling fact in the present controversy, and what characterizes the nature of the commerce involved, is that the plaintiff's whole plan is to arrange deliveries of all of its oil purchases on the seaboard of Florida so that they may all be there stored for convenient distribution in the state to the 123 bulk stations and to fuel oil plants in varying quantities according to the demand of the plaintiff's customers, and thence be distributed to subordinate centers and delivery stations, and this plan is being carried out daily. There is neither necessity nor purpose to send the oil through these seaboard storage stations to interior points by immediate continuity of transportation. The seaboard storage stations are the natural places for a change from interstate and foreign transportation to that which is intrastate and there is nothing in the history of the whole transaction which makes them otherwise, either in intent or in fact. There is nothing to indicate that the destination of the oil is arranged for or fixed in the minds of the sellers beyond the primary seaboard storages of the plaintiff company at Tampa, Port Tampa, Jacksonville, or the St. Johns river terminal. Everything that is done after the oil is deposited in the storage tanks at the Tampa destinations, or at the Jacksonville destinations is done in the distribution of the oil to serve the purposes of the plaintiff company that imported it. Neither the sellers who deliver the oil nor the railroad company that aids the delivery of the oil to the storage tanks and tank cars at the seaboard has anything to do with determining what the ultimate destination of the oil is, or has any interest in it, or any duty to discharge in respect to it, except that the railroad company, after the storage in Florida has been established for the purposes of the plaintiff company, accepts the duty of transporting it in Florida to the places designated by the plaintiff company.

He concluded, "We have no hesitation in saying that the nature of the commerce in controversy in this case was intrastate." Justice Taft also called attention to the case of *General Oil Co. v. Crain*, 209 U. S. 211, 52 L.Ed. 754, as a supporting authority.

Forms of state taxation whose tendency is to prohibit the commerce or place it at a disadvantage as compared or in competition with intrastate commerce and any state tax which discriminates against the commerce are familiar examples of the exercise of state taxing power in an unconstitutional manner, because of its obviously regulatory effect upon commerce between the states.

But it was not the purpose of the commerce clause to relieve those engaged in interstate commerce of their just share of state tax burdens, merely because of an incidental or consequential effect of the tax in an increase in the cost of doing business. (*See Western Livestock v. Bureau of Revenue*, 303 U. S. 250.) State taxation is not to be condemned because, in some manner, it has an effect upon commerce between the states, and there are many forms of tax whose burdens, when distributed through the play of economic forces, affect interstate commerce, which nevertheless fall short of the regulation of the commerce which the Constitution leaves to Congress.

In *Gregg Dyeing Co. v. Query*, 286 U. S. 473, 76 L.Ed. 1233, appellants sought to restrain the enforcement of the state statute known as the Gasoline Tax Act of 1930. The statute was assailed on federal grounds that it violated the commerce clause.

Gasoline was purchased by Gregg Dyeing Co. from states outside South Carolina. Its practice was to buy in bulk and to have gasoline shipped in interstate commerce to plaintiff's plant where the gasoline was unloaded into plaintiff's storage tanks for more than 24 hours and until needed. The court held the gasoline had come to rest when in tanks and therefore taxable.

It is, therefore, the opinion of this office that when fuel shipped from a point outside Nevada comes to rest in Nevada in tanks assigned to certain oil companies, and that thereafter the removal and distribution of the oil is at the discretion of the shipper, that the interstate nature of the transaction has ended and the taxing power of the State becomes immediately applicable.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

OPINION NO. 57-300 NEVADA STATE HIGHWAY DEPARTMENT—In acquisition of lands by Highway Department, or other state agency, either through purchase or eminent domain, burden of paying all accrued taxes thereon falls upon the owner.

Carson City, August 23, 1957

Honorable H. D. Mills, State Highway Engineer, State of Nevada, Carson City, Nevada

Dear Sir:

This is with reference to your inquiry of June 26, 1957, regarding responsibility for payment of taxes against lands acquired by the State Highway Department, and concerning which you request the opinion of this office. Specifically, your inquiry is as follows:

QUESTION

When lands are acquired from private owners by the State Highway Department for State use, either by purchase, condemnation proceedings or otherwise, is the department or the owner of the land acquired responsible for payment of the unpaid taxes levied against said lands?

OPINION

At the outset we note that under the provisions of [NRS 361.055](#), property owned by the State is exempt from taxes. The Highway Department being an agency of the State, any lands acquired by it likewise fall within this immunity. The collection of any taxes levied against property of the State used for highway purposes or otherwise is inconsistent not only with State law but with general law as well. This alone however does not answer the question as above stated. More cogent reasons exist for the conclusions hereinafter stated.

On the first Monday of September of each year a tax lien attaches to all property located within each county of the State. [NRS 361.450](#). This is prior to expiration of the period provided by statute (July 1-Dec. 31) for completing assessment of said property, and also to the time when the tax rate is levied. This lien is in full force and effect at the beginning of the next ensuing fiscal year on July 1, and so continues until satisfied. However, on that date the taxes, payment of which the lien secures, become due and payable. They are certain, definite and fixed in amount and become an immediate obligation of the owner of the property against which levied.

That the taxes for any fiscal year constitute such obligation is recognized in [NRS 360.480\(a\)](#) requiring the county treasurers of the State to give public notice that said taxes will be due and payable on the first Monday of July. Although subsection (b) thereof fixes quarterly payment periods for discharging this obligation, this is no more than a privilege or moratorium to the taxpayer designed for his financial convenience. Even though privileged to pay in installments, obligation for payment of the entire tax arises at the beginning of the fiscal year, namely, July 1, when the tax charge accrues.

Transfer of title to lands during the fiscal year while a portion of the taxes levied against it are still unpaid, has presented many controversies as to who is liable for the payment thereof. We find from the authorities that as between the vendor and vendee, liability for payment of taxes which are a lien against property, is determined by either agreement or statute. In the absence of

either, the well settled common law rule applies, viz, an agreement in general terms to convey real estate without specifying the nature of the title held by the vendor or the kind of deed to be given, calls for conveyance of the entire interest in the land sold, free from taxes overdue and unpaid at the time the contract to sell was made, the law implying an obligation on the part of the vendor to convey free of encumbrances. 55 Am.Jur. 791.

Inasmuch as the State of Nevada has no statutory provision fixing the liability for unpaid taxes as between vendor and vendee, it follows from the rule above stated that unless prorated by agreement of said parties, the obligation to pay such taxes continues to rest with the vendor.

Liability for the payment of taxes levied against lands acquired under the right of eminent domain is a problem for the consideration of the courts in assessing and awarding damages to the owner. Unless otherwise provided by statute, it is almost universally the rule that damages are assessed as of the date of appropriation or taking of the land involved. This date varies in the different jurisdictions but is usually fixed by statute. Under [NRS 37.120](#), damages are deemed to have accrued at the date of service of summons in the condemnation proceedings, and the actual value of the land at that time is the measure of compensation for the property taken.

In a careful study of cases on eminent domain considered by the Nevada State Supreme Court, we have been unable to find one where the question of liability for unpaid taxes has been before the court for unpaid taxes has been before the court for decision. Neither is the matter covered by statute. However, the question has been ruled upon in other states from which numerous decisions appear to clearly state the law. It is unquestionably the general rule that any unpaid taxes accruing before the date of the appropriation of property taken under eminent domain will not be included in the award to the owner. *Los Angeles v. Los Angeles P. Co.*, 159 P. 992 (Cal.); *Moffat Tunnel Improvement District v. Housing Authority*, 125 P.2d 138 (Colo.); *Re Riverside Park*, 69 N.Y.S. 742; *In Re Board of Education*, 62 N.E. 666 (N.Y.); *People Ex Rel. Carofeglio v. Gill*, 9 N.E.2d 58 (Ill.); *Conner v. Brake*, 52 N.W.2d 672 (Mich.); *State v. Fitzgerald*, 58 P.2d 508 (Ore.); *State Ex Rel. Ore.-Wash. Water Co. v. Hoquiam*, 286 P. 286; *Pac Nat. Bank v. Bremerton Bridge Co.*, 97 P.2d 162 (Wash.). See 45 A.L.R.2d 522 Annotations for additional cases.

Many of the authorities supporting the above-mentioned rule take the view that since taxes have already accrued before the appropriation or taking that the sum due is the personal obligation of the owner of the land involved and that he is the proper person to pay it. This reasoning is summed up in a Massachusetts case which ruled in effect that a tax upon real estate is primarily a pecuniary imposition upon the owner, its lien upon the said real estate being simply a security established by statute of which the tax collector may avail himself in default of payment. Apart from statute no such lien exists. *Johnson v. Revere Bldg., Inc.*, 177 N.E. 577. We feel that the general rule prevailing in this matter is well founded and applicable to acquisitions through condemnation proceedings in Nevada.

Although not requested in the question hereinabove presented, we deem it important, nevertheless, to further state that liability for payment of any taxes accruing after the appropriation and prior to the award in condemnation proceedings does not fall upon the owner and should be included in the award made to him. According to some authorities, of which there are many, this rule is based upon the theory that since title of the condemnor to property acquired through condemnation proceedings reverts back to and as of the date of taking, the condemnee or owner having been without any title thereto since such time, should not be required to pay taxes on property he did not own. Frequently the period between the taking and the actual award is of considerable length. Thus, it may be readily seen that if the tax burden fell upon the condemnee during that period a large part of his award, and possibly its entirety, could be consumed by tax deductions therefrom. (See 45 A.L.R.2d 522 Annotations for cases following the rule here under discussion.)

In conclusion we state it as the opinion of this office that the owner is liable for the payment of all accrued taxes against real property acquired by the Nevada State Highway Department by either purchase or eminent domain.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Deputy Attorney General

OPINION NO. 57-301 PUBLIC SCHOOLS—Schools to remain open on dates listed in [NRS 388.120](#) despite executive designation of general holiday.

Carson City, August 26, 1957

Honorable Byron F. Stetler, Superintendent of Public Instruction, Carson City, Nevada

Dear Mr. Stetler:

In your letter of August 20, 1957, you request the opinion of this office upon the following matter.

One provision of the Nevada law requires that the public schools shall be closed on any day appointed by the President of the United States or the Governor for public fast, thanksgiving or holiday. Another provision designates certain dates, such as Lincoln's and Washington's birthdays, upon which the schools will remain open with recognition through appropriate exercises. It occurs that these latter dates are sometimes designated by the executive as a holiday. Ostensibly a conflict is present.

These provisions are exactly as follows:

388.110. Days when public schools to close. No school shall be kept open on:
January 1 (New Year's Day);
May 30 (Memorial Day);
July 4 (Independence Day);
First Monday in September (Labor Day);
Thanksgiving Day;
December 25 (Christmas Day);
Any day appointed by the President of the United States or the governor for public fast, thanksgiving or holiday.
(246:32:1956)

388.120. Observances, exercises on certain days.
1. All schools shall be kept open and shall observe with appropriate exercises:
February 12 (Lincoln's Birthday);
February 22 (Washington's Birthday);
Last Friday in April (Arbor Day);
October 31 (Nevada Day);
November 11 (Veterans Day).

There is a rule of statutory construction or interpretation determinative of this question. The rule states that one section of a statute treating specifically of a matter will prevail over other sections in which incidental or general reference is made to the same matter. *See State v. Hamilton*, [33 Nev. 418](#), 111 Pac. 1026; Sutherland Statutory Construction, 3rd Ed., Sec. 4908.

The specific listing in Sec. 388.120 of certain dates upon which the schools are to remain open sets forth the intention of the Legislature that despite the executive designation of general holiday the schools are, on those named days, to remain open.

It is the opinion of this office, therefore, that despite executive declaration of general holiday the law requires that the public schools are to remain open on those certain dates listed in [NRS 388.120](#).

We think you are quite correct that in certain towns community activity will necessarily dictate procedure.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Deputy Attorney General

OPINION NO. 57-302 CONSERVATION AND NATURAL RESOURCES—Each individual dealer for such corporations as “Shell” or “Standard” must be licensed under the Nevada Liquefied Petroleum Gas Act.

Carson City, August 27, 1957

Nevada Liquefied Petroleum Gas Board, Post Office Box 338, Carson City, Nevada

Attention: Mrs. Ivy M. Shannon, Executive Secretary.

Gentlemen:

Your question as set forth in your letter of August 19, 1957, is as follows:

Under the Nevada Liquefied Petroleum Gas Act of 1957, must the individual dealers of large corporations such as “Shell” or “Standard” be licensed?

OPINION

This office is of the opinion that every person (and we use the word person to mean natural person as distinguished from a corporation, association or partnership) who is engaged in an activity for which a license is required as described in Sec. 14, Chap. 301, 1957 Stats. of Nevada, must apply for and obtain a license.

This is clearly a regulatory measure; enacted for the protection of the using public. Under this law the qualifications of the persons who are to handle the gas and the equipment in connection with it are to be passed upon by the board. To our minds, the reason for the law would be largely defeated if the officers of a corporation obtained a license which would suffice for all the employees or agents of the corporation. It is the qualification of the employee or agent to do the job properly in which the board is interested under the law.

The answer to the question is in the affirmative.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Deputy Attorney General

OPINION NO. 57-303 STATE WELFARE; OLD-AGE ASSISTANCE; AID TO THE BLIND—Supplemental to Opinion No. 274, June 5, 1957—Inclusion of allowance for medical care in payments to individuals for Old-Age Assistance and Aid to the Blind not affected by Chapters 255 and 307, 1957 Statutes of Nevada.

Carson City, August 27, 1957

Mrs. Barbara C. Coughlan, State Director, Nevada State Welfare Department, P.O. Box 1331, Reno, Nevada

Dear Mrs. Coughlan:

The following should be read in connection with, and is supplemental to, Opinion No. 274, June 5, 1957.

Upon further study of the matter set forth in the aforesaid opinion, it appears that only the so-called vendor payments can be made from the newly created "old-age assistance and remedial care fund;" that money from this fund cannot be used in payment to the individual recipient of assistance in order that he or she may pay for medical care.

It is clear that there may well be a good many instances when it will be more advantageous to proceed by means of payment to the individual recipient a sufficient amount in order that he or she may pay for the medical service received. This cannot be done if the entire sum provided by the State for medical or remedial care is to be placed in and drawn from the new fund.

We conclude therefore that the Legislature in subsection 1 of Sec. 3, Chap. 307, 1957 Stats. wherein it is provided: "moneys made available * * * by the state for the purpose of medical care * * * shall be deposited in the fund" meant thereby only that money provided by the State for vendor payments is to be placed in the new fund, and that the money, and the disposition of money, furnished by the State for payment to the individual recipient for medical care is unaffected. We think it was the intention of the Legislature that the disposition of such money is to continue as it had heretofore.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Deputy Attorney General

OPINION NO. 57-304 BONDS; PUBLIC OFFICERS—Surety bonds issued under the Act creating the bond trust fund are in no sense indemnity contracts for the protection of the public officers who are the principals on such bonds.

Carson City, August 30, 1957

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

Dear Mr. Robison:

Your letter of August 27, 1957 asks the following questions:

1. Does [NRS 282](#), as amended by Chap. 357 of the 1957 Stats., provide protection for public officials against errors or omissions?
2. Does it merely protect the State of Nevada against loss by reason of defalcation or misappropriation of public funds? If your answer to question No. 1 is in the negative, please advise whether or not premiums on surety or liability bonds for officials whose positions require such protection would be a legal charge against public funds.

Preliminary to specifically answering the questions, it should be understood that the surety bonds issued under the Act creating the bond trust fund are not and were not designed to protect the individual officer or principal on the bond for whatever type of misconduct may have been his. [NRS 282.230](#), as amended by Sec. 1, Chap. 357, 1957 Stats., is express to the effect that it is the governmental entity for whose protection the bond is issued. In this connection, [NRS 282.060](#) would undoubtedly require the running of the benefit of such bond to any individual who might be injured by the action of the officer; however, it is unlikely that, inasmuch as the suretyship since the 1957 amendment covers only the loss of public funds, any member of the general public would sustain such a specific damage by the loss of public funds as would warrant or permit recovery. In any event, the protection on such bond does not run to the principal on the bond.

While it is true that any loss of public funds sustained by the misconduct of an official would be covered or repaired from the bond trust fund as a result of the suretyship created by the bond, that is not to say that the official has been excused of liability. [NRS 282.340](#) providing for the mandatory prosecution of the officer for recovery of the loss is sufficient in support of the last statement.

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

It should be added, in connection with this question, that the term “negligent loss” as used in the statute means a loss sustained by virtue of the negligence of the official, and the word negligence is defined by Webster’s Dictionary to mean a failure to exercise the care that the circumstances justly demand. The word negligence is variously defined in the court cases, but a representative definition would be that taken from *Biddle v. Mazzocco*, 284 P.2d 364, as follows: “Negligence,” is the doing of that thing which a reasonably prudent person would not have done, or the failure to do that thing which a reasonably prudent person would have done, in like or similar circumstances. *See also* 28 Words and Phrases 524. Thus, when reference is made to “errors” or “omissions” through honest mistakes, those words, insofar as the statute and the law is concerned, must be understood in light of the definition of the term “negligent loss.” Again, if there is in fact a loss of public funds sustained by reason of the negligence of the official, the official is not excused from his fault or from his liability to make good the loss by reason of the fact that the loss is covered by some fund of public money such as the bond trust fund.

The first part of question number two is, we think, sufficiently answered in the above.

Relating to the last portion of your question number two, if you are asking whether or not public funds may be used to pay the costs of insurance or indemnity contract holding the official safe from harm in the event he is negligent in his work, the answer is no. This office knows of no such specific authorization for the expenditure of the public funds and in the absence of such authorization such expenditure is prohibited.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Deputy Attorney General

OPINION NO. 57-305 WEIGHTS AND MEASURES—State Sealer cannot charge a fee for testing, weighing or measuring devices under [NRS 581](#), nor can he be compelled to make such test more than once each year for each device.

