

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL - 1958

OPINION NO. 58-339 LABOR COMMISSIONER—Employment of aliens by independent contractor with State, limited to “construction of public roads,” and as “common laborers.” [NRS 338.130](#) construed.

Carson City, January 6, 1958

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

Dear Mr. Everett:

We have your inquiry of January 3, 1958, asking for an opinion of this office upon facts and a question as hereinafter recited.

FACTS

The State Highway Department has contracted with an independent contractor for the construction of a maintenance building at Lovelock. This independent contractor desires to employ one or more skilled alien tradesmen who have not forfeited their right to citizenship by claiming exemption from military service.

QUESTION

May the independent contractor, under contract with the State of Nevada, as aforesaid, employ skilled alien craftsmen (not common laborers) who have not forfeited their right to citizenship by claiming exemption from military service of the United States, upon such contract, if citizens or wards of the United States or persons honorably discharged from the military service of the United States are not available for such employment?

OPINION

[NRS 338.130](#) in part reads as follows:

Preferential employment on public works construction, employment of aliens.

1. Only citizens or wards of the United States or persons who have been honorably discharged from the military service of the United States shall be employed by any contractor with the State of Nevada or any political subdivision of the state, or by any person acting under or for such officer or contractor, in the construction of public works.

2. In all cases where persons are so employed, preference shall be given, the qualifications of the applicants being equal:

(a) First: To honorably discharged soldiers, sailors and marines of the United States who are citizens of the State of Nevada.

(b) Second: To other citizens of the State of Nevada.

3. Nothing in this section shall be construed to prevent:

(a) The working of prisoners by the State of Nevada, or by any political subdivision of the state, on street or road work or other public work.

(b) The working of aliens, *who have not forfeited their rights to citizenship by claiming exemption from military service, as common laborers in the construction of public roads*, when it can be shown that citizens or wards of the United States or persons who have been honorably discharged from the military service of the United States are not available for such employment; but any alien so employed shall be replaced by a citizen, ward or ex-service person of the United States applying for employment. (Italics is supplied.)

Subdivision 1, above quoted, is construed to limit employment by a private contractor, under contract with the State of Nevada, to citizens or wards of the United States, and persons honorably discharged from the military service of the United States, even though such latter described persons are not citizens or wards of the United States.

Subdivision 2 sets out the manner in which preference shall be shown and determined within the three classifications mentioned, designating the persons that may be employed under such contracts.

Subdivision 3 (b) sets out an exception, as regards the employment of aliens, under such contracts, by providing that if they “have not forfeited their rights to citizenship by claiming exemption from military service,” they may be employed in the construction of public roads, as common laborers.

Under well recognized rules of construction, the exceptions to well defined rules and regulations, are to be strictly construed, including no more thereunder than the Legislature has clearly shown to be intended to be included. It follows that alien employment under such contracts is limited to the “construction of public roads,” and in the classification of “common laborers.”

The question is therefore answered in the negative.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: D. W. Priest
Deputy Attorney General

OPINION NO. 58-340 PUBLIC SCHOOLS; MOTOR VEHICLES—Interpretation of [NRS 483.160](#) involving the definition of “School Bus.”

Carson City, January 7, 1958

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

Dear Mr. Stetler:

In your letter of December 27, 1957, you request the opinion of this office upon the following questions which are quoted from your letter:

A. Does the term “school bus” as used in [NRS 483.160](#) include the following vehicles:

1. A station wagon type vehicle used for transportation of children to or from school? The vehicle is owned and operated by the school district.
2. A station wagon type vehicle privately owned and operating under contract to transport pupils to and from school?

3. A station wagon type vehicle used to transport pupils to and from school but not under contract?

4. A privately owned sedan used by a parent or neighbor to transport pupils to and from school? No payment is made for use of the vehicle but mileage is paid the parent or neighbor.

5. A vehicle used and owned by a parent to transport his own children to or from school? He is paid either mileage or a flat sum for transportation.

6. A school district owned station wagon or sedan which is used primarily for administrative purposes but once a day for approximately fifteen minutes it served to transport pupils?

B. Is the term "school bus" confined to those vehicles specifically designed for the purpose of transporting school pupils to and from school or is the term applied to any vehicle which is transporting school children to or from school?

C. Would an activity bus (used for transporting athletic teams, etc.) be classed as a school bus? This bus is school owned and school operated.

Your letter does not inform us of a factual situation giving rise to these questions and we therefore confine our opinion to answers derived from an interpretation of [NRS 483.160](#) as cited in your letter.

[NRS 483.160](#), which is a section within the chapter involving operators' and chauffeurs' licenses, provides as follows:

"School bus" means every motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school, or privately owned and operated for compensation for the transportation of children to or from school.

Under this definition, your question number one is answered in the affirmative. The station wagon is a motor vehicle and it is used to transport children to and from school. Ownership in these questions is no problem. Every usable vehicle is either publicly or privately owned.

Number two is also answered in the affirmative. The contract has no bearing upon the status of the vehicle under the definition.

Similarly for number three.

As to number four, the privately owned sedan meets the requirements of a school bus as defined in [NRS 483.160](#).

As to number five, this question is a refinement of the problem that this office declines to answer for the reason that there is no legal foundation for a proper answer. We submit that the administrator should decide this for himself as a matter of policy or obtain legislative clarification or both.

As to number six, we submit that here again the administrator should make his own decision.

Concerning question B, as we understand it, we are concerned with the definition of a school bus as defined in [NRS 483.160](#). Therein, every motor vehicle so owned and operated is a school bus.

As to question C, if the activity bus is used to transport children to and from school, it would, under [NRS 483.160](#), be classed as a school bus.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Deputy Attorney General

OPINION NO. 58-341 STATE DEPARTMENT OF HEALTH; MAUSOLEUMS—State Department of Health cannot require an applicant for a permit to build a mausoleum to first secure an endowment care permit from the State Insurance Commissioner.

Carson City, January 8, 1958

Mr. W. W. White, Director, Division of Public Health Engineering, 755 Ryland Street, Reno, Nevada

Dear Mr. White:

You have directed to this office an inquiry as to whether the State Department of Health can require a corporation, association, or individual operating a mausoleum to obtain a permit from the Insurance Commissioner pursuant to [NRS 452.050](#), before beginning operation.

OPINION

It is first to be noted that under [NRS 452.050](#)(1) every cemetery corporation, association or other organization referred to as a “cemetery authority” in [NRS 452.050-452.180](#), inclusive, *may* place its cemetery under endowment care. It is only when such cemetery authority has elected to place its cemetery under endowment care, that the permit is required of the Insurance Commissioner.

It is also to be noted that the law governing mausoleums does not start until [NRS 452.210](#) is reached in the law, and there, under [NRS 452.250](#)(1) it is required that there shall be deposited with the board of trustees or board of directors a maintenance fund in a sum to be determined and fixed by the State Board of Health. [NRS 452.250](#)(2) provides for the investment of those funds, and under [NRS 452.270](#) penalties are provided which tend to give the public and the State adequate protection.

The construction of mausoleums is not restricted, under the law, to organizations of a religious or fraternal nature.

It is therefore the opinion of this office that the State Department of Health cannot require an applicant for a permit from the Insurance Commissioner as provided in [NRS 452.050](#).

Respectfully submitted,

HARVEY DICKERSON
Attorney General

OPINION NO. 58-342 PUBLIC SCHOOLS—Determination of essential requisites of the procedure for the expenditure of county school district funds.

Carson City, January 9, 1958

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

Dear Mr. Stetler:

In your letter of December 27, 1957, you request this office to consider a statement of proposed procedure for the payment of school district bills and to state our opinion on two questions. The statement of procedure and the questions are quoted from your letter as follows:

STATEMENT OF CONDITIONS

1. The bills would be checked for accuracy and correctness by the superintendent of schools who would prepare a list of the bills which were ready for payment.

2. The list of bills (invoices) would include the name of the payee, the amount of the invoice, and the number of the school order drawn for payment of the bill. Also, there would be a statement at the end of the list to the effect that the list of bills had been acted upon by the board of trustees and the president and clerk of the board were authorized to sign the school orders identified by the list.

3. The list of bills along with the invoices and the school orders for payment of the invoices would be presented to the board of trustees at their regular meeting. The board would look over the bills and the list and, if satisfied the bills were payable, a motion would be made allowing payment of those bills shown on the list and authorizing the president and clerk of the board to sign the school orders as listed. Signing could take place later or on the next day. This procedure would remove the necessity of taking time during the board meeting to sign school orders.

INQUIRY

1. Does this procedure comply with the provisions of [NRS 386.330](#), paragraph 4 and [NRS 387.310](#), paragraph 2?
2. Is this procedure legal?

OPINION

[NRS 386.330](#), subsection 4 thereof, provides as follows:

A majority of the members of the board of trustees shall constitute a quorum for the transaction of business, and no action of the board of trustees shall be valid unless such action shall receive, at a regularly called meeting, the approval of a majority of all the members of the board of trustees.

This provision calls for the approval of a majority of all the members of the board of trustees at a regularly called meeting in order that an action of the board be valid. It appears that the proposed procedure contemplates that the board of trustees will act in accordance with this provision of the law; therefore we are of the opinion that the proposed procedure in no way conflicts with the quoted provision.

[NRS 386.310](#), subsection 2 thereof, provides as follows:

A record of the organization of the board of trustees shall be entered in the minutes, together with the amount of salary to be paid to the clerk.

This provision calls for the record of the organization of the board to be entered in the minutes of the board, together with a statement of the amount of the clerk's salary. We think it is to be assumed that the boards of trustees will have organized and will organize after each election in compliance with [NRS 386.310](#) and that such organization has been and will be spread upon the minutes. In any event we can't see wherein there is a conflict between the proposed procedure and this quoted provision. Consequently, we are of the opinion that there is no conflict.

The following is in answer to question number two.

[NRS 387.205](#) provides a list of the authorized uses of the school district funds. This provides the scope and limit upon the authority of the board to expend the public funds.

[NRS 386.320](#)(3b) provides that the clerk of the board of trustees shall, subject to the written direction of the board of trustees, draw all orders for the payment of moneys belonging to the school district.

[NRS 387.210](#) provides, in part, as follows:

Each county treasurer shall: * * * 2. Pay over all public school moneys received by him only on warrants of the county auditor, issued upon orders of the board of trustees of the county school district. All orders issued in accordance with law by the board of trustees shall be valid vouchers in the hands of the county auditors for warrants drawn upon such orders.

It appears from the foregoing provisions of the law that if the board of trustees acting in majority at a regular meeting approves and orders the payment of proper claims for purposes comporting with [NRS 387.210](#), and if the clerk of the board, upon the written direction of the board, has drawn the orders for such payments, and if the county auditor has, upon such orders, drawn warrants, the essentials of the procedure prescribed by law have been complied with.

With possibly some attention given to the requirement of written directions to the clerk by the board, this office is of the opinion that the proposed or suggested procedure would meet the requisites of the law and in addition would provide steps which should prove to be desirable and beneficial.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Deputy Attorney General

OPINION NO. 58-343. STATE BOARD OF STOCK COMMISSIONERS—Board authorized to adopt rules requiring operator of livestock auction to furnish purchaser copy of record thereof as required under [NRS 573.110](#), and also to require an appropriate bond for his protection against defective title.

Carson City, January 13, 1958

Mr. Val Campbell, Supervising Brand Inspector, Division of Animal Husbandry, Department of Agriculture, P. O. Box 1027, Reno, Nevada

Dear Sir:

This acknowledges receipt of your inquiry of January 9, 1958, requesting an interpretation by this office of the law governing outgoing cattle from auction yards, with reference to brands and marks, on bill of sale.

OPINION

Auction sales of livestock in Nevada are regulated and governed by the provisions of NRS, chap. 573, being augmented by certain provisions of the Uniform Sales Act as well as general law. Under [NRS 573.110](#) each operator of livestock auction sales is required to keep certain records of all livestock assigned to or sold through his livestock auction, including, “(b) a description of the livestock which shall include the number and kind, approximate age, the sex,

and any visible brands or other distinguishing or identifying marks.” The keeping of these records in not intended for an idle or useless purpose, but to enable positive identification to be made of the animals sold should future circumstances require. Although the Act set forth in the above-cited chapter does not specifically require an operator to furnish a copy of such description to an auction purchaser, we believe that it may nevertheless be required by the State Board of Stock Commissioners pursuant to its rule making powers as provided for under [NRS 573.170](#). We recommend that the board adopt a rule requiring that copies of all records required under [NRS 573.110](#) be furnished the buyer for any livestock purchased at any public auction sale.

Nowhere in the Act is there any requirement that the buyer be delivered a bill of sale, nor are we cognizant of any law necessitating this in order to accomplish the sale of livestock in this State. While a bill of sale is evidence of title, it is not exclusive for this purpose. Under the provisions of the Uniform Sales Act which has been adopted in Nevada, and specifically under [NRS 96.300](#), “a sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in any other customary manner.”

Whether or not title to livestock acquired by this method is good, depends upon the same or similar circumstances and facts necessary for giving a valid title under a bill of sale. Under the provisions of [NRS 573.030\(3\)](#) the Legislature has provided a means for protecting the purchaser against loss caused by a defective title. There, the board is authorized to “require from the operator of any public livestock auction a bond in any reasonable amount, not exceeding in any case \$5,000, for the protection of purchasers of livestock from any such operator.” The protection afforded a purchaser under this section, together with receipt of a copy of the records required under [NRS 573.110](#), which the board by its rules may require, should be sufficient to enable a purchaser to recover his purchase money from the bondsmen in case a defective title develops subsequent to an auction sale purchase. In fact, it would appear that he would be as well off as he would be if delivered a bill of sale to such purchase, for such instrument is no guarantee against defective title because it likewise would necessitate an action for recovery of the purchase price.

Attention is directed to [NRS 573.100\(1\)](#) which provides that the board may suspend or revoke a license already granted if, after due notice and hearing, the board finds among other things:

“(a) That the licensee has violated any provision of this chapter, or any rule, order or regulation issued thereunder, * * *

“(d) That the licensee has failed to keep records as required by this chapter, * * *.”

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Deputy Attorney General

OPINION NO. 58-344 TAXATION—SPECIAL FUEL TAX—[NRS 366.590](#), which provides that the Special Fuel Tax constitutes a lien and has the effect of an execution duly levied, construed.

Carson City, January 21, 1958

Nevada Tax Commission, Carson City, Nevada

Attention: Mr. Wm. H. Schmidt, Fuels Tax Supervisor.

Gentlemen:

Your letter of December 23, 1957 requests an opinion concerning tax collection under the Special Fuel Tax Act of 1953, NRS 366.

Your questions are quoted from your letter as follows:

Question—Under [NRS Chap. 366](#), Sec. 366.590-366.610 do we have authority through the tax commission agents, the Nevada Highway Patrol, and other police officers to apprehend and hold, until taxes are paid, equipment owned by the special fuel user, which use special fuels? Can we hold for the same purposes above, equipment using special fuels leased to the special fuel licensee? If the answer above is in the affirmative, how long can the equipment be held before proceeding under Sec. 366.560-366.561?

Question—In apprehending and holding diesel powered tractors, hauling perishable products owned by third parties, what steps should be taken to protect the Tax Commission and its agents from liability for damage to the perishable products?

OPINION

[NRS 366.590](#) provides as follows:

The excise tax, interest and penalties shall constitute a lien upon and have the effect of an execution duly levied against any motor vehicle in which special fuel taxable under this chapter is used. The lien attaches at the time the vehicle is operated in this state through the use of the fuel.

This provision says that the tax constitutes a lien and that the lien has the effect of an execution.

A lien is generally defined as a charge upon property for the payment or discharge of a debt or duty. 33 Am.Jur. 419.

Generally speaking, an execution is a remedy afforded by law for the enforcement of a judgment. It is not an action but it is included in the phrase “process in an action.” It is a writ issued to an officer authorizing and requiring him to execute the judgment of the court. 21 Am.Jur. 17.

An execution is based upon a judgment, and the judgment of the court is a prerequisite to the issuance of the writ of execution, 21 Am.Jur. 26.

Thus it appears that under [NRS 366.590](#), the tax constitutes a charge upon a motor vehicle which presupposes a judgment in a tax collection action and the issuance of a writ of execution to enforce judgment.

Now, at this point, distinction must be made between the procedure to be followed in the carrying out of this execution and the procedure provided for under [NRS 366.560](#). The latter procedure contemplates the filing of an action to obtain a judgment upon which an execution could issue; whereas, the former presupposes the judgment and contemplates merely the carrying out of the execution.

This office has carefully examined this matter to the end that some direction may be set down whereby the execution thus provided can be carried out. We have concluded that in order to do this, this office would be required to write the procedural aspects of this law. The statutory direction is simply too lacking. For example, [NRS 366.590](#) says that the excise tax is a lien and the lien has the effect of an execution duly levied. This, we submit, is not enough statutory direction and this office cannot properly write it in.

Among other things we think the statute should include provision for the issuance of a document or warrant by the Tax Commission authorizing the sheriff or some officer to execute such warrant in the same manner as a writ of execution. At this point we have only an

implication in the reference “have the effect of an execution duly levied” that [NRS 21](#), dealing with executions, is to be referred to. Moreover, the statute should spell out the authority of the commission or its authorized representative to seize and sell property and detailed provision should be made with reference to notice of sale, together with details of the conduct of sale and the type of evidence of sale and disposition of proceeds.

With the foregoing in mind we are of the opinion that reliance should not be placed upon [NRS 366.590](#) until such time as the Legislature sees fit to clarify this matter.

We suggest that if the collection of the tax is to be effected by the taking of possession of the motor vehicle that it be done under the provisions of [NRS 366.560](#) and [366.570](#), which provide for the commencement of action and the issuance of a writ of attachment. If this cannot be worked out with sufficient expedition to catch the delinquent while he is using the Nevada highways, this office is at a loss to suggest a more effective procedure until such time as the Legislature makes more explicit provision with reference to the automatic execution, possibly action against the surety on the licensee’s bond would be in order.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Deputy Attorney General

OPINION NO. 58-345 QUARANTINES OF AGRICULTURAL COMMODITIES—

Executive proclamation for interstate quarantine as provided for under [NRS 554.\[0\]20](#) and intrastate quarantine as provided for under [NRS 554.110](#), must be issued in separate documents.

Carson City, January 21, 1958

Mr. Harry E. Gallaway, Assistant Director, Division of Plant Industry, Department of Agriculture, P. O. Box 1027, Reno, Nevada

Dear Sir:

In your letter of January 17, 1958, you inquire whether or not it is legal and proper and proper in preparing a quarantine to protect the cotton industry of southern Nevada to cite both [NRS 554.020](#) and [NRS 554.110](#), and to provide for both interstate and intrastate quarantine in one proclamation to be issued by the Governor.

OPINION

The power to issue an interstate quarantine proclamation appears, under [NRS 554.020](#), to have been delegated exclusively to the Governor. Although the section contains what appears to have been intended by the Legislature as a restriction upon this power in that the proclamation is authorized “on the recommendation of the state quarantine officer,” this has, nevertheless, been negated by the words “or otherwise” which immediately follow. By reason of this we can only conclude that the power to issue such proclamation rests in the discretion of the Governor in the absence of any such recommendation.

While [NRS 554.110](#) makes no provision for any recommendation to initiate an intrastate quarantine proclamation by the Governor, [NRS 554.120](#) immediately following does provide an alternative method for accomplishing a quarantine by authorizing the State Quarantine Officer to

proclaim a quarantine under certain conditions. And unless the Governor thereafter within 48 hours vacates such quarantine, or unless otherwise raised by proper authority, it becomes and remains effective.

With the differences existing between [NRS 554.020](#) and [NRS 554.110](#) as above noted, we can hardly interpret them as being one and the same in the category of executive power. Since the Legislature has vested the Governor with discretionary power to proclaim an interstate quarantine and to refuse to proclaim an intrastate quarantine, or vice versa, they should properly be presented by separate documents for his action. The two types of proposed quarantine, although designed to effect the same ultimate purpose, viz., the protection of the cotton industry in southern Nevada, are greatly different in their jurisdictional aspects. One is interstate and prohibits transportation of diseased cotton across the State line, while the other prohibits its transportation within or outside certain areas within the State. Each is enforceable by different law enforcement officials who could easily become confused if the two proclamations were united in the same document.

We, therefore, state it as our opinion that it would be improper and illegal to provide for both an interstate and intrastate quarantine proclamation in the same document.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Deputy Attorney General

OPINION NO. 58-346 PUBLIC SCHOOLS—Term “School Year” as defined in [NRS 386.150](#) constitutes period running from July 1st of previous year to date of filing certificate of enrolled students as required by statute.

Carson City, February 3, 1958

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

Dear Mr. Stetler:

You have referred this office to [NRS 386.150](#) which reads as follows:

[NRS 386.150](#). Superintendent of public instruction to file certificates with county clerks prior to June 1 in general election year. On or before June 1 in any year in which a general election is held, the superintendent of public instruction shall:

1. File with each clerk of a county whose boundaries are conterminous with a county school district a certificate stating:

(a) The total number of pupils enrolled during that school year in the county school district.

(b) The number and offices of trustees of the county school district to be filled at the next general election.

2. File with each clerk of a county whose boundaries are conterminous with a school trustee election district within a joint school district a certificate stating:

(a) The total number of pupils enrolled during that school year in the school trustee election district of the joint school district.

(b) The number and offices of trustees of the joint school district to be filled from that school trustee election district at the next general election.

You then direct this question to us for answer:

Does the statement “The total number of pupils enrolled during that school year in the county school district” mean the total number of pupils enrolled during the entire school year where the term “school year” would be from July 1 to June 30 of the following year, or does it mean the total number of pupils enrolled in school for that part of the school year prior to the time of the report on or before June 1?

OPINION

It is the opinion of this office that the term “school year” as used above refers to that portion of the school year running from July 1 of the previous year to the date of the report. To illustrate, if the certificate called for was filed with the county clerk on May 18, 1958, it would cover students attending school between July 1, 1957 and May 18, 1958.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

OPINION NO. 58-347 CHILDREN—JUSTICE COURT—Justice Court has jurisdiction under Chapter 107 of 1957 Statutes, over children under 18 years of age charged with driving violations under Chapters 482 through 486 NRS, subject to provisions for incarceration as set forth in [NRS 62.170](#) and [62.180](#).

Carson City, February 7, 1958

Honorable L. E. Blaisdell, District Attorney, Mineral County, Hawthorne, Nevada

Dear Mr. Blaisdell:

You have propounded to this office the following problem: May a juvenile under 18 years of age be lawfully confined to the county jail under judgment and sentence of the Justice Court for violation of the provisions of Chaps. 482 through 486 of the Nevada Revised Statutes, the juvenile’s parent or guardian having made no request for transfer to the Juvenile Court prior to hearing.

Prior to the 1957 session of the Legislature the Justices’ Courts had no jurisdiction of offenses committed by minors under the stated chapters. However, by enacting Chap. 107 of the 1957 Stats. of Nevada, the Legislature gave such jurisdiction to the Justices’ Courts by amending [NRS 62.040](#) by adding the following subparagraph and language:

3. Nothing contained in this chapter shall deprive justices’ courts of original jurisdiction to try matters involving violations of chapters 482 to 486, inclusive, of NRS, nor shall the provisions of this chapter deprive municipal courts of original jurisdiction to try matters involving violation of municipal ordinances concerning operation of motor vehicles. In each such case, however, upon request of the child’s parent or guardian, prior to hearing of the matter in the justice’s court or municipal court, the matter shall be referred to the juvenile division of the district court.

OPINION

It will be noted, however, that upon request of the child's parent or guardian, prior to the hearing of the matter in the justice's court or the municipal court, the matter shall be referred to the juvenile division of the district court.

However, inasmuch as no request was made by the parents prior to the hearing for such transfer, it is apparent that the justice's court has jurisdiction to hear the case and to pronounce judgment. We feel, however, that the sentencing of a minor carries with it the same safeguards which are set forth in Chap. 62 NRS, the Juvenile Court Act.

The appropriate sections of the Act to which we refer are [NRS 62.170](#) and [62.180](#), which read as follows:

1. Any peace officer or probation officer may take into custody any child who is found violating any law or ordinancy 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.

[NRS 62.180.](#)

1. Provision shall be made for the temporary detention of children in a detention home to be conducted as an agency of the court or in some other appropriate public institution or agency; or the court may arrange for the care and custody of such children temporarily in private homes subject to the supervision of the court, or may arrange with any private institution or private agency to receive for temporary care and custody children within the jurisdiction of the court.

2. Authority hereby is granted for any county to provide, furnish and maintain at public expense a building suitable and adequate for the purpose of a detention home for the temporary detention of children, subject to the provisions of this chapter; provided:

(a) That in counties of over 20,000 population, the boards of county commissioners are directed to provide the detention facilities, as aforesaid, within 2 years after March 15, 1949; and

(b) That two or more counties, without regard to their respective populations, may provide a combined detention home, as aforesaid, under suitable terms agreed upon between the respective boards of county commissioners and the juvenile court judges regularly sitting in the judicial districts covering the counties.

3. Any detention home, built and maintained under the authority of this chapter, shall be constructed and conducted as nearly like a home as possible, and shall not be deemed to be or treated as a penal institution, nor shall it be adjoining or on the same grounds as a prison, jail or lockup.

In view of the attempt on the part of the Legislature to throw around children a cloak of protection against contact with adult law violators, every effort should be made to comply with these provisions of the law.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

OPINION NO. 58-348 PUBLIC SCHOOLS—SUPERINTENDENT OF PUBLIC INSTRUCTION—Deals with the manner of computation of moneys distributable from the state distributive school fund. [NRS 387.125](#) 2(a), (4) construed.