Carson City, September 3, 1957

Honorable Minard W. Stout, President, University of Nevada, Reno, Nevada

Dear Doctor Stout:

You have advised this office that the Food and Drugs, Weights and Measures Department, a public service division of the University of Nevada, has made inquiry as to the extent of that department's duty under the law to check scales, both governmental and private.

The inquiry arises as a result of a demand by private contractors to have their scales tested by the State Sealer. The problem confronting the State Sealer is a lack of sufficient help to comply with all demands, and a lack of appropriated funds to pay the attendant costs.

The inquiry arises as a result of a demand by private contractors to have their scales tested by the State Sealer. The problem confronting the State Sealer is a lack of sufficient help to comply with all demands, and a lack of appropriated funds to pay the attendant costs.

The question arises as to whether the State Sealer can charge a fee for servicing scales when such service would not ordinarily be offered at the time of demand and necessitates an extra trip, added help, or other unforeseen contingency.

OPINION

Under the general law which governs, the State Sealer of Weights and Measures is empowered to inspect, test, try, and ascertain if they are correct, all weights, measures and weighing or measuring devices. The duty is imposed on him to at least once each year, or as often as he may deem necessary, see that all weights, measures and measuring or weighing devices used are correct. (See [NRS 581.070](#).)

It seems to this office that the duty thus imposed is one which cannot be fully complied with, in view of the great number of weighing and measuring devices now in use in this State, unless the Legislature will, by appropriation, provide for many more deputies than are now available. At least no duty is imposed on the State Sealer, under the law, to inspect weighing or measuring devices at the demand of those in possession of the same. If he makes an inspection of said devices in the possession of the demandors once a year, or oftener if he deems it necessary, his compliance with the law is complete.

Under [NRS 581.040](#) the State Sealer, subject to the approval of the Board of Regents of the University of Nevada, may appoint such deputies as he may deem necessary. The answer would seem to be a demand for more deputies with a subsequent increase in the legislative appropriation, if the present force is insufficient to meet the demands of the statute.

The duty of checking all weighing and measuring devices, whether governmental or private, falls on the shoulders of the State Sealer, subject only to the minimum yearly inspection, but in no event can there be imposed for such service, a fee or charge. The act is not for the purpose of service but for the purpose of regulation, and the protection of the general public.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

OPINION NO. 57-306 SCHOOL DISTRICTS, COUNTY—The enumeration of authorized uses for county school district funds is exclusive. [NRS 387.205](#) construed.

Carson City, September 4, 1957

Mr. Archie Clayton, President, Washoe County School District, 318 Fodrin Way, Sparks, Nevada

Dear Mr. Clayton:

This opinion is in response to the question propounded to this office by you and Mr. Edward L. Pine on August 22, 1957.

FACTS

You advised us of the following facts: In March, 1957, the school trustees of the State of Nevada completed the organization of a state association entitled "Nevada School Trustees Association." This association is a member of the national association entitled "National Association of School Board Members." The state association, operating under the provisions of a formal written constitution and by-laws, requires each county school board of trustees to pay dues in the amount of \$80 annually. The purposes of the state association are exclusively educational and the improvement and coordination of educational facilities and functions in Nevada. The local association is set up under standards and as a secondary purpose of coordination with the national association to the end that the facilities and functions appertaining to public education nationally may be improved and fully suitable to the national need. The contribution of the state association to the national association is \$100 annually.

QUESTION

May these sums for these purposes be paid from county school district funds?

OPINION

However laudable and important the functions of these two associations, the question, under the limitations of the applicable statutory law, must be answered in the negative.

[NRS 387.205](#) provides as follows:

1. Moneys on deposit in the county school district fund shall be used for:
 - (a) Maintenance and operation of public schools.
 - (b) Payment of premiums for Nevada industrial insurance.
 - (c) Rent of schoolhouses.
 - (d) Construction, furnishing or rental of teacherages, when approved by the superintendent of public instruction.
 - (e) Transportation of pupils, including the purchase of new buses.
 - (f) School lunch programs, if such expenditures do not curtail the established school program or make it necessary to shorten the school term, and each pupil furnished lunch whose parent or guardian is financially able so to do pays at least the actual cost of such lunch.
2. Money on deposit in the county school district fund, when available, may be used for:
 - (a) Purchase of sites for school facilities.
 - (b) Purchase of buildings for school use.
 - (c) Repair and construction of buildings for school use.

It is a well known principle of statutory construction that the enumeration of powers, rights, privileges, etc., is an exclusion by inference. That is to say, such an enumeration is exclusive of other powers, rights, privileges, etc., which could have been, but were not, enumerated. The principle under consideration is expressed, "inclusio unius est exclusio alterius," meaning "the inclusion of one is the exclusion of another."

It is the opinion of this office that the authority which you desire to exercise can be vested in county school district boards only by statutory amendment.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: D. W. Priest
Deputy Attorney General

OPINION NO. 57-307 PUBLIC EMPLOYEES RETIREMENT—Contributions of participating employees to Public Employees Retirement System not subject to levy by Federal Government under Section 6321 of Internal Revenue Code of 1954, for delinquent income taxes.

Carson City, September 6, 1957

Mr. Kenneth Buck, Executive Secretary, Public Employees Retirement Board, Carson City, Nevada

Dear Mr. Buck:

You have directed to this office an inquiry as to whether your department should honor a lien placed by the Federal Government on moneys in your possession due to a tax delinquency of a member of the Public Employees Retirement System.

OPINION

The demand of the Federal Government is made under Section 6321, Internal Revenue Code of 1954. This section reads as follows:

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

It is to be noted that the Federal lien applies to all property and rights to property, whether real or personal, belonging to the delinquent taxpayer. The question then arises as to whether the contributions to your department by a member of the Public Employees Retirement System constitute property or rights to property which can be reached by the Federal levy. In order to cogently arrive at a decision in this matter it becomes necessary to peruse and study the Public Employees Retirement Act of Nevada, and to discuss the same.

Under the Act as amended and effective as of the date of this opinion, the Public Employees Retirement Board is commanded to deposit with the State Treasurer all funds paid into the Public Employees' Retirement fund. The State Treasurer is made custodian of the funds, and authorized

to pay all warrants drawn thereon by the State Controller in compliance with law. No warrant is to be paid until the claim for which it is drawn has been first certified by the executive secretary and otherwise allowed, audited and drawn as required by law. (See [NRS 286.240](#))

[NRS 286.250](#) reads as follows:

1. Upon the written request of the board, the state controller is authorized and directed to draw his warrant in favor of the board in the sum of \$75,000, and, upon presentation of the same to the state treasurer, he is authorized and directed to pay the same from the public employees' retirement fund.

2. The sum of \$75,000 shall be known as the public employees' retirement board revolving fund, and shall be used by the board for the purpose of paying retirement and disability allowances and authorized refunds to members of the system and for no other purpose.

3. All claims or demands paid by the board from the public employees' retirement board revolving fund shall, after payment thereof, be passed upon by the state board of examiners in the same manner as other claims against the state, and, when the claims have been approved by the state board of examiners, the state controller shall draw his warrant for the amount of such claim or claims in favor of the public employees' retirement board revolving fund, to be paid to the order of the board, and the state treasurer shall pay the same.

4. The board is directed to deposit the public employees' retirement board revolving fund in a bank of reputable standing and to secure the deposit by a depository bond satisfactory to the state board of examiners.

5. All checks drawn upon the public employees' retirement board revolving fund shall be signed by two persons designated by the board, and the persons so designated shall furnish such bond as shall be directed by the state board of examiners.

It thus becomes apparent that all moneys contributed by both employer and employee under the system are commingled and become part of a common fund, with \$75,000 maintained in a revolving fund to pay current allowances and refunds. While it is true that under [NRS 286.260](#) the board is required to set up individual accounts for each member of the system, this is a bookkeeping transaction which in nowise affects the integration of each employee's contribution with the contributions of other members of the system in the funds placed in the hands of the State Treasurer.

It is also to be noted that the State Board of Finance is authorized to invest the funds which come into the hands of the board, and which are unnecessary for current operations.

Under [NRS 286.290](#) the employees of public employers who participate in the system must become members of the system, and for the duration of their employment or until their death or retirement they have deducted from their gross salary 5 percent of said earnings, not to exceed \$20 per month. These moneys are entrusted to the Public Employees Retirement Board, who, in effect, become trustees of said funds.

What control, if any, do these contributors have over these funds? Under [NRS 286.430](#) if an employee, who is a member of the system and has contributed to the fund, and has not attained his earliest retirement age, is separated for any reason, other than death or disability, from all service entitling him to membership in the system, he may withdraw from the public employees' retirement fund the amount credited to him in his account. Otherwise he cannot draw from the funds entrusted to the board until retirement from age or disability, nor can a beneficiary draw upon such funds until his death.

It is also pertinent to know the provisions of [NRs 286.670](#) which reads as follows:

286.670. Rights to Benefits not Subject to Tax, Process or Assignment. The right of a person to a pension, an annuity, a retirement allowance, the return of contributions, the pension, annuity or retirement allowance itself, any optional

benefit or death benefit or any other right accrued or accruing to any person under the provisions of this chapter, and the money in the various funds created by this chapter, shall:

1. Be exempt from all state, county and municipal taxes.
2. Not be subject to execution, garnishment, attachment or any other process.
3. Not be subject to the operation of any bankruptcy or insolvency law.
4. Not be assignable.

It has been decided many times that state exemption statutes do not apply as against claims of the United States for Federal taxes, (*Cannon v. Nicholas*, 80 F.2d 934, *Kyle v. McGuirk*, 82 F.2d 212, *Shambaugh v. Scofield* 132 F.2d 345) but it is equally well settled that the lien of Federal taxes extends only to property in which the taxpayer has an interest, (*United States v. Long Island Drug Co.*, 115 F.2d 983, *United States v. Warren R. Co.*, 127 F.2d 134).

It might be of some assistance in determining the property rights of an employee member of the system in and to the contributions to a common fund, to discuss those cases where the proceeds of insurance policies are the subject of Federal liens for tax delinquencies. Two fairly recent cases touching upon this problem are *United States v. Behrens*, 230 F.2d 504 (1956), and *Rowen v. Commissioner of Internal Revenue*, 215 F.2d 641.

The Rowen case concerned a state of facts where the taxpayer had taken out life insurance policies with his wife as beneficiary and where the Federal Government, after his death, sought to reach the *proceeds* to satisfy a claim it had for unpaid income taxes due from the deceased taxpayer. The Behrens case was along similar lines. In the above-cited cases the court points out that only assets which were the property of a deceased taxpayer during his lifetime are liable to liens for Federal income taxes that should have been paid by him. They then consider the difference between the *proceeds* and the *cash surrender value* of a life insurance policy and conclude that, while the proceeds of such an insurance policy were not the property of the taxpayer, the cash surrender value was to be regarded as an asset of the taxpayer during his lifetime for the purposes of liability to liens for Federal income taxes.

Applying the above principles to the return of accumulated contributions payable upon the retirement of a member of the Retirement System, it is clear that the ordinary retirement benefits cannot be considered as an asset of the member, since, like the proceeds of a life insurance policy, the amount of this benefit was never the property of the member. As an example take the case of a member of the system who starts work at 40 years of age and retires at age 60 years after having contributed \$20 per month to the system for 20 years. His contribution has been \$4,800. He is then entitled to draw \$2,400 a year until his death. He lives until 80 years of age and draws \$48,000 in retirement benefits, or \$43,200 over his contribution. Until his retirement he has no property right in this award, and unless there is a cash surrender value to his contribution he has no property right in any of the money contributed. True it is, that if he resigns, or is otherwise separated from the service of a participating agency, he can demand his contributions from the inception of his entry into the retirement plan to the date of his separation; but here again, there is a vast difference from the cash surrender value of an insurance policy, which value is always present, and the value of an employee's contribution to the retirement system, which value is wholly contingent on the happening of future events, and the property right to which does not arise in the employee contributor until the happening of that contingency.

In the case of *United States v. Long Island Drug Co., Inc., et al*, 115 F.2d 983, the court states, "Rights which do not exist at the time of the demand upon the taxpayer are not subjected to any lien (citing *United States v. Pacific R.R.*, 1 F. 97). * * * In the absence of a statute to the contrary, it is the usual rule that a garnishment does not affect future earnings or salary (citing *Savings Bank of Danbury v. Loewe*, 242 U. S. 357)."

The court also points out in this case, "Though we shall assume that a salary or wages which have been earned may be made subject to a lien for unpaid taxes and also subject to distraint and levy, the situation in respect to future earnings is quite different. They are contingent upon performance of a contract of service and represent no existing rights of property."

To allow the Federal Government to levy on and collect funds in the hands of the Public Employees Retirement Board under such circumstances would constitute an interference with the administration of trust funds by a governmental agency of the sovereign state to the detriment of participating agencies and employees. No property right of the employee in and to funds in the hands of the Public Employees Retirement Board having arisen at the time of the levy by the Federal Government, it is the opinion of this office that such levy should not be honored.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

OPINION NO. 57-308 SOIL CONSERVATION DISTRICTS, NEVADA—Opinion Number 280, June 17, 1957, Modified.

Carson City, September 17, 1957

Mr. James G. Jensen, Chairman, Board of Supervisors, Tonopah Soil Conservation District, Tonopah, Nevada

Dear Mr. Jensen:

This opinion is in modification of Opinion No. 280 of this office under date of June 17, 1957.

Among other things as a basis for that opinion you had advised “some years ago this Board of Supervisors disapproved a petition by a group in Fish Lake Valley to secede from this district and form one of their own. They are again requesting the same.”

Upon this statement of facts you asked the following question: “How often should a board be required to consider a matter of this type?”

In the formal written opinion we stated: “Petitions to include ([NRS 548.515](#)), or to exclude ([NRS 548.520](#)), lands within an established district, or for discontinuance ([NRS 548.525](#)) of a soil conservation district are filed with the state soil conservation committee.”

We stated further, by way of conclusion upon the question under consideration: “Under the provisions of [NRS 548.540](#), none of such petitions may be filed or considered by the state soil conservation committee more frequently than once in five years.”

Subsequent to the release of the Opinion No. 280 Mr. C. W. Cleary and Mr. Graham Hollister, representing the state committee, conferred with the undersigned deputy in the office of the Attorney General, respecting the conclusion reached was too sweeping and inclusive.

Thereafter, Mr. Hollister, Chairman, Nevada State Soil Conservation Committee, under date of August 8, 1957, addressed a letter to your board, reciting among other things, the following:

Mr. Priest spent some little time reviewing with us the provisions of the State Law and the result of our discussions indicated that this five-year limitation does not apply to petitions for any purpose other than discontinuance of the district and Mr. Priest indicated that the opinion issued on June 17 could be amended to indicate that fact if we felt it was important at this time.

The section under review, being [NRS 548.540](#), reads as follows:

The state soil conservation committee shall not entertain petitions for discontinuance of any district, nor conduct referenda upon such petitions, nor make any determination pursuant to such petitions in accordance with the provisions of this chapter, more often than once in five years.

From the above it appears clear that the five-year limitation expressed in this section applies only to “petitions for discontinuance of any district.” Opinion No. 280 is therefore modified accordingly.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: D. W. Priest
Deputy Attorney General

OPINION NO. 57-309 STATE BOARD OF STOCK COMMISSIONERS; BRAND INSPECTION—The petition of a majority of the owners of neat cattle, horses or mules, within a Brand Inspection District to be excluded from the provisions of subsections (a) and (b) of paragraph 2 of [NRS 565.040](#) must be immediately honored by State Board of Stock Commissioners.

Carson City, September 19, 1957

Honorable Cameron M. Batjer, District Attorney, Ormsby County, Carson City, Nevada

Dear Mr. Batjer:

You advise this office that a majority of the owners of neat cattle, horses or mules within a brand inspection district in Lyon County have petitioned the State Board of Stock Commissioners to be excluded from the operation of subsections (a) and (b) of paragraph 2 of [NRS 565.040](#). Said paragraph 2, insofar as applicable to this inquiry, reads as follows:

2. After the creation of any brand inspection district as authorized by this chapter all neat cattle, horses or mules within any such district shall be subject to brand inspection in accord with the terms of this chapter before:
 - (a) Consignment for slaughter within any district; or
 - (b) Any transfer of ownership by sale or otherwise; * * *.

Subparagraph 4 then reads as follows:

4. When a petition signed by a majority of the owners of neat cattle, horses or mules within a brand inspection district is filed with the board praying that the brand inspection district be excluded from the operation of the provisions of paragraphs (a) and (b) of subsection 2 of this section, the board forthwith shall cause the brand inspection district to be so excluded by the issuance of a regulation in the manner prescribed in this chapter.

Your specific question is whether the State Board of Stock Commissioners can refuse to honor such a petition in view of the statute.

OPINION

It becomes apparent upon reading the statute that this law was initiated by the stock industry for its own protection. Conditions might be such that the creation of brand inspection districts

and the inspection of animals consigned to slaughter or transferred in ownership would be vitally important to the welfare of the industry. But the law contemplates a period of time when this necessity may have abated, and when such occurs the Legislature felt that the persons best in a position to make that decision were the owners of the livestock involved.

The wording of paragraph 4 of [NRS 565.040](#) admits of no interpretation but that of a mandatory duty on the part of the Board of Stock Commissioners to exclude the brand inspection district which has petitioned to be excluded from the provisions of subparagraphs (a) and (b) of paragraph 2, and to cause such exclusion “forthwith” which Black’s Law Dictionary, Fourth Edition, defines as “immediately.”