Carson City, February 13, 1958

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

Dear Mr. Stetler:

We have your letter of February 11, 1958, requesting an opinion of this office involving a matter of statutory construction. The three specific questions propounded will be hereafter stated.

Chapter 387 NRS makes provision for the financial support of the public schools. [NRS 387.010](#) provides for the composition of the state permanent school fund. Subsequent sections provide for the investment of that fund and provide that the state distributive school fund is composed in part from the earnings of the state permanent school fund. It is provided that the permanent fund, as its name indicates is to be permanent and to remain undiminished. It is from the state distributive school fund that funds are distributed quarterly to the school districts, which in part, from the state office, makes provision for the local financing of the public school system. [NRS 387.120](#) provides that the State Controller shall quarterly render a statement to the Superintendent of Public Instruction, advising that officer of the amount of money available in the State Treasury for distribution to the several school districts of the State.

[NRS 387.125](#) makes provision for the apportionment of the state distributive school fund. This section provides an elaborate formula which we will discuss more at length presently. In brief this is intended as an equitable distribution to all of the school districts, according to their needs and their respective situations. This distribution from the state office to each of the districts, is a benefit which materially reduces the burden of the taxpayers, on the local level, as will hereafter more fully appear.

[NRS 387.130](#) and the sections that follow, make provision for aid to those school districts, in addition to the distribution authorized under [NRS 387.125](#), which have a larger school population and average daily attendance, than would exist if state officers did not reside within the district. These sections make provision for a supplemental distribution by the Superintendent from the state distributive school fund.

[NRS 387.145](#) et seq., make provision for the financing and providing of the permanent facilities, building, etc., in part at the cost of the State, in those districts that are burdened with a higher school population and average daily attendance than would exist if state officers did not reside within the district.

[NRS 387.170](#) et seq., make provision for the source and authorized use of county school district funds. [NRS 387.175](#) provides:

The county school district fund shall be composed of:

1. All local taxes for the maintenance and operation of kindergartens, elementary schools and high schools.
2. All moneys received from the Federal Government for the maintenance and operation of public schools.
3. Receipts from sales of school property.
4. Apportionments by the state as provided in [NRS 387.125](#).
5. All moneys transferred in compliance with the provisions of [NRS 387.170](#).
6. Any other receipts, including gifts, for the operation and maintenance of the public schools in the county school district.

[NRS 387.185](#) provides that the State Treasurer shall pay over, quarterly, to the county treasurer the moneys apportionable from the state distributive school fund as provided under [NRS 387.125](#).

[NRS 387.195](#) provides for a mandatory tax levy by each county for the support of the county school district of 70 cents upon each \$100 of assessed valuation of property within the county, and makes provision of a discretionary tax levy, in addition to the 70-cent levy of not to exceed 80 cents.

[NRS 387.205](#) provides the following:

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 school houses.
 - (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. (*Italics supplied.*)

We have deemed it necessary to set out the general provisions of law and thus reflect the general plan of financing of the Nevada schools, to render the questions which you have propounded, more fully and completely understandable.

As will hereafter more fully appear in some manner “new school buses” are intended to be excluded from the items that are to be considered in the formula or computation to determine the amount of money that may be apportioned to a county school district, from the state distributive school fund.

QUESTIONS

1. For the purpose of the application of the formula contained in the provisions of [NRS 387.125](#), what is the meaning of the term “new school buses”?

(The answer to this question is intended to clarify the recurring question of whether it includes all new buses or only the new buses added from year to year, i.e., the number of increase in buses owned at the end of the previous year.)

2. If a school district operates a complete maintenance shop, and has adopted for its plan of operation the purchase of used buses, and thereafter through complete repairs restores them to good condition, should the cost of such buses, including both the original purchase price and full cost of repairs and restoration, place them in the same category as “new school buses,” under the limitations set forth in [NRS 387.125](#)?

3. If a school district enters into a “lease-purchase” written agreement, whereby it pays to the company holding legal title to the bus (buses) a sum monthly, and binds itself to so pay for an extended exact period of months, in which agreement there is contained a provision binding the legal owner to transfer title of the chattel(s) to the district, after full performance of the provisions requiring monthly rental payment, upon the payment of \$1, is the full amount so paid by the district to the owner, including the monthly rentals and the final payment of \$1, to be construed as the sums paid for the purchase of “new school buses” under the limitations set forth under [NRS 387.125](#)?

OPINION

Subsection 1 of [NRS 387.125](#) provides the manner in which “average daily attendance” is to be computed by the State Board of Education, having a bearing, as it does upon the apportionment.

The remainder of [NRS 387.125](#) reads as follows:

2. Immediately after the state controller shall have made his quarterly report, the state board of education shall apportion the state distributive school fund among the several county school districts and joint school districts in the following manner:

(a) The minimum yearly requirements of each school district shall be determined, which requirements shall be the sum of:

(1) \$4,000 per certified employee.

(2) \$80 per pupil.

(3) \$40 per kindergarten pupil.

(4) One-half of the cost of transportation during the previous year computed in a manner prescribed by the state board of education, *but which computation shall not include the cost of purchase of new school buses*. For the first year, one-half of the actual expenses during the preceding year shall be used, but if there was no actual expense for the prior year the budget estimate shall be used and adjustments made.

(5) \$200 per handicapped child as defined in [NRS 388.440](#).

(b) From July 1, 1956, until July 1, 1957, the availability of local funds shall be determined, which local funds shall be the sum of the proceeds of the 70-cent local tax levied in accordance with the provisions of [NRS 387.195](#) or 387.250. On and after July 1, 1957, the availability of local funds shall be determined, which local funds shall be the sum of:

(1) The proceeds of the 70-cent local tax, computed as provided in [NRS 387.200](#) or 387.255.

(2) Forty percent of the receipts during the previous year from all federal funds for maintenance and operation paid because of the existence of federally owned, tax-exempt property within the school district.

(c) Apportionment computed on a yearly basis shall consist of the difference between the minimum yearly requirements as computed in paragraph (a) of this subsection and the local funds available as computed in paragraph (b) of this

subsection, but no school district shall receive less than one-half of the minimum yearly requirements.

(d) Apportionments shall be paid quarterly at the times provided in [NRS 387.120](#), each quarterly payment to consist of approximately one-fourth of the yearly apportionment as computed in paragraph (c) of this subsection. The first quarterly apportionment based on an estimated number of certified employees and pupils and succeeding quarterly apportionments shall be subject to adjustment from time to time as the need therefor may appear. A final adjustment shall be made in the August apportionment of the succeeding year by adding or subtracting the difference between the amount paid in the previous year and the amount computed on the actual average daily attendance of the highest 6 months of the previous year, so that for any school year the adjusted amount paid shall be equal to, but shall not exceed, the sum computed for the highest 6 months of average daily attendance.

3. Pupils who are excused from attendance at examinations or have completed their work in accordance with the rules of the board of trustees shall be credited with attendance during that period.

(Italics supplied.)

Briefly, subsection 2(a), (4), of [NRS 387.125](#), upon the theory that to a degree there must be an equalizing of educational facilities and opportunities, certain enumerated minimum needs of a district are to be added together to arrive at a figure, provides that the figure is not to include the "cost of purchase of new school buses."

Subsection 2(b), in part, provides for the interim period, preceding July 1, 1957, not now to be considered, and provides that another figure is to be set up, consisting of the sum of two items, viz: (1) the proceeds to the county district from the 70 cents tax levy and (2) 40 percent of funds received by the state office, from the Federal Government, attributable to federally owned, tax exempt facilities and properties, located within the county. Subsection 2(c) then provides that the figure arrived at under subsection 2(b) above, is to be subtracted from the figure arrived at under subsection 2(a) above, and the difference represents the amount of the annual apportionment, unless such figure is less than one-half of the figure arrived at under subsection 2(a), in which event the latter figure will control.

A number of questions present themselves in arriving at the proper construction to be placed upon the language that the "computation shall not include the cost of purchase of new school buses." As, for example, if not to include the cost of purchase of "new" school buses, may it include the cost of purchase of "used" school buses? And, if so, to what extent must they be used to qualify? If not to include the cost of "purchase" of new school buses, may it include the cost of "rent" of new school buses? It is provided that the computation of 2(a), (4), is to include: "One-half of the cost of transportation during the previous year, computed in a manner prescribed by the state board of education." This portion quoted could contemplate rent. But, if a facility as for example an automobile, or house, were used exclusively by the lessee or tenant, from the time when it is new to the time that it is used up or worn out, the total cost in rents would normally be the new price of the facility, as well as something added by way of interest and profit. In other words, if rents are to be considered as included, the distinction intended by excluding "new buses" is not one of economy, for the cost remains present. The distinction that does exist, upon this line of analysis, is that the amount of money required for this one item, year by year, in a given school district, remains more or less constant. It is not great one year and non-existent the following year. The choice of language here is ambiguous and unfortunate.

It could be that the word "new" was intended to be significant, but for reasons heretofore mentioned we find it difficult to pivot the decision upon a meaning so uncertain. Clearly something was intended to be included as a part of the "cost of transportation." Clearly also it was the intention that the cost of new buses should not be included. Clearly also the manner of computation may be "prescribed by the state board of education" One or the other of two errors is possible, i.e., (1) the error of including too much, or (2) the error of including too little, on this

item of costs of transportation. It appears that to apportion too little would be the lesser error, if it were an error.

[NRS 387.160](#) provides for a method of permanent financing for the construction of facilities. Facilities, as buildings, being more or less of a permanent nature, are to be paid off by bond financing. It must be borne in mind that school buses are also more or less permanent equipment, and are not worn out in a single year. It must also be remembered that the apportionment by the state office is quarterly and final computation on an annual basis. Also that the entire financing system would be well near unworkable or at least of diminishing feasibility if the authorized system did not make a distinction between permanent goods and goods to be consumed annually, in the provisions respecting apportionment. Such a system if allowed would lead to wide gyrations as to sums to be apportioned by the state office to a given county, from year to year, which in turn would tend to render the fund inadequate.

We believe that having pointed out as we construe the law, the difficulties, and the dangers to be avoided, and having pointed out that the State Board of Education has a rule-making power, respecting the manner to compute this “cost of transportation,” under the provisions of [NRS 387.125](#), it appears to us that the greatest service that we can now render, will be to recommend that the board promulgate a rule, as to the manner in which the computation shall be made under the statute. In doing this we have in mind that the board is familiar with specific facts in given counties, which will or should make the rules to be promulgated more enlightened than we could formulate without the assistance of the board.

We, therefore, recommend that the State Board of Education formulate and promulgate a rule as to the matter here under consideration, and as to how the computation shall be made, and enumerating what may be included therein.

It is necessary, however, in fully assisting the board in formulating such a rule that we deal briefly with the situations outlined in the questions. As to a school district that buys used school buses and makes full repairs, we doubt that this materially reduces the costs or that it evenly spreads the costs over a period of years. We therefore doubt that such composite costs of school-owned buses may be included in the computation. A determination by the board that the operation does spread the costs more or less evenly over a period of years, however, if such be true, would justify including these composite costs in the computation, and would justify a provision in the proposed rule that this be allowed and performed in a prescribed manner. As to the case represented by the lease-purchase agreement, we are impressed that this is an attempt to do indirectly that which is forbidden to be done directly. We are impressed that the contract is in effect a conditional sales contract for the sale of the bus or buses to the school district. We are of the opinion that to buy a new bus, or new buses, although authorized as a power of the board, such costs could not be added to this computation under [NRS 387.125, 2\(a\)](#), (4), either for cash, or by conditional sales contract, or by the lease-purchase contract as described to us.

In formulating and promulgating the rule as here recommended, we know that you will call upon us, if you deem that we are able to help your board.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: D. W. Priest
Deputy Attorney General

**OPINION NO. 58-349 PUBLIC PURCHASING; COUNTY HOSPITALS; COUNTIES;
WASHOE MEDICAL CENTER**—Under [NRS 333.470](#) Counties may purchase through
the State Department of Purchasing. This may include purchasing for the County Hospitals,

such as Washoe Medical Center, which have no separate legal entity apart from the County.

Carson City, February 18, 1958

Mr. Francis E. Brooks, Director, Nevada Purchasing Department, Carson City, Nevada

Dear Mr. Brooks:

In your letter of February 14, 1958, you request the opinion of this office upon the following question, which we quote from your letter:

Under the State Purchasing Act, Nevada Revised Statutes, Chap. 333, can the Washoe Medical Center be considered eligible to participate in the program on a voluntary basis?

OPINION

The various county hospitals established pursuant to Chap. 450 NRS are without separate legal entity apart from their counties. They are county institutions established, owned and supported by their counties. The Washoe Medical Center is such a hospital. *See Hughey v. Washoe County*, 306 P.2d 1115 (Nev. 1957); *Bloom v. Southern Nevada Memorial Hospital*, [70 Nev. 533](#), 275 P.2d 885; *McKay v. Washoe General Hospital*, [55 Nev. 336](#), 33 P.2d 755.

We conclude from this that, while the Washoe Medical Center as such cannot purchase through the State Department of Purchasing, Washoe County can so purchase for and on behalf of the Medical Center. [NRS 333.470](#) does, of course, specifically authorize counties to participate on a voluntary basis.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Deputy Attorney General

OPINION NO. 58-350 NEVADA STATE HOSPITAL—The estate of a mentally ill person committed to the Nevada State Hospital under any of the various forms of commitment provided by law is subject to charges made by the hospital for said person's care and support while an inmate.

Carson City, February, 18, 1958

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

Dear Sir:

In your letter of February 3, 1958, you present certain facts pertaining to an inmate of the Nevada State Hospital and submit a query as to liability for his support. The facts as supplemented from other sources of information, and the question arising in connection with the case, are substantially as follows:

FACTS

Dale Sollars, a disabled veteran, shot and killed a man in Las Vegas, Nevada, in 1953, and a jury trial was ordered to test his sanity. Being declared insane for the purpose of standing trial on the murder charge, he was, by the court, ordered committed to the Nevada State Hospital to await recovery to the extent of enabling him to stand trial on the charge. In September, 1954, the superintendent of the said hospital gave notice to the then district attorney of Clark County that Sollars was then sufficiently recovered to stand trial, and upon the district attorney's refusal to try the case, a writ of mandamus issued out of the Nevada State Supreme Court in March, 1955, compelling such trial. *Sollars v. District Court*, [71 Nev. 98](#). The defendant was then tried and convicted on the charge in June, 1955, compelling such trial. *Sollars v. District Court*, [71 Nev. 98](#). The defendant was then tried and convicted on the charge in June, 1955, and sentenced to life imprisonment in the Nevada State Penitentiary, which conviction was reversed and the case remanded for a new trial by our Supreme Court in October, 1957. *Sollars v. State of Nevada*, 316 P.2d 917. Even before the order of reversal, the Warden of the State Penitentiary had on August 6, 1957. *Sollars v. State of Nevada*, 316 P.2d 917. Even before the order of reversal, the Warden of the State Penitentiary had on August 6, 1957, petitioned the First Judicial District Court, in and for Ormsby County, for an order of commitment of the said person, which order was made on the same date pursuant to [NRS 433.200](#).

We understand that Sollars has been back in the State Hospital since his recommitment on August 6, as aforesaid, and that in your opinion he shows little or no promise of ever being restored to such degree of sanity as to enable him to cooperate in defending the murder charge against him or to understand the nature of a trial of such. It is also understood that he receives approximately \$170 per month as veteran's compensation for a 100 percent disability, which money is paid into his guardianship estate now being administered through the Second Judicial District Court for Washoe County.

QUERY

In view of his legal status, since the Supreme Court reversed the verdict and ordered a new trial, may the State of Nevada, through the hospital, now charge against Sollars' estate for his support and care pending a retrial which may never come, or other disposition?

OPINION

Although we have set forth a rather extensive statement of facts covering this case, we believe, nevertheless, that the answer to the question propounded is dependent upon the present status of this inmate rather than upon the present status of this inmate rather than upon the entire procedure affecting him since he was first apprehended on the murder charge. It appears necessary only to look back to the last order made to determine this man's status relative to determining liability for his support and care. It appears to us that [NRS 433.370](#) controls in making this determination, the pertinent portions of which read as follows:

1. When a person is committed to the hospital under one of the various forms of commitment prescribed by law * * * the estate of the committed person, and the guardian * * * of the estate of the committed person shall, if of sufficient ability: * * *
 - (b) Cause the committed person to be cared for and maintained properly and suitably at the hospital.
 - (c) Pay for services rendered to the committed person at the hospital.

The last commitment made of this man on August 6, 1957, in our opinion, falls within the category of those contemplated in the above quoted section as it is "one of the various forms of commitment prescribed by law." This being true, the provisions for support of the inmate set

forth in the said statute must be applied. It is plain from the wording of subsections (b) and (c) of the above statute that this inmate's guardianship estate, "if of sufficient ability," was directed by the Legislature to be used for his support and care while committed at the State Hospital.

It is noted that the order of commitment of August 6, 1957, has appended the words "until the further order of this court." We do not believe that these words alter Sollars' position as an inmate at the hospital or tend to remove him from the provisions of [NRS 433.370](#) above discussed. Whether he is there subject to stand trial or to resume his place in society when sufficiently recovered, appears to be immaterial insofar as liability of his estate for his support is concerned.

It is, therefore, the opinion of this office that the guardianship estate of the above-named inmate is subject to payments for his support and care while an inmate at the State Hospital pursuant to the order of commitment made August 6, 1957.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Deputy Attorney General

OPINION NO. 58-351 NEVADA STATE DEPARTMENT OF HEALTH—[NRS 144.130](#),
which was originally applicable to highway construction camps employing five or more persons, amended by Chapter 155, Statutes 1957, to include "any construction or labor" camp employing five or more persons.

Carson City, February 18, 1958

Mr. W. W. White, Director, Division of Public Health Engineering, 755 Ryland Street, Reno, Nevada

Dear Sir:

In your inquiry of February 13, 1958, you ask the opinion of this office as to whether the provisions of [NRS 144.130](#) have been extended by Chap. 155, Stats. 1957, to include farm labor camps with five or more persons working.

OPINION

The effect of amending [NRS 144.130](#) by Chap. 155, Stats. 1957, is clear. Not only did the Legislature delete the word "highway" from the types of camps previously covered by the Act, but it also inserted the word "labor" immediately prior to the word "camp." Thus, an Act which was originally applicable only to "highway construction camps" is broadened so as to become applicable to any "construction or labor" camp where five or more persons are employed.

In view of the definiteness of the Act as amended by the 1957 law, we can draw no other conclusion than that it was the intent of the Legislature that all labor camps, including farm labor camps, employing five or more persons, come under its provisions.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Deputy Attorney General

OPINION NO. 58-352 NEVADA ATHLETIC COMMISSION—Commission’s jurisdiction to regulate fights and exhibitions, to require license for participants or collect commissions on gate receipts, limited to fights and exhibitions held within the State, and does not extend to telecasts of such events held without the State.

Carson City, February 18, 1958

Mr. Jim Diskin, State Athletic Commission, 1411 Norman Avenue, Las Vegas, Nevada

Dear Sir:

In your letter of February 15, 1958 you call attention to the forthcoming fight between Carmen Basilio and Sugar Ray Robison in Chicago on March 25, and advise that Joe Julian of Las Vegas has acquired TV rights from TelePrompter Corp. to conduct a closed circuit telecast of the same in your city and to charge admissions. You request the opinion of this office as to the authority of the Nevada Athletic Commission to require Mr. Julian to obtain a license from the commission for this purpose and also as to the rights of the commission to collect a 2 percent commission on the gate receipts.

OPINION

The Nevada Athletic Commission was created by Act of the Nevada State Legislature in 1941, being Chap. 40, Stats. 1941, which exists at the present time without modification or amendment as [NRS 467.010](#)-467.180, inclusive. We call particular attention to [NRS 367.070](#) defining and setting forth the jurisdiction of the commission which is as follows:

1. The commission shall have and is vested with the sole direction, management, control and jurisdiction over all boxing contests, sparring and wrestling matches and exhibitions to be conducted, held or given within the State of Nevada, and no boxing contest, sparring and wrestling match or exhibition shall be conducted, held or given within this state except in accordance with the provisions of this chapter.
2. Any boxing or sparring contest conforming to the rules, regulations and requirements of this chapter and of the commission shall be deemed to be a boxing contest and not a prize fight.

There it is specifically provided that the commission’s jurisdiction shall extend “over all boxing contest, sparring and wrestling matches and exhibitions to be conducted, held or given within the State of Nevada,” then follows the further provisions that no matches or exhibitions shall be held or given within this State except in accordance with the provisions of this chapter. We believe that this answers the inquiries submitted inasmuch as the fight to be telecast by Mr. Julian over the closed circuit he has leased, does not constitute a fight held or given within the State of Nevada.

In view of the provisions of the foregoing section, it follows that one arranging for the showing of fights over a closed circuit telecast is not required to obtain the license provided for under [NRS 467.100](#) as such license is required only of those persons who directly or indirectly participate in matches, contests or exhibitions held within the State. Being without jurisdiction in

the matter, the commission is likewise without authority to collect any commission from gate receipts collected at the telecast.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Deputy Attorney General

OPINION NO. 58-353 PLANNING AND ZONING; SOCIAL SECURITY; FEDERAL OLD-AGE AND SURVIVORS INSURANCE—A determination of the status of a regional planning commission as an independent instrumentality of government.

Carson City, February 19, 1958

Mr. Harry A. Depaoli, Executive Director, Employment Security Department, P. O. Box 602,
Carson City, Nevada

Dear Sir:

The following is in answer to your letter of December 31, 1957, requesting the opinion of this office as to the status of a Regional Planning Commission and the Western Nevada Industrial Development Commission as independent governmental entities.

STATEMENT OF FACTS

The federal social security program, under USCA Title 42, Sec. 418, extends the old-age and survivors insurance program to employees of a state or any of its political subdivisions under certain conditions.

USCA Title 42, Sec. 418(b)(2) defines a political subdivision of a state as follows:

The term 'political subdivision' includes an instrumentality of (A) a State, (B) one or more political subdivisions of a State, or (C) a State and one or more of its political subdivisions.

As we understand it, the term "instrumentality" as used in this provision has been interpreted by the federal counsel to mean, for purposes of old-age and survivors insurance, those governmental entities or agencies having an independent status as a functional unit of government apart from that unit, or those units, of government of which it is an instrument. Moreover, this interpretation appears to declare some of the attributes which would make it possible to determine the independent status of an instrumentality. For example, organization as a corporate body, the power to contract as a principal, the power to levy taxes or borrow money, to acquire and hold property in its own name, to exercise the authority of eminent domain, or to sue and be sued. *See* the legal opinion of the office of The Regional Attorney, Department of Health, Education, and Welfare Regional Office released December 19, 1957, and directed to the State of Nevada.

Under this interpretation, then, the employees of an independent instrumentality would constitute a coverage group to which the old-age and survivors insurance program would extend. If the instrumentality is not an independent entity, the program would extend to its employees as a part of a larger coverage group, provided other requisites have been met.

It is to be observed also that the Nevada enabling Act in [NRS 287.100](#) defines the term “political subdivision” for this purpose in the same language as does the federal statute and adds thereto the following language:

* * * but only if such instrumentality is a juristic entity which is legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to such juristic entity employees of the state or subdivision.

Clearly, then, the state statute expresses the interpretation placed upon the federal statutory definition by the federal counsel.

QUESTION

The question then is this: Are the Regional Planning Commission (comprised of Washoe County, Nevada, and the municipalities of Reno and Sparks located therein) and the Western Nevada Industrial Development Commission independent instrumentalities within the meaning of the federal and state statutes?

OPINION

The Regional Planning Commission here in question was created and operates under [NRS 278.090](#) and following sections. Under these provisions it is clear that the principal function of this commission is to prepare a master plan for the region to be adopted by the governing bodies therein. Such governing bodies consist of the Board of County Commissioners of Washoe County and the City Councils of Reno and Sparks. This commission is also charged with the promotion of the public interest in the master plan and has also certain powers of approval as to acquisition and abandonment of streets and parks and the construction of public buildings. In this regard it will be noted that in every instance the decisions and operations of the commission are subject to reversal and rejection by the governing bodies. In [NRS 278.110](#) the commission is given the power to employ experts, clerks and a secretary and to pay for their services and such other expenses as are necessary and proper not exceeding the annual appropriation by the governing bodies. Beyond this there is nothing express in the statute granting those powers usually attributable to a governmental agency of independent operation; such as, for example, the express statement that the commission is constituted a body corporate with the power to sue and be sued, etc. Nor is there anything in the statute indicating that such powers are to be implied. [NRS 278.190](#) provides that, in general, the commission shall have such power as may be necessary to enable it to fulfill its functions and carry out the provisions of [NRS 278](#). However, it nowhere appears that the functions of the commission require the implied powers which usually accompany corporate existence.

The Nevada court in *Bloom v. So. Nev. Hospital*, 275 P.2d 885, [70 Nev. 533](#), dealing with the question of whether a county hospital is subject to suit for tort had this to say:

It is settled law that county hospitals created pursuant to the cited statutory authority are without legal entity and for this reason are not subject to suit. *McKay v. Washoe General Hospital*, [55 Nev. 336](#), 33 P.2d 775, 756. In that case this court stated: “The act under which the defendant hospital was organized provides that ‘any county may establish a public hospital in the following manner.’ The act did not create a corporation, but merely authorized the respective counties to establish a hospital, and it did not provide that such hospital might sue or be sued.” See *Granite Oil Co. v. Douglas County*, supra, for a discussion of this decision.

Since the decision in the McKay case, Sec. 2228, NCL 1929, Supp. 1943-1949, dealing with the powers and duties of the hospital trustees, has been amended to empower the trustees “by proper legal action to collect claims due, owing and unpaid to said public hospital from any person dealing with the

same * * *.” This authority granted to the trustees does not, however, breathe corporate life into the institution they represent, or in any other manner provide it with independent entity.

See also Hughey v. Washoe County, 306 P.2d 1115 (Nev. 1957).

Whatever may be the particular political subdivision of the State of which this commission may be a part (that question is not dealt with here), this office is of the opinion that the Regional Planning Commission in question is not such an independent governmental instrument as is contemplated by the federal and state statutes for the purpose of constituting its employees a separate group for old-age and survivors insurance coverage.

The Western Nevada Industrial Development Commission, insofar as this office is able to determine, is in the nature of a working committee of the particular Regional Planning Commission dealt with above, and carries no independent status whatsoever for the purposes here involved.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Deputy Attorney General

OPINION NO. 58-354 STATE PLANNING BOARD—When survey report shows structural defectiveness, State Planning Board required under provisions of Chap. 275, Sec. 15, Stats. 1957, immediately to furnish copies of same to boards of institutions with buildings reported defective.

Carson City, February 20, 1958

Mr. W. E. Hancock, Assistant Manager, State Planning Board, Carson City, Nevada

Dear Sir:

In your letter of January 20, 1958, you state that pursuant to Sec. 15, Chap. 275, Stats. 1957, the State Planning Board engaged registered structural engineers to inspect the structural condition of certain state buildings, and that according to the reports of said engineers, the Nevada State Museum at Carson City and Stewart Campus all have inherent structural conditions that are a potential hazard to those using them. Based upon these facts you have requested the opinion of this office as to what action the State Planning Board should take to protect the State of Nevada from any damages which may occur because of the defectiveness reported.

OPINION

Chap. 275, Stats. 1957, has a broad title making an appropriation of more than one million dollars for miscellaneous uses, including the making of structural surveys. Section 15 of the Act earmarks the sum of \$35,150 and specifies the amount to be spent on each, for making such surveys on certain state-owned buildings including the State Museum, Stewart Hall and the Agriculture Building aforementioned. The second paragraph of said section then makes the following direction: “The State Planning Board is charged with the duty of carrying out the provisions of this section, and may acquire such structural engineering services as may be necessary to carry out the provisions of this section.” Beyond this the statute is silent. Nor do we

find anything stated therein or elsewhere in the law implying any duty or obligation to follow any further course of action upon completion of the surveys. It is an elementary rule of law that boards and commissions have only such powers as are expressly delegated to them by the Legislature or which may be reasonably inferred therefrom. Further action in the matter might well be unnecessary except for the fact that the structural defects in the buildings with which we are here concerned could result in injuries to those using them, all of which the State of Nevada is interested in preventing.

Although the Planning Board is charged with no further concrete action in the matter, such as the repairing or rebuilding of the structurally defective buildings, it must be inferred from the Act providing for the survey that the board must submit the findings reported in the surveys to the Legislature for such action as it shall deem necessary. Since that body will be unable for at least another year to alleviate the hazards existing, the board, in our opinion, should immediately furnish copies of the structural survey reports to the Board of Directors of the Nevada State Museum and the Board of Regents of the University of Nevada, respectively. These boards have authority, if they feel that the condition of the buildings in question warrant, to discontinue their present use. Any determination as to their future use must be left to the Legislature at its next session.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Deputy Attorney General

OPINION NO. 58-355 CONSERVATION AND NATURAL RESOURCES—Refunds of unused application fees made pursuant to [NRS 533.435](#) (4) may properly be made only to the party to whom original receipt was issued for their payment.

Carson City, March 4, 1958

Mr. Edmund A. Muth, State Engineer, P. O. Box 606, Carson City, Nevada

Dear Mr. Muth:

In your letter of February 26, 1958, you state that in many cases handled by your office the fee paid pursuant to [NRS 533.435](#), for filing an application to appropriate water in this State, is advanced by another party for the applicant and not by the applicant himself. In making refund when the application is cancelled under the provisions of [NRS 533.355](#) or is withdrawn before publication, you inquire whether the portion of the fees refundable in such cases should be refunded to (1) the applicant, or (2) the party to whom the original receipt for the application fee was issued.

OPINION

[NRS 533.435](#) provides that the fee for filing and examining an application for a permit to appropriate water shall be \$25, including the \$15 necessary for publication and, further, that “Any moneys received by the State Engineer as publication fees and not used by him for that purpose shall be returned to *the person who paid the same.*” (Italics supplied.)

The answer to the query hereinabove presented lies in the meaning of the words italicized. They could refer but to the applicant alone where he himself pays the filing fee, but where it is

paid on his behalf by another person the words, in our opinion, include such other person as well. This inclusion must be limited, however, to such another or other person who used his own money for payment of said fees for the applicant. Obviously, the words would not include one who acts merely as an agent for the applicant and whose sole function consists in delivering his principal's funds to your office in payment of the fees in question. A receipt for payment of such fees should be issued to either the applicant paying them himself or to another paying the same out of his own funds for and on behalf of the applicant.

Based upon these conclusions, it is the opinion of this office that any refund of unused fees may properly be made only to the person to whom the original receipt for payment was issued.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Deputy Attorney General

OPINION NO. 58-356 REAL ESTATE COMMISSION—Nevada. Powers of commission respecting “advance fee” and business opportunity brokers and salesmen, determined and limited. Chapter 147, Stats. 1957, [NRS 645.002](#), [645.004](#), 645.006, 645.008, 645.322, 645.324, 645.230, 645.850 construed.

Carson City, MARCH 6, 1958

Mr. Gerald McBride, Executive Secretary, Nevada Real Estate Commission, P. O. Box 369,
Carson City, Nevada

Dear Mr. McBride:

It appears under the date of December 12, 1957, you addressed an inquiry to counsel for the southern division of the Nevada Real Estate Commission, as to the effect of Chap. 147, Stats. of 1957, p. 209, upon the law respecting the licensing and disciplining of real estate brokers. The exact questions will appear hereafter. Counsel answered your inquiries by a reply dated December 30, 1957. Thereafter the matter was sent to this office for review, and apparently was received here on the 25th day of February, 1958. The statute of 1957 heretofore cited now appears in the Nevada Revised Laws, as will be cited hereafter. However, in order to comprehend the purpose of the Act and the evil sought to be corrected, it is necessary to read the preamble thereto which appears only in the session laws.

Briefly the statute (1957, p. 209) recites that high-pressure tactics and practices have been used by persons and entities under a so-called “advance fee business,” respecting the sale, lease, rental, or exchange of real property, by which tactics and unethical practices the owners of real property have been financially injured, and that because of such fact and an intention to correct it, the Legislature has decided to regulate, through the Nevada Real Estate Commission, in the public interest, the activities of such individuals and entities.

[NRS 645.002](#), [645.004](#), 645.006, 645.008, provide as follows:

645.002. “Advance fee” defined. As used in this chapter, “advance fee” means a fee contracted for, claimed, demanded, charged, received or collected for an advance fee listing, advertisement or offer to sell or lease property, issued for the purpose of promoting the sale or lease of business opportunities *or real estate* or for referral to business opportunity or real estate brokers or salesmen or both, prior to

the last printing or other last issuance thereof, other than by a newspaper of general circulation.

645.004 “Advance fee listing” defined. As used in this chapter, “advance fee listing” includes, but is not limited to:

1. The name or a list of the names of the owners, landlords, exchangers or lessors, or the location or locations of property, or of an interest in property, offered for rent, sale, lease, or exchange.

2. The name or a list of the names, or the location or locations at which prospective or potential purchasers, buyers, lessees, tenants or changers of property may be found or contacted.

3. An agreement by which a person who is engaged in the business of promoting the sale or lease of business opportunities *or real estate* agrees to render to an owner or lessee of such property any services, to promote the sale or lease of such property, for an advance fee.

4. An agreement by which a person who is engaged in the business of finding, locating or promoting the sale or lease of business opportunities *or real estate* agrees, for an advance fee, to circularize, notify or refer *business opportunity or real estate brokers or salesmen*, or both, to such property which is offered for sale or lease.

645.006 “Business opportunity broker” defined. As used in this chapter, “business opportunity broker” also includes any person who engages in the business of claiming, demanding, charging, receiving, collecting or contracting for the collection of an advance fee in connection with any employment undertaken to promote the sale or lease of *business opportunities or real estate* by advance fee listing advertising or other offerings to sell, lease, exchange or rent property.

645.008 “Business opportunity salesman” defined. As used in this chapter, “business opportunity salesman” also includes a natural person who is employed by a *licensed business opportunity broker* to claim, demand, charge, receive, collect, or contract for the collection of an advance fee in seeking to promote the sale, exchange, lease or rent of *business opportunities or real estate* by advance fee listings, advertising or other offerings to sell, exchange, lease or rent property. (Italics supplied.)

[NRS 645.322](#) and [645.324](#) provide as follows:

645.322 Accountings of use of advance fees charged or collected; commission may demand accounting. Any person or entity who charges or collects an advance fee shall within 3 months after such charge or collection, furnish to his principal an accounting of the use of such money. The commission may also demand an accounting by such person or entity of advance fees so collected.

645.324 Commission may prescribe forms of advance fee agreements, accountings; rules and regulations.

1. The commission may require such forms of advance fee agreements to be used, and such reports and forms of accounting to be kept, made and submitted, and may make such rules and regulations as the commission may, in its discretion, determine to be necessary to carry out the purposes and intent of [NRS 645.322](#).

2. Any violation of the rules, regulations, orders or requirements of the commission shall constitute grounds for disciplinary action against the licensee.

[NRS 645.230](#) and [645.850](#) provide the following:

645.230 Engaging in business or acting without license; complaint and assistance at trial; prosecution of violations by district attorney.

1. After June 1, 1947, it shall be unlawful for any person, copartnership, association or corporation to engage in the business of, act in the capacity of, advertise or assume to act as, a real estate broker or real estate salesman within the State of Nevada without first obtaining a license as a real estate broker or real estate salesman from the commission as provided for in this chapter.

2. The commission may prefer a complain for violation of this section before any court of competent jurisdiction; and the commission, collectively and individually, and its counsel, may assist in presenting the law or facts upon any trial for a violation of this section.

3. The district attorney of each county shall prosecute all violations of this section in their respective counties in which violations occur.

645.850 Penalties.

1. Any person, copartnership, association or corporation violating a provision of this chapter, shall, upon conviction thereof, if a person, be punished by a fine of not more than \$1,000, or by imprisonment in the county jail for a term not to exceed 1 year, or by both fine and imprisonment, and if a copartnership, association or corporation, be punished by a fine of not more than \$2,500.

2. Any officer or agent of a corporation, or member or agent of a copartnership or association, who shall personally participate in or be accessory to any violation of this chapter by such copartnership, association or corporation, shall be subject to the penalties herein prescribed for individuals.

3. Nothing herein contained shall be construed to release any person, corporation, association or copartnership from civil liability or criminal prosecution under the general laws of this state.

4. The commission, or any member thereof, may prefer a complaint for violation of [NRS 645.004](#) before any court of competent jurisdiction, and it may take the necessary legal steps through the proper legal officers of this state to enforce the provisions thereof.

5. Any court of competent jurisdiction shall have full power to try any violation of this chapter, and upon conviction the court may, at its discretion, revoke the license of the person, copartnership, association, or corporation so convicted, in addition to imposing the other penalties herein provided.

QUESTION

Question No. 1. Would a person or entity so engaged, as above outlined in [NRS 645.004](#), be in fact performing the acts of a real estate broker in so performing such services for another and for compensation or the expectation of receiving compensation?

Opinion as to question No. 1.

[NRS 645.004](#) consists of four subdivisions and each of those subdivisions contemplates a different activity on the part of the person or entity that contractually enters into an “advance fee listing.”

This section must be strictly construed, in such a manner as to grant no greater powers to the commission than were clearly intended by the Legislature, for the Legislature was considering the entire problem, and was considering the persons and entities engaged in the activity designated in all four subdivisions.

Subdivisions 3 and 4 use real estate brokers and salesmen synonymously with those persons dealing with business opportunities. Clearly then the Legislature intended that business opportunity brokers and salesmen should fall in the same category as real property brokers and salesmen. We therefore conclude that those persons or entities that contract and “advance fee listing,” under the provisions of subdivisions 3 and 4 of [NRS 645.004](#), must be licensed as real estate brokers or salesmen.

Those persons who contract for an “advance fee listing” under the provisions of subdivisions 1 and 2 of [NRS 645.004](#) need not be so licensed, unless of course there is

more to tie them to the real property (brokers and salesmen) licensing laws. This position is strengthened by the reflection that the Nevada Real Estate Commission has authority over such operators, apart from licensing, by reason of the provisions of [NRS 645.322](#), and [NRS 645.324](#).

Question No. 2. If the answer to question No. 1 is in the affirmative, may the Nevada Real Estate Commission properly demand that such persons or entities obtain a real estate broker's license?

Opinion as to question No. 2.

If the activity of the person or entity falls under subdivisions 3 or 4 of [NRS 645.004](#), the commission may properly demand that such persons or entities obtain a real estate broker's license.

On the other hand, if the activity of the person or entity falls under subdivision 1 or 2 of [NRS 645.004](#), the commission could not properly so demand, unless upon activities in addition to the provisions of subdivisions 1 and 2, which additional activities alone would warrant the real estate activity and license classification.

Question No. 3. If the answer to question No. 2 is in the affirmative, may the Nevada Real Estate Commission properly prefer criminal complaints as outlined under [NRS 645.850](#), subdivision 4 thereof, against such persons or entities so engaged who do not have a valid real estate broker's license?

Opinion as to question No. 3.

As to criminal prosecution, strictly speaking, the answer must be affirmative. However, this procedure presents practical aspects not to be overlooked. First, prosecutions are commenced at the discretion of the district attorney who must first be convinced that there is a probability that the criminal action will terminate in conviction. Secondly to classify these persons and entities as real estate brokers, who fancy themselves to be in an advertising business, or a related business, is a bit surprising and startling to them. A campaign of education should therefore precede anything in the nature of criminal enforcement. Thirdly, the commission has authority to discipline without resorting to the criminal law, or in any event without first so resorting thereto, under the provisions of [NRS 645.322](#) and [NRS 645.324](#). Fourthly, ordinarily criminal proceedings should not be followed until civil proceedings have been pursued and have failed, in situations of this kind, under this chapter.

Question No. 4 This question contemplated the possibility of question No. 2 being answered in the negative. It was not so answered.

Question No. 5. May the Nevada Real Estate Commission properly prefer criminal complaints against any person or entity who fails to render the accounting of fees as contemplated under [NRS 645.322](#) and [NRS 645.324](#) for violation of the provisions of [NRS 645](#), whether or not such persons or entities have, or are required to have, a real estate broker's license?

Opinion as to question No. 5.

As we construe [NRS 645.230](#) and [NRS 645.850](#), criminal actions may be commenced only against those entities that are required to be licensed as real estate brokers and real estate salesmen. Criminal actions in this situation should be considered in the light of the limitations mentioned in the opinion of question No. 3.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: D. W. Priest
Deputy Attorney General

OPINION NO. 58-357 STATE PLANNING BOARD—Board authorized under Chap. 424, Stats. 1955 to make reasonable expenditure from state office building construction fund for furnishing auditorium and restrooms therein for appropriate use.

Carson City, March 7, 1958

Mr. M. George Bissell, Engineer-Manager, State Planning Board, Carson City, Nevada

Dear Sir:

You have advised that the state office building located on the capitol grounds at Carson City is nearing completion and already occupied by several state offices. In that connection you call attention to the fact that the auditorium or conference room is without any furnishings, i.e., chairs, tables, etc., and that the ladies' restrooms therein are greatly in need of the ordinary furnishings essential for rendering them comfortable. You request the opinion of this office as to whether or not any of the funds appropriated for construction of the building may be used for purchasing this needed equipment.

OPINION

Authorization for the construction of the state office building above mentioned is contained in Chap. 424, Stats. 1955. Section 1 thereof reads in part:

Provision is hereby made for the *construction* and *equipment* of a state office building on the grounds of the state capitol at Carson City, * * *. (Italics supplied.)

Section 4 prohibits use of the funds in the state office building construction fund except for the four purposes thereunder listed, the one pertinent to this opinion being number 1, which reads:

To construct and equip a state office building on the grounds of the state capitol at Carson City.

A strict construction of what is authorized in the above-mentioned Act would readily lead us to the conclusion that the Legislature intended only that a state office building be constructed and equipped, and nothing more. No difficulty confronts us in determining what is meant by construction of a building, but equipping a building is subject to a variety of meanings. In its strictest sense, the term "equipment" as used in connection of a building, but equipping a building is subject to a variety of meanings. In its strictest sense, the term "equipment" as used in connection with building construction is usually limited to such items as lighting, plumbing, heating, and similar adjuncts without which no building could be complete. By the very nature of the use to which certain rooms or portions of a building are to be put, however, it is certain that they are not complete or ready for use when such facilities as light, heat and water alone are installed. It becomes apparent that if we adopt the strict meaning of the term "equipment," certain portions of a newly constructed building would be complete in one sense but still not ready for use until something more is added. We feel that the term must be viewed in a broader sense in order to give full expression of the legislative intent.

In *State Ex Rel. Davis v. Barber*, 190 So. 809, it was held that a resolution for issuance of bonds to "erect, construct, furnish and equip" a courthouse was within power of board of county commissioners under statute authorizing issuance of bonds to "erect" courthouse and other structure, since "erect" and "construct" are synonymous, and "furnish" and "equip" are synonymous, referring to essential adjuncts that are a component part of the completed structure.

So have the lexicographers shown the word “furnish” and “equip” to be synonymous. If we accept these authorities we must regard “furnishing” to be a part of or included in “equipping,” especially if certain furnishing is necessary for a final completion of a building to the point where it is ready for use. An auditorium is not useable unless equipped with chairs and tables or other appropriate furnishings. Such furnishings, along with those necessary for rendering restrooms comfortable, fall into the category of equipment benefitting the entire building. Their use is no more applicable to any one group or office than to others located in the building. It would be absurd to conclude that the Legislature intended to construct a building to the point where it is ready for full use except for the furnishing of certain comparatively inexpensive equipment in the auditorium and restrooms. Every effort must be made to interpret a statute so as to carry into effect the legislative intent. This can be done only by construing it to mean that the Legislature intended to authorize the construction of a completed building ready for use. To accomplish this, both the auditorium and restrooms must be suitably equipped for use.

Similar questions have been presented to this office in the past, where we have followed the same line of reasoning as hereinabove stated. Attorney General’s Opinions Nos. 132 (1955), 183 (1956).

Based upon the foregoing, it is our opinion that Chap. 424, Stats. 1955, authorizes the expenditure of a reasonable amount from the state office building construction fund for furnishing both the auditorium and restrooms therein for appropriate use.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Deputy Attorney General

OPINION NO. 58-358 STATE PRINTING OFFICE—Superintendent of State Printing Office not authorized to enter into union agreements or to recognize or be bound by the same except as to their provisions relative to wage scales for union members employed in his office.

Carson City, March 12, 1958

Honorable Jack McCarthy, Superintendent, State Printing Office, Carson City, Nevada

Dear Sir:

This is with reference to our conversation of last week relative to an Agreement and Scale of Wages governing Reno Printing Pressmen and Assistants’ Union No. 222 and Commercial and Job Shop Employees, effective October 31, 1957 and expiring December 31, 1959. In addition to setting up a wage scale for the period mentioned, the agreement also contains several other sections dealing with subject matter of a nature usually found in this type, including a provision that the employers within the jurisdiction of the union put into effect by March 1, 1958, an adequate hospital and health plan to be financed by said employers. Several employees in your office being members of the printers union, you inquire whether or not the law permits you, on behalf of the State Printing Office, to enter into and become bound by the terms of this agreement.

OPINION

Under [NRS 344.080](#)(2) the Superintendent of State Printing is permitted to pay up to the maximum wage provided in the union scale to employees in his office who are engaged in work in connection with printing. That section provides: "At no time shall the state superintendent pay (such) compositors, machine operators, pressmen and assistants a higher rate of wages than is recognized by the employing printers of the State of Nevada, or than the nature of the employment may require."

Under Chap. 284, Nevada Revised Statutes, creating the State Department of Personnel, [NRS 284.180](#)(2) provides that: "This chapter shall not be construed to supersede or conflict with existing or future contracts of employment dealing with wages, hours and working conditions." Although carrying the employees of the State Printing Office on its rolls as classified personnel, that department has nevertheless given recognition to the printers union scale and has adopted that scale of wages as its schedule of compensation for members of that union, although all non-union personnel are paid under schedules formulated solely by the department.

Thus we see that the Legislature has taken cognizance of wage scales set by unions and has in effect adopted them as the prevailing wage of union members engaged in work for the State, the wages for whom the union has seen fit to regulate. But we fail to find any law authorizing recognition of other provisions of union agreements. In fact, certain statutes have been enacted by the Legislature which appear definitely to negative any intent to recognize, far less to adopt, any provisions of a union agreement other than its wage scale. We refer particularly to the subject of employees' insurance.

[NRS 287.020](#) authorizes departments of the State to purchase group life, accident or health insurance for their employees who agree thereto and who consent to deduction of the premium in payment therefor from their salaries. This plan it itself affords state employees an opportunity to benefit by being enabled to purchase certain protection for themselves and families at lower rates than the individual could obtain it. To permit any one group of employees to receive this benefit at the expense of the State would, in our opinion, be equivalent to and constitute additional compensation to them. Neither in this section nor elsewhere in the law are we able to find anything that indicates any legislative intent to provide the benefits of the insurance available under this plan free to any group of employees.

By reason of the foregoing we can only conclude that the Superintendent of the State Printing Office is not authorized by law to enter into any union agreements or to recognize or be bound by any provisions thereof except as to the wage scales therein provided.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Deputy Attorney General

**OPINION NO. 58-359 MENTALLY DISEASED AND DEFICIENT PERSONS—
NEVADA STATE HOSPITAL—CIVIL PRACTICE—LIMITATION OF
ACTIONS**—Interpretation of [NRS 433.480](#) relating to the liability of the estate of
deceased persons for care in the Nevada State Hospital prior to death as that provision
affects the general law relating to limitations of actions.

Carson City, March 12, 1958

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

Dear Dr. Tillim:

The following opinion is in answer to your letter of February 6, 1958.

A person was a patient at the Nevada State Hospital from December, 1929, until her death in February, 1957. During this time she was hospitalized as an indigent person. Following her death it was learned that there exists in the estate of the deceased certain valuable property subject to the claim of the State for care and hospitalization.

The question arises as to the applicability of the statute of limitations of actions against the claim of the State.

[NRS 433.370](#) provides that the relatives or estate of a committed person shall, if of sufficient means, pay for the care of the person. [NRS 433.410](#) provides a means for determining a daily rate to be charged for the care of patients.

[NRS 433.480](#), subsection 1, provides as follows:

1. Claims by the hospital against the estates of deceased persons may be presented to the executor or administrator in the manner required by law, and shall be paid as a preferred claim, ranking with claims for expenses of last illness. When a deceased person has been maintained at the hospital at a rate of pay less than the maximum usually charged, or the hospital has incurred other expenses for the benefit of the person for which full payment has not been made, the estate of the person shall be liable, if the estate is discovered within 5 years after the person's death.

[NRS 11.010](#) provides as follows:

Civil actions can only be commenced within the periods prescribed in this chapter, after the cause of action shall have accrued, except where a different limitation is prescribed by statute.

[NRS 11.190](#) provides, in part, as follows:

Actions other than those for the recovery of real property can only be commenced as follows: * * * Within 4 years: * * * (c) An action upon a contract, obligation or liability not founded upon an instrument in writing.

[NRS 11.230](#) provides as follows:

Except for the provisions of [NRS 11.030](#) and [11.040](#), the limitations prescribed in this chapter shall apply solely to actions regarding personal property brought in the name of the state, or for the benefit of the state, and in the same manner as to actions by private parties.

The last-quoted provision places the State in the same position as an individual insofar as the limitation of actions upon claims by the State of the type here involved are concerned. Thus, unless [NRS 433.480](#), above quoted, provides an exception, or unless an implied exception tolling or preventing the running of the statute of limitations exists, the claim of the State against the estate of the decedent would be limited to a period of four years last preceding the person's death.

This office is of the opinion that [NRS 433.480](#) does not provide such an exception. The wording of that provision appears to declare the intention of the Legislature that the time during which the estate of such person is to remain liable is to be extended to a maximum of five years. It is, however, nowise clear that it was intended that the statute providing for limitations of actions by the State was to be otherwise altered. To conclude that [NRS 433.480](#) authorizes recovery by the State for cost of care in the hospital without limitation upon the time for bringing action is to conclude that the statute placing the State in the same position as an individual suitor

has, to that extent, been repealed. Such a conclusion leading to the repeal of a portion of a law must be supported by some clarity of expression. We think that the line of cases represented by *State v. Donnelly*, [20 Nev. 214](#), 19 P. 680, is determinative of this question. There the court reasserted the principle that a repeal by implication ought not to be presumed, unless from the repugnance of the provisions the inference be necessary and unavoidable. *See also Abel v. Eggers*, [36 Nev. 372](#), 136 P. 100, and Sutherland Statutory Construction, 3d Ed., Vol. 1, sections 2014 and 2022.

We conclude, therefore, that [NRS 433.480](#) renders the estate of such deceased person liable to such portion of the State's claim not barred by the statute of limitations prior to death for a period of five years after death.

This brings us to the question of whether an implied exception exists which would have prevented or tolled the statute of limitations. There are certain express exceptions in the statute relating to limitations of actions which prevent or toll the running of the limitation period, none of which apply here. There is, however, an implied exception recognized by the courts which warrants discussion in this instance.