That this was the clear intent of the Legislature is shown by [NRS 565.100](#), which provides for a brand clearance certificate or written permit from a brand inspector for animals consigned for slaughter or transferred in ownership. Paragraph 2 of this section reads as follows:

2. This section shall be inoperative if by regulation issued pursuant to the provisions of subsection 4 of [NRS 565.040](#) the brand inspection district has been excluded from the operation of the provisions of paragraphs (a) and (b) of subsection 2 of [NRS 565.040](#).

It is, therefore, the opinion of the Attorney General that the State Board of Stock Commissioners must immediately honor a petition by the majority of the owners of neat cattle, horses or mules within a brand inspection district to be excluded from the provisions of subparagraphs (a) and (b) of paragraph 2 of [NRS 565.040](#).

Respectfully submitted,

HARVEY DICKERSON
Attorney General

OPINION NO. 57-310 Unnecessary to give notice to employees or other persons on University Farm of nonliability of the State for injuries of such persons sustained thereon.

Carson City, September 24, 1957

Mr. P. W. Hayden, Comptroller, University of Nevada, Reno, Nevada

Dear Mr. Hayden:

In your letter of September 16, 1957, you state that several employees of the State University and their families, as well as some nonemployees, living on the University Main Station Farm, have been verbally advised that neither the State of Nevada nor the University is liable for any injuries which may be sustained by them on said farm. You inquire as to the advisability of bringing this to their attention in writing and also whether a written release should be obtained from said persons.

OPINION

That no liability lies against either the University or public schools of the State for injuries sustained by either employees, students or the public generally while on the University of school premises, has been stated in at least two previous opinions from this office. *See* Attorney General’s Opinion No. 806, 1949, and No. 248, 1957. The conclusions therein stated are based upon the theory of “*Rex non potest peccare*,” or the immunity of the sovereign from suit. The Nevada State Supreme Court has recognized and applied the theory in *Gurley v. Brown*, [65 Nev.](#)

[245](#), and in the recent case of *Taylor v. State of Nevada and the University of Nevada*, 311 P.2d 733.

The doctrine or theory that the sovereign can do no wrong is applicable to the State in all its functions or agencies. Since the law in that particular is well established in this State, it is not necessary to furnish notice of its existence as everyone is presumed to know the law. Neither is a waiver of liability from employees of any state agency necessary, because no liability exists which can be waived.

We wish to call attention, however, to the fact that employees at the University Farm, as well as other state agencies, are furnished protection against injuries arising thereon in connection with their work through and under the Nevada Industrial Insurance Act.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Chief Deputy Attorney General

OPINION NO. 57-311 FISH AND GAME COMMISSION, STATE—Regulation as to posting construed—Unlawful to hunt upon certain lands even though not posted.

Carson City, September 24, 1957

Mr. Frank W. Groves, Director, State Fish and Game Commission, 51 Grove Street, P.O. 678, Reno, Nevada

Dear Mr. Groves:

We have your letter of September 20, 1957 requiring an opinion of this office upon questions hereinafter stated.

QUESTIONS

1. What constitutes legal posting upon large privately owned tracts of ranch property? Would posting upon the four gates of entry be sufficient?
2. Under [NRS 503.250](#) is it unlawful to commit the forbidden acts, upon property within the description of the statute is the property is not posted?

OPINION

[NRS 503.240](#) reads as follows:

1. It shall be unlawful for any person to shoot or discharge firearms or to hunt upon or within any enclosed grounds which are private property and where signs are displayed forbidding such hunting or shooting, without permission obtained from the owner or person in possession of such enclosed grounds.
2. Any person who violates any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$50 nor more than \$200, or by imprisonment in the county jail for not less than 25 days nor more than 60 days, or by both fine and imprisonment.

We find no provision of law that defines what number of cards or other notices of forbidding of hunting, etc., shall be posted upon a given area, or maximum distances between such notices, or otherwise regulating what constitutes legal posting. We do observe that [NRS 503.240](#) is limited to “enclosed” privately owned real property. Upon such “enclosed” property the natural point of entry would be at gates. It is therefore clear that the posting as set forth in the first question, is not intended by the owner to be such as to escape attention, thereby to make it more likely to bring about game violations, preliminary to prosecutions. To the contrary it appears that the owner is doing those things, under the law, in the manner calculated to give notice to hunters, and other, that hunting, etc. is forbidden. We therefore conclude that question number one must be answered in the affirmative, and that the posting is sufficient.

Question number two is answered in the affirmative. If the Legislature had intended that the forbidden acts upon “occupied, cultivated and fenced property of another,” in the absence of “written permission from the owner, occupant or agent,” would be rendered unlawful, only upon posted land, it would have so qualified the statute. The section is clear and unambiguous.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: D. W. Priest
Deputy Attorney General

OPINION NO. 57-312 SECRETARY OF STATE—Trust receipt financing—Office authorized to file statement of trust receipt financing, if trustee has a place of business in State, but not otherwise.

Carson City, September 27, 1957

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

Dear Mr. Koontz:

We are in receipt of your letter of September 18, 1957, and with it certain correspondence to your office from General Motors Acceptance Corporation. With your inquiry hereinafter stated, you also delivered for our examination a number of instruments entitled “Statement of Trust Receipt Financing,” prepared for filing under the provisions of [NRS 93.140](#). Each of these instruments is according to the form set out in this statute, with blanks duly filled in and signatures affixed, as to both Entruster and Trustee. An examination of these forms, we will not be unduly specific, discloses that the Entruster has its address (branch office for processing loans) at 1229 East Fourth Street, Reno, Nevada, and some of the Trustees have addresses and places of business in California. Except for the letter of inquiry to this office we return, with this opinion, these documents and records to your office.

QUESTION

Does our trust receipts law authorize the office of Secretary of State to file a “Statement of Trust Receipt Financing” in the cases wherein the Trustees and the property covered by such trust receipt financing are not at all located in Nevada, but are located in some other state?

OPINION

From the question it is clear that you are not disturbed about the authority to file the "Statement of Trust Receipt Financing" in those instances in which the Trustees have addresses and places of business in Nevada. Those cases are quickly eliminated from the field of inquiry. You concede that there is authority to file, and with this conclusion we are in accord.

The trust receipt law of Nevada is cited as Secs. [NRS 93.010](#)-93.200, inclusive. Briefly it provides for financing by merchants and others, of goods floored with them, and sets out specifically the rights and duties of Entruster (the finance company) and Trustee (the merchant), as well as authorized contracts as between each other. It also makes provision as to the rights of each respecting goods sold, and financed in this manner, and the rights of third parties respecting such goods. The Nevada statute provides ([NRS 93.190](#)) for uniformity of those states that enact it. The so-called uniform statutes between states are seldom entirely uniform, and there are minor variations. We do not find it necessary to determine to what extent there is uniformity in the law of Nevada and California in this respect, for the question is resolved entirely by the provisions of the Nevada statutes.

Obviously for the purpose of giving notice to third parties, of encumbrances against goods, Sec. 93.140 NRS provides for the filing with the Secretary of State the "Statement of Trust Receipt Financing." Contracts involving the merchandise, of course, are almost solely between the Trust and the third parties as distinguished from contracts between the Entruster and third parties. From this it would appear that the filing with an office of Secretary of State would be almost, if not entirely, ineffectual, if in a state other than that in which the Trustee has its address and place of business of the Trustee should be the controlling factor, as distinguished from the office address of the Entruster. The wording of the statute bears out this construction.

[NRS 93.140](#) in part reads as follows:

1. Any entruster undertaking or contemplating trust receipt transactions with reference to documents or goods is entitled to file with the secretary of state a statement, signed by the entruster and the trustee, containing:
 - (a) A designation of the entruster and the trustee, and of the chief place of business of *each within this state*, if any; and if the entruster has no place of business within the state, a designation of his chief place of business outside the state; and
 - (b) A statement that the entruster is engaged, or expects to be engaged, in financing under trust receipt transactions and acquisition of goods by the trustee; and
 - (c) A description of the kind or kinds of goods covered or to be covered by such financing.
2. The following form of statement (or any other form of statement containing substantially the same information) shall suffice for the purposes of this chapter.

STATEMENT OF TRUST RECEIPT FINANCING

The entruster, whose chief place of business within this state is at (or who has no place of business within this state and whose chief place of business outside this state is at), is or expects to be engaged in financing under trust receipt transactions the acquisition by the trustee, whose chief place of business *within this state* is as Of goods of the following description: (coffee, silk, automobiles, or the like).

(Signed) Entruster.
(Signed) Trustee.

(Italics supplied.)

From the above-italicized portions it is clear that an Entruster “is entitled to file” a “Statement of Trust Receipt Financing” if the Entruster has a place of business and the Trustee has a place of business with this State, and likewise the Entruster “is entitled to file” a “Statement of Trust Receipt Financing,” in cases in which the Entruster has no place of business within this State if the Trustee has a place of business within this State. Simply stated, you are required “Statement of Trust Receipt Financing” if Trustee has a place of business within this State, and not otherwise.

The question is answered in the negative.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: D. W. Priest
Deputy Attorney General

OPINION NO. 57-313 OLD-AGE ASSISTANCE—State Welfare Department may deduct from award to individual recipient the amount of medical or remedial care paid directly by the State under contract or agreement.

Carson City, October 1, 1957

HONORABLE JAMES SLATTERY, State Senator, Storey County, P. O. Box 9474 University Station,
Reno, Nevada

Dear Senator Slattery:

You have directed to this office an inquiry as to whether Chap. 307 of the 1957 Stats., by reason of Sec. 3 thereof, increased payments to recipients under the old-age assistance medical and remedial care fund. Sec. 3 reads as follows:

Sec. 3. Chap. 427 is hereby amended by adding thereto a new section which shall read as follows:

1. The old-age assistance medical and remedial care fund is hereby created in the state treasury. Moneys made available to the state by the Federal Government and by the state for the purpose of providing medical care or any type of remedial care to recipients shall be deposited in the fund.

2. Except as otherwise provided in subsection 3, any moneys so made available by the state, by appropriation or otherwise, shall remain in the fund and shall not revert to the general fund.

3. If the fund is dissolved, the Federal Government shall be reimbursed for its proportionate share of contributions into the fund, and any moneys remaining thereafter shall revert to the general fund.

4. The state board may designate that the fund may cover any one, several or all items of the medical care or any type of remedial care costs as deemed most advantageous for the best interests of the state.

5. The state department may purchase necessary medical care or any other type of remedial care by contract or “fee for service.” Each vendor or group who has a contract with the state department and is rendering medical care or any type of remedial care to recipients shall submit such charges for payment to the state department, and payment shall be made as other claims against the state are paid.

OPINION

In order to arrive at a determination it is necessary to study [NRS 427.010](#) to and including [NRS 427.280](#), the Old-Age Assistance Act, to ascertain whether Chap. 307 of the 1957 Stats. changed the amounts of payments to recipients under the Act, or in any way restricted the determination of the State Welfare Department as to the amounts to be paid recipients.

Let us begin by pointing out that under the Act no recipient has a vested right to receive assistance, either under the original Act or under any of its amendments. A determination of these rights is made with due regard to the resources and necessary expenses of the individual and the conditions existing in each case, provided that an award must be sufficient, when added to all other income and support of the recipient, to provide such person with a reasonable subsistence compatible with decency and his needs and health. In no event shall it be less than \$40 per month.

While the determination as to the amount to be received is determined by the State Welfare Department, various avenues of recourse are left open to a recipient dissatisfied with that determination. He may ask the county board to review the determination; he may ask for a hearing before the state department; and he may have recourse to a hearing before the state department; and he may have recourse to the courts to enforce his rights under the provisions of the Act.

Prior to the enactment of Chap. 307 of the 1957 Stats., the State Welfare Board in arriving at a sum to be paid to a recipient determined the amount necessary for medical or remedial care and added the monthly sum needed to that necessary for subsistence. In other words, if the amount necessary for subsistence was determined to be \$50 per month, and the amount determined necessary for medical care and supplies was determined to be \$10 per month, the recipient was awarded \$60 per month.

Now the matter to be determined is whether Sec. 3 of Chap. 307 of the 1957 Stats. changed this procedure or the amount to be awarded. A careful study reveals that Sec. 3 established a medical and remedial care fund and gave the State Welfare Department the power to designate the items of medical or remedial care that such fund covers. It also gives the State Welfare Department the right to purchase medical or remedial care on a contract basis.

It can readily be established that Sec. 3 of Chap. 307 of the 1957 Stats. does not take from the State Welfare Department the right to determine the amount to be paid to each recipient for subsistence. It necessarily follows that if the base amount for subsistence has previously had added thereto the base amount for medical treatment or supplies, and that now under the law the recipient does not have to meet such medical expenses from the amount paid to him, that such amount would necessarily be reduced by the amount of the medical payments paid directly by the State Welfare Department under a contract agreement.

It is therefore the opinion of this office that Chap. 307 of the 1957 Stats. does not impose upon the State Welfare Department the mandatory duty of adding medical payments to an amount already received by a recipient which includes medical payments, and that the department is acting within the letter of the law in making a new determination as to the amount to be paid to such recipient, taking into account the deduction of medical expenses paid directly by the State.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

OPINION NO. 57-314 MOTOR VEHICLE DEPARTMENT—HIGHWAY PATROL—
Licensed new or used car dealer cannot store percentage of his cars for resale and sell them

at a place other than his registered established place of business. However, salesmen of such dealers may initiate sales to prospective buyers away from such established place of business, provided that the transaction is reflected in the books and records maintained by the dealer at his regularly established place of business. A highway patrolman in enforcing Section 8 of [NRS 482](#) is not subject to public liability unless his actions in enforcing the Act go beyond the reasonable bounds of enforcement, and then such liability is that of the individual patrolman and not that of the State of Nevada.

Carson City, October 4, 1957

Honorable Robert A. Allen, Chairman, Public Service Commission, Carson City, Nevada

Dear Mr. Allen:

In accordance with your letter of October 1, 1957, we have reviewed [NRS 482.215](#) as well as the amendments to [NRS 482](#) found in Chap. 305 of the 1957 Stats.

Under Sec. 4 of Chap. 305 of the 1957 Stats., the application of a new or used car dealer for a license to do business must be accompanied by proof that such applicant has an established place of business in Nevada. As defined in the amendment known as Section 8, established place of business is defined as a permanent enclosed building structure owned either in fee or leased with sufficient space to display one or more vehicles which the dealer is licensed to sell. In the case of a used vehicle dealer, trailer dealer or semi-trailer dealer, an established place of business need not be a permanent building or structure, but may be a vacant lot sufficiently bounded or otherwise marked to definitely indicate the boundaries thereof, but the term shall not mean or include a residence, tent, temporary stand or temporary quarters or permanent quarters occupied pursuant to a temporary arrangement. In the case of a used car lot the law requires the erection of a permanent closed building or structure large enough to accommodate the office or offices of the dealer and to provide a safe place to keep the books and other records of the business of such dealer, at which site or location the principal portion of such dealer's business shall be conducted and the books and records thereof kept and maintained.

In your letter you submit to this office the following query: "Can a new or used car dealer or salesman under Sec. 8 of Chap. 305 of the 1957 Stats. of Nevada (amending [NRS 482](#)) conduct the selling of vehicles outside the confines of his designated, established place of business?"

OPINION

Under Sec. 10 of [NRS 482](#) are set forth the causes for which a license of such dealers may be denied or revoked. Subparagraph (g) provides that this may be done by the department for "Failure on the part of such licensee to establish and maintain a fixed place of business in this state" in accordance with Sec. 8.

This office is convinced, after studying the entire Act, that the Legislature enacted Sec. 8 and Sec. 10 of [NRS 842](#) so as to establish a central operating unit for dealers where the books and records of their transactions will be at all times available for inspection by the authorized agents of the Motor Vehicle Department. It also establishes the place at which the operators of the business may be reached in case communication by post, wire or telephone is necessary by the department or the general public.

In short it would not be proper under the law for a dealer to move a number of the vehicles in his possession for resale to a location not listed with the department, and there to offer them for sale. However, there is nothing in the law which would prevent a salesman from contacting a potential purchaser at a point other than the confines of the dealer's established place of business, and after demonstration of the car, making initial commitments for the closing of the deal, provided, of course, that the completed transaction is reflected in the books at the listed place of business submitted by the dealer to your department.

Sec. 13 of [NRS 482 adequately](#) provides for the licensing and policing of salesmen by the department, so that abuses by unregistered and unlicensed salesmen can readily be detected upon complaint, and thereafter remedied by appropriate action.

Insofar as your question as to whether a highway patrolman would be subject to suit as a result of his action in enforcing a public law is concerned, it is the opinion of this office that no liability would attach unless such officer went beyond the bounds of reasonable enforcement, and then such liability would be personal and would not involve the State of Nevada, which under the law is exempt from suit without its consent.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

OPINION NO. 57-315 STATE WELFARE DEPARTMENT—OLD AGE ASSISTANCE—Exclusive contract entered into by State Welfare Department with medical profession to the exclusion of remedial care professions contrary to legislative intent and unconstitutional in that it discriminates against the remedial care professions and the applicants and recipients of Old-Age Assistance under Chapters 254, 255 and 307 of the 1957 Statutes of Nevada.

Carson City, October 9, 1957

Dr. R. W. Warburton, D.C., Secretary-Treasurer, Nevada State Board of Chiropractic Examiners,
329 N. Sierra Street, Reno, Nevada

Dear Dr. Warburton:

You have requested of this office an opinion as to whether the manner in which the State Welfare Department is administering state and federal funds under AB 171, AB 172 and AB 173, is in accordance with the law. These bills became Chap. 307, 255 and 254 of the 1957 Legislature.

In order to more fully appraise this department of the situation, you advise that the State Welfare Department has entered into a contract with the Nevada State Medical Association for the care of recipients of funds from state and federal sources, which excludes such recipients from seeking the aid of chiropractors, optometrists, chiropodists, dentists, and other remedial care agencies duly licensed and recognized by the State of Nevada.