It should be stated initially that the courts are reluctant to recognize any exceptions to the limitations statute other than those expressly provided, 34 Am.Jur. 150. Moreover, the fact that a person entitled to an action has no knowledge of his right to sue or the facts out of which his right arises does not prevent the running of the statute, 34 Am.Jur. 186. However, as is stated in 34 Am.Jur. 188: "The general trend of the decisions is in support of the rule that where a party against whom a cause of action has accrued in favor of another, by actual fraudulent concealment prevents such other from obtaining knowledge thereof, or the fraud is of such a character as to conceal itself, the statute of limitations will begin to run from the time the right of action is discovered or, by exercise of ordinary diligence, might have been discovered."

Applying this rule to the present set of facts, it is clear that the matter is largely a question of fact as to whether the element of fraud upon the part of those administering the estate of the deceased during her incompetency was present, and whether due diligence had been employed to discover the existence of the estate during that time. If these prerequisites can be properly established, there would be basis for the argument that the statute of limitations had not started to run in this case until discovery of the estate, and, of course, in this instance liability would extend and be limited to a maximum of five years following death.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Deputy Attorney General

**OPINION NO. 58-360 PROTECTION FROM FIRE—STATE FORESTER FIRE-
WARDEN—ATTORNEY GENERAL**—Federal Forest Service and Land Management personnel when employed under [NRS 472.040](#) are in state employment and are in the same position as other state employees so engaged insofar as liability to others for their actions in the performance of duty under state employment is concerned. The Attorney General is authorized to defend the interests of the State of Nevada.

Carson City, March 13, 1958

Mr. George Zappettini, State Forester, Carson City, Nevada

Dear Mr. Zappettini:

In your letter of March 3, 1958, you request the opinion of this office upon the following question quoted from your letter:

Do federal officials, appointed by the State Forester Firewarden to act as voluntary firewardens and engaged in enforcing Nevada fire laws, enjoy the same immunity from private suit as an official of the State of Nevada? What would be the position of the Attorney General's office as to protection and defense afforded a federal official, should he be named in a private suit while acting in a state capacity?

[NRS 472.040](#) authorizes the State Forester Firewarden to appoint resident officers of the United States Forest Service and the United States Bureau of Land Management as unpaid voluntary firewardens and provides that such voluntary firewardens shall have all of the police powers of paid firewardens.

As we understand it, the federal officials when thus employed would, even though unpaid for their service, act in the capacity of officers, or agents or employees of the State of Nevada. It is clear, at least, that when thus engaged they will be performing such service and exercising such authority on behalf of the State of Nevada as stems from and is limited by the powers set forth in the State statute. To this extent they would be under the control of and in the employ of the State. Service without pay does not mean that the relationship of employer and employee fails of existence. While agreement of service must be supported by lawful consideration, it is not essential that there be a promise of payment of wages. *Reeder v. Pincolini*, [59 Nev. 396](#), 94 P.2d 1097.

We conclude that when such persons are engaged in the performance of such duties and within the scope of the authority delegated to them they are, with respect to liability to others for their actions, in the same position as any employee of the State would be when so engaged.

With respect to the latter portion of your question, the office of the Attorney General, under [NRS 228.170](#), is authorized, when the interests of the State of Nevada require protection, to institute proper defense. Thus, in an action at law arising from the performance of an authorized duty by an employee or officer of the State in which the interests of the State will be adversely affected, the Attorney General is authorized to defend those interests. It should be understood, however, that it is the interest of the people of the State of Nevada alone, rather than an individual employee, in whose behalf the Attorney General is primarily authorized to direct his defense. And, of course, it may be added, simply for purpose of clarity, that the foregoing is to be distinguished from the liability of an individual as an officer or employee of the State for his wrongful acts committed during the performance of what is otherwise an authorized duty. Such liability is his own, for which he is privileged to conduct his own defense.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Deputy Attorney General

OPINION NO. 58-361 INSURANCE, COMMISSIONER OF—Insurance premiums may not be paid by installments, after coverage attaches, without the payment of interest at 6 percent per annum. [NRS 686.160](#)-268.460 construed.

Carson City, March 18, 1958

Honorable Paul A. Hammel, Insurance Commissioner, Carson City, Nevada

Dear Mr. Hammel:

We are in receipt of your letter of March 11, 1958, requesting an opinion of this office. You have enclosed a circular of advertising material, which, in part, reads as follows:

To All Automobile Owners—

With the rising cost of automobile insurance the payment of premiums becomes as important as the necessity for coverage itself.

We believe that our new Time Payment Plan can solve your problem.

NO INTEREST OR CARRYING CHARGE OF ANY KIND.

Standard rates for any and all coverages you may desire. You pay 25% down and the balance in five monthly payments: for example:

TOTAL PREMIUM	\$100.00
DOWN PAYMENT 25%	25.00

BALANCE	<u>\$75.00</u>
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To be paid in FIVE monthly payments of \$15.00 each per month, *and no more.*

You can buy a six months policy at 50% of the premium and at the same terms.

Protect your car from all hazards including your legal responsibilities, and pay by the month; costs you no more than if you paid cash.

(Then follows the name of the corporation which is a duly licensed insurance agent.)

QUESTION

Please advise whether or not the financing of the premiums on an automobile insurance policy by a corporation as a licensed insurance agent, without charging interest, is in violation of [NRS 686.160](#) or 686.460 or both.

OPINION

[NRS 686.160](#), in part, reads as follows:

686.160. Payment or acceptance of rebates prohibited.

1. No company doing business in this state and no insurance agent or broker shall:

(a) Offer, promise, allow, give, set off or pay, directly or indirectly, any rebate of or part of the premium payable on the policy, or on any policy or agent's commission thereon or earnings, profits, dividends or other benefits founded, arising, accruing or to accrue thereon or therefrom, or any special advantage in date of policy or age of issue, or any paid employment or contract for services of any kind *or any other valuable consideration or inducement to or for insurance on any risk in this state*, now or hereafter to be written, or for or upon any renewal of any such insurance, which is not specified in the policy contract of insurance; or

(b) Offer, promise, give option, sell, purchase any stocks, bonds, securities or property or any dividends or profits accruing or to accrue thereon, or *other thing of value whatsoever*, as inducement to insurance or in connection therewith, or any renewal thereof which is not specified in the policy. (Italics supplied.)

Under subsection 2 of [NRS 686.160](#) the exceptions to the above mandates are set out. We find no exception applicable to the situation under consideration.

Subsection 3 thereof reads as follows:

3. This section shall not be construed to prevent the taking of a bona fide obligation, with interest at 6 percent per annum, in payment of any premium.

In Opinion No. 174, of June 4, 1952, this office held that the purpose of the provisions quoted, and particularly the sections italicized herein, is to establish and maintain uniform rates and to protect the public. We are of the opinion that this practice is violative of the section quoted, for it is a "valuable consideration or inducement for insurance." We are also of the opinion that subsection 3, above quoted, is not subject to modification as to authorized credit for unpaid insurance premiums. Notes to evidence such unpaid insurance premiums shall provide for interest at 6 percent per annum, and not more and not less.

In arriving at this conclusion, we necessarily assume, which we think to be safe for assumption, that there is nothing in the policy which provides for the procedure here advertised and proposed.

We construe [NRS 686.460](#) to be remedial, whereas the other section quoted is substantive. [NRS 686.460](#) provides the means of dealing with a violation, whereas [NRS 686.160](#) provides what constitutes a violation.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: D. W. Priest
Deputy Attorney General

OPINION NO. 58-362. DEPARTMENT OF AGRICULTURE—Application by contractors or builders of insecticides, fungicides or herbicides on new construction of residence buildings or building slabs constitutes "custom application" as defined by [NRS 555.260\(2\)](#).

Carson City, March 20, 1958

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

Dear Mr. Burge:

In your letter of March 18, 1958, you call attention to [NRS 555.260\(2\)](#), and in that connection, have submitted an inquiry for the opinion of this office substantially as follows:

QUESTION

Does a building contractor come under the provisions of this section, the specific case concerned being that of McKeller and Associates, 563 Oak Grove, Menlo Park, California, now subdividing Charleston Estates at Las Vegas, Nevada, which project is FHA financed and subject to minimum requirements of the FHA for soil treatment to prevent termite infestation?

OPINION

[NRS 555.260](#) to [555.460](#) provide for custom application of insecticides, fungicides, and herbicides by aircraft or ground equipment. The policy of the State and purposes of the Act are set forth in [NRS 555.270](#), which reads:

It is the policy of this state and purpose of [NRS 555.260](#) to [555.460](#), inclusive, to regulate, in the public interest, the custom application of insecticides, fungicides and herbicides, which, although valuable for the control of insects and weeds, may seriously injure man, animals and crops over wide areas if not properly applied.

[NRS 555.360](#)(2) which this inquiry chiefly concerns, defines the term “custom application” as follows:

Custom application means any application of insecticides, fungicides or herbicides by aircraft or ground equipment for hire, *including application made on new construction of residence buildings or building slabs by contractors or builders.* (Italics supplied)

This definition, except for the portion italicized, was a part of the Act as originally enacted. The italicized portion was added by amendment at the last session of the Legislature. (Chap. 394, Stats. 1957). A reading of this amendment may, at first glance, raise some doubt as to its meaning. Without it, the section defined “custom application” as including any application of insecticides, fungicides or herbicides by (1) aircraft, or (2) ground equipment for hire. Was the term broadened by the amendment too include new construction of residence buildings and building slabs only when such application is by one of these methods, or does it include them when such application is made by some other method as well? Since the Legislature has declared it as the policy of the State that it is in the public interest that custom application be controlled, it is a reasonable deduction to draw therefrom that that body would in all probability amend the definition so as to broaden rather than narrow its scope. We believe the true meaning of the amendment lies in the last four words thereof, i.e., “by contractors or builders.” Rearranging these words in the amendment so as more clearly to express what we believe the Legislature intended, the wording becomes “including application made (by contractors or builders) on new construction of residence buildings or building slabs.” Any difficulty encountered in giving a ready interpretation to the amendment appears to us to be no more than an unfortunate arrangement of words. Read in the light of the meaning made apparent by the transposition of the last four words thereof, the section ([NRS 555.260](#)(2) as amended, includes application of insecticides, fungicides and herbicides by contractors and builders on new construction of residence buildings or building slabs within the definition of “custom application.”

Aside from being subject to any FHA requirement or regulations, it is our opinion based on our study of the law applicable to this question that any contractor in this State, who makes application of any of the above-mentioned chemicals on new construction of residence buildings or building slabs, comes within purview of [NRS 555.260](#)(2).

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Deputy Attorney General

OPINION NO. 58-363 PUBLIC EMPLOYEES RETIREMENT BOARD—Contributions made to Public Employees Retirement Board by a deceased member of state retirement

system may not properly be paid to a designated beneficiary under a legal disability, but may be made to such person's guardian or directly to said beneficiary after disability is removed.

Carson City, March 20, 1958

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

Dear Mr. Buck:

In your letter of March 17, 1958, you state that your office is holding a certain sum of money accumulated through contributions to the Public Employees Retirement Fund by a teacher in the Nevada public schools who recently died, leaving an 18-year-old son who is named as her beneficiary. Our opinion is requested as to the proper disposition of this sum and you submit the following inquiry which we quote from your letter.

QUESTION

May we request that you advise this office whether payment may be made directly to the designated beneficiary under [NRS 286.660](#) or whether we must require the appointment of a guardian in view of the minority of the beneficiary.

OPINION

[NRS 286.660](#)(1) provides:

If a person who is a member of the system dies before retiring, the amount credited at the time of his death to his account in the public employees retirement fund shall be paid directly and without probate or administration to the beneficiaries which he designates.

This section dispenses with the necessity of probating the estate of a deceased member of the state retirement system in order to make contributions made to the retirement fund available for distribution to designated beneficiaries. However, it is ineffectual and inapplicable toward removing any legal disability any such beneficiaries may have. Male persons under 21 years of age and female persons under 18 years of age, with certain exceptions which do not apply in the facts hereinabove stated, are under a legal disability to enter into contracts or to exercise many other rights commonly afforded by the law to adults. [NRS 129.010](#).

In our opinion, a male person under 21 years of age is legally incapacitated to execute a valid release for payment to him of the sum which your office holds. Immediate payment thereof may be made only to his legally appointed guardian for and on behalf of such minor. In the alternative, payment thereof may be made to said minor directly upon his attaining legal age.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Deputy Attorney General

OPINION NO. 58-364 EDUCATION—PUBLIC SCHOOLS—LOCAL SCHOOL ORGANIZATION—[NRS 386.290](#) as construed with 386.350 allows payment covering travel and living expense of school board members only for attendance at school board meetings.

Carson City, March 21, 1958

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

Attention: Hon. Dwight F. Dilts, Assistant Superintendent of Public Instruction.

Dear Sir:

Your letter of March 18, 1958 requests the opinion of this office upon a statement of facts and question which are quoted from your letter as follows:

STATEMENT OF FACTS

[NRS 386.290](#) provides that necessary travel and living expenses for attendance at board meetings may be paid to members of county school boards. [NRS 386.350](#) gives a school board general powers to attain and promote the welfare of the schools.

There has been discussion in several counties as to whether it is legal for a school board to authorize the payment of travel and living expenses for board members to attend meetings other than meetings of the school board and held outside the county where the member resides and holds membership in a county school board. At a meeting held March 17, 1958 the State Board of Education voted to request the opinion of the Attorney General on the following query:

QUERY

May county school boards authorize the payment of travel and living expenses of members to attend meetings other than meetings of a school board and held outside the county where the board functions as a board of school trustees?

OPINION

[NRS 386.290](#) provides as follows:

1. No trustee shall be entitled to or be allowed any compensation for his services as trustee. This subsection shall not be construed to prevent payment of a salary to any trustee elected as clerk of a board of trustees.
2. Except as provided in subsection 3, a trustee shall be allowed:
 - (a) His traveling expenses for traveling each way between his home and the place where board meetings are held at the rate authorized by law for state officers.
 - (b) His living expenses necessarily incurred while in actual attendance at board meetings at the rate authorized by law for state officers.
3. Claims for mileage and per diem allowances shall be allowed and paid in the same manner as other claims against the school district fund are paid, but no claim for mileage and per diem allowances for living expenses shall be allowed or paid to a trustee residing not more than 5 miles from the place where board meetings are held.

[NRS 386.350](#) provides as follows:

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.

Section 290 is specific as to the allowance of payment to compensate for expense. The allowance, therein, is only for the expense of travel to and from the board meeting and for expense while in attendance at such meeting.

The intention of the Legislature is determined from the specific provision of Sec. 290 as it controls over the general provision of Sec. 350 if it bears on the same subject. *State v. Hamilton*, [33 Nev. 418](#), 111 P.1026.

However desirable it may be to permit payment for expense in attendance at other school functions and meetings held for the general benefit and welfare of the schools, the answer must be in the negative.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Deputy Attorney General

OPINION NO. 58-365 PUBLIC WATER UTILITY—Service of fire protection in the way of water and mains to towns and cities in Nevada made mandatory by [NRS 704.660](#), in the absence of exemption by franchise, charter or permit issued prior to March 26, 1913.

Carson City, March 21, 1958

Honorable Robert E. Berry, District Attorney, Storey County, Virginia City, Nevada

Dear Mr. Berry:

You have directed to this office inquiries which depend on the following statement of facts:
The Virginia City Water Company is a utility charged with the responsibility of furnishing water, at a price, to the inhabitants of Virginia City for domestic purposes.

You then propound these three questions:

1. Is the complete responsibility for the maintenance of the fire mains and the laying of new mains that of the water company?
2. Does the town of Virginia City (or the town of Gold Hill, where the same situation exists) have any obligation, duty or responsibility in this respect?
3. If the municipality has no responsibility, what should be the procedure followed by the County Commissioners?

The first matter to be discussed is [NRS 704.660\(5\)](#), which reads as follows:

5. This section shall be deemed to apply to and govern all public utilities furnishing water for domestic use on March 26, 1913, unless otherwise expressly provided in the charters, franchises or permits under which such utilities are acting, and it is specifically provided that all persons, firms, associations or corporations engaging in the business of a public utility to supply and city, town, village or

hamlet with water for domestic uses after March 26, 1913, shall be subject to the provisions of this section, regardless of any conditions to the contrary in any charter, franchise or permit of whatever character granted by any county, city, town, village or hamlet within this state, or of any charter, franchise or permit granted by any authority outside the State of Nevada.

From this it can be determined that the law applying to public utilities furnishing water for domestic use as of March 26, 1913, is not applicable if there are express provisions in the charters, franchises or permits under which such utilities were acting which relieves them of the responsibility of furnishing and maintaining fire mains.

On the other hand, if the charter, franchise or permit was granted after March 26, 1913, no such relief from liability could be granted. You must, therefore, look to the provisions of the charter, franchise or permit, and the date thereof.

If the Virginia City Water Company was in existence prior to March 26, 1913, and no relief from liability to furnish and maintain water mains for fire protection purposes was contained in the charter, franchise or permit of said company, or if the company was formed and received its charter after March 26, 1913, then in either event the present law is applicable.

The law reads as follows:

704.660. Water companies must furnish sufficient water for fire protection at reasonable rates; regulation by commission.

1. Any person, firm, association or corporation who or which, as a public utility, is or may hereafter be engaged in the business of furnishing, for compensation, any city, town, village or hamlet within this state with water for domestic purposes shall be lawfully bound to furnish such city, town, village or hamlet a reasonably adequate supply of water at reasonable pressure for fire protection and at reasonable rates, all to be fixed and determined by the commission.

2. The duty to furnish a reasonably adequate supply of water provided for in subsection 1 shall be deemed to include the laying of mains with all necessary connections for the proper delivery of the water for fire protection and also the installing of such appliances as will assure a reasonably sufficient pressure for such purposes.

3. The commission shall have full power and authority to fix and determine reasonable rates for the service herein provided for, and to prescribe all installations and appliances fairly adequate for the proper utilization and delivery of water for the purpose named. The commission shall also have authority to prescribe rules, regulations and practices to be followed by any of the persons mentioned in subsection 1 in furnishing water for fire protection, and shall have complete jurisdiction of all questions arising under the provisions of this section.

4. All proceedings under this section shall be in conformity with the provisions of [NRS 704.010](#) to [704.640](#), inclusive. All violations of any order made by the commission under the provisions of this section shall be subject to the penalties for like violations of the provisions of [NRS 704.010](#) to [704.640](#), inclusive.

It is apparent, therefore, that question No. 1 must be answered in the affirmative, unless a charter, franchise or permit issued prior to March 26, 1913, specifically exempts them.

Question No. 2 must be answered by stating that prior to the compliance with the law by the water company, the city certainly has the obligation and duty to see that persons and property in Virginia City are protected.

The answer to question No. 3 lies in a direct report to the Public Service Commission requesting the service guaranteed by the law subsequent to March 26, 1913, and notice to the water company that the town and its commissioners expect such service.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

OPINION NO. 58-366. SCHOOL BOND ELECTION—TAXPAYER—Person owning real property, and who signs affidavit to that effect at school bond election, is entitled to vote on such bond issue, despite fact that owner's name does not appear on the assessment roll as owner of said property as of December 31 preceding the date of the election, or despite fact that instruments of title have not at the time of said election been recorded.

Carson City, March 24, 1958

Honorable William P. Beko, District Attorney, Nye County, Tonopah, Nevada

Dear Mr. Beko:

You have requested this office to place an interpretation on [NRS 387.375\(2\)](#), which reads as follows:

2. If a registered elector is the owner of or the spouse of the owner of real property in the county school district, assessed on the assessment roll of the county, he shall, after making the required affidavit, be furnished, by an election officer conducting the election, a ballot printed on colored paper. All such ballots, when voted, shall be deposited in the ballot box.

Before any person shall be allowed to vote a ballot printed on colored paper, he shall be required to make before one of the officers of the election, any of whom is authorized to take the same, an affidavit, showing that he is the owner or the spouse of the owner of real property so assessed in the county school district.

OPINION

This office is of the opinion that if a registered elector is the owner of or the spouse of the owner of real property in the county school district, assessed on the assessment roll of the county, that he or she is entitled to vote whether the assessment roll was closed or not prior to the school bond election.

It is the feeling of this office that if the property purchased was on the assessment roll, and the new owner is to be subjected to taxation thereon, that the owner's right to vote on a bond issue which will directly affect his property cannot be taken from him and that the Legislature in its language meant to give him the right to play a part in the determination as to whether a bond issue should or should not pass.

If the bond issue passes, the tax burden will fall on the new owner's property as well as on that of his neighbor. The same reasoning applies to owners who have failed temporarily to record their instruments of title. They are, to all intents and purposes, property owners who must share in the taxable burden in the future, and should therefore have a right to the franchise provided by law.

The affidavit required at such elections that the person voting is a property owner indicates the Legislature's intention to allow such persons to express by ballot their acceptance or rejection of the bond issue.

Respectfully submitted,

HARVEY DICKERSON

OPINION NO. 58-367 SCHOOL DISTRICT TRUSTEES—NEPOTISM—Board of School Trustees has right under statute to employ school superintendent for term of four years, after two years' satisfactory service in such district, despite fact such appointment extends beyond term of any member of said board. Employment of teacher who is wife of school superintendent and who works under his direction is employment by board of trustees and does not violate nepotism law.

Carson City, March 24, 1958

Mr. Allen E. Conelly, MR. EARL LEBEAU, *Members, Board of Trustees, Mineral County School District, Hawthorne, Nevada.*

GENTLEMEN: You have posed two problems which confront your board and which arise by reason of two different situations. In order to facilitate an understanding of the questions and an answer thereto, they will be taken in the order of their presentation.

The first situation set forth in you letter of March 20, 1958, is as follows:

On March 19, 1958 the Mineral County School Board with four (4) members sitting in session tendered, or proposed tendering, a contractual offer for a four (4) year term of office to the Superintendent of Mineral County Schools on the basis of his having already served two (2) years in the district and in accordance with the provisions of paragraph 2, Section 333, Article 34 of the 1956 School Code. No member of the current Mineral County School Board, at this time, will legally hold office beyond the first Monday in January, 1961. Paragraph 2, Section 334, Article 34 of the 1956 School Code states "A Board of Trustees shall not have the right to employ teachers for any school year commencing after the expiration of the time for which any member of the Board of Trustees was elected or appointed."

You then ask this question:

Based on the action described in situation 1 above, is it a legal action for a duly constituted county school board to contract for the professional services of a school superintendent after the expiration of the time for which any member of the board of trustees was elected or appointed?

OPINION ON QUESTION 1

It is the opinion of this office that the Legislature has clearly distinguished between the administrative officers of the school such as superintendents and the teaching staff. This is indicated in several ways. To begin with [NRS 391.110](#) is headed "Superintendent of Schools" and reads as follows:

1. The board of trustees of a school district is authorized to:
 - (a) Employ any person regularly certificated to serve as the superintendent of schools of the school district. In school districts having 7,000 or more students, the superintendent of schools shall hold at least a master's degree in school administration or education.
 - (b) Define his powers and fix his duties.
 - (c) Fix his salary.
2. No superintendent of schools shall be employed for more than a term of 1 year unless he shall have first served 2 years satisfactorily in the school district. If he has served 2

years satisfactorily in the school district he may be employed for a term of not to exceed 4 years.

3. A superintendent of schools may be dismissed at any time for cause.
4. A superintendent of schools is authorized to administer:
 - (a) Teachers' oaths or affirmations of office.
 - (b) All other oaths or affirmation relating to public schools.

It will be noted that the superintendent of schools is placed outside the category of the teaching staff by the authority to administer to his teachers their oath of office.

Then again [NRS 391.120](#) is headed "Teachers" and reads as follows:

1. Boards of trustees of the school districts in this state shall have the power to employ legally qualified teachers, to determine the salary to be paid each teacher, and the length of the term of school for which teachers shall be employed. These conditions shall be embodied in a written contract to be signed by the president and the clerk of the board of trustees and the teacher, or by a majority of the trustees and the teacher. A copy of the contract, properly written, shall be delivered to each teacher not later than the opening of the term of school.
2. A board of trustees shall not have the right to employ teachers for any school year commencing after the expiration of the time for which any member of the board of trustees was elected or appointed.
3. It shall be unlawful for the board of trustees of any school district to employ any teacher who is not legally qualified to teach all the grades which such teacher is engaged to teach.

Sec. 2, this office feels, applies to teachers only and not to superintendents of schools, whose appointments are provided for by Sec. 2 of [NRS 391.110](#) hereinbefore set forth.

Therefore, question No. 1 must be answered in the affirmative, viz: that it is legal for a duly constituted county school board to contract for the professional services of a school superintendent for a term extending beyond the term of office of any member of the school board, provided such employment is not for more than four years.

Situation 2 is expressed as follows:

A situation currently exists and has existed in the Mineral County school system wherein the superintendent of county schools employs his spouse in a regular classroom teaching capacity on a contractual basis with the board of trustees.

You then propound to this office the following question:

Is the above described action in situation 2 in violation of the intent of the "nepotism Act" approved March 6, 1925 and being Chap. 75, Stats. of Nevada 1925 as amended, and must such action, if legally permissible, require unanimous consent of the board of trustees of the school district involved?

OPINION ON QUESTION 2

[NRS 391.100](#) authorizes the board of trustees of a school district to employ a superintendent of schools, teachers, and all necessary employees.

Clearly then the teacher is an employee of the board of trustees and not of the superintendent of schools. The board, and not the superintendent, has the right, for due cause, to terminate the teacher's contract.

Therefore, this office is of the opinion that the mere fact that the wife of a superintendent of schools works under his direction and guidance does not constitute a violation of the nepotism laws of this State.

Question No. 2 is, therefore, answered in the negative.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General.*

OPINION NO. 58-368. Minors—Employment of minors in establishment conducting gambling and dispensing alcoholic beverages is contrary to law.

Carson City, March 28, 1958

HONORABLE A. DYER JENSEN, *District Attorney, Reno, Nevada.*

DEAR MR. JENSEN: Your office has referred to the Attorney General for a formal opinion, questions posed by *Murray v. Dolan*, City Attorney of Sparks, Nevada.

The two questions being capable of determination in one opinion are herewith set forth:

Is there a violation of [NRS 202.020](#), [NRS 202.060](#), [NRS 463.350-1.\(b\)](#) or [NRS 463.350-2.](#), when a minor, 18 years of age or older, is employed as a waiter to serve both food and alcoholic beverages in the restaurant portion of an establishment which serves alcoholic beverages to be consumed on the premises, when the only contact of the said minor with a bar is to place the order for drinks with a bartender at a utility bar serving only waiters and waitresses, the drinks to be served to adjacent dining rooms and not private bar customers; when such orders are placed by the minor in full view of the dining room patrons, and when the ingress and egress of said minor to and from the dining room where employed can be accomplished without the minor entering a room where gambling is carried on and/or where a bar exists which is open to the general public?

Is there a violation of [NRS 202.020](#), [NRS 202.060](#), [NRS 463.350-1.\(b\)](#), or [NRS 463.350-2.](#), when a minor works as a waiter in a dining room in an establishment wherein gambling is conducted and alcoholic beverages are served on the premises if the minor remains on the premises only during working hours and his exposure to gambling and drinking is minimal, based upon the physical separation of the dining area from the drinking and gaming areas, although the course of employment might require the minor's presence at a bar to order alcoholic beverages for the dining room patrons and require him to carry the same from the bar to the patrons in the dining room?

In order to cogently explore the law on this subject we are prompted to set forth the relevant statutes referred to.

[NRS 202.020](#)

Any person under the age of 21 years who purchases any alcoholic beverage or any such person who consumes any alcoholic beverage in any saloon, resort or premises 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 \$50 nor more than \$100.

[NRS 202.060](#)

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.

[NRS 463.350](#)

1. No person under the age of 21 years shall:

* * *

(b) Loiter, or be permitted to loiter, in or about any room or premises wherein any licensed game is operated or conducted.

[NRS 463.350](#)

2. Any licensee, employee, dealer or other person who shall violate or permit the violation of any of the provisions of this section and any person, under 21 years of age, who shall violate any of the provisions of this section shall be guilty of a misdemeanor.

[NRS 202.050](#)

1. Every person who shall sell, give or in anywise furnish intoxicating liquors to any person under the age of 21 years, or to any imbecile, or who shall leave or deposit any such intoxicating liquors in any place with the intent that the same shall be procured by any person under the age of 21 years, or by any imbecile, shall be guilty of a gross misdemeanor, and shall be punished by a fine of not less than \$250 nor more than \$1,000, or by imprisonment in the county jail for not less than 3 months nor more than 1 year, or by both fine and imprisonment.

2. Nothing in this section shall be deemed to apply to parents of such minor or imbecile, or to their guardians or physicians.

OPINION

It must be determined after a careful study of the foregoing laws that it was the intent of the Legislature to prevent so far as possible the contact of those under 21 years of age with places where liquor is sold or consumed and where gambling is allowed. While the sale and consumption of liquor and the privilege of gambling have been permitted by legislation in this State, the Legislature has wisely taken the precaution of insulating our youth from contact with these permissive enterprises.

This protection of the law over the rights, privileges, and restrictions of minors is founded on the doctrine of *parens patriae*, or guardianship of the State over persons under disability, and stems from the earliest times when infants or minors were regarded as entitled to the especial protection of the State, and the King, as *parens patriae*, was parent in a peculiar sense of all orphaned and dependent children within the realm.

Let us determine whether the proposed service would be, in the long run, of benefit to minors as an arm of our society. Boys and girls of college age would be subjected constantly, while on duty, to the temptations of imbibing alcoholic beverages and of playing slot machines or other games of chance. No matter how careful the proprietor might be in his surveillance of these employees, there would be those who would yield to the prompting of an inner voice stronger than themselves, and thus succumb to temptation.

There would be those who, never having had the opportunity to observe drinking and gaming, might become enchanted by the vistas afforded of surcease from reality or the opportunity for sudden riches, and form habits deleterious to their future welfare.

While it is commendable to propose the safeguards of restrictions from entering certain portions of the premises, and of ingress and egress through portions of the operation where gaming or drinking is not carried on, this office feels very strongly that such safeguards are not sufficient to take such operation out of the prohibitory provisions of the statutes.

The Legislature has, in its wisdom, forbidden minors to loiter in or frequent establishments where drinking and gaming are allowed. The proposed duties, in the opinion of this office, would constitute loitering about and frequenting such places, and therefore, under the law as now written, is forbidden.

It is, therefore the opinion of this office that both questions should be answered in the affirmative, viz: that such employment would be in violation of the law.

Respectfully submitted,

HARVEY DICKERSON, *Attorney General.*

OPINION NO. 58-369. Taxation—Delinquent Taxes. After publication of delinquent taxes has begun in accordance with [NRS 361.565](#), the published list cannot be altered or changed for the required time of publication.

Carson City, March 31, 1958

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

DEAR MR. BLAISDELL: You have submitted to this office a statement of facts as follows:

X failed to pay his 1956-1957 taxes and the list of all tax delinquents was published for the first time on March 19, 1958, in the local paper. The day following, March 20, 1958, X paid his delinquent taxes with penalties and cost of advertising in full. X then demanded of the clerk that the delinquent tax notice as to X be removed from the list as published. The demand was denied and the publication is proceeding.

You then propound the following question:

After publication of the delinquent tax notices has begun is the county clerk and treasurer and ex-officio tax receiver required to have the names of delinquents removed during the publication period if delinquencies are paid up in full before publication is completed?

OPINION

In order to bring the question more closely to those interested in this opinion, I cite [NRS 361.565](#):

361.565. Notice of delinquent taxes: Contents; publication, posting and mailing.

1. Within 20 days after the 1st Monday in March of each year, in all cases where the delinquent tax, exclusive of poll taxes, penalties and assessments of benefits of irrigation districts, does not exceed the sum of \$3,000, the tax receiver of the county shall give the notice in the manner and form provided in this section.

2. Such notice shall be published in a newspaper, if there is one published in the county, at least once a week from the date thereof for 4 consecutive weeks, being four insertions. If there is no newspaper in the county, such notice shall be posted in at least five conspicuous places within the county.

3. The cost of publication in each case shall be charged to the delinquent taxpayer, and shall, in no case, be a charge against the state or county. Such publication shall be made at not more than legal rates.

4. When the delinquent property consists of unimproved real estate assessed at a sum not exceeding \$25, the notice shall be given by posting a copy of the same in three conspicuous places within the county without publishing the same in a newspaper.

5. Such notice shall state:

(a) The name of the owner, if known.

(b) The description of the property on which such taxes are a lien.

(c) The amount of the taxes due on the property and the penalties and costs as provided by law.

(d) That if the amount is not paid by the taxpayer or his successor in interest the tax receiver will, on the 4th Monday in April of the current year at 1:30 p.m. of that day, issue to the county treasurer, as trustee for the state and county, a certificate authorizing him to hold the property, subject to redemption within 2 years after date thereof, by payment of the taxes and accruing taxes, penalties and costs, together with interest at the rate of 10 percent per annum from date due until paid as provided by law and that such redemption may be made in accordance with the provisions of chapter 21 of NRS in regard to real property sold under execution.

6. At the same time that the tax receiver shall first publish the notice or post the same, as the case may be, he shall send a copy of the notice by registered mail, in the case of each respective property as taxed, to the owner or owners thereof, and also to the person or persons listed as the taxpayer or taxpayers thereon on the tax rolls, at their last known address, if such names and addresses are known. In addition, a second copy shall be sent in the same manner as in the case of the first copy, not less than 60 days before the expiration of the period of redemption as stated in the notice.

It becomes apparent from a careful scrutiny of the law that no provision is made for striking from the list of delinquent taxpayers the name of any individual who, after finding his name on the list as first published, rushes to the courthouse and pays his taxes. The reason for this is clear—the list, while published at least once a week for four consecutive weeks, reflects those taxpayers delinquent as of the first date of publication.

The tax receiver, in order to prove compliance with the law, must be able to furnish an affidavit from the publisher of the paper in which the list was published that the list as presented to him was published in that form for the number of issues required by law. If the list were constantly subject to deletions, not one affidavit but four or five would have to be submitted, showing the deletions in each issue. This the law, in our opinion, never intended.

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

Respectfully submitted,

HARVEY DICKERSON, *Attorney General*.

OPINION NO. 58-370 PUBLIC FINANCIAL ADMINISTRATION—COUNTY, MUNICIPAL AND DISTRICT FINANCIAL ADMINISTRATION—COUNTY FINANCES—Expenditure by counties over their total budget authorized only through procedure provided for making temporary emergency loans.

Carson City, April 8, 1958

Honorable A. D. Jensen, District Attorney, Washoe County, Reno, Nevada

Dear Mr. Jensen:

In your letter of March 31, 1958, you request the opinion of this office upon the following facts and question, which are here quoted from your letter:

In the fiscal year of 1957-1958 subsequent to the submission of the budget for Washoe County and the certification of the tax rate by the Nevada Tax Commission it became obvious to the County Commissioners of Washoe County that because of the deterioration of water pipe at the Washoe County Golf Course an extensive program of replacement of water pipe would be necessary prior to the summer of 1958. This expense had not been anticipated in the original budget. As soon as the necessity of replacement became obvious, the County Commissioners immediately raised the green fees of the golf course so that the income from the current fiscal year would pay for the replacement of water pipes to be made in the fiscal year of 1957-1958. The increase in green fees occurred after submission of the budget and the increased income is not reflected in the budget. There is on hand at the present time a sufficient amount of money, or there will be at the expiration of the fiscal year an adequate amount of money with which to pay for the replacement of the water pipe. All of the increased income has been or will be in the general account of Washoe County.

Also with respect to the Clerk's Office of Washoe County, there too, because of the desire to increase the staff handling the marriage license business, an increased expense was incurred not originally anticipated in the budget. To meet this increased expense, the County Commissioners passed an ordinance raising the price of marriage licenses to meet the additional expense. The increased fee from marriages will more than pay the increased expense and neither the increase or expense was reflected in the current budget.

QUESTION OF LAW

Can the Commissioners of Washoe County, without resorting to the provisions of [NRS 354.410](#) et seq., cause an appropriate resolution to spread upon their minutes authorizing the transfer of funds from the general fund to meet and pay the increased expenses not contemplated in the original budget?

We take it that [NRS 354.410](#) referred to in your question is a typographical error. That section and those following in that chapter pertain to temporary emergency loans of cities, towns, school districts and other districts. The subject of county temporary emergency loans is found in [NRS 354.070](#)-354.110. We will consider the question as relating to the latter provisions.

It is our understanding that the expenditure in this case would be an expenditure over and above that contemplated or authorized by the total amount of the budget for the county for the fiscal year.

This question, as we see it, involves a determination of how the county can spend money from its funds beyond its budget in order to meet unforeseen expenses.

[NRS 354.060](#), subsection 1, provides as follows:

1. It shall be unlawful for any county commissioner, or any board of county commissioners, or any county officer to authorize, allow or contract for any expenditure unless the money for the payment thereof is in the county treasury and specially set aside for such payment.

It may be noted that a similar provision to that provision last quoted, pertaining to cities, towns, etc., is found in [NRS 354.400](#) wherein expenditure is prohibited "unless the money for the payment thereof has been specially set aside for such payment by the budget."

Whatever may have been the intention of the Legislature in the omission of the wording "by the budget" in the provision pertaining to county finance, we are of the opinion that the operation

of the budget system requires an adherence to the concept that each of the governmental entities are limited in their total expenditure to the total amount of their budget for that fiscal year.

How, then, is the county to meet those unforeseen expenses which occur, and have occurred in this case?

The only provision in the law to meet this appears to be the temporary emergency loans procedure found in [NRS 354.070](#)-354.110. This office is having difficulty reconciling the use of this temporary loans provision to meet this situation. That provision contemplates the borrowing of money in case of great necessity or emergency. Now, to commence the procedure to borrow money when the county has, or will have, the money in its funds from a regular revenue source for the sole purpose of authorizing an unforeseen and unavoidable expenditure over and above its budget appears to this office to be somewhat incongruous. Be that as it may, we are, nevertheless, of the opinion that it provides the only method of authorizing an expenditure over and above the budget, and should be followed as a means of avoiding the greater alternative evil of expenditure above the budget without authority.

It will be noted, however, that [NRS 354.100](#) provides for a transfer from the general fund when it contains a surplus, and the tax to meet the loan need not be levied.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Deputy Attorney General

**OPINION NO. 58-371 REGIONAL PLANNING COMMISSIONS—FEDERAL GRANTS
IN AID**—Neither regional nor other types of local planning commissions eligible under state law to qualify for federal aid under Section 701 of 1954 Federal Housing Act.

Carson City, April 10, 1958

Board of County Commissioners, Washoe County, Reno, Nevada
Board of County Commissioners, Ormsby County, Carson City, Nevada
Board of County Commissioners, Douglas County, Minden, Nevada

Gentlemen:

Nevada-California Lake Tahoe Association has presented several questions for consideration by this office in connection with some plan for the orderly development of the area bordering on Lake Tahoe, a portion of which lies in your respective counties. The association has had engineers make a survey of this area, both on the Nevada and California sides, and the county commissioners of those counties lying in the latter state are also being appealed to regarding some plan of development there. This office has been consulted with reference to the laws of Nevada authorizing the formation and operation of planning commissions through which plans for the portion of the area lying within the State may be made and executed. In that connection our opinion is requested as to the extent such commissions may function under existing applicable law, and particularly their eligibility to enter into agreements with the Federal Housing Act of 1954.

OPINION

The portion of Section 701 of the 1954 Federal Housing Act pertinent to this opinion provides as follows:

* * * The administrator is further authorized to make planning grants for similar planning work in metropolitan and regional areas to official state, metropolitan, or regional planning agencies empowered under state laws to perform such planning. Any grant shall not exceed 50 per centum of the estimated cost of the work for which the grant is made and shall be subject to terms and conditions prescribed by the administrator to carry out this section * * *.

Several conditions must be met by both metropolitan and regional planning agencies in order to qualify for grants under the above act. They are:

- a. Legally created as an official state, metropolitan or regional planning agency empowered under state or local laws to perform planning work in metropolitan or regional areas.
- b. Legally empowered to receive and expend federal funds and expend other funds for the purpose stated in a. above, and to contract with the United States with respect thereto.
- c. In position to provide nonfederal funds in an amount at least equal to one-half the estimated cost of the planning work for which the federal grant is requested.
- d. Technically qualified to perform the planning work, either with their own staffs or through acceptable contractual arrangements with other qualified agencies or private professional organizations or individuals.

In determining whether regional planning commissions in this State, which are hereinafter discussed, meet the above requirements, we direct our attention to the state laws authorizing the creation of such commissions. Such authority is provided for under [NRS 278.090-278.260](#), both inclusive, being sections of Chapter 278, Nevada Revised Statutes, originally enacted in 1941, and as amended in 1947. To date neither the Act nor any of its parts has been before our State Supreme Court for interpretation.

Under [NRS 278.090](#)(1) the board of county commissioners of any county,; alone or in collaboration with the governing body (city council) of the incorporated cities in the county, or any of them, or in collaboration with the board, or boards, of county commissioners of any adjacent county or counties, or the governing bodies of adjacent cities, may establish a regional planning commission. Under [NRS 278.100](#)(1) the county commissioners must specify by ordinance the number of members on the commission, which shall not be less than 6 nor more than 12, and at the same time must appoint the members thereof for terms to be staggered. Regional planning districts are provided for under [NRS 278.140](#)(1) and shall under subparagraph (2) thereof consist of a portion of a political subdivision, two or more contiguous political subdivisions or contiguous portions of two or more political subdivisions. Pursuant to subparagraph (3) of said section, all territory embraced within a regional planning district shall be contiguous, except where composed of two or more municipalities.

This, obviously, is sufficient authorization for the creation of such commission by the county commissioners of Washoe, Ormsby and Douglas Counties. It is equally obvious that any regional district created pursuant to the above cited NRS sections will not be concerned with any incorporated cities since none exist within the area involved. It is, therefore, not only legally permissible, but also feasible for a regional planning commission to be created by the county commissioners of the three counties above mentioned, and further, that a regional planning district be formed to embrace all contiguous area lying within said counties, bordered by the shore line of Lake Tahoe on the north or northwest and extending south and southeast to a line, the location of which shall be determined.

This brings us to a consideration of the powers of a commission so created. [NRS 278.190](#)(1)(2)(3) lists those specifically conferred, and generally provides in subparagraph (4)

thereof that “the commission shall have such power as may be necessary to enable it to fulfill its functions and carry out the provisions of this chapter.” We believe this is sufficient authorization for the commission to enter into contracts in its own name, with the limitation, however, that any contracts so made must be in furtherance of the functions of the commission in carrying out the provisions of the Act. Nowhere in the Act do we find anything whereby the performance of any of the commission’s authorized functions is dependent upon cooperation with the Federal Government or any of its agencies in any manner. A careful reading of the Act convinces us that its paramount purpose is to enable properly authorized agencies to prepare an over-all or master plan for cities, school districts, counties or other governmental units within certain areas concerned.

Expenses of a regional commission are provided for in [NRS 278.120](#), such being made available only through general taxation by the county or municipality included in the regional district involved. The amount of such expenses is, under 278.110, limited to the amount actually appropriated by the governing body of such county or municipality. Under this last section the expenses contemplated under the Act may be incurred for employment of experts, clerks, secretary, and such other purposes as are necessary and proper but in no case to exceed the appropriation made by the governing body aforesaid. Authorization of the commission to spend any moneys received through federal grants seems not to have been within the contemplation of the Legislature. That there was no legislative intent to confer such authority becomes apparent when we consider that the Act is silent as to any provisions for matching such grants. The county commissioners of the counties included in regional planning districts are charged with the duty of making all appropriations necessary to discharge the expenses to which a regional planning commission is limited. Nothing in the Act suggests an appropriation for this purpose in excess of the limitation so imposed.

In view of the restrictions above mentioned, we are unable to read into the Act or infer from any of its provisions that a regional planning commission operating pursuant thereto has any authority to enter into a contract with the United States to match, receive, and use federal funds in furtherance of its functions. It is an elementary rule of law that public officers have only such powers and authority as are clearly conferred by law or necessarily implied from the powers expressly granted. 67 C.J.S. 366, Sec. 102. The Nevada Supreme Court first recognized this rule in 1865 in *Waitz v. Ormsby County*, [1 Nev. 315](#), where the power of county commissioners to borrow money was in issue. In ruling that no such power existed, the court said:

The statute expressly enumerated the powers of county commissioners; that of borrowing money is nowhere conferred upon them; and that such officers have no powers except those expressly granted by the legislature, is too well established to admit of question now.

The same line of reasoning is set forth in 48 Am.Jur. 100, paragraph 290, with reference to public officials entering into contracts generally and it is stated:

Inasmuch as a public officer has only the authority that is conferred on him by law, he may make for the government he represents only such contracts as he is authorized by law to make, and he must comply with the requirements of law in respect of the manner in which, and the conditions upon which, contracts may be entered into. Custom and usage will not justify the making of an unauthorized contract.

We gather that the Legislature in passing the Act authorizing the creation of regional planning commissions had in mind that such commissions be deemed strictly as local governmental units of the State, with powers commensurate to those generally given other such local units in our state system of government. Our study of the powers of boards and commissions within the State to enter into contracts convinces us that such powers have been granted with great caution, if at all, only to those above the local level. Thus, regional or other local planning commissions in this

respect constitute no exception. Incorporated cities, however, fall within a different category because they are governmental units with plenary powers. However, this office expressed the opinion in Attorney General's Opinion No. 143, January 31, 1956, that the State Planning Board is properly authorized to enter into contracts with the Federal Government. That opinion was based upon express provisions in the statutes specifically vesting that power upon that board. On the other hand, this office in Attorney General's Opinion No. 730, 1949, and Opinion No. 269, 1957, expressed the view that soil conservation districts in this State are without power to enter into an agreement to borrow money from the federal agencies.

As commendable as the proposal may be for a local planning commission to enter contracts for obtaining federal aid, it is, nevertheless, our opinion that such is not authorized by law. This being true, no purpose could be served at this time in ruling whether or not such commissions meet the other necessary requirements laid down by the Federal Government prerequisite to such bodies becoming eligible for federal aid under Section 701 of the Federal Housing Act of 1954.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Deputy Attorney General

OPINION NO. 58-372 NEVADA INDUSTRIAL COMMISSION—Commission one of
“Using Agencies” under [NRS 333.020](#) required to comply with State Purchasing Act.

Carson City, April 10, 1958

Mr. Francis E. Brooks, State Purchasing Director, Carson City, Nevada

Dear Mr. Brooks:

You have asked this office to advise you as to whether the Nevada Industrial Commission is a “Using Agency” as outlined in Sec. 2 of [NRS 333.020](#) of the State Purchasing Act.

OPINION

[NRS 333.020](#) (2) reads as follows:

“Using agencies” means any and all state officers, departments, institutions, boards, commissions and other agencies which derive their support from public funds in whole or in part, whether the same may be funds provided by the State of Nevada, funds received from the Federal Government of any branch, bureau or agency thereof, or funds derived from private of other sources, excepting counties, municipalities, irrigation districts and school districts.

We feel that the intent of the Legislature was to include all state departments, but most certainly there can be no doubt that the statute includes state officers. The chairman and members of the Industrial Commission are state officers. They are appointed by the Governor to regular terms and fulfill duties imposed on them by state statutes. Therefore, under the wording of the statute, they are required to comply with the requirement that purchases be made through the State Purchasing Department.

While *State v. McMillan*, [36 Nev. 383](#), has often been depended upon by the Nevada Industrial Commission to escape the burdens and restrictions placed upon other state agencies, that case only went as far as to hold that the state insurance fund would be regarded as separate from the state treasury, and therefore subject to disbursal without the approval of the State Board of Examiners. The reason behind the decision, that the insurance fund was not public funds as are those in the state treasury, has been taken care of by the Legislature in this instance by the insertion of the phrase, "or funds derived from private or other sources," as separate and distinct from the phrase, "which derive their support from public funds, in whole or in part * * *". While the language of Sec. 2 of [NRS 333.020](#) might have been more wisely used to clarify the Act, there can be no doubt of the Legislature's intention.

We may also look to the agencies exempted, which are specifically named, and which do not include the Nevada Industrial Commission.

It is, therefore, the opinion of this office that the Nevada Industrial Commission is one of the "Using Agencies" required to comply with the State Purchasing Act under [NRS 333.020](#).

Respectfully submitted,

HARVEY DICKERSON
Attorney General

**OPINION NO. 58-373 FISH AND GAME COMMISSION AND COUNTY GAME
BOARDS** are without authority to maintain closures of areas to hunting in season for the sole reason of safety to residents of such areas.

Carson City, April 18, 1958

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

Dear Mr. Groves:

Your letter of April 3, 1958, poses the following question:

Do the Fish and Game Commission and the county game boards have authority to maintain certain semi-urban areas in the State closed to hunting for the sole reason that hunting and the discharge of firearms thereon may be dangerous to the life and property of those persons who own the land involved?

The answer is in the negative.

This question arises from the problem of game management in those areas near and around cities. These areas are not urban nor are they quite rural. From the standpoint of good game management, it appears that the density of the game in such areas warrants a harvesting of the game crop by the hunter. And, indeed, it appears that many landowners in such areas desire that the hunting season be opened upon their land in order that they may hunt thereon. Some of the landowners in such areas who are engaged in agriculture and the growing of crops consider it desirable to have the game harvested by the hunting public for the protection of their crops. From the standpoint of other landowners in such areas, the discharge of firearms therein is inimical to the safety and welfare of themselves, their loved ones and their property. It is the contention of these persons that the density of the population is such that the season should remain closed in such areas, and request has been made of the game management agencies to maintain a closure of these areas.

It may be added at this point that the law contemplates that a person can by his own action close his land to hunting or trespass, and the law does, in fact, make it a criminal offense to trespass upon properly posted privately owned lands; [NRS 207.200](#). Moreover, criminal

provisions relating to hunting on private grounds are to be found in [NRS 503.240](#) and [503.250](#). These two sections may also be read in connection with [NRS 501.180](#).

However, it appears that the relief provided to the landowner by the criminal law and his remedy by civil action does not entirely meet and satisfy the possible dangers involved in the problem of safety to person and property. A landowner who has posted his property to prohibit trespass may have his home located near the boundary line of another landowner's property which is not posted and which is open to public hunting in season. The zealous hunter with the shotguns, while hunting on the opened ground, may hunt and fire too near to the home. This could, of course, occur irrespective of the density of the dwellings in an area, but the difference lies in the consideration of the odds in favor of its occurrence in the more densely populated places.

The foregoing is stated solely for the purpose of providing a background of the facts and in attempt to bring the problem more sharply into focus.

It is elementary that any agency of government such as the Fish and Game Commission or the county game boards can exercise authority only to the extent of the powers delegated by the people through their Legislature. Those powers, which are expressly delegated by statute and those powers which are necessarily implied to carry out those expressly delegated, are the only powers properly to be exercised.