This office, in an interview with the Director of the State Welfare Department, has learned that the sum paid to the Nevada State Medical Association under the contract is the sum paid to the Nevada State Medical Association under the contract is the sum of \$6 (half of which is contributed by the Federal Government) multiplied by the number of recipients on the rolls of said State Welfare Department. The director stated that any percentage of such sum as was not incurred for medical expenses by the recipients went into a reserve fund with the Medical Association.

OPINION

In order to more fully gain a background which will lead to a solution of the problem at hand, it is proper to briefly and succinctly delineate the contents of the Acts in question.

Chapter 307 of the 1957 Stats. (AB 171) contains amendments to [NRS 427 with](#) regard to assistance to needy aged persons who are 65 years or older. It is interesting to note in Sec. 3 the establishment of the old-age assistance fund. It reads: "1. The old-age assistance medical and

remedial care fund is hereby created in the State Treasury. Moneys made available to the State by the Federal Government and by the State for the purpose of providing medical care or any type of remedial care to recipients shall be deposited in the fund.”

Where did this language originate? In Section 303, Title 42, United States Code, which deals with the federal participation, subparagraph (4) reads, “in the case of any State, an amount equal to one-half of the total of the sums expended during such quarter as old-age assistance under the State plan in the form of medical *or any other type of remedial care (including expenditures for insurance premiums for such care or the cost thereof)* not counting so much of such expenditure for any month as exceeds the product of \$6 multiplied by the total number of individuals who received old-age assistance under the State plan for such month.” (Italics ours.)

Now it appears to the Attorney General that the federal Act would not have used the term “remedial care” separate and distinct from “medical care” unless it was contemplated that recipients might be in need of treatments not available through medical treatment. It contemplated conditions, both mental and physical, which might more readily respond to treatment by science outside the medical field, and recognized and authorized by state law.

Chap. 255 of the 1957 Stats. (AB 172) amends [NRS 426 as](#) such chapter affects aid to the blind. Here again in Sec. 1 aid to the blind is defined as “money payments to or medical care in behalf of *or any type of remedial care in behalf of*, blind individuals who are needy * * *.” Sec. 3 of the Act, subparagraph 1, provides for an “aid to the blind medical and remedial care fund” to be deposited in the State Treasury. Subparagraph 5 of Sec. 3 provides that the department may purchase necessary medical care or any other type of remedial care by contract for fee for service. (Italics ours.)

Once again it is contemplated that the Legislature foresaw the need of other types of remedial care not afforded by medical treatment by doctors. This is emphasized by the fact that all three of the 1957 legislative Acts provided for remedial care. The terms “medical care” and “remedial care” were both included in the federal law in order to make certain that the states would be authorized to include in their state plans or in the administration of their state plans the provision of professional care rendered by any type of healing arts practitioner legally recognized under the state law. In order to demonstrate the breadth of the authority, the Senate Finance Committee Report No. 1669, which was submitted in explanation of the bill, and as specifically directed to the provision involved, stated: “Thus, if a State recognized the care rendered by Christian Science practitioners, participation in the cost of this will be authorized.”

How, then, is the State Welfare Department to avoid this clear expression of legislative intent on both the part of the Federal Congress and the State Legislature. Under subparagraphs 4 of Secs. 3 of Chaps. 255 and 307 of the 1957 Stats. it is provided: “The state board may designate that the fund may cover any one, several, or all items of the medical care or any type of remedial care costs as deemed most advantageous to the state.”

That this is the peg on which the State Welfare Department has hung its exclusionary contract provisions is at once apparent. In further confirmation of this theory, the Director, in a letter to Dr. Marvin M. Sedway, Secretary of the Nevada State Optometric Association under date of August 28, 1957, wrote:

The State Legislation provides that “The state board may designate that the fund may cover any one, several or all items of the medical care or any type of remedial care costs as deemed most advantageous for the best interests of the state.” Because the fund is limited, it is not possible to pay for all items of medical or remedial care. * * * An agreement was entered into between the State Welfare Department and the State Medical Association, which represents the largest single group of suppliers of medical care within the State. Under the agreement the State Medical Association administers the fund—paying the physician and pharmacy directly in accordance with a special fee schedule.

It is the belief of this office that this provision was not incorporated in Nevada’s law for the purpose of excluding remedial care professions and awarding all payments under the Act to the

medical profession. If such were the intention of the Legislature, the words “remedial care” would not have found their way into the Act.

The paying of the entire \$6 per recipient of assistance into a fund available only to the doctors is, in the opinion of this office, improper. A recipient might be in sore need of dental care, of the services of a chiropractor or of an optometrist, and in no need of medical care. Yet his health must, under such an agreement, be jeopardized because the State Department of Welfare has relinquished all moneys available for medical or remedial care to the medical profession. Common sense would dictate that it was not the intention of the Legislature to deprive these aged and needy citizens of remedial care.

If the State Welfare Department has the right to place the interpretation on the law that it is for the best interests of the State to enter into an exclusive contract with the medical profession, what is to prevent a subsequent director or administration from determining that the State’s interests would best be served by entering into an exclusive contract with the remedial care professions, or one of them, and excluding the medical profession. Such contract would seriously affect the welfare of the individual, as does this contract, and could not, of course, be countenanced.

It is, therefore, the opinion of the Attorney General that the State Welfare Department, in entering into an exclusive agreement with the medical profession for the care of recipients under the provisions of Chaps. 254, 255 and 307 of the 1957 Stats. of Nevada, is contrary to the express intent of the Legislature, and to the intent of the Federal Statutes providing for federal participation, and unconstitutional in that it denies to applicants and recipients of assistance under the Acts rights provided for them in the legislation.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

OPINION NO. 57-316 PUBLIC SCHOOLS—Rules and regulations relating to the transportation of children between the ages of 7 and 17 to public schools are discretionary with the school boards and not mandatory under [NRS 392.300\(1\)](#).

Carson City, October 11, 1957

Honorable E. R. Miller, Jr., District Attorney, White Pine County, Ely, Nevada

Dear Mr. Miller:

You have directed to this office an inquiry in which you set up the following statement of facts:

Certain children living in rural areas of White Pine County are not attending public school because their local school was closed; and the parents claim that the new school which was designated for the children is too far away, and that access thereto would be difficult during the winter months.

You then propound the following four questions:

1. Is it mandatory that the school accept the responsibility for providing transportation for children living in an attendance area?
2. When the school has provided rules and regulations regarding their transportation payments, may they assume that the parent is responsible to see that these children are transported to the school in their attendance area?

3. Would it be possible for the school to pay in excess of the 7 1/2 cents per mile for the transportation of students if in their opinion they thought the road conditions warranted payment above the 7 1/2 cents per mile?

4. In the event that the parent is responsible for the transportation of their children to school what is the procedure for the board of trustees to follow in case the parent refuses?

OPINION

Your first question is answered by [NRS 392.300\(1\)](#), “As provided in this title of NRS, the board of trustees of any school district may, in its complete discretion, furnish transportation for all resident children of school age in the school district attending public school.” It is clear from this wording that the Legislature placed in the hands of the board of school trustees the broadest possible power for determining whether transportation should be furnished for resident children of school age to public schools.

The reason for this must be apparent. It would not be economically sound to provide transportation by bus for one or two children from a remote part of the school district. It may be determined that it would be more economical, in lieu of furnishing transportation, to abide by the terms of [NRS 392.350](#), whereby the board may pay to the parents or guardians an amount not to exceed \$3 per school attendance day to assist in the lodging and subsistence of the pupil. This often occurs where a public school in an adjoining school district is closer than the school previously attended by the pupil.

Then again, under [NRS 392.330](#), the board may use transportation funds for arranging for the payment of transportation costs of pupils by private car by contract. This type of contract could be entered into with the parents of the pupils to be transported.

It would appear, therefore, that the answer to your first question is that the transportation of children to public school with public funds is discretionary with the school board.

Do these provisions in any way conflict with [NRS 392.040](#) which provides for compulsory attendance at public schools of children between the ages of 7 and 17 years? Under this section the mandatory duty of seeing that children attend school is placed upon the parent or guardians of children within this age bracket. Therefore, the answer to your second question is that when the school board has provided rules and regulations which include legal transportation payments, the parents or guardians are responsible for the attendance of school children at the designated public school.

However, we call your attention to [NRS 392.080](#) which provides that this mandatory attendance set up in [NRS 392.040](#) shall be excused when the deputy superintendent of public instruction of the proper educational supervision district has determined that the child’s residence is located at such distance from the nearest public school as to render attendance unsafe or impractical, and the child’s parent or guardian has notified the board of trustees to that effect in writing.

Your third question deals with the contract of transportation by private car referred to in [NRS 392.330](#). It is the opinion of this office that the school board might enter into such a contract based upon their independent judgment as to the conditions attendant upon such transportation, and that a limitation of 7 1/2 cents per mile would not apply.

In view of the fact that the answer to your fourth question involves application to the courts for appropriate orders, it is not answered in this opinion.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

OPINION NO. 57-317 PUBLIC EMPLOYMENT—NURSES—Public employer abiding by maximum hour law for females subject to pay time and one-half only for hours actually worked in excess of eight hours in any one day.

Carson City, October 15, 1957

Mr. John H. McLaughlin, Deputy Labor Commissioner, State Building, Las Vegas, Nevada

Dear Mr. McLaughlin:

You have submitted to this office for determination a question which involves the rate of pay for nurses employed in private industry, and who are thus amenable to [NRS 609.010-609.180](#).

The problem presented may be thus succinctly stated: A nurse begins work at 7 a.m. and works for 8 actual hours on that day. She is then “on call” in case of emergency for the next 16 hours. Following this “on call” period the nurse has 24 hours when she is neither “on duty” nor “on call.” Your question is whether she is entitled to time and one-half wages for the actual time she serves while “on call” duty, or for the entire time she is “on call.”

OPINION

Under [NRS 609.030](#) (3a) it is declared to be the policy of the State “that 8 hours in any one 13-hour period, and not more than 48 hours in any 1 calendar week, and not more than 6 days in any calendar week, are the maximum number of hours and days female workers shall be employed in private employment, with certain exceptions in emergencies; * * *.”

It thus becomes apparent that under ordinary circumstances, not constituting an emergency, a nurse who goes on duty at 7 a.m. could not put in more than 8 actual hours between that time and 8 p.m. that night. Only because of her profession and the fact that it is closely allied service which might determine the health or permanent impairment thereof, of a patient, would time spent in work be permitted beyond the letter of the law. The same reasoning applies to weekly employment.

The maximum hours under which a nurse might be employed in case of emergency is set forth in [NRS 609.110](#)(2). It reads:

In the event of the illness of the employer or other employees, or a temporary increase of the business of the employer which could not by reasonable diligence be foreseen, to the extent that a greater number of female employees would be required than normally if the regularly employed females were, relieved from duty at the expiration of the 8-hour period, and no additional persons are then and there available or can be obtained with reasonable certainty who are capable of performing the duties required of the regularly employed females of any such employer, the regularly employed females may then be required and permitted to work and labor an additional period of time in a 24-hour period, but not to exceed 12 hours in such period, and in no event shall such females be required or permitted to be employed more than 56 hours in any 1 week of 7 days.

It can thus be seen that the actual amount of overtime “on call” duty could not exceed 4 hours if the nurse had actually put in an 8-hour day, and in no event may their employment exceed 56 hours in a 7-day week. It is presumed the nurse gets paid on her days off.

Paragraph 3 of [NRS 609.110](#) provides:

As to all hours the females shall be required or permitted to work, labor or serve over and above 8 hours in any 13-hour period, or 48 hours in any 1 week, such females shall be paid time and one-half for each additional hour, computed on their regular wage rates.

Thus we see that the payment for overtime is for actual work, labor or service.

It is therefore the opinion of this office that if the employer abides by the provisions of the law as to hours worked by each nurse and as set forth hereinbefore, that time and one-half would not have to be paid during the "on call" period except for actual hours worked during such period.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

OPINION NO. 57-318 FEDERAL MILITARY INSTALLATIONS WITHIN STATE—
Certain laws inapplicable—Jurisdiction ceded by State of Nevada to Federal Government in Chapter 144, Statutes 1935, applies exclusively to Hawthorne Ammunition Depot and has no application whatever to other federal military installations in the State.

Carson City, October 23, 1957

Harry L. Arkin, 2nd Lt., USAF, Asst. Staff Judge Advocate, Nellis Air Force Base, Nevada

Dear Sir:

In your letter of October 8, 1957, you request the opinion of this office as to (1) whether the "State of Nevada Cession Act of March 28, 1935, relating to the ceding of jurisdiction over military reservations to the Federal Government," is still in force and effect, and (2) whether the State, acting under this Act, ceded criminal jurisdiction to the Federal Government over any military installations within the State, thereby leaving exclusive criminal jurisdiction over these areas to the Federal Government.

OPINION

With reference to the first part of the above inquiry we wish to advise that the Act referred to appears in our statutes as Chap. 144, Stats. 1935 ([NRS 328.260](#)), and that it is still in full force and effect. Although several special Acts and at least two general Acts have been enacted since 1935 relative to the ceding of jurisdiction by the State to lands acquired by the Federal Government, we fail to find that they in any way tend to supersede or modify the Act to which this inquiry refers. It was undoubtedly a special Act, limited in its application to the USN Ammunition Depot and the buildings and other governmental installations erected in connection therewith, at Hawthorne, Mineral County, Nevada.

In answering the second part of the inquiry hereinabove propounded, we wish to advise that the question as to the extent of jurisdiction ceded by the State of Nevada to the Federal Government, under this Act, has on several occasions been considered by this office. Attorney General's Opinions Nos. 740, 1949; 77, 1951; and 163, 1952. By reason of the holdings in decisions of the federal courts and the content of Art I, Sec. 8 of the United States Constitution and Acts of Congress enacted pursuant thereto, these opinions express the view that it was not the intent of the Nevada Legislature in passing the Act to cede exclusive criminal jurisdiction to the Federal Government over the Hawthorne area. Although our State Supreme Court has never ruled on this precise question, the view of this office as above mentioned had previously been announced by the District Court for Mineral County in the trial of a criminal case entitled "*State of Nevada v. DeWitt*." This view is supported not only by the federal decisions, constitutional provisions and congressional acts as above mentioned, but also, by the general rule of statutory construction to the effect that statutes whereby the State relinquishes jurisdiction of lands to the

Federal Government must be strictly construed. And where the meaning of a statute, similar to that here under discussion which ceded jurisdiction to the Federal Government over an area used for the construction of Boulder Dam was under consideration, this rule was invoked by Judge Norcross in the Federal District Court of Nevada. *Six Companies, Inc. v. DeVinney*, 2 Fed.Supp. 693 (1933).

It having already been given as the opinion of this office that the Federal Government did not acquire exclusive jurisdiction over the Hawthorne Naval Ammunition Depot under the 1935 Act, and that criminal jurisdiction thereon is concurrent between the State and Federal Government, we reaffirm that contention. Further, the Act having been enacted exclusively for use in connection with the Hawthorne area, its provisions can have no application whatever to those military installations at Nellis Air Force Base, Indian Springs Air Force Base or the Air Force Base at Angeles Peak or any others in the State.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Deputy Attorney General

OPINION NO. 57-319 STATE LAND REGISTER—STATE HIGHWAY ENGINEER—

State Highway Engineer authorized under existing statutes to sell all state owned lands under jurisdiction of his department and to keep records of all transactions affecting title thereto. State Land Register empowered to sell all other state owned lands and is required to keep records of all such transactions, and also of all transactions affecting title to lands under the Highway Department's jurisdiction.

Carson City, October 29, 1957

Honorable H. D. Mills, State Highway Engineer, State of Nevada, Carson City, Nevada

Dear Sir:

In your letter of October 16, 1957, you call attention to conflicts existing between the provisions of (1) Chap. 320, Secs. 3 and 4, Stats. of 1957, approved March 28, 1957, and Chap. 370, Sec. 198, Stats. of 1957, approved April 1, 1957, both of which pertain to the method of disposing of state owned lands offered for sale, and (2) Chap. 320, Sec. 2, Stats. of 1957, and Chap. 370, Sec. 43, Stats. of 1957, pertaining to the keeping of records covering state owned lands. You have submitted an inquiry on each of these matters respectively, which we quote in order, as follows:

QUESTIONS

1. It is respectfully requested that an opinion by your office be given interpreting the statutes either to reconcile or to distinguish them; or to determine which should govern the selling of land under the jurisdiction of the State Highway Department.
2. Is it possible that the state land register may designate the State Highway Department as its agent to maintain an index or records of deeds or other references of title or interests in and to all lands or interests in land owned or acquired by the Department of Highways for highway purposes?

OPINION

No. 1. Without quoting in full the sections herein referred to, we note from their content that Chap. 320, Secs. 3 and 4, Stats. of 1957, provide a distinct method for disposing of all state owned lands offered for sale, authority to conduct such sales being vested exclusively in the State Land Register. Chap. 370, Sec. 198, Stats. of 1957, provides with equal definiteness that sales of all lands offered for sale by the State Highway Department, an agency of the State, shall be conducted by the State Highway Department, an agency of the State, shall be conducted by the State Highway Engineer. Relating to the same subject matter, these statutes are in pari materia and should be construed together. *State v. Esser*, [35 Nev. 129](#). But where an irreconcilable conflict appears between such statutes, the one last becoming effective will control. Sutherland Statutory Construction, Vol 2, Sec. 5202; *State v. Nev. Tax Com.*, [38 Nev. 112](#); *State v. Brodigan*, [37 Nev. 245](#).

It is clear from reading the sections of the statutes herein mentioned that they cannot be construed together. Their provisions are diametrically opposed. The wording of the Act first approved was evidently designed for the purpose of excluding all other agencies from the realm of conducting state land sales. The Legislature not only provided that all land sold by the State should be sold pursuant to the method therein provided, but also, "notwithstanding any other provisions of law." That method would be exclusive had no further legislation on the subject been enacted, but such was not the case. With full knowledge of the existence of the statute providing for all state land sales by the State Land Register, the Legislature, nevertheless, and at the same session, enacted Chap. 370, Sec. 198, providing that all sales of state land owned by the Highway Department should be conducted by the State Highway Engineer. We can deduct no other conclusion than that the Legislature intended to make an exception as to the method by be used in selling lands of the State Highway Department. Since the Legislature has enacted two statutes with irreconcilable provisions, the one last becoming law will control under the rule above stated and which has been frequently recognized by the courts of this State.

It is therefore our opinion that Chap. 370, Sec. 198, Stats. of 1957, governs as to the sale of lands under the jurisdiction of the State Highway Department.

No. 2. The keeping of records pertaining to all state owned lands is provided for in Chap. 320, Sec. 2, Stats. of 1957, which reads as follows:

Sec. 2. 1. In addition to the records required to be kept pursuant to [NRS 321.040](#), the state land register shall maintain an index or record of deeds or other evidence of title or interest in and to all lands or interests in lands owned or acquired by the state or any department, agency or institution thereof, whether the same was acquired by purchase, gift, grant or selection, condemnation, escheat, forfeiture of contract of sale, or otherwise, including all lands or interests therein acquired by the department of highways for highway purposes.

Since statutes are to be construed in their ordinary sense, we believe that the section above quoted makes it mandatory that the State Land Register keep a complete record of all transactions affecting title to lands owned by either the State or any of its departments, including the State Highway Department. This interpretation must stand unless some other statute exists which must be read in pari materia. Chap. 370, Sec. 43, Stats. of 1957 appears to be such a statute, and reads as follows:

Sec. 43. 1. The engineer shall have charge of all the records of the department, keeping records of all proceedings pertaining to the department and keeping on file information, plans, specifications, estimates, statistics and records prepared by the department, except those financial statements described in section 172, which shall not become matters of public record.

We have but to determine whether the two sections above quoted are in conflict so as to exclude the operation of one of them, or if they may both operate without deterring the effectiveness of each other. A close study of the functions required of the State Land Register as provided for in the first section quoted above (Chap. 320, Sec. 2, 1957 Stats.) fails to convince us that they conflict with those required of the State Highway Engineer as provided for in the second section above quoted (Chap. 370, Sec. 43, 1957 Stats.). The State Land Register is required to "maintain an index or record of deeds or other evidence of title or interest in and to all lands, etc.," whereas the State Highway Engineer is required to "have charge of all the records of the department, etc." Having already stated it as our opinion herein that the State Highway Engineer is empowered to sell all lands under the jurisdiction of his department, it follows that all transactions affecting either the acquisition or disposal of such lands must be kept of record in the Highway Engineer's office. Otherwise his power to sell lands of the department as provided for in Chap. 370, Sec. 198, Stats. of 1957 would be rendered ineffective.

The keeping of all such records by the State Highway Engineer does not prevent nor prohibit the State Land Register from maintaining a record of all transactions occurring in the State Highway Engineer's office affecting lands under the jurisdiction of the latter department. The register, under the provisions of Chap. 320, Sec. 2, Stats. of 1957 is permitted to keep and maintain the actual records of deeds or "other evidence of title or interest" thereto. This permissive requirement as it affects lands under the jurisdiction of the State Land Register's office is fulfilled if he maintains files of the copies of all deeds and other instruments affecting the title to such lands. Keeping copies of such transactions in lieu of the originals thereof is equivalent, as we see it, to maintaining what this section terms "other evidence of title or interest." In order that this procedure be effective, it is necessary that a copy of each and every transaction affecting any lands under the jurisdiction of the State Highway Department be immediately furnished by it to the State Land Register for his records. This precludes any possibility that the State Highway Department may act as an agent in this capacity for the State Highway Department may act as an agent in this capacity for the State Land Register as suggested in the second question hereinabove propounded.

For the reasons stated it is our opinion that question No. 2 should be answered in the negative. Should the Legislature desire to eliminate this duplicate process of maintaining records pertaining to lands under the jurisdiction of the State Highway Department, it has but to delete from Chap. 370, Sec. 198, Stats. of 1957 the power of the State Highway engineer to sell such lands.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Deputy Attorney General

OPINION NO. 57-320 STATE DEPARTMENT OF EDUCATION—The printed form of teacher contract supplied by the department may be modified by contracting parties.

Carson City, November 4, 1957

Honorable Roscoe H. Wilkes, District Attorney, County of Lincoln, Pioche, Nevada

Dear Mr. Wilkes:

We have your letter of October 23, 1957, requiring an opinion from this office.

In your inquiry you have quoted the abrogation clause that appears in the teacher form contract that is supplied to school districts by the state office of Superintendent of Public Instruction. This abrogation clause reads as follows:

This contract may be abrogated only for legal cause as stipulated in the Nevada School Code, or by mutual consent. In case this contract is not performed in its entirety, the salary the teacher receives shall be figured in the same proportion as the number of school days taught is to the number of actual days of teaching covered in the contract.

This clause appears hardly adequate to meet the needs of the Lincoln County school district, by reason of a fluctuating economy of that county, insofar as the mining industry is concerned.

You have proposed three abrogation clauses, to the end that if we conclude that one or another may be used, we then show a preference, it being the intention that if one of these abrogation clauses be used it be substituted for the one appearing on the contract form hereinabove quoted in part.

We are advised by the office of the Superintendent of Public Instruction that the form contract supplied by the department was never intended to be exclusive or mandatory but that it was supplied to assist the small schools, and that certain of the schools of the State have altered it slightly and do enter into a contract of slightly different content.

QUESTION

May a county school board in Nevada include any or either of the above-proposed abrogation clauses in a school teacher's contract without having violated the provisions of the Nevada School Code or other Nevada law?

OPINION

Opinion No. 440, of April 2, 1947, answers this question in the affirmative, holding that the "Printed forms may be altered by the contracting parties."

We find no material change in the statutes in this respect and are of the opinion that the question must be at this time, under the present code, answered in the affirmative.

[NRS 386.350](#) provides the powers of the board of trustees. This statute is broad and comprehensive.

[NRS 391.120](#) provides for boards of trustees to enter into written contracts of employment with teachers. This section in no respect indicates that the printed form contract provided by the state department must be used without alteration.

[NRS 391.110](#) provides that boards of trustees may employ a county superintendent of schools and may "define his powers and fix his duties."

In view of these statutory provisions we feel that your proposed abrogation clause (c) is most desirable. It differs from (b) in that the board could act without the recommendation of the county superintendent of schools, which we feel to be the more desirable provision, for the board of trustees would nevertheless, in an ordinary case, have the views and recommendations of the superintendent.

Your proposed abrogation clause (c) reads as follows:

This contract may be abrogated only for legal cause as stipulated in the Nevada School Code, or at any time by mutual consent, or by action of the Board of Trustees in cases where emergencies arise and where the fulfillment of this contract would handicap the educational program in the district. In case this contract is not performed in its entirety, the salary the teacher receives shall be figured in the same proportion as the number of school days taught is to the number of actual days of teaching covered in the contract.

We therefore recommend that if an abrogation clause differing from the one contained in the printed form be deemed necessary by the board of trustees, that the above be substituted.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: D. W. PRIEST
Deputy Attorney General

OPINION NO. 57-321 COUNTIES; COUNTY EMPLOYEES; PUBLIC EMPLOYEES—

Vacation time for county elective officers under [NRS 245.190](#) is 15 working rather than calendar days. Military leave time with pay under [NRS 245.210](#) is not to exceed 2 weeks by the calendar.

Carson City, November 7, 1957

Honorable William P. Beko, District Attorney, Nye County, Tonopah, Nevada

Dear Mr. Beko:

This is in compliance with your request for the opinion of this office upon the following problem.

[NRS 245.190](#) provides as follows:

Elective county officials who have been in the service of the county for 1 year or more, in whatever capacity, shall be allowed in each calendar year a leave of absence of 15 days with full pay.

[NRS 245.210](#) provides as follows:

The board of county commissioners of each of the several counties is authorized, upon such terms and conditions as it deems proper, to grant vacations with pay, military leaves, not to exceed 2 weeks with pay, and sick leave to any employee or appointed officer of the county who is a regular employee or officer and has been in the service of the county for at least 1 year.

The question arises as to whether the 15 days referred to in [NRS 245.190](#) and the 2 weeks referred to in [NRS 245.210](#) means 15 and 14 working days or 15 and 14 calendar days.

The wording used in [NRS 245.190](#), above quoted, is identical, insofar as this problem is concerned, to the former Sec. 7279 N.C.L. 1929, which concerned the vacation period of state officers and employees. The wording as applied to state officers and employees was determined by this office to refer to working days and not calendar days. *See* Opinions of Attorney General Nos. 273, August 1, 1927; 336, April 9, 1942, and Letter Opinion No. B-27, December 31, 1940. This office is of the opinion that the same interpretation is to be placed upon the provisions of [NRS 245.190](#) concerning county elective officers as was placed upon the provision concerning state officers and employees. Thus, we interpret [NRS 245.190](#) to mean that the elective county officials are to have 15 working days vacation per year with pay.

Of course, with reference to [NRS 245.210](#), the county commissioners are, by that section, the body authorized to fix the length and period of the vacations of the county employees and

appointed officials. With reference to the limitation of 2 weeks allowed for military leave with pay, we are of the opinion that the wording does not admit of any interpretation other than that "2 weeks" means 2 weeks as measured on the calendar. If you consider the 2 weeks in this instance to mean 14 working days, you in effect authorize in practice an absence from work with pay of three weeks. This, we think, does too much violence to the wording of the law wherein the limitation is "not to exceed 2 weeks." Moreover, it is quite clear that this time allowed for military leave is designed to permit those persons who go each year to a military camp for training to do so without loss of pay or of their own vacation time. These military training periods are 2 weeks by the calendar and not 3 weeks. We think the Legislature was in this instance allowing 2 calendar weeks of leave to correspond with the 2 calendar weeks of military training.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Deputy Attorney General

OPINION NO. 57-322 PUBLIC EMPLOYEES RETIREMENT SYSTEM—Duty of determining whether position covered by system normally requires less than 1,200 hours per year lies with the Public Employees Retirement Board and not with the employer.

Carson City, November 7, 1957

Mr. Kenneth Buck, Executive Secretary, Public Employees Retirement Board, Carson City, Nevada

Dear Mr. Buck:

This office is in receipt of your letter of October 22, 1957, requesting an opinion as to an interpretation of [NRS 286.320](#) and [286.420\(1\)](#).

These sections read as follows:

286.320. No employee whose position normally requires less than 1,200 hours of service per year may become or remain a member of the system.

286.420(1). Deductions shall not be made from the salary of an employee and contributions shall not be paid thereon by the public employer until the conclusion of 30 consecutive days of employment, unless the employee shall elect, at the beginning of the employment period, to make such contributions from the first day of employment.

OPINION

Referring first to [NRS 286.320](#), what was the intention of the Legislature? It was, in the opinion of this office, simply this: That persons filling positions which had been determined to require less than 1,200 hours per year could not become members of the system. The words "or remain" clearly indicate that if a position which had required 1,200 hours of work or more, per year, were reduced below that number, the incumbent of the position would no longer be within the directive requiring membership in the system, and thence could only come within the purview of the law by transfer to a job requiring the 1,200-hour minimum service, or return to a

job within the system requiring more than the 1,200-hour minimum within the 5-year period set forth in [NRS 286.400](#).

[NRS 286.420](#)(1) is perfectly clear in that it merely gives an employee within the system an option to join the system immediately upon employment, or to wait 30 days before having compulsory deductions made from his salary. This section has nothing to do with a determination as to whether the position falls within the 1,200-hour classification.

This brings us to the only question which we feel is important in the matter presented to this office. Who shall make the determination as to whether the position contemplates less than 1,200 hours service per year, for it must be conceded that it is the position and not the incumbent which gives rise to this determination. Under [NRS 286.190](#) the Public Employees Retirement Board is given the power of managing the system. This, we think, includes the determination of those positions which normally require less than 1,200 hours per year.

To hold otherwise would be to place in the hands of employers under the system the power to make determinations affecting self-interest, as to whether positions require a contribution to the system, and the result would lead to as many determinations as there were employers. There would be no uniformity of determination throughout the State and only confusion would result, to the detriment, if not eventual destruction, of the Public Employees Retirement System.

It is, therefore, the opinion of this office that if the Public Employees Retirement Board has determined that a position within the system normally requires more than 1,200 hours' service per year, that the public employer member of the system must, after a maximum period of 30 days from the date of employment, deduct contributions for retirement benefits from the employee and pay the same into the fund provided by law for that purpose.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

OPINION NO. 57-323 NEVADA STATE INDUSTRIAL SCHOOL—Superintendent empowered to make certain rules, regulations and orders, but must follow certain prescribed procedure in enforcement of the same.

Carson City, November 15, 1957

Mr. Ward Swain, Superintendent, Nevada School of Industry, Elko, Nevada

Dear Mr. Swain:

We acknowledge receipt of your letter of October 21, 1957, stating that it has been for several years, and still is, the practice to take boys who are committed at the Nevada School of Industry to the county jail in Elko for short periods of incarceration when they become incorrigible. You inquire as to the necessary legal steps justifying this practice.

OPINION

Under existing laws governing the existence and operation of the Nevada School of Industry, no provision is made for incarceration of incorrigibles at the school or elsewhere. It is obviously the intent of the law that the institution not be regarded as a prison or reformatory, but as a school. Yet, many, if not most, of those committed there have been juvenile offenders whose activities in unlawful pursuits would have reached great heights had they not been curbed by court action resulting in their commitment. Tendencies toward the commission of unlawful acts does not always cease automatically when a boy is so committed. In fact, it may even become

more pronounced. The Legislature has recognized the necessity of enforcing order at the school and among the powers of the superintendent enumerated under [NRS 210.070](#) he is empowered, among other things, "to make and revise rules and regulations for the preservation of order and the enforcement of discipline."

We believe that by reason of the section quoted it was without doubt the legislative intent to empower the superintendent of the Industrial School not only to make orders, rules and regulations governing discipline at the school, but also to enforce the same. Although the Legislature did not attempt to set a limit upon the extent of such rules, regulations and orders, we believe they may extend to whatever becomes reasonably necessary for the preservation of good order and discipline. An order that a boy who has run away, stolen cars or burglarized homes on at least two occasions, is incorrigible and must be incarcerated in the county jail, is, as we see it, a reasonable and necessary order.

But since the superintendent is restricted under [NRS 210.070\(2\)\(f\)](#) to invoke any legal, equitable or special procedures for enforcement of his orders, it follows that any procedure other than that prescribed by law or recognized by the courts is not authorized. The only applicable procedure, in the opinion of this office, is provided under [NRS 62.170](#) reading as follows:

1. Any peace officer or probation officer may take into custody any child who is found violating any law or ordinance or whose surroundings are such as to endanger his welfare. When a child is taken into custody, the officer shall immediately notify the parent, guardian or custodian of the child, if known, and the probation officer. Unless it is impracticable or inadvisable or has been otherwise ordered by the court, the child shall be released to the custody of his parent or other responsible adult upon the written agreement signed by such person to bring the child to the court at a stated time or at such time as the court may direct. The written agreement shall be submitted to the court as soon as possible. If such person shall fail to produce the child as agreed or upon notice from the court, a writ may be issued for the attachment of the person or of the child requiring that the person or child, or both of them, be brought into the court at a time stated in the writ.

2. If the child is not released, as provided in subsection 1, the child shall be taken without unnecessary delay to the court or to the place of detention designated by the court, and, as soon as possible thereafter, the fact of detention shall be reported to the court. Pending further disposition of the case the child may be released to the custody of the parent or other person appointed by the court, or may be detained in such place as shall be designated by the court, subject to further order.

3. No child under 18 years of age shall at any time be confined or detained in any police station, lockup, jail or prison, or detained in any place where the child can come into communication with any adult convicted of crime or under arrest and charged with crime; except that where no other detention facility has been designated by the court, until the judge or probation officer can be notified and other arrangements made therefor, the child may be placed in a jail or other place of detention, but in a place entirely separated from adults confined therein.

Under the procedure there prescribed, the incorrigible is brought under the supervision of the court for a hearing before any incarceration in the county jail may be finally adjudged or ordered. Incarceration of a person without a hearing is, in our opinion, both unauthorized under existing procedure and fails to constitute due process of law. We believe that offenses involving boys committed to the Industrial School must be treated in much the same manner as those not so committed.

Respectfully submitted,

HARVEY DICKERSON

Attorney General

By: C. B. Tapscott
Deputy Attorney General

OPINION NO. 57-324 NEVADA LIQUEFIED PETROLEUM GAS BOARD—Board not authorized under Nevada Liquefied Petroleum Gas Act of 1957 to license plants used for storage purposes only in connection with liquefied petroleum gas business, as it is not within contemplation of Act that such plants be licensed. Persons and firms making repairs and adjustments to gas consuming appliances required to be licensed by LPG Board. Such persons and firms fall within Class 4 for purposes of determining license fees.

Carson City, November 18, 1957

Mrs. Ivy M. Shannon, Executive Secretary, Nevada Liquefied Petroleum Gas Board, Carson City, Nevada

Dear Mrs. Shannon:

This refers to your letter of October 28, 1957, wherein the Liquefied Petroleum Gas Board requests the opinion of this office on the following:

QUESTION

1. Is it possible for the above named board to license storage plants that are not manned? We are now licensing substations but many licensed dealers have storage plants some distance from their place of business. Can these storage plants be licensed?
2. The second question that has come before the board is can they license firms doing repair and adjustments to gas consuming appliances?