Concerning the authority of the game management agencies to determine open seasons and the areas to be opened to hunting, the Fish and Game Law of Nevada (NRS Title 45) is explicit in several of its sections that the duties of the agencies are directed to the conservation of fish and game to the end that the public may continue to enjoy the privilege of hunting and fishing, and, of course, to other ends as well. For an example, [NRS 501.210](#) provides as follows:

The members of the commission, individually and collectively, shall have full power and authority to enforce all laws of the State of Nevada respecting the protection, preservation and propagation of fish, game animals and game birds within the state.

With but one exception, which will be referred to hereafter, this office finds no delegation of power to the game management agencies to maintain a closure of areas of the State during open seasons except for the express purpose of conservation of the wildlife. Except in the interest of game management for conservation purposes there appears no express authority lodged with these agencies to maintain a closure of an area for the purpose of protection of the people residing therein. Thus, if an area is such that good game management will permit a hunt thereon, it is not within the province of the management agencies to maintain a closure solely for the safety of the persons residing there.

The exception to which we referred is [NRS 504.140](#) which provides as follows:

1. The commission is authorized to enter into agreements with landowners, individually or in groups, to establish game management areas and to make regulations necessary thereto for the purpose of providing greater areas for the public to hunt on private lands and to protect the landowner or lessee from damage due to trespass or excessive hunting pressure.
2. Such agreement shall provide that the commission shall designate certain portions of the area as closed zones for the protection of livestock, buildings, persons and other properties.
3. The zones shall be posted conspicuously along all boundaries and it shall be unlawful to hunt or trespass therein or to hunt on any cooperative area contrary to the regulations provided.
4. The agreement may designate the number of hunters who may be admitted to the area, if such limitation is necessary or desirable.

This provision, as we see it, is not a delegation of general authority to maintain a closure for protection of persons and property, but rather an exception to fit particular situations wherein an agreement can be reached with landowners.

In order to deal with this subject as fully as we are able, we consider it necessary to add the following: The thought no doubt arises that despite the fact that the law, other than the fish and game statute, provides the means whereby a person may post his land and exclude the hunters therefrom, still, if from the standpoint of personal safety, absolute protection is not afforded, then, it is the over-all intention germane to the fish and game statute that the good offices of the game management agencies are to maintain a closure of those areas wherein the density of population creates a safety problem. In support of this it will be said that one of the primary purposes of government, which the Legislature has at all times in mind, is the protection of the citizen to hold and enjoy his property free from danger. And, of course, our organic law provides, "Government is instituted for the protection, security and benefit of the people." Sec. 2, Art. 1, Constitution of Nevada.

However, this same Article, in Sec. 1, provides, "All men are by nature free and equal and have certain inalienable rights, among which are those of enjoying and defending life and liberty." There is, of course, expressed in these two provisions the fundamental concept of individual freedom which is counterbalanced by authority to place such restriction of that freedom as is necessary to the maintenance of an orderly society. But it is to be observed also that this same Article of the Constitution provides, "All political power is inherent in the people." The people speak primarily through their Legislature in the enactment of the necessary laws restrictive of our individual freedoms. It is from this authority delegated by the people that the liberty of hunting game is hedged about by restriction. Thus, if the Legislature intends that the game management agencies are to concern themselves with ends other than fish and game conservation, which ends are restrictive of the freedom to hunt game, it will have to express itself to that effect.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Deputy Attorney General

OPINION NO. 58-374 ELECTIONS—Qualification for candidacy requires that party affiliation to existing party at last general election not be changed since such election.

Carson City, April, 22, 1958

Honorable Johnson W. Lloyd, District Attorney, Eureka, Nevada

Dear Mr. Lloyd:

You request the opinion of this office upon the following facts and question quoted from your letter:

If a registered voter changed his political affiliation after the General Election of 1956, can that person file for office as a candidate for nomination under his new party's affiliation?

The above question deals only with affiliation with the democratic and republican registrations and is not concerned with filings as an independent candidate.

OPINION

[NRS 294.115](#) provides as follows:

A candidate's name shall not be printed on an official ballot to be used at a primary election unless he qualifies by filing a declaration of candidacy or by filing an acceptance of nomination, and by paying a fee as provided in this chapter.

[NRS 294.120](#) provides as follows:

Not less than 50 days prior to the primary every candidate for nomination for any elective office shall file a declaration of candidacy or an acceptance of nomination.

[NRS 294.125](#) provides that a declaration of candidacy or an acceptance of nomination shall be in substantially the following form, and provides thereafter the form of the declaration which contains the requisites of the declaration. One of the requisites is as follows:

* * * that I am a member of the Party, that I have not reregistered and changed the designation of my political party affiliation on an official affidavit of registration since the last general election.

This requisite must be met. If it cannot be met, the person is excluded from appearing on the ballot. *See State v. Brodigan*, [37 Nev. 458](#), 142 P. 520; also Opinion of Attorney General of Nevada, No. 898, released March 30, 1950 and the cases cited therein.

The answer is, therefore, in the negative.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Deputy Attorney General

OPINION NO. 58-375 ELECTIONS—ABSENT VOTING—Certain statutory requirements regarding residence must be met by registered electors voting absent ballot. County clerks authorized to determine eligibility.

Carson City, April 23, 1958

Mrs. Mary A. Montgomery, County Clerk, Lincoln County, Pioche, Nevada

Dear Mrs. Montgomery:

In your letter of April 11, 1958, you state that several persons have moved from Lincoln County since the closing of the mines there which has resulted in termination of their employment. It is pointed out that many of these persons have now been gone more than a year, others less than that time, and you inquire as to their right to vote at the coming elections

pursuant to the absent voters laws. Your specific inquiry, which we quote from your letter, is as follows:

QUESTION

Are those persons who voted in the last general election and whose names still appear on the registration list, eligible to vote absentee ballot?

OPINION

The right to vote conferred by Art. 2, Sec. 1, of the Constitution is a mere political privilege, and not an inherent, unqualified personal or political right. *Riter v. Douglas*, [32 Nev. 400](#). Same in *In Re Walker River Irr. Dist.*, [44 Nev. 321](#).

The Legislature has the power to adopt such rules and prescribe such oaths as deemed necessary to test the qualifications of an elector, and to adopt such reasonable uniform and impartial regulations of the constitutional rights of a voter as may be deemed necessary to preserve order at elections. To guard against fraud, undue influence or oppression, and to preserve the purity of the ballot. *State v. Findley*, [20 Nev. 198](#).

Under [NRS 300.010-300.140](#) any qualified electors who expect to be absent from their precinct or county at any general, primary or special election, are privileged to make application to the clerks of their respective counties for an official voter's ballot not more than 90 nor less than 5 days prior to such election, thereby enabling them to vote by mail. [NRS 300.030](#) requires the clerk, on receipt of any such application, to determine whether the applicant is entitled to vote. Although several aspects of an elector's eligibility to vote by absent ballot might be considered, we are by the facts here presented concerned solely with the question of residence as affected by removal from the precinct or county. Certain residential requirements are necessary before any otherwise qualified elector may register. It is equally essential that such residential requirements be maintained up to and including the time of voting. Nor may these requirements be relaxed or waived by reason of the fact that a vote is cast by absent ballot procedure rather than in person by the voter at the polls.

What are these essential requirements as to residence which all voters must possess? They may well be determined from Chapter 292 of Nevada Revised Statutes, entitled "Registration of Electors," in the following sections:

[NRS 292.080](#) defines legal residence of a person with reference to his right of suffrage as:

* * * that place where he shall have been actually, physically and corporeally present within the state or county, as the case may be, during all of the period for which residence is claimed by him.

[NRS 292.100](#), with respect to moving from one county to another within the State within less than 30 days before election, or from one precinct to another within the county within less than 10 days before election, provides that the person so moving,

* * * shall not be deemed to have lost his residence in the county or precinct removed from if he was an elector in the county or precinct on the date of removal therefrom.

We interpret this section to mean that an elector removing from one county to another or one precinct to another within the time specified aforesaid, continues eligible to vote in the county or precinct from which he moved.

But, by [NRS 292.120](#) (2) if a person having a fixed and permanent home breaks up such home and moves from the county where he is a registered elector to another county in the State *more* than 30 days before election, or to another precinct in the county *more* than 10 days before

election, the intent to abandon his residence in the county or precinct from which he removed is presumed, and the burden is upon him to prove the contrary.

By the provisions of [NRS 292.110](#):

If a person remove to another state, territory or foreign country, with the intention of establishing his domicile there and making it his home, he shall lose his residence in this state.

This section is but declaratory of general law to the effect that residence is a matter of intent. If by the intent aforesaid an elector has abandoned his residence and moved out of the State, he is no longer eligible to vote within the State even though still registered here.

By [NRS 292.120](#) (1) where one, having a fixed and permanent home in this State, breaks up his home and moves to another state, territory or foreign country, the act of such moving in itself creates a presumption of intent to abandon his residence in Nevada, leaving the burden on such person to prove otherwise. Obviously, unless such presumption is satisfactorily rebutted, such person, even though previously registered, becomes ineligible to vote in Nevada.

Even though a person removes from the State with the intention of remaining in another state, territory or foreign country, for an indefinite time as a place of residence, he, nevertheless, under the provisions of [NRS 292.140](#), loses his residence in this State. And this is true notwithstanding that he may entertain the intention of returning to Nevada at some future period, and an occasional return either for business or pleasure will not be sufficient to preserve his residence here.

We believe it mandatory that the county clerks of the various counties of the State, upon receiving applications for official absent ballots, must be guided by the provisions of the statutes above cited in determining the eligibility of the applicants to vote absent ballots. No doubt each case will be based upon a separate and different set of facts. While registration is an essential prerequisite to voting absent ballot, it does not automatically follow that every person so registered is eligible to vote. The status of his residence must be determined in the light of the definitions, requirements and rules laid down by the Legislature in the foregoing laws. A person whose residence is in dispute and who is denied an official absent ballot is not without recourse, as he may be given an opportunity to rebut any presumptions against him respecting the same.

The provisions of [NRS 292.090](#) should be kept in mind in determining residence eligibility. It is there provided that no person shall be deemed to have gained or lost a residence:

1. By reason of his presence or absence while employed in the military, naval or civil service of the United States or of the State of Nevada.
2. While engaged in the navigation of the waters of the United States or of the high seas.
3. While a student at any seminary or other institution of learning.
4. While kept at an almshouse or other asylum at public expense.

All persons whose names appear on the list of registered electors are entitled to vote absent ballot when temporarily absent from their precincts or counties on election day, provided, of course, that they are still bona fide residents of the respective precinct or county in which they seek to vote. This right is assured by the statute to such residents even though they may have been absent from their places of local residence since the last election.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Deputy Attorney General

OPINION NO. 58-376 COUNTIES—Computing sufficiency of petition to divide county into commissioner districts under [NRS 244.050](#) requiring 20 percent of the qualified electors to submit petition.

Carson City, April 25, 1958

Honorable William P. Beko, District Attorney, Tonapah, Nevada

Dear Mr. Beko:

Your letter of April 14, 1958 asks the opinion of this office upon the following facts and question:

A petition was filed on February 3, 1958 with the Nye County Commissioners signed by 600 persons, 586 of whom are registered electors and 14 of whom are presumably qualified voters of Nye County. The petition is for the purpose of creating three commissioner districts in Nye County under [NRS 244.050](#). It appears also that at the time of filing the petition there were 1,797 registered voters in Nye County. The pertinent part of [NRS 244.050](#) provides as follows: “Whenever 20 percent or more of the *qualified electors* of any county in this state shall petition the board of county commissioners of their county to that effect, the county commissioners of such county shall, on or before the 1st Monday in July preceding any general election, divide the county into 3 districts to be known as Commissioner Districts.” (Italics added.)

QUESTION

How can it be determined that the requirement of the statute, requiring a petition of at least 20 percent of the qualified electors, is met?

OPINION

To bring the problem more sharply into focus, it may be said that if the statute had simply added a yardstick to determine how many qualified electors are required on the petition the problem would not arise. However, there appears to be no way of determining the exact number of qualified electors in an area at a given time, and, consequently, no way of arriving at a figure representing 20 percent thereof. It is established in this State that a qualified elector is not one and the same thing with a qualified voter. Sec. 1, Art. 2 of the Nevada Constitution prescribes the qualifications of an elector. To be a qualified voter, one must be, in addition to holding the qualifications of an elector, registered to vote. *See State v. Payne*, [57 Nev. 286](#), 63 P.2d 921; *Caton; v. Frank*, 56, 44 P.2d 521; *State v. Board of Examiners*, [21 Nev. 67](#), 24 P. 614.

While the provision in the instant statute was enacted some five months before what appears to be the first expression of our state court drawing a distinction between a qualified elector and a qualified voter in the case of *State v. Board of Examiners*, above, we are unable to conclude, by reason of the length of time in which this provision has been in the statutes and the intervening expressions of the court, as cited above, that in the use of the term “qualified voter.”

We are, nevertheless, required to construe the provisions as operative if at all possible. *Ex Parte Anderson*, 49 Nev.208, 242 P. 587. Moreover, this provision of the law was referred to in *McDonald v. Beemer*, [67 Nev. 419](#), 220 P.2d 217, in effect, as the statute to be followed in dividing a county into commissioner districts; and although the court in nowise had this question before it, it did comment favorably as to the validity of the provision. Moreover, it will be noted in *State v. Streshley*, [46 Nev. 199](#), 209 P. 712, that our court had this same provision to deal with, and held that the action of the county commissioners was invalid because their records did not show a finding that 20 percent of the qualified electors had petitioned for the action.

Presumptively, if such a finding had been made of record by the commissioners the court would have considered the action of the commissioners valid. Thus, the court has said, in effect, that if the action of the commissioners is to be held valid, they must show of record a finding that the requisites of the statute have been complied with. If the court had in mind at the same time that compliance with the requirements of the statute is impossible the position is somewhat incongruous. Although the judge who wrote this opinion had, four months earlier, written the opinion in *State v. Kelso*, [46 Nev. 128](#), 208 P. 424, dealing with the same provision and problem, and had concluded the court's opinion, for a reason that does not appear in the opinion, with the statement that since it is the policy of the courts not to declare a statute unconstitutional unless necessary, they decline to express an opinion as to the constitutionality of the statute. To conclude that the court, in making this statement, had in mind a question of the statute's constitutionality from the standpoint of its impossibility in operation as a practical matter, would not be a justified conclusion. It is one thing to say that a statute is void for impossibility of its operation as a practical matter, would not be a justified conclusion. It is one thing to say that a statute is void for impossibility of its operation, and it is quite another to declare it unconstitutional because the Legislature did not possess the constitutional authority to enact the statute in the first place.

Thus far we conclude that, by reason of the clear distinction that has been drawn between a qualified elector and a qualified voter, we are not justified in construing the statute to mean that qualified elector and qualified voter are to be treated as synonymous. We also conclude thus far that, by reason of the rule that a statute is to be construed as valid if possible and by reason of the cases dealing with the provision in question, we are not justified in saying that the statute is void because of impossibility of operation.

Now the bind comes in this problem when we consider the principle and requirements expressed in *State v. Kelso* and *State v. Streshley*, cited above. In the *Kelso* case the court quoted the general rule from *Corpus Juris* to be as follows: "More specifically, it is held that, as county boards are bodies with special and limited jurisdiction, all facts necessary to give jurisdiction must affirmatively appear on the record of the proceedings." The court, in that case, also quoted from *Godchaux v. Carpenter*, [19 Nev. 415](#), 14 P. 140, as follows: "It must appear affirmatively from the record of the board *found as a fact* that 'a majority of the resident taxpayers of Willow Point road district, according to the last previous assessment roll,' had signed the petition, * * *". (Italics added.)

How then, in the present case, is the board of county commissioners going to find as a fact to be spread on the minutes of their meeting that 20 percent of the qualified electors signed the petition when as a practical matter the exact number of qualified electors in the county cannot be determined at a given time?

While it is established law that the commissioners are a board with special and limited jurisdiction, it is also established law in conformance therewith that such board has such power as is expressly delegated to it by statute, together with such implied power as is necessary to carry out those powers which are expressly delegated. *Sadler v. Eureka County*, [15 Nev. 39](#); *State v. King*, [55 Nev. 405](#), 36 P.2d 355.

Applying this rule we conclude that, if the statute requires the board of county commissioners to divide the county into commissioner districts upon the submission to it of the petition of 20 percent of the qualified electors of the county, the statute has also imposed the duty upon the board to determine whether or not 20 percent of the qualified electors have signed the petition, and, if in making that determination it becomes necessary to exercise its judgment and discretion in deducing from whatever reasonable evidence exists a figure representing the number of qualified electors there are in a county, then the authority to so function has been lodged with the board of county commissioners. Thus, if it becomes necessary for the board to exercise its judgment to determine as a matter of fact whether or not 20 percent of the qualified voters signed the petition, the power to perform the duty imposed. It would follow, however, as a corollary of this, that any judgment so exercised must be exercised reasonably and not arbitrarily.

This office is, therefore, of the opinion that, even though the board of county commissioners cannot work from an exact figure which would represent the number of qualified electors in a county and thus arrive at an exact 20 percent thereof, it can use any reasonable means it chooses in computing a figure representing the number of qualified electors in the county at a given time and find as a fact that 20 percent thereof constitutes 20 percent of the qualified electors within the county at that time, and thereby arrive at a figure with which to compare the number of signatures on a petition to determine the sufficiency of the number of signatures.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Deputy Attorney General

OPINION NO. 58-377 COUNTIES—Transfers from one category of the general fund of the county to another category of the same fund authorized.

Carson City, April 28, 1958

Honorable L. E. Blaisdell, District Attorney, Mineral County, P. O. Box 1217, Hawthorne, Nevada

Dear Mr. Blaisdell:

In your letter of April 18, 1958, you ask the opinion of this office upon the following questions which are quoted from your letter as follows:

1. If a budget item is exhausted within one department of the general fund and requires replenishment and another budget item within the department has a surplus must the procedure set forth in [NRS 354.395](#) be followed in order to accomplish the replenishment?
2. If one entire department within the general fund requires replenishment may such replenishment be accomplished by transfer from another such department which has a surplus without employing the procedure of [NRS 354.395](#)? Or could such replenishment be accomplished in any method other than through an emergency loan?

As we understand it from your letter and the enclosure from the county clerk, this involves only the county government.

We are of the opinion that [NRS 354.395](#) has no application to the county government. Whatever distinction may have been in the minds of the legislators, it appears that this provision refers only to cities, towns and school districts. It will be noted that the term “political subdivision” as used and defined in the makeup of [NRS 354](#) appears in [NRS 354.330](#) and [354.410](#) pertaining to cities, towns and school districts. The provisions of NRS concerning county finance are separate and apart, and contain no specific reference to the definition of the county as a political subdivision. If then in the enactment of Sec. 2, Chap. 95, 1957 Stats. (now appearing as [NRS 354.395](#)), the Legislature had intended the provision to be applicable to counties, reference would have been made to the counties as well as to political subdivision as that term is used in NRS relating to public financial administration. Likewise, subsection 3 of [NRS 354.395](#) provides that this section shall not be regulated by [NRS 354.410](#) through 354.460

pertaining to emergency loans of cities, towns and school districts. Had it been intended that [NRS 354.395](#) apply to counties, reference would also have been made at this point to sections 354.070 through 354.110 pertaining to emergency loans of counties.

Your question has reference to transfers between categories of the general fund. [NRS 354.070](#) through [NRS 354.110](#) pertaining to county emergency loans, and referred to in your question, authorizes a procedure for the transfer from one of the various funds to meet an emergency expenditure. This provision does not deal with the transfer of funds from one account within the general fund to another account within the same fund, and is, therefore, not applicable, nor does it constitute the express authority for such transfer.

No express provision appears in the statutes authorizing transfers between categories of the general fund of a county. Nevertheless, while we are aware that the budget of the county is itemized to cover the various categories within the general fund, this office is of the opinion that the county commissioners have the power by their own resolution to authorize such transfers by implication from their express duties of the administration of the county business so long as the total estimated expenditures shown in the budget to be made from the general fund are not exceeded.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Deputy Attorney General

OPINION NO. 58-378 PUBLIC SCHOOLS—Construction of [NRS 386.270](#) concerning term of appointment to fill vacancy in office of county school district trustee.

Carson City, April 29, 1958

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

Dear Mr. Stetler:

In your letter of April 24, 1958, you request the opinion of this office upon the question quoted from your letter as follows:

If a person were appointed prior to the last date of filing for election in 1958 to fill the unexpired term of a trustee who was elected in 1956 to hold office from the first Monday in January, 1957 to the first Monday in January, 1961, would the appointment for such "unexpired term" mean until the first Monday in January, 1961 or would the person have to file for election in 1958 if he wished to hold the office beyond the first Monday in January, 1959?

OPINION

This office is of the opinion that the term of office being four years, the office would not appear upon the ballot until 1960.

The pertinent portion of [NRS 386.270](#) provides as follows:

Any vacancy occurring in a board of trustees shall be filled for the unexpired term by an appointment by the superintendent of public instruction. * * *

We can conceive of only one reason why it may be contended that this provision carries with it an exception requiring the office to appear on the ballot in an intervening general election. That reason would be that the office is an elective office and that when it can conveniently be done the office should be filled by vote of the people. However, we consider this proposition to be dealt with and foreclosed in the case of *Bridges v. Jepsen*, [48 Nev. 64](#), 227 P. 588. In that case, citing from *Sawyer v. Haydon*, [1 Nev. 75](#), the court states that there is no inherent right in the people to fill a vacancy in an office for an unexpired term merely because the office is an elective one where there was no expressed provision for such election by the people to fill the vacancy.

This being true, we look to the wording of the controlling statute, as quoted above. This provides for the appointment for the unexpired term. The term is four years and does not expire until following the election of 1960. Had it been intended that the appointment was to fill the vacancy until the next biennial election, the Legislature would have said so as in [NRS 245.170](#) pertaining to the filling of vacancies in county offices.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Deputy Attorney General

OPINION NO. 58-379 LEGISLATOR—One holding office of mayor may not, under prohibition of Section 1 of Article III of the Constitution of Nevada, hold at the same time the office of member of the State Legislature.

Carson City, April 30, 1958

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

Dear Mr. Dickerson:

You have made inquiry as to whether a person who is mayor of one of Nevada's leading cities, and who has been elected assemblyman, can hold both jobs at one and the same time.

OPINION

The office of major is an office within the executive framework of government of one of the state's political subdivisions. Sec. 1, Art. III of the Constitution of Nevada, reads as follows:

The powers of government of the State of Nevada shall be divided into three separate departments—the legislative, the executive and the judicial; and no person charged with the exercise of powers belonging to one of these departments shall exercise any functions appertaining to either of the others, except in cases herein expressly directed or permitted.

An assemblyman is a member of the legislative branch of our government, and therefore the separation of powers doctrine is applicable in the problem you present.

This matter has been decided by the Attorney General's office on former occasions. On November 22, 1954, the District Attorney of Clark County asked the Attorney General if Mr. George Harmon, newly elected assemblyman from Clark County, could serve as chief deputy in the office of the county assessor. The District Attorney pointed out that Mr. Harmon suggested

that he take a leave of absence from the assessor's office during the time the Legislature was in session.

In a scholarly opinion Attorney General Mathews pointed out that the county was a political subdivision of the State, and that the separation of powers provided for in Sec. 1 of Art. III of the Constitution must be construed so as to prevent the holding of positions in two separate branches of State Government. He said, "We think it clear that the office of county assessor as well as that of chief deputy assessor is an office belonging exclusively to the executive department of our State Government. There can be no doubt but that the office of an assemblyman is part and parcel of the legislative department. It necessarily follows that an assemblyman in exercising the powers and duties of the county assessor's office is undoubtedly exercising the functions of that office contrary to the constitutional prohibition."

A leading case which confirms General Mathews' opinion is *State Ex Rel. Black et al v. Burch*, State Auditor, 80 N.E.2d 294 (Ind.). The case concerns the actions of three assemblymen and one senator, members of the Indiana Legislature who were elected to office in 1944 and served during the 1945 and 1947 sessions of the Legislature. They were appointed to certain positions in the executive departments in 1945 after the adjournment of the 1945 session. Thereafter in January, 1947, they resigned other employments and served as legislators in the 1947 session, and thereafter were reappointed to employments within the executive branch of government after adjournment of the 1947 session of the Legislature. The action was brought to compel the payment of their salaries in the appointive positions. The court denied relief upon the ground that they had violated Sec. 1, Art. III of the Indiana Constitution, which is identical with the same section and article of our Constitution.

In the course of the opinion the court said:

In view of the fact that it is obvious that the purpose of all these separation of powers provisions of Federal and State Constitutions is to rid each of the separate departments of government from any control or influence by either of the other departments, and that this object can be obtained only if Section 1 of Article III of the Indiana Constitution is read exactly as it is written, we are constrained to follow the N.Y. and Louisiana cases cited above. If persons charged with official duties in one department may be employed to perform duties in one department may be employed to perform duties, official or otherwise, in another department the door is opened to influence and control by the employing department. We also think that these two cases are logical in holding that an employee of an officer, even though he may be performing a duty not involving the exercise of sovereignty, may be, and is, executing one of the functions of that public office, and this applies to the cases before us.

General Mathews in concluding his Opinion No. 353, dated November 24, 1954, wrote:

Certainly if a duly elected member of our legislative body and who exercises the powers and prerogatives of a member of the legislative department of the State Government accepts and appointment to an office in the executive department and performs the duties thereof that then there is an ignoring of if not in fact a violation of the constitutional prohibition. Such a proceeding we think is against the public policy of this State as so pertinently expressed in the above constitutional provision.

On December 21, 1954, the State Director of Personnel requested an opinion of the Attorney General as to whether two employees of the State Highway Department could take leaves of absence to serve in the State Legislature.

General Mathews again answered the question in the negative. In conclusion he stated: "It is the opinion of this office that the Personnel Director has no power to grant such leaves."