OPINION

With reference to question No. 1, we deduct that an unmanned plant is one at which an overseer of employee is not regularly in attendance. This situation is common to storage plants for oils, gases and similar products since their locations are usually outside city limits for security reasons, and the product stored there is drawn upon as sales which are made at the regular place of business located elsewhere require. Under such circumstances it must be said that maintaining a storage plant for liquefied petroleum gas which serves a liquefied petroleum gas business does not constitute a separate or additional enterprise, but is only a part of such regular business. Under the provisions of Sec. 10, 590 NRS (1957), before any person may engage in the business of selling, delivering, transporting or storing LPG he must first be properly licensed by and through the LPG Board. By its nature, a license is more than a mere permit to open a building or plant to business. It grants a special privilege to the individual to whom issued and certifies to his qualifications to operate a particular business. We believe that the intent of the law above cited is that an applicant granted a dealer's license by the LPG Board is privileged not only to sell gas but also to do and perform such other functions as may necessarily be a part thereof. Despite the provisions of Sec. 15(2) of Chap. 590 above cited, requiring that an LPG license shall specify the premises for which it is issued, and Sec. 16(1) thereof stating that it is valid only for the particular premises for which issued, we believe that the licensee is nevertheless authorized to maintain a storage plant on a separate premises as a necessary part of the privilege granted him. If the nature of operations carried on at the plant should change to that where a separate license is

required, the board is empowered to request such. While limited in its operations to storage, it is our opinion that no license is necessary under existing laws.

With reference to question No. 2, we understand that certain persons and firms who are not LPG licensees and who perform no services in connection with the handling of such gas nevertheless repair and adjust gas consuming appliances. While we fail to find any requirement in the Act specifically requiring a license for persons and firms performing such services, neither are they specifically exempt as are certain others under Sec. 10(1)(2)(3). Had the Legislature intended to exempt those persons and firms rendering repair and adjustment services to gas consuming appliances from obtaining a license, they would have been included with those who are exempt. We note that persons installing gas consuming appliances, piping, apparatuses, fixtures and connections are, under the Act, specifically required to be licensed. Repairing and adjusting gas consuming appliances is so closely related to these services as to be practically synonymous. The second type of service would appear as important as the first insofar as the health, safety and welfare of the people of the State is concerned. To permit unlicensed persons and firms to repair and adjust gas consuming appliances after its installation by licensed persons or firms would be analogous to requiring a licensed electrician to install wiring in a house and thereafter permitting an unlicensed person to make repairs and adjustments thereto. Our opinion is that it was intended in the Act that all persons or firms who in any way or manner handle LPG or appliances used in connection therewith be licensed unless specifically exempt.

Since persons and firms making repairs and adjustments to gas consuming appliances, by the very wording used in the Act, do not fall within Class 1, 2 or 3 as set forth in Sec. 14 Thereof, they logically fall into Class 4 for purposes of assessing license fees.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Deputy Attorney General

OPINION NO. 57-325 NEVADA FISH AND GAME COMMISSION—Mere possession alone of another's game tag insufficient to constitute an illegal act under [NRS 502.140](#). Such possession must be accompanied by intent to make an illegal use of the same while in a position to do so.

Carson City, November 19, 1957

Mr. Frank Groves, Director, Fish and Game Commission, P.O. Box 678, Reno, Nevada

Dear Sir:

In your letter of November 14, 1957, you ask the opinion of this office as to the interpretation of [NRS 502.140](#), reading in part as follows:

And it shall be unlawful for any person to obtain tags for his use in excess of this number or to use or possess tags issued to any other person, or to transfer or give tags issued to him to any other person.

OPINION

The above is, of course, a criminal statute appearing in the Fish and Game Code, and is what the law terms “malum prohibitum” in that no intent is necessary for its violation. It is a general rule of interpretation that penal statutes be strictly construed. Sutherland-Statutory Construction, Vol. 3, Sec. 5604 et seq. The rule has been almost universally adopted by all courts, including the Nevada State Supreme Court. *Ex Parte Smith*, [33 Nev. 466](#); *State v. Brodigan*, [37 Nev. 488](#); *Ex Parte Smith*, [33 Nev. 466](#); *State v. Brodigan*, [37 Nev. 488](#); *Ex Parte Todd*, [46 Nev. 214](#). In a Michigan case the court stated what we believe best fits statutes of the type under consideration. It said: “The rule of strict construction confines an offense to the words of the statute, but it permits the words not only to be read naturally, but to be given a meaning in harmony with the purpose and intent of the law as far as it may be done without distortion of the language.” *Hightower v. Detroit Edison Co.*, 247 N.W. 97.

We believe that the prohibition contained in the above statute against any person possessing game tags issued to another person must be tempered to fit the particular situation involved. We cannot concede that the Legislature intended every possession of another person’s tag to constitute a violation of the law. It must be determined from attending circumstances whether the possessor was in a position to use the tag to his own advantage and also whether such was his intent. In cases where one presents the license of another person for the purpose of obtaining a tag for such person, it would appear obvious that there could be no intent of misuse under usual circumstances. The fact that the tag is issued upon a particular license would confine its use to the owner of the license. Unless one in possession of another’s tag is actually using it while hunting or under some similar circumstances indicating an effort or intent to derive benefits for himself, we are of the opinion that such possession would not be illegal.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Deputy Attorney General

OPINION NO. 57-326 PUBLIC SERVICE COMMISSION—Neither under the law creating it nor under any other laws or court decisions does the Public Service Commission have jurisdiction to approve purchases of electrical distribution systems or other such utilities.

Carson City, December 17, 1957

Honorable Robert A. Allen, Chairman, Public Service Commission, State of Nevada, Carson City, Nevada

Dear Sir:

In your letter of December 5, 1957, you state that Ely Light and Power Company has recently purchased from Kennecott Copper Company, certain distribution facilities, i.e., pole lines and hardware necessary for distribution of power in McGill, Ruth, New Ruth and Lone Tree Townsite. By reason of this purchase, the opinion of this office is requested as to whether or not the Public Service Commission has jurisdiction, by statute, to approve the purchase of electrical distribution systems and other such utilities.

OPINION

Like most public boards and commissions, public service commissions are generally creatures of statute, deriving their powers therefrom. With respect to their jurisdiction, the rule is well stated in 43 Am.Jur. 701, Sec. 193, thus: "A public service commission has, however, no inherent power; all its power and jurisdiction, and the nature and extent of the same, must be found within the statutory or constitutional provisions creating it."

Although we have not found an expression of the Nevada State Supreme Court precisely in point with this rule, there are, nevertheless, numerous decisions embracing it from other jurisdictions. It has been held that a public service commission has no powers except those granted by the Public Utilities Act, 146 N.E. 606; that all powers and jurisdiction of the public service commission must be found within the four corners of the statute creating it, since it is a tribunal of statutory creation. *Monroe v. Railroad Commission of Wisconsin*, 174 N.W. 450; that a public utility 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 the 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*, 255 So. 130; and that 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 P.2d 709.

The Public Service Commission of Nevada is created under [NRS 703.020](#) of Chap. 703. There, and also under Chap. 704 of NRS are enumerated certain powers and duties. In none of these is the commission authorized or vested with jurisdiction to approve purchases of electrical distribution systems, nor can any such authority be implied from any of those specifically granted. We feel compelled to follow the rule above stated, and as reiterated in many court decisions, in finding that no jurisdiction lies within the commission to approve purchases of the type mentioned. (See also Attorney General's Opinion No. 919, May 16, 1950).

Based upon these authorities, the inquiry submitted should, in our opinion, be answered in the negative.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Deputy Attorney General

OPINION NO. 57-327 MOTOR VEHICLES, DEPARTMENT OF—PUBLIC SERVICE COMMISSION; BOAT REGULATION LAW—Privately owned boats which are not rented but used exclusively for pleasure, not required to be licensed under the provisions of Chapter 339, Statutes of 1957.

Carson City, November 21, 1957

Honorable Robert A. Allen, Ex Officio Director, Department of Motor Vehicles, Carson City, Nevada

Dear Sir:

Your inquiry of November 7, 1957, calls attention to Chap. 339, Stats. of 1957, commonly referred to as "The Boat Regulation Law," and points out that Sec. 5 thereof apparently limits its scope to rental units only. The opinion of this office is required on the following:

QUESTION

Does the boat owned by a private individual, used by him for pleasure, and not rented or offered for rent, come under the provisions of the act?

OPINION

Chap. 488, NRS, being Chap. 143, Stats. of 1951, providing for regulation of certain boat operations in this State is entitled: "An Act regulating the Operation of Power boats and Providing Penalties." Chap. 339, Stats. of 1957, amends the earlier Act and is entitled: "An Act amending Chapter 448 NRS relating to powerboats by creating *new provisions relating to all boats* * * *. (Italics supplied). It was obviously the intent of the Legislature, by reason of this language, to broaden the scope of the law regulating the operation of boats so as to extend it to *all boats*. Such intent is further expressed in Sec. 8 of the body of the Act which sets forth that the provisions of the Act "shall be applicable to all boats, as herein defined, navigated or operated upon the public waters of this state." Both the term "Boat" and "Motorboat" are defined in the Act. Under Sec. 4(1) "Boat" means any vessel less than 26 feet in over-all length, including canoes, skiffs, dinghies, rowboats, sailing vessels and motorboats, and under Sec. 4(3) "Motorboats" means any boat less than 26 feet in over-all length propelled in whole or in part by machinery, including boats temporarily equipped with detachable motors. By reason of Sec. 3, any boat falling within either of these definitions comes within the scope of the Act.

This brings us to a consideration of Sec. 5 for a determination as to whether it entirely excludes any particular type of boats, (e.g. those privately owned, not rented and used exclusively for pleasure) from the scope of the Act. Having already determined that all boats, including those in question, come under the Act generally, we have now but to determine whether the provisions of Sec. 5 apply to this special class. We can only read the language of the section in its ordinary and usual sense to arrive at its meaning. It specifically applies to such boats as are rented or offered for rent upon the public waters of the State. By the very wording of the section itself, privately owned boats which are not rented but which are used exclusively for pleasure by the owners thereof, are not required to be licensed.

Our conclusion is that while boats falling into this category come under all other provisions of Chap. 339, Stats. of 1957, they are excluded from those provisions thereof pertaining to licensing, i.e., Sec. 5, and also Secs. 6 and 7.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Deputy Attorney General

OPINION NO. 57-328 COUNTY COMMISSIONERS—There are exceptions to the rule that county commissioner may not vote upon any proposed contract that would extend beyond his term of office. [NRS 244.320](#) construed.

Carson City, November 27, 1957

Honorable Cameron M. Batjer, District Attorney, County of Ormsby, Carson City, Nevada

DEAR MR. BATJER:

We are in receipt of your letter of November 21, 1957 presenting a problem and requesting an opinion of this office thereon.

[NRS 277](#), hereinafter more fully discussed as to content, provides for cooperative agreements to be entered into in writing between public agencies.

[NRS 244.320](#) provides the following:

244.320. Commissioners cannot vote on contract extending beyond term.

1. *Except as otherwise authorized by law*, no member of any board of county commissioners shall be allowed to vote on any contract which extends beyond his term of office. (Italics added.)

QUESTION

May Douglas County, Ormsby County and the city of Carson City enter into a cooperative agreement pursuant to the provisions of Chap. 277, for the employment of an engineer, whose term of employment under the contract would extend beyond the term of office of some of the members of the boards of county commissioners?

OPINION

[NRS 277.010](#) provides that cooperative agreements "if authorized by their legislature or other governing bodies," may be entered into between public agencies within and without the State.

[NRS 277.020](#) provides that cooperative agreements may be entered into between counties, cities and school districts within the State.

[NRS 277.030](#) provides that cooperative agreements may be entered into between counties and cities with the State.

[NRS 277.040](#) authorizes the execution of cooperative agreements for fire protection between counties and cities within the State.

[NRS 277.050](#) makes provision for the sale or lease of real property from one public agency to another within the State by the governing body thereof, without the necessity of an election being held upon such question.

It is our view and opinion that in the enactment of [NRS 244.320](#) the Legislature intended the authority set out under the sections mentioned to allow the execution of contracts upon the enumerated subjects, despite the fact that the contracts would extend beyond the term of some of the interested county commissioner incumbents. That is, these are exceptions to the impediment recited under [NRS 244.320](#).

We are also of the opinion that a portion of [NRS 277.030](#) is directly applicable to a contract for the employment contemplated. It is authority for such a contract.

[NRS 277.030](#), in part, reads as follows:

1. The boards of county commissioners of the various counties of this state and the city council of any incorporated city within such county are authorized and empowered to enter into cooperative agreements with each other for:

* * *

(b) The joint employment of clerks, stenographers and other employees in the offices of the city and county auditor, city and county assessor, city and county treasurer, *or any other joint city and county office existing or hereafter established* in the several counties, upon such terms and conditions as may be determined for the equitable apportionment of the expenses of the joint city and county office. (Italics added.)

For the reasons given and upon the authority cited, we are of the opinion that the question must be answered in the affirmative.

Respectfully submitted,

HARVEY DICKERSON

Attorney General

By: D. W. Priest
Deputy Attorney General

OPINION NO. 57-329 STATE DAIRY COMMISSION—University of Nevada Dairy Farm subject to registration and payment of assessments provided by the 1955 Act regulating state dairy products and substitutes.

Carson City, December 3, 1957

Mr. P. W. Hayden, Comptroller, University of Nevada, Reno, Nevada

Dear Sir:

Your letter of November 22, 1957, states that the University of Nevada Dairy Farm sells milk as a natural by-product of its experimental dairy herd. By reason of this activity, you request the opinion of this office as to whether or not the University should register with the State Dairy Commission and pay the monthly assessment charge required by that organization of all milk producers.

OPINION

At its 1955 session the Nevada Legislature passed an Act regulating state dairy products and substitutes wherein the State Dairy Commission was created and declared to be the instrumentality of the State for purposes of administering and enforcing said Act. We are here concerned with those portions thereof defining a producer and prescribing his duties with reference to registration with the commission and paying assessments. Pertinent thereto are the following provisions:

[NRS 584.370](#)(1) “Producer” means any person who produces fluid milk from five or more cows or goats in conformity with the applicable health regulations of the place in which it is sold.

[NRS 584.510](#). The commission may issue licenses to distributors and require the registration of producers.

Assessment of producers insofar as it relates to this inquiry is found in [NRS 584.635](#)(1) (3) which provide:

1. Distributors who are subject to the provisions of any stabilization and marketing plan made effective by [NRS 584.325](#) to [584.690](#), inclusive, shall deduct as an assessment from payments due producers for fluid milk, fluid cream or both, including each distributor’s own production, the sum of one-half cent per pound milk fat on all milk fat contained in fluid milk, fluid cream or both, or in the case of

distributors who do not purchase or receive fluid milk, in milk fat pounds, the sum of 1 1/2 cents for each 10 gallons of fluid milk sold. Such assessment rates are maximum rates.

* * *

3. The amount of the assessment so deducted shall be paid to the commission on or before the 15th of the month following the month during which such fluid milk or fluid cream was received.

While the University of Nevada Dairy Farm is maintained and operated primarily for experimental purposes, it nevertheless produces and furnishes to the market a product in competition with other milk producers. We believe that in so doing it acts in this particular respect in a proprietary capacity. It realizes certain financial benefits from such operation separate and apart from the experimental knowledge acquired. Insofar as its function of furnishing milk for the market is concerned, it serves the same purposes as any private producer. That it is a producer under the statutory definition of that term as hereinabove quoted, there can be no doubt.

Nowhere in the Act is the University Dairy Farm excepted from the provisions thereof. Unless, as a branch of the State University, it falls under some exception otherwise provided by law, it becomes subject to all provisions of the Act applicable to producers, including the payment of assessments therein provided.

We know of no law which excepts the farm from the provisions of the Act, nor have any cases interpreting the same been decided by our State Supreme Court. Although property of the State, its subdivisions and agencies, is specifically exempt from taxation by [NRS 361.055](#), that section is inapplicable to assessments of the type here involved. The assessment provided for in the Act under discussion is not a tax in its strict sense, but is more properly speaking a contribution or dues for maintenance of the State Dairy Commission and its functions as none of the moneys collected from this source goes for the general support of State Government.

For the contributions so made, the farm is the recipient of benefits afforded by the Act to the same extent as other producers. It is, therefore, our opinion that the University must comply with the provisions thereof, both as to registration as a producer and payment of all assessments.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Deputy Attorney General

OPINION NO. 57-330 NEVADA TAX COMMISSION—Deficit in boarding house operation not a deductible item in computation of net proceeds of mines. Attorney General Opinion No. 780, July 21, 1949, confirmed. Costs of maintenance and repairs of facilities are deductible. [NRS 362.120](#) construed.

Carson City, December 5, 1957

R. E. Cahill, Secretary, Nevada Tax Commission, Carson City, Nevada

Attention: Richard C. Yates, Chief Auditor.

Dear Sir:

We are in receipt of your letter of November 15, 1957, respecting allowable deductions from gross yield under the net proceeds of mines tax law.

You advise that camp maintenance costs have been disallowed, and the ruling of the commission in this respect has been questioned.

You have referred to Opinion No. 780 of the Attorney General, dated July 21, 1949, to which we later refer, as the basis for the disallowance of camp maintenance costs. We quote in part from your letter:

Camp maintenance costs are those costs incurred by a mining company in the repair and maintenance of houses and housing facilities used by employees; the repair and maintenance of roads and walkways in the housing area; furnishing of water and power and servicing their facilities; and such other expenses of a similar nature. Such of the above type of expenses as are not offset by rental payments or other payments by employees are in many instances included in deductions from gross yield by some companies.

QUERY

We quote further: "Our query is, are such expenses as are not offset by recoveries to be considered as properly chargeable as deductible items under the net proceeds law?"

OPINION

The authority for the statute hereinafter quoted is found in Sec. 1, Art. X of the Constitution. We shall not quote the constitutional provision. We have discarded an original reflection that if the statute does not allow a deduction for a loss of operation of a boarding house (an indispensable factor in the operation of certain mines), the statute is unconstitutional. We have discarded it for the reason that the statute is very explicit and now expressly contains many allowable deductions from gross yield, which were rejected by the courts under earlier less explicit statutes.

See: Chap. 153, Stats. 1915, Sec. 13, p. 186. Chap. 177, Stats. 1917, Sec. 13, p. 336. Chap 77, Stats. 1926-1927, Sec. 3, p. 100 (6578 NCL et seq). Chap. 68, Stats. 1937, Sec. 3, p. 139 (6580 NCL, 31-41 Supp). Chap. 174, Stats. 1939, Sec. 3, p. 256 ([NRS 362.120](#)).

See also: *State v. Tonopah Extension Mining Company*, [49 Nev. 428](#), 248 P. 835. *Anaconda Copper Mining Company v. Junod*, (Montana 1924) 227 P. 1001.

See also: Attorney General's Opinion No. 210, June 8, 1936, holding that "Royalties are not deductible items in determining net proceeds of mines." Attorney General's Opinion No. 780, July 21, 1949, holding that "Deficit in boarding house operations and commissaries cannot be charged as deductible items from gross yield to determine net proceeds."

[NRS 362.120](#) reads as follows:

1. The Nevada tax commission shall, from the statement and from all obtainable data, evidence and reports, compute in dollars and cents the gross yield and net proceeds of each semiannual period.
2. The net proceeds shall be ascertained and determined by subtracting from the gross yield the following deductions for costs incurred during such 6-month period, and none other:
 - (a) The actual cost of extracting the ore from the mines.
 - (b) The actual cost of transporting the product of the mine to the place or places of reduction, refining and sale.
 - (c) The actual cost of reduction, refining and sale.
 - (d) The actual cost of marketing and delivering the product and the conversion of the same into money.
 - (e) The actual cost of maintenance and repairs of:

- (1) All mine machinery, equipment, apparatus and facilities.
 - (2) All milling, smelting and reduction works, plants and facilities.
 - (3) All transportation facilities and equipment except such as are under the jurisdiction of the public service commission of Nevada as public utilities.
 - (f) The actual cost of fire insurance on the machinery, equipment, apparatus, works, plants and facilities mentioned in paragraph (e) of this subsection.
 - (g) Depreciation at the rate of not less than 6 percent nor more than 10 percent per annum of the assessed valuation of the machinery, equipment, apparatus, works, plants and facilities mentioned in paragraph (e) of this subsection. The percentage of depreciation shall be determined for each mine by the Nevada tax commission, and in making such determination the Nevada tax commission shall give due weight to the character of the mine and equipment and its probable life.
 - (h) All moneys expended for premiums for industrial insurance, and the actual cost of hospital and medical attention and accident benefits and group insurance for all employees.
 - (j) The actual cost of development work in or about the mine or upon a group of mines when operated as a unit.
 - (k) All moneys paid as royalties by a lessee or sublessee of a mine, or by both, shall constitute a deductible item for such lessee or sublessee in determining the net proceeds of such lessee or sublessee or both; but the royalties so deducted by the lessee or sublessee shall constitute part of the gross yield of the mine for the purpose of determining the net proceeds upon which a tax shall be levied against the person, corporation, association or partnership to which the royalty has been paid.
3. The several deductions mentioned in subsection 2 shall not include any expenditures for salaries, or any portion thereof, of any person not actually engaged in:
- (a) The working of the mine; or
 - (b) The operating of the mill, smelter or reduction words; or
 - (c) The operating of the transportation facilities or equipment; or
 - (d) Superintending the management of any thereof; or
 - (e) The State of Nevada, in office, clerical or engineering work necessary or proper in connection with any such operations.

The above is the statute construed by this office in Attorney General's Opinion No. 780, heretofore mentioned.

A tax measure, "if there be any doubt as to its meaning, the doubt should be resolved in favor of the taxpayer." *State v. Tonopah Extension Mining Co.*, [49 Nev. 428 at 434.](#)

Under NRS 362.120, subdivision 2(e)(1), we have the following: The commission shall allow a deduction for "the actual cost of maintenance and repairs of all mine machinery, equipment, apparatus and facilities." A boarding house we believe to be a "facility" under the statute, but the loss through the operation and sale of meals at less than cost is not a charge of "maintenance" or "repairs." We construe these terms to be limited to the concept of mechanical upkeep of facilities.

It follows that Attorney General's Opinion No. 780 must be confirmed. However, it does not purport to go further than to hold that a deficit from a boarding or eating house operation of the mining corporation may not be charged off in the computation of net proceeds. The remainder of your question remains unanswered.

It is also our opinion, for the reasons heretofore given, that costs of maintenance and repairs of housing facilities used by employees may properly be charged off. Also ;the costs of repairs and maintenance of the boarding house facility (i.e. the building) may be charged off. Also the cost of the repair and maintenance of roads and walkways in the housing area may be charged off. Also under the authority of subdivision 2(e)(3) of said section, if not under the jurisdiction of the

Public Service Commission of Nevada, the actual cost of maintenance and repairs (not initial cost) of water and power facilities.

The theory of the statute, subdivision 2(g), is that the initial cost of a facility in connection with a mining operation is a capital investment and is to be depreciated as a write-off over its probable life. This depreciation, of course, as allowed by the commission is an item of deduction from gross yield, to arrive at net proceeds upon which the tax attaches. Therefore, the cost of installation of water, or power facilities, or of housing or boarding house facilities, and things of like nature, must be governed by subdivision 2(g). The content of subdivision 2(g) confirms our belief that the conclusions, respecting mechanical upkeep of facilities above reached, are correct.

Amendment of the law should be obtained to include as an item of deduction, in the computation of net proceeds, the loss from an eating house operation kept and maintained for the convenience and well being of employees.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: D. W. Priest
Deputy Attorney General

OPINION NO. 57-331 SCHOOLS; CORRESPONDENCE SCHOOLS; FOREIGN CORPORATIONS; EDUCATION; CONSTITUTIONAL LAW—Correspondence schools soliciting business—Solicitation of business in Nevada by correspondence schools is not operation of a school therein within contemplation of [NRS 394](#). The enrollment and teaching of students in Nevada by correspondence may be operation of school within meaning of said statute but such operation is not subject to provisions of [NRS 394](#) because burdensome to interstate commerce clause of Federal Constitution. Such business not amenable to regulatory provisions of Nevada Foreign Corporation Law.

Carson City, December 6, 1957

Honorable Byron F. Stetler, Superintendent of Public Instruction, Carson City, Nevada

Dear Mr. Stetler:

In your letter of November 27, 1957, received in this office on December 2, 1957, you request answers to the following two questions:

1. Does [NRS 394](#) require that correspondence schools must obtain a license to solicit students in Nevada by means of newspaper or magazine advertisement?

The answer is no.

Entirely aside from the question of enforcement in such a situation, which renders this problem largely academic at the outset, such solicitation by an out-of-state school does not constitute the operation of a school within the meaning of [NRS 394.030](#).

Subsection 1 of [NRS 394.030](#) provides as follows:

No school subject to the provisions of [NRS 394.010](#) to [394.120](#), inclusive, shall be operated in this state unless there is first secured from the state board of education a license issued in accordance with the provisions of [NRS 394.010](#) to [394.120](#), inclusive, and the regulations thereunder promulgated by the state board of education under authority of [NRS 394.050](#) and [394.070](#).

It has been held by the courts that the mere solicitation of business in a state by a foreign corporation does not constitute doing business therein. For early cases supporting this statement see Ann. Cas. 1912A, p. 555. For recent decisions consult 38 A.L.R.2d, p. 758. For a specific case involving correspondence schools see *International Textbook Co. v. Connelly*, 124 N.Y.S. 1125.

By analogy we conclude that if solicitation by a correspondence school does not constitute the carrying on of the school's business, it does not, by the same token, constitute the operation of the school. [NRS 394 requires](#) license of schools operating in Nevada only.

The above answers your specific question. But one more step will complete the picture. The question should arise as to whether there is an operation of a school when as a result of the solicitation there is enrollment in correspondence courses, the sending of books and lessons and the return thereof by mail, the grading of the student, and, in all, the teaching by correspondence.

The courts hold this operation to be a doing of business in a state. See *International Textbook Co. v. Pigg*, 217 U.S. 91, 54 L.Ed. 678.

However, it is not necessary to determine whether such operation constitutes the operation of a school within Nevada which must be licensed. While such activity constitutes a doing of business, and while it may well be considered the operation of a school in Nevada, it is, nevertheless, not subject to the regulatory provisions of [NRS 394](#). This point has been variously stated, but concisely in *Victor Talking Mach. Co. v. Lucker*, 150 N.W. 790, as follows:

It may be conceded that defendant was doing business in this state. But not all business in the state is within the prohibition of the statute. It is beyond the power of the legislature to enact laws prohibiting or restricting the transaction of interstate commerce.

The business carried on by a correspondence school in the various states has been held clearly to be interstate commerce which cannot be affected by state statutes designed to prohibit operation unless licensed. See *International Textbook Co. v. Pigg*, above; *International Textbook Co. v. Peterson*, 218 U. S. 664, 54 L.Ed., 1201; Annotations in 26 A.L.R. 782.

Thus, the licensing requirements of [NRS 394 have](#) no application to the business here under discussion.

2. Does any statute of Nevada require approval or license from some regulatory body in order to so solicit students?

The only other state statute of which this office is aware bearing upon this is [NRS 80](#), which deals with the requirements of foreign corporations to do business in Nevada, and this only if the word "solicit" in your question is extended to include the entire activity of a foreign correspondence school operating in Nevada.

Here again, by reason the fact that such activity is interstate commerce, the regulatory provisions of [NRS 80](#), providing that foreign corporations shall not operate until they qualify as prescribed by the statute, can have no application. The same authorities above cited are applicable here.

It should be noted, however, that there is a distinction drawn in the cases between the amenability of foreign corporations to the regulatory provisions of a statute and the amenability to process of a foreign corporation engaged in interstate commerce, and, again, the fact that certain regulatory provisions of a state statute cannot be made to apply to interstate business is not to say that a foreign corporation need not qualify under our foreign corporation law in order to take advantage of the facilities of the state such as, for example, the use of the courts. That question is, however, not dealt with here but is simply mentioned in passing.

Your second question, then is also answered in the negative.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Deputy Attorney General

OPINION NO. 57-332 VOCATIONAL EDUCATION—PRACTICAL NURSING—State Vocational Education Board authorized under existing statutes to formulate and adopt curriculum of subjects to be taught in practical nurse training in all schools participating in practical nurse training programs.

Carson City, December 6, 1957

Mr. John W. Bunten, Director, Vocational Educational Division, State of Nevada, Carson City, Nevada

Dear Sir:

This is with reference to the inquiry propounded by you several days ago during a discussion in this office between you, Mr. Wallace and myself, regarding the proper curriculum for schools in this State teaching practical nurse training pursuant to the Federal Vocational Act. You specifically inquired whether the curriculum adopted by your office or that adopted by the State Board of Nurse Examiners should be used for this purpose.

OPINION

Vocational education benefits first became available to the states through the Federal Government upon passage of the Smith-Hughes Act of 1917. It might be termed a pioneer in that great mass of legislation which followed and wherein the Federal Government matches funds with those appropriated by the states for the support of health, education and welfare programs. Characteristic of most, if not all, of these Acts, is the fact that they prescribe the terms and conditions under which the states may participate. General acceptance of the Smith-Hughes Act, the Vocational Educational Act of 1946, as amended, and any other Vocational Educational Acts making appropriations to the states, is provided for in the 1957 School Code, being [NRS 387.050\(1\)\(2\)\(3\)](#). In accepting the Acts of Congress above referred to "the State of Nevada agrees to comply with all their provisions and to observe all their requirements." [NRS 387.050\(4\)](#). Furthermore, the State has created a Vocational Education Board with broad powers for administration of the same. [NRS 388.330-388.400](#).

Since 1953 the board has maintained a limited program for practical nurse training pursuant to the provisions of the 1946 Vocational Educational Act. The Act was amended as of August 2, 1956, by Public Law 911 (20 USCA, Ch. 2, par. 15aa, 1956 Annual Cumulative Pocket Part), so as to permit the extension and improvement of this type of training. In order to take advantage of the benefits afforded by reason of this amendment, the Nevada Legislature amended its previous acceptance of the 1946 Act (Chap. 149, S. 1947) by adding thereto the words "and any amendments thereof or supplemental thereto." By this action the Legislature accepted all amendments to the 1946 Act, including par. 15cc thereof which sets forth the requirements for a plan of operation and administration which each participating state must submit for approval of the Federal Government. Included in these requirements is the provision that such plan "must designate the state board as the sole agency for the administration of the plan or for the supervision of administration of the plan by local educational agencies." 20 USCA, Ch. 2, par. 15cc(1), 1956 Annual Cumulative Pocket Part.

Pursuant to this mandate, the Nevada State Board of Vocational Educational has submitted and received approval by the Department of Health, Education and Welfare, U.S. Office of Education, of a proposed plan, including a curriculum of subjects to be taught, for extending and

improving practical nurse training. In so doing the state board followed an outline of the plan required by law by the United States Department of Education. Strict adherence to the provisions of par. 15cc above quoted is mandatory in our opinion as a prerequisite to a state's eligibility to receive any of the funds appropriated by Congress pursuant to the 1956 amendment above mentioned. Nevada, as hereinabove state, has pledged itself to abide by all conditions and requirements of Vocational Educational Acts.

By an Act of the Nevada State Legislature in 1949, the State Board of Nurse Examiners was created and its duties and powers prescribed. Included among these is that "the board shall have the power to *prescribe standards and curricula for schools of practical nursing*, to visit, survey, supervise, and accredit such schools and to remove such schools from an accredited list for just cause." (Italics supplied.) [NRS 632.430](#), as amended. This provision is in direct opposition to the power of the Vocational Education Board to administer the plan for practical nursing in the State. Furthermore, it was enacted prior to the Act of the Legislature accepting the benefits of the Practical Nursing Act enacted by Congress.

It is a general rule of statutory construction that statutes in *pari materia*, or those dealing with the same subject matter, will both be given effect insofar as possible. But if an irreconcilable conflict exists between the new provision and a prior statute relating to the same subject matter, the former will control as it is the later expression of the Legislature. Sutherland Statutory Construction, Vol. 2, Sec. 5201. The rule has been adopted in Nevada by the State Supreme Court. *Ex Parte Smith*, [33 Nev. 466](#); *State v. Nevada Tax Commission*, [38 Nev. 181](#); *Carson City v. Board of County Commissioners*, [47 Nev. 415](#).

For the reasons hereinabove stated and authorities there cited, it is the opinion of this office that the curriculum for practical nurse training adopted by the Vocational Education Board for Nevada Schools should alone be used for this purpose.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Deputy Attorney General

OPINION NO. 57-333 TOWNS; UNINCORPORATED TOWNS; TOWN FUNDS; COUNTY COMMISSIONERS—Fines collected pursuant to court order for violation of a properly authorized penal ordinance of an unincorporated town are to be placed in the proper town fund.

Carson City, December 9, 1957

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

Dear Mr. Robison:

In your letter of December 4, 1957, you state that a misunderstanding is again arising between your office and the Mineral County officers over the disposition of certain money derived from criminal court fines.

You request the official opinion of this office upon the following question quoted from your letter:

QUESTION

Do the county commissioners of any county, acting as a town board for an unincorporated town, have authority to direct that penal fines collected for reckless driving and drunk driving be credited to the general fund of the town?

OPINION

This office is of the opinion that the answer is in the affirmative provided that the following circumstances have occurred in combination:

1. Ordinances have been adopted making it unlawful to operate a motor vehicle within the limits of the town recklessly or while drunk.
2. The violation of the ordinance occurs within the limits of the town.
3. The charge upon which the fine is levied is the violation of the ordinance of the town.

[NRS 269.185](#) pertaining to the government of unincorporated towns provides as follows:

In addition to the powers and jurisdiction conferred upon the boards of county commissioners by this chapter, such boards shall have the power:

1. To regulate traffic upon the streets and alleys of towns or cities governed by such boards pursuant to this chapter.
2. To regulate the speed, parking, stopping, turning and operation of all motor vehicles and other vehicles using the streets and alleys.
3. To pass and adopt all ordinances, rules and regulations, and do and perform all acts and things necessary for the execution of the powers and jurisdiction by this section conferred.

It would appear that there is ample authority here for the adoption of ordinances or regulations prohibiting the operation of vehicles on the streets of such towns recklessly or while drunk, and carrying penal provisions.

[NRS 269.165](#) provides as follows:

1. Any justice of the peace within the town or city shall have jurisdiction of all violations of ordinances applicable thereto under the provisions of this chapter, and may render final judgment, hold to bail, fine or commit to the county jail any offender, in accordance with the provisions thereof.
2. All commitments of imprisonment shall be directed to the sheriff of the county, and all fees or fines collected shall be paid to the county treasurer of the proper county, to be by him distributed to the proper fund of the town or city.

According to this provision, it would appear to be mandatory under the occurrence of the circumstances above listed, that the fine money is to be placed in the proper town fund.

It is to be noted, however, that according to the provision the placement of the money in the proper fund is to be done by the treasurer. We mention this because your question asks whether or not the town board can direct that such money be placed in the general fund of the county. We have not made this technicality the basis for an answer in the negative because as we understand your problem, the question goes to the matter of the retention of the funds for local use as opposed to the transmittal of the funds to the State Treasury.