General Mathews went further and pointed out that even legislation empowering any official or person to grant leaves of absence from employment in the executive branch of State

Government for the purpose of exercising powers belonging to the legislative branch would be beyond the constitutional power of the Legislature to enact.

It was further held in this opinion that by reason of the express language contained in Sec. 1 of Art. III of the Constitution, that resignation of an employee of the executive department for the purpose of serving as a member of the Legislature, with reinstatement thereafter in the executive department, would be a manifest evasion of such constitutional prohibition and a subterfuge evading the public policy of the State.

On April 18, 1955, the District Attorney of Mineral County inquired of the incumbent Attorney General if employment with the school district, an executive branch of the county government, was prohibited during the time the employee was acting as assemblyman from Mineral County.

This office in answering the question in the negative pointed out:

An assemblyman is not only an assemblyman during the legislative session but also during his entire elective term of office. He is charged, during that term, with the exercise of powers properly belonging to the legislative branch of our State Government. He is subject to special session duty during his term of office and may and oftentimes does serve on interim committee or commission activity all during his two year term.

The reason for the prohibition is aptly expressed in Vol. 42 Am.Jur. at page 933:

Provisions restricting the right of members of the legislature to hold other offices are designed to prevent such members from occupying a dual position, and to prohibit them from deriving, directly or indirectly, any pecuniary benefit from the legislative enactments or appropriations made by them. They take away to a certain extent any improper bias in the vote of the representative and secure to his constituents some solemn pledge of his disinterestedness. Like other provisions against dual office holding, they should be construed somewhat strictly and not extended beyond their plain terms.

The office of mayor of one of our large cities and the office of assemblyman from the district in which said mayor serves are incompatible. The duties of the two offices are inherently inconsistent and repugnant so that because of the contrariety and antagonism which would result from the attempt of one person to discharge faithfully, impartially and efficiently the duties of both offices, consideration of public policy renders it improper for an incumbent to retain both. If the duties of one office may conflict, to the public detriment, with the exercise of important duties of the other office, then the offices are incompatible.

Let us take an example which might well result in the instant case: Suppose the mayor has, with the advice of the city council, advocated and supported a program within the city which is controversial insofar as its benefits to the city are concerned. The mayor now drops the mantle of mayor for the time being and dons the mantle of lawmaker. He introduces a bill to achieve the aims fostered by himself and the city council, and has the bill referred to a special committee of which he is a member. The bill is reported favorably, and members of the assembly deeming that the wish of the mayor is the wish of the people, pass it. This is the very thing the founding fathers wished to prevent by Sec. 1 of Art. III of our Constitution.

In fact it is the studied opinion of this office that should a mayor of one of Nevada's cities be elected to the Legislature, and should he accept such election and qualify, then the office of mayor would become vacant.

The court in *Stubbs v. Lee* (Me.), 18 Am.Rep. 251, points out that the public has a right to know, in the case of an attempt to hold two incompatible offices, which office is held and which surrendered and that it should not be left to chance or to the uncertain whim of the office holder to determine, and declares, therefore, that the general rule that the acceptance of and qualification for an office incompatible with one then held is a resignation of the former is certain and reliable,

as well as indispensable for the protection of the public. *See also State Ex Rel. Barnhill v. Thompson*, 29 S.E. 720; *State Ex Rel. Kingsbury v. Brinkerhoff*, 17 S.W. 1090.

The fact that an incumbent of one office before being elected to another incompatible office publicly declares his intention to perform the duties of the first office does not affect the operation of the general rule. Thus in *Attorney General Ex Rel. Moreland v. Detroit*, 70 N.W. 450, it was held that the fact that a mayor of a city was elected to the office of Governor after a public declaration by him of an intent to continue to perform the duties of mayor is no reason why the office of mayor should not be declared vacant.

In *People Ex Rel. Russell v. Fire Commissioners*, 27 N.Y.S. 548, the court said:

The law does not favor the multiplication of offices in one person, and where they are inconsistent with each other, or where such multiplication has a tendency to impair the public service, it will be held that the occupant must surrender the one or the other if both appointments were conferred upon him at the same time, or, if they were conferred at different times, the acceptance of the last one made forfeits the first.

In *Northway v. Sheridan* (Mich.), 69 N.W. 82, it was held that a board of public officers could not refuse to recognize one elected as a member thereof upon the ground that at the time of his election he held an office incompatible therewith since the former office was ipso facto vacated by his election to and acceptance of the latter office.

The fact that the office sought will be of short duration does not alter the general rule.

In *State v. Bultz*, 9 S.C. 156, where a solicitor sought the office of member of the House of Representatives, the court said:

The fact that in this particular case the defendant accepted the office of Representative in Congress for an unexpired term, which happened to be of very short duration, and the fact that the public suffered no immediate detriment in this particular instance, cannot alter the principle applicable to the case.

In *State Ex Rel. Harris v. Brown* (1928), 6 S.W.2d 560, it was said that to continue in the duties of the vacated office is a usurpation of such office, the remedy for which is by quo warranto.

It is, therefore, the opinion of this office that the holding of the public office of mayor, within the executive framework of government, and that of legislator, within the legislative framework of government, at one and the same time is contrary, and repugnant, to Sec. 1 of Art. III of the Constitution of Nevada.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

OPINION NO. 58-380 FISH AND GAME COMMISSION—Law prohibits the capture of coarse fish by means of electric and sonic device.

Carson City, May 1, 1958

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

Dear Mr. Groves:

The following is in answer to the questions contained in your letter of April 30, 1958.

Does the Fish and Game Commission have the authority to grant a permit to an individual to take rough fish, mainly carp, from Colorado River water with electronic and sonic gear?

We take it that this question includes both the actual taking of the fish by killing them with the electric device and the directing of the fish by the electric and sonic device in combination with netting or trapping. Either way, we conclude that for the purpose of this question the capture of the fish is accomplished by means of the electric and sonic device. Thus, the question is not affected by this distinction.

[NRS 503.290](#), subsections 1 and 2, provide as follows:

1. Except as provided in subsection 2, it shall be unlawful for any person to fish in or from any of the waters of the State of Nevada for any fish of any species whatever with any seine, net, spear, setline, set hooks, grabhooks, trotline or snagline, or in any manner known as snagging, or with any weir fence, trap, giant powder, or any other explosive compound, or in any manner other than with hook and line attached to a rod or reel closely attended in the manner known as angling.
2. Carp or other coarse fish may be taken by seine.

This section prohibits the taking of any fish, by any method other than with hook, line, rod and reel, except that carp or other coarse fish may be taken by seine. This excludes the taking of coarse fish by electric and sonic devices, and the use of these devices is therefore prohibited.

It may be added that we are aware that it may be desirable to rid the water of the coarse fish, and it may be thought that when the use of the seine was permitted it was eradication of the coarse fish that was intended; that if this is so then any means of eradication was intended to be authorized. However, the above quoted provision does not admit of an interpretation. It is clear and unambiguous. In such case interpretation is not authorized. *Eddy v. State Board of Embalmers*, [40 Nev. 329](#), 163 P.245. If this means of taking coarse fish is desirable, further legislation would be in order.

Now, concerning your question as to whether this method of capturing coarse fish may not be authorized under [NRS 501.240](#). That section provides as follows:

1. The commission is authorized to enter into reciprocal fishing license agreements with corresponding state or county officials of adjoining states pertaining to licensing for fishing residents of the State of Nevada and adjoining states upon waters forming the boundary between the State of Nevada and adjoining states. Such agreements may include, but are not limited to, provisions by which each state shall honor the license of the other only when there is affixed to such license a stamp purchased from the other state, the charge for such stamp being set by mutual agreement of the states. Such agreements may further include, but are not limited to, provisions specifying the portions of boundary waters to which the agreements apply and providing penalties for violations of the regulations promulgated pursuant to the agreements. All regulations so made shall be established and published in the same manner as other fishing regulations.
2. It is the primary purpose of this section to provide a method whereby the fishing opportunities afforded by the Colorado River, Lake Mead, Lake Topaz and Lake Tahoe may be mutually enjoyed by the residents of Nevada and the residents of adjoining states, and it is not intended to cover the waters of rivers which transverse laterally the border of the State of Nevada.
3. This section shall not be construed to abrogate, alter or annul any interstate agreement or pact concerning reciprocal fishing licenses which was executed prior to March 4, 1955.

This office is inclined to the view that there is no intention expressed in this provision to authorize agreements which would permit exceptions to the general provision providing the

method of capturing fish in Nevada. We do not consider the phrase “but not limited to” which is used in Sec. 501.240 to be intended to permit the commission to enter into whatever exceptions to the fish and game law it finds desirable for the purpose of reciprocal arrangements with Arizona. The primary authorization of this provision is to permit fishing license agreements, and the designation of the portions of boundary water to which they apply.

If there was an interstate agreement executed prior to 1955, we assume that it was executed pursuant to Chap. 23, 1949 Stats. This chapter authorizes no more than reciprocal fishing license agreements. That is to say, agreements permitting one licensed in either state to fish in the boundary waters of either state.

This office is of the opinion that the law not only does not authorize, but rather expressly prohibits the capture of coarse fish by means of electric and sonic device.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Deputy Attorney General

OPINION NO. 58-381 INSURANCE, DEPARTMENT OF—Commissioner of Insurance is without authority to suspend or revoke license of foreign company duly licensed in Nevada, by reason of its violation of [NRS 682.510](#).

Carson City, May 16, 1958

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

Attention: Mr. Lawrence G. Means, Chief Deputy Insurance Commissioner.

Dear Mr. Hammel:

We have your letter of May 9, 1958 requesting an opinion of this department, construing the insurance statutes, upon a question hereinafter stated.

[NRS 682.510](#) provides as follows:

682.510 Loans to stockholders, directors, officers or employees.

1. No loans shall be made:

(a) To any stockholders upon the security of the capital stock of such insurance company.

(b) To any director, officer or employee of such insurance company.

2. Nothing contained herein shall prohibit a life insurance company from making a loan upon its policies or contracts in an amount not exceeding the net reserve value of the policy or contract.

This section is included within the chapter entitled “Domestic Companies” and therefore has reference to the control and supervision of domestic companies, as distinguished from foreign companies.

Under the chapter entitled “Foreign and Alien Companies,” [NRS 683.090](#) in part provides as follows:

683.090 Revocation, suspension of license: Grounds; notice; hearing.

1. The commissioner may revoke or suspend the license of a foreign or alien company whenever he shall find that such company:

(b) Fails to comply with the requirements for admission in respect to capital, contingent liability, the investment of its assets or the maintenance of deposits in this or another state, or fails to maintain the initial required surplus of similar domestic companies transacting the same kind or kinds of business;

(d) Has violated any insurance law of this state or has in this state violated its charter or exceeded its corporate powers;

2. Except for the grounds stated in paragraph (h) of subsection 1, the commissioner shall not revoke or suspend the license of a foreign or alien company until he has given the company at least 20 days' notice of the proposed revocation or suspension and of the grounds therefor and has afforded the company an opportunity for a full hearing.

QUESTION

May the license of a foreign or alien company, duly qualified to do business in Nevada, be revoked or suspended under the provisions of [NRS 683.090](#), if upon notice and order to show cause it is found to have violated [NRS 682.510](#)?

OPINION

The first reflection upon this question is that if the answer is in the negative, the net result is that a domestic company operates under a restriction, in effect a more rigid control with greater demands made upon it than if it were a foreign company. But this is not strictly correct, upon careful analysis.

[NRS 683.010](#) makes provision for the admission of alien or foreign companies to Nevada, with license to be issued by the commissioner. The conditions are rather demanding and exacting, requiring among other things that the corporation be under 1, (c), (7), "financially responsible," and that it have "a good record on the payment of claims for the 10 years immediately preceding application.

From the foregoing it is clear that a domestic corporation would be authorized to engage in an insurance business in Nevada with a much less impressive record than would be required of a foreign corporation, as conditions precedent to its being granted a license to engage in the same kind of insurance business in Nevada.

Another substantial distinction is worthy of note: In the case of the domestic insurance corporation it may, and probably will, obtain its license to engage in the insurance business in Nevada, without previously being licensed to engage elsewhere, and until it is licensed to engage elsewhere, if ever, it will be under the sole supervisory jurisdiction of the Nevada insurance commissioner. But from the nature of the transactions such is not true of a foreign corporation, upon its admission and license to engage in the insurance business in Nevada. Such a corporation is domestic to another state or nation, and as such it has in all probability been supervised and is supervised by an insurance commissioner of another sovereign state; it has an age of at least 10 years and a record of properly and promptly discharging its obligations elsewhere. Being a mature person (artificial person) of proven character if otherwise in compliance with the Nevada exacting statute it is licensed to engage in the insurance business here.

Considering this distinction of status and supervisory jurisdiction, of the two types of corporations here under investigation, we believe that to omit a section equivalent to the provisions of [NRS 682.510](#) from the chapter regulating Foreign and Alien Companies, was not accidental. We believe that it was designedly omitted.

For if it were included in the foreign corporation chapter, since the amount of business conducted here might be very small indeed to that conducted in the state of its domicile, or business conducted in the state of domicile added to amount conducted in other states in which licensed, a foreign corporation might be seriously impeded in operation, not only here, but in

other states. A statute so construed would, from this result, be confronted with serious constitutional test. *See*: Vol. 19, Insurance Law and Practice, Appleman, Section 10,397, entitled "Limitations Upon Powers to Deny or Revoke License."

In any event, the statute must be strictly construed to the result that the powers of the commissioner are those expressly conferred upon him and those implied powers strictly required to administer the express powers conferred. *See*: Section 10, 396, Vol. 19, Insurance Law and Practice, by Appleman, entitled "Power to Deny or Revoke Licenses."

By reason of the foregoing the question is answered in the negative.

Respectfully submitted,

Harvey Dickerson
Attorney General

By: D. W. Priest
Deputy Attorney General

OPINION NO. 58-382 COUNTIES—CORONERS—Interpretation of [NRS 259.200](#) relating to fees of coroners.

Carson City, May 19, 1958

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

Dear Mr. Dickerson:

This office is in receipt of your letter of May 13, 1958 requesting the opinion of this office relating to the allowance of coroner's fees.

The coroner of Las Vegas Township conducted an investigation at the scene of the recent airline disaster in Clark County in which 49 lives were lost on the spot. It having been determined that the deaths were caused by manifest accident, it was certified that no inquest was required. It appears that although the coroner devoted considerably more than one day to his efforts in this disaster, he submitted a charge for his fees covering only one day. Thus, he computed his bill for mileage and investigation to be: 30 cents for 2 miles multiplied by the number of deaths which occasioned his trip for total of \$14.70, together with \$10 per day for one day multiplied by the number of deaths which occasioned his investigation for a total of \$490.

Question has arisen as to the proper computation of the coroner's fee in this case involving an investigation into many deaths occasioned by a common disaster.

[NRS 259.200](#) lists the coroner's fees, the pertinent portions of which provide as follows:

1. The fees of the justice of peace, acting as ex officio coroner, shall be as follows: * * * For each mile necessarily traveled in conducting an investigation or inquest into the cause of death and in going to and returning from the presence of the dead body, regardless of the type or ownership of the conveyance employed and the number of persons conveyed—\$0.15 * * *. For each day necessarily employed in holding an inquest or conducting an investigation in connection therewith—\$10.00.

While it may be true that a moment's examination may be all that is required to determine the cause of death, the investigation required to be conducted by the coroner entails considerably more. We are of the opinion that the recovery of the belongings of the deceased and, if there be more than one death involved, the recovery and segregation of the belongings with attempt to

identity the belongings with the bodies, is all a part of the investigation to be conducted by the coroner. Under [NRS 259.150](#) the coroner is charged with delivery of the property of the deceased to the county treasurer in order that it may be later claimed by representatives of the decedent. In a matter such as this recent airline disaster the duties of the coroner could, and no doubt did, lead him into the necessity of identifying portions of a body or of bodies in order that the dead might be identified together with the identity of their belongings.

Relating now to the question of the coroner's fee for investigation, it is reasonable to say that the coroner in this case conducted 49 separate investigations involving 49 deaths for which he is entitled to \$10 for each investigation. It is also reasonable to say that his work involved one investigation into the deaths of 49 people occasioned by a common disaster for which he is entitled, under the statute, to \$10.

We think the statute obviously does not specifically contemplate the situation wherein more than one death has occurred and we think also that the proper method of approaching the solution is to apply what appears to be the reason for the allowance of the coroner's fee in order to arrive at his compensation under the statute. We think it a fair interpretation of the statute to conclude that if, in this case, only one death had occurred the coroner would have been entitled to \$10 for his investigation. This appears to be what the Legislature thought he should be compensated for his work in this regard. We do not think that it was the intention of the law to allow less than \$10 even though the investigation into the death necessitates employment of less than a day by the coroner.

We think it is reasonable to conclude that if he has conducted an investigation into 49 deaths he has done 49 times the work he would do in the case of one death and he is to receive 49 times as much compensation for his work, or \$490.

Applying this reasoning to the question of the amount allowed for mileage, we think that the allowance of 15 cents per mile is an attempt to gear the amount to the cost of travel; for example, to cover the cost of gasoline and wear on a vehicle. Thus if he had made, in this case, 49 separate trips of 2 miles each, the allowance would be \$14.70. If it was on trip, the allowance would be 30 cents.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Deputy Attorney General

OPINION NO. 58-383 UNIVERSITY OF NEVADA—Legality of the organization of a research institute as a part or connected with the University of Nevada.

Carson City, May 20, 1958

Board of Regents, University of Nevada, Reno, Nevada

Gentlemen:

Request for an opinion of this office has been made through Dr. William R. Wood, Acting President of the University respecting the legality of the establishment of research institute within or connected with the University in any one of the following forms or organization:

1. A research institute as a division of the University, authorized by the Board of Regents and supported in part directly by appropriations from the State Legislature.
2. A research institute established by action of the Board of Regents as a separate corporation within the over-all corporate body that is the University of Nevada as defined in the Nevada Constitution.
3. A research institute as a nonprofit corporation separate from the University but having as its board of directors members of the faculty and Board of Regents.

As we understand it, there is a fast growing need for organization to perform research service, principally in the field of science, to be sponsored not only from state appropriation but mainly from funds provided by private industry under contract with the institute for research service, and from funds of the Federal Government under contract with the institute for such service, and also from gifts and donations through testamentary bequest and otherwise.

The problem is somewhat complicated by the fact that these sponsors appear to find it far more desirable to expend funds in their research endeavor through an institute sponsored and authorized or controlled by an accredited university, rather than through a private organization in no way connected with the university connected institute (when the university is a state institution such as the University of Nevada) the system of control over the expenditure of university funds required by law appears to present certain disadvantages. That is to say, it has been stated that the control over the expenditure of funds by the University as required by law is somewhat too slow and cumbersome to lend itself smoothly to the requirements of private industry or the Federal Government in whatever necessary cooperation must exist under a contract for sponsorship and research.

In short, it is thought that what is desired is an institute having the advantage of the University connection and control but also with the flexibility of operation of a distinct corporation sufficiently separated from the regular University government to permit such flexibility.

We should like to state at this point that we are appreciative of the great extent of work and effort of Dr. William R. Wood, Acting President of the University, in supplying us with letters of information and research institute brochures from many universities throughout the United States. This has provided comparisons and background from which we could work.

It appears that the framers of the Nevada Constitution had in mind when directing the establishment of the University (Art. XI) nothing more than the establishment of an institution of higher learning for the purpose of disseminating knowledge through instruction to students. *See* the Nevada Constitutional Debates and Proceedings. *See also* the United States Statutes at Large, Vol. 12, Chap. 130, wherein Congress in 1862 granted lands to the several states to finance the establishment of a college to teach but not limited to the teaching of agriculture and mechanic arts "in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life." This appears to have been the initial impetus to the establishment of the Nevada University and for the enactment of the constitutional provision.

However, the initial contemplation of the establishment of the University as an institution whose paramount purpose is instruction does not appear to have proven to be a limitation. Thus, the Legislature added a division to the University designated the Public Service Division, [NRS 396.600](#). The major part of the service carried on in this division has little if any direct connection with the instruction of students. For example, the declared purpose by statute of the establishment of the State Analytical Laboratory within this division is to aid the prospector in the discovery of new mineral deposits, [NRS 396.660](#). Again, the Agricultural Experiment Station appears to have been established by the Board of Regents and its establishment confirmed by the Legislature, [NRS 396.740](#); moreover, this development appears to have had the blessing of Congress as an outgrowth of the Hatch Act of 1887.

We conclude, then, that the launching of a project or activity such as the contemplated research institute is not without precedent, and that such project can properly and legally be established within the framework and purpose of the University.

We are also of the opinion that with reference to the establishment of the research institute as a division or department of the University, the Board of Regents can, by their own resolution, legally create and establish such division or department. We are of this opinion for the following reason: It will be observed that, while many of the public service activities of the University have received particular authorization or confirmation by the State Legislature, in large part the organization of the University has been established by action of the Board of Regents without special action of the Legislature. This appears to stem from the constitutional provision requiring the establishment of the University under control of the Board of Regents "whose duties shall be prescribed by law" (Art. XI), and the consequent Act of the Legislature authorizing the Board of Regents to prescribe rules for its own government and the government of the University, [NRS 396.110](#). We are supported in our views in this regard by the majority opinion of the Supreme Court of Nevada in *King v. Board of Regents*, [65 Nev. 533](#), 200 P.2d 221, wherein the court, in taking the long view of the future development of the University, states, in effect, on page 548 of the Nevada Report, that organizational expansion and development of the University lies within the function of the Board of Regents.

This brings us to the question of the authority of the Board of Regents to enter into contracts with persons or entities with interests inside and outside the State to perform research through the facilities of such an institute.

Such contracts, as we understand it, will entail the supply of funds by whatever entity desires the research service for the purpose of performing the research.

Here again, we consider the broad powers lodged with the Board of Regents by the Constitution or by legislative action, as above stated, to encompass the authority to enter into contracts of the type contemplated. It should be understood, however, that a contract creates an obligation and imports a consideration to be received by the contracting parties. This we think poses no difficulty so long as the research service can be directed to the benefit of the University in its ultimate endeavor and purpose. In connection with the authority of the Board of Regents to contract in the performance of its control over the functions of the University, we refer also to [NRS 396.130](#) which imports authority to contract.

It may be added at this point also that authority to accept funds by way of gift to be used for research purposes is authorized by [NRS 396.420](#). This provision clearly authorizes the acceptance of funds by way of grant, gift, devise or bequest to be used in conformance with such conditions as may be attached thereto so long as the purpose is appropriate to the University. Thus, if a gift of a fund of money were made to such institute upon the condition that it be used only for research in the field of, for example, snow reservoir measurements and water conservation, and prescribing conditions with reference to the disposition of patent rights and other conditions, we take it that, in the absence of conditions so limiting as to render the gift invalid or unacceptable, its acceptance would be clearly authorized, particularly where the performance of the research can be worked into the over-all University endeavor.

Thus far, then, we conclude that a research institute as a division of the University authorized by the Board of Regents to carry out the program hereinabove outlined is authorized by law.

In this regard and with reference to the expenditure of funds for this purpose, we are of the opinion that, at this point, whatever moneys are received from whatever source and in whatever manner must be expended in accordance with the legislative directive under [NRS 396.390](#) requiring action by the State Board of Examiners. While it is true that this requirement under this provision appears to refer particularly to funds set aside and appropriated, we do not consider ourselves at liberty to conclude that this requirement is not also to be impressed upon the expenditure of University funds from whatever source received. If a different procedure is needed or would be advantageous in certain cases, then, the authorization of such procedure will have to come from the lawmaking body.

This brings us to number 2 of the forms listed above for the institute organization. This form, as we understand it, would call for a separate corporate entity organized under the corporations and associations law of Nevada; possibly something in the nature of a cooperative corporation or association under [NRS 81.170](#) through 81.280, but having an existence within the framework of

the University organization. From the standpoint of the legality of such an arrangement there are a number of difficulties that present themselves, some of which we list as follows:

1. The law under which such a corporation would be organized contemplates an independent entity responsible for its own endeavors and its own obligations. For example, if the corporation were organized under the sections of the law cited above, it would be found that such an organization under [NRS 81.220](#) would have the power to sue and be sued in its associate name, to borrow money, to issue evidences of indebtedness and to do all things which could ordinarily be done by any entity engaged in business enterprise. Under [NRS 81.190](#), the members of such an association could find themselves individually liable for their proportion of indebtedness. Now, if such a corporation is to be at the same time a part of the University organization, we are at somewhat of a loss to clarify the placement of responsibilities and the position of the University to respond as the superior entity for the responsibilities of the supposedly independent corporation.

2. To our minds the arrangement would further complicate itself by such questions as the authority of the Board of Regents to delegate certain of its powers to an independent entity even though within the framework of the University organization. Here again the management of University funds rears its head. If under such a setup, we say that the funds acquired by the institute corporation are independent of the University funds, it is, to our minds, subterfuge. If it is thought that the Regents or members of the faculty could constitute the members of the institute corporation, they must act as such either in their official capacity with the University or as private individuals disconnected from their official University duties; if in their official capacity, there is no independence of corporate entity of the institute; if as private individuals, again the question of the delegation of the performance of University functions to other than those authorized by law to perform them becomes apparent.

Possibly, in light of the great extent of the authority determined to be lodged with the Board of Regents by the Nevada Supreme Court in the case of *King v. Board of Regents*, cited above, the difficulties expressed here are illusory. Nevertheless, this office is not able to advise that the establishment of a separate corporation within the University framework is legally sound. If it is thought to be necessary, quite likely legislative sanction could cure whatever legal obstacles may exist.