Opinion No. 150, February 28, 1952, referred to in your letter, is in accord with the above.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Deputy Attorney General

OPINION NO. 57-334 TAXATION—State Tax Commission in arriving at a ratio of assessment to true valuation of property, must, under the Statutes of Nevada, and the Constitution, include in the factors leading to such ratios the value of the property of public utilities.

Carson City, December 12, 1957

Honorable George M. Dickerson, District Attorney, Clark County, Las Vegas, Nevada

Dear Mr. Dickerson:

You have, at the request of the county assessor of Clark County, addressed an inquiry to this office concerning an interpretation of certain constitutional and statutory provisions relating to the inclusion of the value of property of public utilities by the Tax Commission in arriving at a ratio of assessment to the valuation of property within a county.

STATEMENT

For a considerable period of time the tax assessors of Nevada have been confronted with the problem of abiding by the average ratios of assessments to true values of property, as established by the State Tax Commission, which has not included the value of public utility property in arriving at that determination.

OPINION

To take the matters in their proper order let us first see if the position of the Tax Commission can be sustained by the Constitution of this State. Art. VIII, Sec. 2, of said Constitution, reads as follows:

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; provided, that the property of the corporations formed for municipal, charitable, religious, or educational purposes may be exempted by law.

There seems to be no inhibition here against taxing the property of public utilities exercising a proprietary function and not specially excluded by statute. Therefore, in arriving at a ratio of assessments to true value, the value of property of public utilities should be considered.

Likewise, there is no exemption from taxation afforded public utilities under Art. X, Sec. 1, of the Constitution of Nevada. This section reads as follows:

The legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory, excepts mines and mining claims, when not patented, the proceeds alone of which shall be assessed and taxed, and when patented, each patented mine shall be assessed at not less than five hundred dollars (\$500), except where one hundred dollars (\$100) in labor has been actually performed on such patented mine during the year, in addition to the tax

upon the net proceeds; shares of stock (except shares of stock in banking corporations), bonds, mortgages, notes, bank deposits, book accounts and credits, and securities and chooses in action of like character are deemed to represent interest in property already assessed and taxed, either in Nevada or elsewhere, and shall be exempt. No inheritance or estate tax shall ever be levied, and there shall also be excepted such property as may be exempted by law for municipal, educational, literary, scientific or other charitable purposes.

This office calls special attention to the admonition to the Legislature to “prescribe such regulations as shall secure a just valuation for taxation of *all* property, real, personal and possessory, except mines and mining claims, when not patented, * * *.” There is nothing in the language of this constitutional provision which sets public utilities apart from other taxable entities, nor can we find such exemption under statute. It would, therefore, be no true yardstick of value of property within a county to arrive at a ratio of assessments to true value which failed to take into account the value of property belonging to public utilities.

[NRS 361.045](#) provides: “Except as otherwise provided by law, all property of every kind and nature whatever within this state shall be subject to taxation.” In the exemptions which follow, public utilities are nowhere exempted from this mandatory provision of the law. It can therefore be concluded that the Legislature did not intend to exempt their value from consideration in arriving at the ratio of assessment to true value of all property within the county.

[NRS 361.235](#), subparagraph 2, provides: The property of every firm, incorporated company, or association shall be taxed in the county wherein the same is situated.

Then again the intent of the Legislature to include public utilities within the tax framework insofar as determining ratios is concerned is indicated by [NRS 361.260](#), subparagraph 2, which reads: In arriving at the value of all public utilities of an intracounty nature, the intangible or franchise element shall be considered as an addition to the physical value and a portion of the full cash value.

The method of establishing property valuations of an interstate and intercounty nature is directed to the Nevada Tax Commission in [NRS 361.320](#). Public utilities are there included. The formulas adopted by the Tax Commission must, under the law, show all the elements of value considered in arriving at and fixing the value for any class of property assessed by it. Under no statutory construction can there be found an authority in the Tax Commission to establish a tax formula which eliminates public utilities. This would place such utilities in a different position than that occupied by other taxable entities.

While it is true that the main determination in *Nevada v. C.P.R.R. Co.*, [10 Nev. 47](#), was that public utilities exercising proprietary functions are taxable, yet the court implies that while conditions of cost, conditions, depreciation, etc. can be taken into account in arriving at an assessed valuation, the value arrived at is a part of the over-all picture upon which ratios of assessment must be based.

In the case of *Southern California Telephone Co. v. Los Angeles County*, 113 P.2d 773, the court first points out that under Art. XIII, Sec. 14 of the Constitution of the State of California, which provides for the assessment of public utilities by the state board of equalization, that “all property so assessed shall be subject to taxation to the same extent *and in the same manner* as other property.” The court then goes on to say: “We may start with the premise that the law contemplates that utility property and common property bear the same burden of taxation in proportion to value.” The words “in proportion to value” are misleading and of no practical effect if the property of public utilities is not considered in arriving at the ratio of assessment to true valuation of property.

In *Schleman v. Conn. Gen. Liferlins. Co.*, 9 So.2d 197, the court points out that valuations for taxation must have a just relation to real value of the assessed property, and there must be no substantial inequalities in valuation of various kinds of taxable property. The inclusion of the value of property of public utilities in addition to the value of privately owned property in arriving at an over-all picture upon which to base a ratio of assessment to true value, meets the just relation of valuation to taxation that is cited by the learned judge.

In *People v. Com Edison Co.*, 32 N.E.2d 902, it is pointed out that it is the assessor's duty to value personal property of a public utility by the exercise of honest judgment, with due consideration of the constitutional injunction pertaining to uniformity of taxation.

The case of *Tuttle v. Bell*, 57 N.E.2d 180, states that the constitutional provision requiring uniformity of taxation precludes taxing officials from adopting a method of valuing property whereby there is a discrimination in favor of or against any class of property.

The long range objective of all tax measures is the accomplishment of good social order. Emphasis belongs upon the general objectives of such laws with the view to accomplishing uniformity and equality among the class of persons sought to be taxed. In *Sutherland on Statutory Construction*, Vol. 3, Sec. 6705, it is stated: "In accord with the general rule that revenue laws are to be strictly construed, statutes granting the power to tax and administer revenue laws are usually given a narrow construction."

It must be clear then to all who have studied the Constitution and the statutes, that the property of public utilities exercising a proprietary function is in no different position from that of other taxpaying property owners. This being true, it is the opinion of this office that the Nevada Tax Commission, in arriving at a ratio of assessment to the true value of taxable property should, and in fact under the Constitution and law must, include the value of property of public utilities, not specifically exempt by statute.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

OPINION NO. 57-335 NEVADA FISH AND GAME COMMISSION—State Fish and Game Commission in issuing deer tags for bow and arrow season authorized to restrict their use to deer killed only by shooting with the bow and arrow, and to prohibit using or carrying firearms for that purpose.

Carson City, December 12, 1957

Mr. Frank W. Groves, Director, Nevada Fish and Game Commission, P. O. Box 678, Reno, Nevada

Dear Sir:

Receipt is acknowledged of your inquiry of November 30, 1957, as to whether or not the Nevada Fish and Game Commission has authority to pass resolutions prohibiting the packing of firearms while hunting with a bow and arrow, in a strictly bow and arrow deer season, for which special tags have been issued.

OPINION

The type of firearms which is prohibited and that permitted for hunting game animals is provided for in [NRS 503.150\(1\)](#), which reads:

It shall be unlawful for any person to hunt game animals with any revolver or self-loading pistol, or in any manner other than with gun, or rifle, or bow and arrow, held in hand, but excluding the crossbow and bolt.

In listing the firearms permitted for hunting such animals, the Legislature saw fit to enumerate them disjunctively. This in itself indicates the intent of that body to restrict a hunter to one

firearm only while hunting. Had the Legislature intended otherwise it would have listed the above named firearms conjunctively instead.

In making regulations pertaining to the use of tags, the commission has been delegated broad powers. The statutes hereinafter quoted appear to be controlling in determining our immediate question. [NRS 502.160](#) provides in part:

(1) * * * Each tag shall *show the game for which it may be used*, the year, and, whenever necessary, the district or area in which it may be used.

(2) The commission may make any regulation necessary relative to *the manner of using*, attaching, filling out, punching, inspecting, validating or reporting such tags. It shall be unlawful for any person to fail to abide by any such regulation. (Italics supplied.)

These statutes, in our opinion, authorize the commission to issue a tag for bow and arrow season and specifically limit or restrict its use to deer killed with bow and arrow. Acceptance of such tag and the conditions imposed thereon constitutes a waiver by the hunter of his right to use or carry firearms for hunting deer during such season. If membership alone in the National Bow Hunter's Association, or other organizations with similar purposes, has failed to act as a deterrent to the use of firearms by bow and arrow hunters while hunting deer, then the power of the commission to impose such prohibition should be invoked. We conclude that such action by the commission is properly authorized.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Deputy Attorney General

OPINION NO. 57-336 CIVIL DEFENSE—Broadest possible powers within constitutional limitations given Governor in case of proclaimed or resolved emergency.

Carson City, December 12, 1957

Mr. A. E. Holgate, Project Manager, Civil Defense Agency, Carson City, Nevada

Dear Mr. Holgate:

You have requested of this office an official opinion as to the powers given to the Governor under Nevada's Civil Defense Act upon the occurrence of an emergency such as that outlined in [NRS 414.070](#).

OPINION

There can be no question but that the Legislature intended to give to the Governor the broadest possible powers consistent with constitutional government in a time of dire emergency.

You are particularly interested to ascertain the limits of the Governor's powers with regard to the controlling, rationing, issuing or requisitioning of food and drug supplies in the event of a threatened emergency or an actual state of emergency. To this might be added the question as to the Governor's right to seize these items in case of emergency.

The powers given to the Governor prior to an actual emergency are set forth in [NRS 414.060](#). But there can be no question, in view of the broad language of [NRS 414.070](#), that once the Governor has, by proclamation, declared an actual emergency to exist, or such step has been taken by the Legislature by resolution, extraordinary powers are conferred upon the chief executive of the State which are enforceable without regard to the limitations of any existing law.

The power would extend to the control, rationing, issuing, requisitioning or seizing of any food, drug or other supplies necessary for coping with such emergency. The law, of course, contemplates that the person or persons relinquishing such property for the general welfare of the State shall be compensated therefor.

It is also the opinion of this office that, under the broad and necessary powers delegated to him in case of such emergency, the Governor could appoint personnel to such positions as the exigencies of the situation demanded, without reference in this opinion to their titles. This authority is given under power number 6, which reads as follows: "To perform and exercise such other functions, powers and duties as are necessary to promote and secure the safety and protection of the civilian population."

Respectfully submitted,

HARVEY DICKERSON
Attorney General

OPINION NO. 57-337 MINORS—LIQUOR CONTROL—When minor is on premises where alcoholic beverages are sold, for the purpose of repairing, or putting in operation, mechanical devices, there is no violation of [NRS 202.030](#) or [NRS 202.060](#) provided such minor leaves the premises immediately [after] his task is completed.

Carson City, December 19, 1957

Honorable A. J. Jensen, District Attorney, Washoe County, Reno, Nevada

Dear Mr. Jensen:

You have forwarded to this office a request for an opinion based on the following question:

Is there a violation of [NRS 202.030](#) or [NRS 202.060](#) when a minor is on premises where alcoholic beverages are sold for the purpose of repairing mechanical or gambling devices?

STATEMENT

The problem arises by reason of the fact that local businessmen employ minors to repair and service various types of mechanical devices found in gambling houses. You state in your inquiry that such minors are only on the premises during the time required to repair the equipment described above.

[NRS 202.030](#) reads as follows:

Any person under 21 years of age who shall loiter or remain on the premises of any saloon where spirituous, malt or fermented liquors or wines are sold is guilty of a misdemeanor and shall be punished by a fine of not less than \$25 nor more than \$100. Nothing in this section shall apply to:

1. Establishments wherein spirituous, malt or fermented or wines are served only in conjunction with regular meals and where dining tables or booths are provided separate from the bar; or
2. Any grocery store or drugstore where spirituous, malt or fermented liquors or wines are not sold by the drink for consumption on the premises.

[NRS 202.060](#) reads as follows:

Any proprietor, keeper or manager of a saloon or resort where spirituous, malt or fermented liquors or wines are sold, who shall, knowingly, allow or permit any person under the age of 21 years to remain therein is guilty of a misdemeanor, and shall be punished by a fine of not less than \$25 nor more than \$100. Nothing in this section shall apply to:

1. Establishments wherein spirituous, malt or fermented liquors or wines are served only in conjunction with regular meals and where dining tables or booths are provided separate from the bar; or
2. Any grocery store or drugstore where spirituous, malt or fermented liquors or wines are not sold by the drink for consumption on the premises.

OPINION

In arriving at a determination of this question it is necessary to ascertain the purpose of the legislation and the intent of the Legislature in relation thereto. It cannot be readily disputed that the purpose of the legislation was to protect the morals and health of minors by keeping them away from premises where they might come in contact with undesirable elements of the population and be subjected to the urge or inclination to purchase intoxicating beverages at an age when such beverages would be detrimental to their health.

However, we believe that the key to your question lies in the words “loiter” and “remain” found in [NRS 202.030](#), and the word “remain” found in [NRS 202.060](#). The word “loiter” is defined as “to spend time idly; to be dilatory,” and “remain” is defined as to “continue in one place.”

It is, therefore, the opinion of this office that when a minor is on the premises where alcoholic beverages are sold for the purpose of repairing, or putting in operation, mechanical devices, there is no violation of [NRS 202.030](#) or [NRS 202.060](#), provided such minor leaves the premises once his task is accomplished.

The burden of seeing to this still remains with the owner of the establishment, but if he used reasonable care to see that the law is complied with, there is no violation of [NRS 202.060](#).

Respectfully submitted,

HARVEY DICKERSON
Attorney General

OPINION NO. 57-338 UNIVERSITY OF NEVADA—Board of Regents, under direction of legislative auditor, may obtain services of an independent public accountant, to examine University books and records. [NRS 218.770\(12\)](#), construed.

Carson City, December 19, 1957

Honorable Archie Grant, Chairman, Board of Regents, University of Nevada, Reno, Nevada

Dear Mr. Grant:

This communication is in response to your telephone call of December 13, 1957, at which time you asked us to advise the Board of Regents upon the following question:

QUESTION

Does the Board of Regents of the University of Nevada have authority to authorize and engage the services of an independent public accountant or firm of public accountants to perform an audit, inspection and examination of the books, records, reports and accounts of the university of Nevada.?

OPINION

Although perhaps not pertinent to the opinion you advised that the purpose of such an audit under consideration would be to "improve the quality of the product." We understand the product of an institution of higher learning, and the sole purpose of its existence is to assist students to acquire useful knowledge. We understand that other activities of such institutions, however glamorous or dramatic, are only byproducts.

[NRS 218.610](#), and succeeding sections make provisions for the legislative counsel bureau, under which a legislative auditor is appointed and functions. Briefly stated, it is clear that the purpose for the creation of such offices is for fact finding and legislative recommendation, by which the Legislature may more effectually and intelligently perform its duty.

Under the provisions of [NRS 218.720](#) the records of every state elective public officer (which of course includes the Regents of the University of Nevada) are to be made available to the examination of the legislative counsel.

1. To perform a postaudit of all accounts, books and other financial records of all state departments that are charged with the collection, custody or expenditure of public funds, and to prepare a written report or reports of such audit or audits to the legislative counsel bureau and to such other person or persons designated in this chapter.

12. To employ and authorize, at his discretion and subject to his direction and responsibility, an independent public accountant or firm of public accountants, doing business within the State of Nevada, to perform an audit, inspection and examination of all books, accounts, claims, reports, vouchers or other records of all state departments whose disbursements in whole or in part are paid out of the funds received may be considered funds held in trust and not used for general governmental purposes, or whose funds are invested. The expense and cost for such independent audit shall be paid by the state department audited. The provisions of this subsection shall not be applicable to the employment security department.

Under subsection 1 above quoted, certain departments of the State Government which collect, hold custody of, and expend strictly public funds are to be audited by the legislative auditor, at the expense of the legislative counsel bureau, whereas, certain other departments, not expending strictly or exclusively public funds, are to be audited at the cost of the state department so audited.

It is clear that subsection 12 above quoted, includes among others the University of Nevada, as to its inclusion within a class, and being included within a class, the cost of such audit is provided to be upon the institution audited.

The conclusion, to this point, is clear that the University of Nevada may be audited by an independent public accountant, at its cost, which audit must be subject to the direction and responsibility of the legislative auditor.

Two other questions present themselves, requiring consideration, to a full determination of the problem presented: First, do the provisions appear to offend constitutional limitations and

Secondly, if the foregoing is answered in the negative, are the procedures outlined by the Legislature for an independent audit, exclusive of other procedures?

Having in mind Art. XI, Sec. 4 of the Constitution, vesting the control of the State University in a Board of Regents, whose duties shall be prescribed by law, and the proposition that legislation which could “change, alter or modify the constitutional powers and functions” of the Board of Regents, would be rendered unconstitutional, (*State v. Douglass*, [33 Nev. 82](#), 110 P. 177, *King v. Board of Regents*, [65 Nev. 533](#), 200 P.2d 221), it appears to us, that the manner provided for the audit is not violative of the power of the regents to “control” the University. It appears to us that the legislative enactments, referred to, provide facilities by which they may “control” the University.

It also appears to us that the legislative audit referred to in [NRS 218.770](#), subdivision 12 thereof, inclusive, as we have determined of the University of Nevada, was intended to be exclusive of other methods of audit, as to similarly classified institutions, and the power of the Legislature to prescribe the “duties” of the Board of Regents never having been challenged, it appears to us that the manner of audit which has been prescribed, of right ought to be and is exclusive.

To summarize then, the audit may be made by an independent public accountant, or firm of such, under the provisions and limitations of [NRS 218.770](#), subdivision 12.

Respectfully submitted,

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