Relating now to number 3 of the forms listed above for the institute organization, we understand that this would contemplate a nonprofit corporation entirely separate from the University except that members of the University faculty and Board of Regents would constitute the managing body of the corporation. Here, a separate organization is contemplated to be organized under NRS, Chap. 81, relating to nonprofit corporations; probably most particularly under [NRS 81.350](#) through 81.400 relating to nonprofit corporations for advancement of state and local interests. Again such a corporation will or may have certain powers as a separate legal entity not compatible with the duties required of the Board of Regents. For example, a corporation, of the type last above referred to, would, under [NRS 81.370](#), have as incident to its existence the power to hold property and to manage and dispose of it, the power to incur indebtedness, etc. These powers would be exercised by the corporation as a separate legal entity even though some part or all of the Board of Regents acted as the managing head of the corporation. Again, this office does not find it possible to advise that the Board of Regents are authorized to conduct the function of the University by this method.

This office, is, then, of the opinion that, under the law as it now exists, the method proposed in form number 1 listed above which contemplates the research institute as a division or department of the University is the only method or form of organization of the three which would be proper.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Deputy Attorney General

OPINION NO. 58-384 WATER LAW—LAS VEGAS VALLEY WATER DISTRICT—

Where intent of statute is clearly expressed in providing for election of a definite number of directors for water district, but omits to provide method or basis for their selection among the various divisions of said district, statute may nevertheless be made operative by directors of district supplying and following an equitable method of selection.

Carson City, May 22, 1958

Mr. W. C. Renshaw, Chief Engineer and General Manager, Las Vegas Valley Water District,
Box 4427 P. O. Annex, Las Vegas, Nevada

Dear Sir:

In your letter of May 12, 1958, you call attention to the provisions of paragraphs 2 and 3, Sec. 5.1, Chap. 401, Stats. 1957, amending Chap. 167, 1947, which provides for the establishing of the Las Vegas Valley Water District. This amendment provides for election in 1958 of seven directors for said district and specifies that one shall be elected from each division thereof, three for a two-year term each and four for a four-year term each, and that at each general election thereafter all seven of said directors be elected for four-year terms in the order these terms expire. You request our opinion as to which of these directors are to be elected for two years and which for four years, the statute being silent in this respect.

OPINION

The problem here presented cannot be solved by anything specifically expressed in the 1957 amendment nor in the original Act, that we can find. Neither do we believe that any provisions of general law are applicable. In fact Sec. 19 of the original Act (Chap. 167, Stats. 1947), which has never been repealed, provides: "That this act is complete in itself and shall be controlling. The provisions of any other law, general, special or local, except as provided in this act, shall not apply to a district incorporated under this act." We are, therefore, compelled to look to the Act itself to determine legislative intent. Undoubtedly the intent is that a full staff of elective officials (seven directors) for the Las Vegas Valley Water District be elected biennially at the general election to be held in November, beginning in 1958, instead of being elected at a special biennial election held in April as was done under the Act previously. But how is this to be accomplished so that three of such directors will be elected for two-year terms and four for four-year terms?

We cannot rely upon Sec. 5 of the Act as originally enacted, which provided for selection by lot from the seven directors elected to fill two-year terms and those to fill four-year terms, because that section is specifically repealed by the 1957 amendment (Chap. 401, Stats. 1957, Sec. 2). This leaves the statute devoid of all procedure or any plan for getting candidates on the November ballot for election as directors unless some plan or procedure is supplied. Unless this is done the statute must fail and the legislative intent not effectuated. It is a general rule of construction that while words may not be read into a statute which the Legislature did not see fit to include in its passage, yet this is not designed to prevent the supplementation of words or terms in order to render a statute operative where the intent of the Legislature is clear. Sutherland-Statutory Construction, Vol. 2, Section 4924, in quoting from a Tennessee case, states the rule thus: "It is within the power of a court when necessary to effectuate legislative intent to supply language in construing an act, inserting such words and clauses as may reasonably appear to be called for."

Our State Supreme Court has adopted the rule. *State v. Brodigan*, [37 Nev. 345](#), involved the interpretation of a statute creating district courts in the State and defining their boundaries, but which for the omission of certain necessary words the real intent of the Legislature was rendered inoperative. In ruling that the defect could be supplied, the court said:

It is the province of the courts to give effect and construction to legislative enactments at least to the extent to which the legislative intent may be made operative by a fair and liberal construction of the language used in the act. It is not within the province of the courts to assume the powers or functions which properly belong to the legislature to the extent of either enacting laws or supplying defective enactments with language sufficient to make them operative for a presumed purpose, *unless from a reading of the entire act, the purpose and intent is made manifest, in which instance courts are warranted in supplying sufficient language to carry out the purpose and intent of the legislature to the end that the law may be made operative for the purpose for which it was intended by the legislative body.*
(Italics supplied.)

We believe that this rule is not only applicable but that its application is well warranted with respect to supplying a procedure for effectuating the provisions of Chap. 401, Stats. 1957, Sec. 5.1, paragraphs 1 and 2, with which we are here concerned. The directors now in office and empowered to manage and conduct *affairs of the district* are, in our opinion, properly authorized to determine by resolution from which three of the divisions of said district two-year-term directors shall be elected and from which four divisions thereof four-year-term directors shall be elected. Candidates filing for these offices in 1958 would then be enabled to file for the term so designated for their respective division or precinct. All future filings subsequent to the present year will be for four years in accordance with paragraph 3 of the above chapter and section.

Careful consideration must be given as to the method of making this determination. While a method which would preserve or continue the present position of each division with respect to the time for electing its four-year or two-year director might, at a cursory glance, appear equitably desirable, yet certain mathematical involvements must be considered. If it were determined that the four divisions in which four-year terms are now current should each elect a director for a two-year term at the 1958 general election, then the mandate contained in the 1957 amendment that only three two-year directors be elected is violated. Likewise, if it were determined that the three divisions in which two-year terms are now current should each elect a director for a four-year term at the coming election, the amendment is again violated because it calls instead for four directors to serve for four-year terms.

Rather than make the determination on an arbitrary basis, we believe that it should be made by lot, i.e., simply by a drawing of each division or precinct by number and these to be checked off in order against a list of the terms to be filled, or vice versa. It should not escape our attention that selection of directors for the different length terms by lot was recognized, and even more, adopted, by the Legislature in enacting the original Act. We believe it is not only workable but also most equitable.

Based upon the foregoing, it is the opinion of this office that it is legally permissible to use the method above outlined for determining the length of term the director elected from each division or precinct is to serve, and further, that candidates filing pursuant thereto and subsequently elected will become duly elected directors of the district.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Deputy Attorney General

OPINION NO. 58-385 PUBLIC SERVICE COMMISSION—Motor Vehicle Department. Interstate carriers when operating their equipment within the State permitted under [NRS 706.550](#) to engage in intrastate transportation, provided they have qualified to go on a mileage fee basis and have procured a flat fee license. Above section inapplicable to strictly intrastate carriers.

Carson City, May 23, 1958

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

Dear Sir:

In your letter of April 29, 1958, you refer to [NRS 706.540](#) and [NRS 706.550](#) providing for *flat rate license fees* and *mileage license fees* respectively on motor vehicles operating as carriers for hire within the State. You state that interstate operators are contending that under the latter section they should be permitted to operate intrastate, e.g., transport shipments originating and terminating within the State, solely on a mileage basis, and that intrastate operators are objecting to such operations by interstate operators unless they first procure flat rate plates. Your inquiry which we quote from your letter is as follows:

QUERY

May we have your opinion as to the eligibility of:

1. Purely intrastate operators going on a mileage basis;
2. Can interstate operators on mileage operate intrastate on mileage, or do they have to procure a flat fee plate;
3. Can the interstate carriers use their mileage tax plates when their equipment, and the movement thereof, is entirely within the State?

OPINION

Under the provisions of [NRS 706.520](#), every person operating motor vehicles in the carriage of persons or property for hire is required to secure from the Motor Vehicle Department a license therefor on or before July 1 of each year. Then follows [NRS 706.530](#) providing a schedule for flat rate license fees to be paid on all such vehicles. Next we find [NRS 706.540](#) prescribing a schedule of license fees for the unladen weight on such vehicles and requiring that such fees shall be paid at the same time, and, in addition to the flat rate fees provided for under [NRS 706.530](#). These sections could well be construed together with no apparent conflict, but [NRS 706.550](#) appearing subsequent thereto constitutes the crux to the inquiries herein propounded. Its pertinent content is as follows:

1. In lieu of the *license fees set forth in [NRS 706.540](#)*, the department may, at its discretion, where it is shown that adequate records are being maintained, permit any person engaged in the operation of a vehicle, combination of vehicles, or combination for the carriage of persons or property, *who operates in interstate commerce, both within and without the state*, to pay a mileage fee upon all power unit mileage traveled within the State of Nevada in the statutory licensing period at the following per mile rates * * *. (Italics supplied.)

Then follows the prescribed fees for mileage traveled.

We note from a careful reading of the section quoted that its provisions are designed and applicable only to persons who operate in interstate commerce, both within and without the State. It contains nothing either directly or by way of implication that could give it any application to persons not meeting these specifications. In prescribing certain specifications as prerequisite to carriers going on mileage basis, the Legislature, under the maxim of “*Expressio unius est exclusio*,” excluded all those not meeting the specifications set. Under this well recognized rule of statutory construction, which has been adopted by our Supreme Court, when the Legislature enumerates certain instances in which an act or thing may be done, or when certain privileges may be enjoyed, it names all those it contemplates; otherwise, what is the necessity of specifying any? See *Ex Parte Arascada*, [44 Nev. 30. Intrastate operators](#) not possessing interstate licenses do not come under mileage fee provisions above quoted, nor may interstate operators not operating regularly within the State. The legislative intent, therefore, appears clear as to the type of operators covered.

It is noted from a study of legislative acts regulating transportation on Nevada highways, that both the flat rate fees and unladen weight fees with which we are here greatly concerned, had their inception in Chap. 165, Stats. 1933. In that Act, provision for payment was embodied in Sec. 18 thereof, consisting of only one paragraph, but in the 1935 Session of the Legislature, that section developed into two paragraphs, viz, paragraph (1) setting forth and providing for payment of flat rate license fees, and (2) setting forth and providing for payment of unladen weight license fees. The Act continued in this form with respect to such fees until the 1955 session when an unnumbered paragraph providing for mileage fees was added to paragraph (2) above, with the opening words reading as follows: “In lieu of the license fees set forth *above * * **.” (Italics supplied.)

In 1957 the Legislature in adopting Nevada Revised Statutes, designated paragraph (1) above mentioned, as [NRS 706.550](#), but revised said paragraph to read in its opening words, “In lieu of the license fees set forth *in NRS 706.540 * * **.” (Italics supplied.) These NRS designations for the flat rate license fees, the unladen weight license fees and the mileage license fees, respectively, were left intact by the Legislature in enacting Chap. 355, Stats. 1957, wherein certain revisions were made to the original Act, as amended. As presently appearing in NRS, these sections state the law applicable to the assessment of the various license fees and must be followed.

Those interstate operators qualified to come within the purview of [NRS 706.550](#), the mileage license fee statute above quoted, must do so only with permission of the department and at its discretion, and must still fulfill any other statutory requirements which have not been waived as to them. When permitted to operate under the provisions of [NRS 706.550](#), they do so in lieu of operating under those in [NRS 706.540](#). They are permitted to pay mileage license fees in lieu of those set forth under the latter section. What are the license fees set forth under [NRS 706.540](#). They are permitted to pay mileage license fees in lieu of those set forth under the latter section. What are the license fees set forth under [NRS 706?](#) As we read it, such fees actually set forth therein consist solely of those based upon the unladen weight of the carrier vehicle.

No other fees or schedules are listed, nor may we supply them. To do so would, in effect, be reading something into the statute which was excluded by the Legislature. Had that body intended the fees provided for under [NRS 706.550](#) to be in lieu of any others than those scheduled for unladen weight in [NRS 706.540](#), it would have said so. A rule early established by the Nevada Supreme Court and since adhered to is that in the construction of a statute the intention of the Legislature is the primary object to be ascertained, but to ascertain it, recourse should first be had to the language employed, and if that be plain and unambiguous, the courts must give it its strict and grammatical construction. *Brown v. Davis*, [1 Nev. 346; State v. Hamilton](#), [33 Nev. 418](#). No provision having been made that payment of the fees provided for under [NRS 706.550](#) are to be in lieu of flat rate license fees, we believe that these latter fees are a charge to be paid by interstate operators going on a mileage basis in addition to their mileage license fees. To assess intrastate carriers for flat rate fees and at the same time exempt interstate carriers for such, although each engages in intrastate transportation, would, in our opinion, be a discrimination against the former.

We believe that assessment of both flat rate fees and mileage fees against an interstate carrier transporting shipments which both originate and terminate within the State, is a reasonable regulation of intrastate commerce. While Congress alone has the power to regulate commerce carried on between the states (Art. I, Sec. 8, Cl. 3., U. S. Constitution), yet laws enacted by the states in exercising their powers to regulate intrastate commerce have been generally upheld by the courts unless they have by their nature imposed a burden upon the regulation of interstate commerce by the Federal Government. *Great Northern Railway Co. v. Washington*, 300 U. S. 154. It is the general rule supported by numerous authorities that a state may impose a charge, registration, or license fee, on those using motor vehicles in the state although engaged in interstate commerce, as a compensation for the use of the public highways, which is a fair contribution to the cost of maintaining them and regulating the traffic thereon. *Wallace v. Pfost*, 65 Pac.2d 725 (Ida.). It has also been held that a corporation engaged in interstate commerce is not, by reason of that fact alone, authorized to exercise the functions of a common carrier in a purely local business, without permission of the state. *State Ex Rel. Dawson v. Kansas City Stock Yards Co.*, 145 Pac. 831 (Kans).

From the foregoing analysis and authorities cited, we make the following conclusions:

Inquiry No. 1—Purely intrastate operators are not eligible to operate on a mileage basis.

Inquiry No. 2—Interstate operators going on mileage may not operate solely on a mileage fee basis, but must also procure a flat fee plate.

Inquiry No. 3—Interstate carriers coming under [NRS 706.550](#) may use their mileage tax plates on any carrier vehicle for which a flat fee plate has been procured, when the same and the movement thereof is entirely within the State.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Deputy Attorney General

OPINION NO. 58-386 UNIVERSITY OF NEVADA—FOOD AND DRUG, WEIGHTS AND MEASURES DEPARTMENTS—Food and Drug, Weights and Measures Departments not authorized to enter into lease agreements for quarters. University of Nevada, through which these departments function as a public service, authorized to act on behalf of said departments in this connection.

Carson City, MAY 23, 1958

MR. E. L. RANDALL, Commissioner, Food and Drug, Weights and Measures Departments, P. O. Box 719, Reno, Nevada

Dear Sir:

In your letter of May 21, 1958, you state that due to the necessity of vacating your present offices, you desire to negotiate for a five-year lease on other office space with provisions for renewal, and you inquire whether the authority to do so lies with your department or the University of Nevada.

OPINION

[NRS 396.600](#) lists as public service departments of the University of Nevada the following: (1) State Analytical Laboratory; (2) Food and Drug Control; (3) Weights and Measures; (4) Agricultural Extension; and (5) Agricultural Experiment Station.

[NRS 396.610](#) provides as follows:

All rules and regulations necessary for the proper administration and enforcement of the public service division of the University of Nevada shall be made by the president and the board of regents of the University of Nevada.

In view of the wording of these sections, there can be no doubt but that the Food and Drug, Weights and Measures Departments of this State are part and parcel of the State University. That the affairs of these departments come under the supervision and control of the President of the University and the Board of Regents thereof is made certain by the provisions of [NRS 396.230](#) (3), which reads: "The president shall, under the direction of the board of regents: (a) manage all matters connected with the university."

In none of the statutory provisions governing the public services within the Food and Drug, Weights and Measures Departments, are we able to find any authority for them to enter into lease agreements. A lease is the acquisition of an interest in real property, and in the absence of express authority, administrative agencies of the State may not bind the State on a lease agreement. Being creatures of the Legislature, they may be abolished at the will of that body at any time. For that reason their powers are limited to those expressly granted in the statute or reasonably implied therefrom.

It is our opinion that the leasing of premises for housing the Food and Drug, Weights and Measures Departments, is a function to be exercised by the University of Nevada through its President and Board of Regents.

Respectfully submitted,

Harvey Dickerson
Attorney General

By: C. B. Tapscott
Deputy Attorney General

OPINION NO. 58-387 GAMBLING—State gaming license is primarily personal. An established licensee relocating his casino within same city is not required to obtain a new license simply because of change of location.

Carson City, MAY 26, 1958

Honorable Robbins E. Cahill, Chairman, Gaming Control Board, Carson City, Nevada

Dear Mr. Cahill:

Opinion follows on facts and question contained in your letter of May 14, 1958.

An established licensed gaming casino will move its location within the same city. The licensee or licensees are the same, the operation at the former location will close, and all that appears to be contemplated is the change of location into new quarters for purpose of expansion. The move is contemplated in the middle of a licensing calendar quarter or period. The quarterly state gaming license fee has been paid in advance for the quarter during which the change is contemplated.

Question arises as to whether a new state license is required to which will attach the necessity of paying the quarterly license fee with the consequent forfeiture of a portion of the quarterly fee already paid in advance.

It is true that in certain sections of the Nevada Gaming Control Act wording is used which indicates on its face that it is the establishment for which a license is issued. For example, [NRS 463.220](#), subsection 5, uses the following wording:

In any case in which the establishment for which a license is to be issued * * *.

Again, [NRS 463.260](#), subsection 1, declares:

All licenses issued * * * shall be posted by the licensee * * * in the establishment for which issued until replaced by a succeeding license.

This, together with the requirement in [NRS 463.200](#) that the contents of an application for license contain the location of the place or places of business, is powerfully indicative of the intention that the license is issued only for the particular location initially authorized.

It is to be observed, however, that the principal concern of the Control Board and the Commission in the issuance of a license lies in the qualification of an applicant or applicants to properly conduct a gaming establishment or establishments. This, we think, is evident throughout the Act.

Moreover, it will be noted that the definition of the term license provided in [NRS 463.020](#) determines the license to be personal to the individual. That definition is:

“License” or “gaming license” means any license issued by the state or any political subdivision thereof pursuant to [NRS 463.020](#) to [463.360](#), inclusive, which authorizes the person named therein to engage in gaming.

We are not saying here that the location has no bearing upon the issuance of a license or of its continuance, but rather that the license is primarily personal with the individual; that principally it is the person and not the place that is being licensed.

If we are correct in this, does it follow that the expansion and new quarters within the same city requires the issuance of a new license? We are inclined to the view that, if within the present record there would be no question of the licensee to operate in the new location in the same city, it would be needless to issue a new license but rather the present license should be continued with amendment as to location.

This office is therefore of the opinion that the original license should be amended with reference to location, and that, unless there is something involved other than simply a change in location within the same city, there is no basis in the law for the requirement that the licensee whose qualifications have already been established must obtain a new license.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Deputy Attorney General

OPINION NO. 58-388. PUBLIC SERVICE COMMISSION—POWERBOAT AND MOTORBOAT REGULATIONS—Counties and cities not authorized under [NRS](#)

[488.010](#) to enact ordinances regulating powerboats and motorboats when Legislature has already passed adequate laws on subject matter involved.

Carson City, May 28, 1958

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

Dear Mr. Batjer:

We refer to your letter of May 9, 1958 enclosing a copy of regulations governing motorboat operations within the counties of this State, proposed by the Nevada State Highway Patrol for adoption as an ordinance by those counties not already having suitable regulations in this matter. Said proposed regulation provides that it shall constitute a misdemeanor:

1. For any motorboat to be operated upon any waters within the limits of this county which is not equipped and operated in accordance with the federal, state or county laws and regulations in effect as of the effective date of this ordinance for operation on the navigable waters of the United States.
2. For any motorboat while carrying passengers for hire to be operated or navigated by a person who is not licensed for such service.
3. For any person to operate a motorboat or vessel in a reckless or negligent manner so as to endanger the life, limb, or property of any person.

You have raised the following inquiry for the opinion of this office, which we quote from your letter:

My only question is, whether or not, pursuant to the provisions of [NRS 488.020](#) the Board of County Commissioners of Ormsby County could pass a county ordinance making it unlawful and a misdemeanor to violate federal laws and regulations governing motorboat operation?

OPINION

In order that this question be answered adequately, it is necessary that the legislation in this State regulating motorboats be given some study. The original Act enacted by the Nevada State Legislature which regulated the operation of powerboats and provided penalties was Chap. 143, Stats. 1951. It scarcely introduces the subject and constitutes only three paragraphs in Chap. 488, Nevada Revised Statutes, viz, [NRS 488.010](#)-488.030. Its inadequacy in this field of legislation was early discovered, prompting the Legislature to enact Chap. 339, Stats. 1957, amending Chap. 488 above mentioned, by adding twenty new sections, being [NRS 488.040](#)-488.210, giving counties and cities the power to make further restrictions concerning the navigation and operation of powerboats, has, in effect, been rendered almost nugatory because the sections in the portion amendatory thereto have provided the regulations which it was contemplated would be effectuated by the counties and cities under [NRS 488.020](#).

Even if [NRS 488.020](#) were accorded its fullest possible meaning, we do not feel that enactment of any of the proposed ordinances is justified. As noted in [NRS 488.040](#)-488.210, the Legislature has already enacted adequate legislation covering the regulations proposed in (1) and (3) above. Further county regulations in the matter would be duplications, in our opinion. Neither do we believe the county could properly adopt proposed ordinance (2) because nothing appears in [NRS 488.020](#) as we interpret it, either expressly or impliedly, authorizing county commissioners to enact ordinances pertaining to the licensing of persons operating a motorboat for hire. That is a matter to be directed to the attention of the Legislature.

We believe that in amending the original powerboat regulation Act, and taking over the regulation of certain aspects thereof, the Legislature intended to supplant county commissioners

in providing regulations therefor. We, therefore, conclude that for the reasons mentioned, the county commissioners of Ormsby County are not empowered to enact the proposed regulations into county ordinances. The question propounded as to whether county commissioners may adopt an ordinance making it a misdemeanor to violate federal laws governing the same subject matter, becomes moot and we deem it unnecessary to pass on it at this time.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Deputy Attorney General

OPINION NO. 58-389 STATE PARKS AND MONUMENTS—Interpretation of the
Ichthyosaur Park Act.

Carson City, June 23, 1958

Mr. Thomas W. Miller, Chairman, State Park Commission, Carson City, Nevada

Dear Mr. Miller:

In your letter of May 28, 1958, you request an opinion of this office upon matters involving the operation of the University of California at the Ichthyosaur State Park in Nye County, Nevada.

According to the information before us the facts are these:

The land upon which this park is located is owned by the Federal Government.

In January of 1955 the Federal Government granted a special use permit, without expiration date, to the Nevada State Park Commission covering this park area for the purpose, among other purposes, of protecting ichthyosaur fossils located there.

The Federal Government also issued permits under authority of Section 432, Title 16 USCA, to excavate at the park site. The last of these permits was issued in May of 1956 and expired in December of 1956, and to our knowledge have not been renewed. These permits so issued appear to have been only for the purpose of preliminary exploration at the ichthyosaur discovery site.

The Nevada State Museum also issued a permit under authority of [NRS 38.200](#) to the University of California to excavate at this park site. This permit was issued for the period June 15, 1954 until work completed.

The University of California, through one of its staff members, Dr. Charles Camp, and in cooperation with the Nevada Ichthyosaur Park Board, has performed considerable excavation and development work at and for the park.

Question has arisen as to the present status of the federal and state permits to the University of California, and to the authority to remove any of the ichthyosaur fossils from the park site. This latter question is prompted by the possible understanding by the museum staff of the University of California that, as partial compensation for its efforts, removal of portions of the fossils to the University at Berkeley, California, or elsewhere, will be permitted.

The various laws involved in this question are as follows:

USCA, Title 16, Section 432. This federal law contemplates the granting of permits for the excavation of archeological sites and the gathering of objects of antiquity for museums and universities (we assume that this would cover work in the field of paleontology).

[NRS 381.200](#)-381.250. This state law contemplates the granting of permits to explore and excavate objects of antiquity, providing that necessary federal permits have been granted.

[NRS 407.160](#)-407.200. This state law is the Nevada Ichthyosaur Park Act, under which the State Park Commission is constituted a State Ichthyosaur Park Board created to protect and maintain the ichthyosaur discovery site.

Now, this park site is upon federally owned land, and we conclude that, despite the fact that a state permit exists which purports on its face to be presently valid, a federal permit of present existing validity must also be in existence in order that a gathering of paleontological objects upon such lands can be carried forward. We consider Section 432, Title 16 USCA to be sufficient authority in this case for this statement. Moreover, the state law itself does not contemplate the validity of a state permit unless a valid federal permit is in existence. [NRS 381.200](#), cited above, provides, in part, as follows:

* * * in addition thereto and before issuing such permit shall require the applicant to have a permit from the proper authority as to federal lands * * *.

Certainly we consider this provision to mean also that if the federal license is revoked or for any reason no longer in existence, the existing state license would no longer be of force and effect.

We conclude, therefore, that, under the present set of facts, the University of California holds no permit as to this operation either federal or state of present force and effect. Until this is rectified, the operation by the university in this regard is not valid.

Now, as to the question of the removal of fossils from the site in Nye County, this office is of the following opinion:

We are fully aware that the federal law cited above is designed to permit the exploration and gathering of objects of this type for the purpose of museum display or scientific endeavor without restriction as to removal from the site or state of discovery.

Nevertheless, the Federal Government has granted to the State of Nevada a special permit covering this site for the purpose of protecting the discoveries made thereon. The State of Nevada in line with this permit has enacted a special law, the Ichthyosaur Park Act, and created a special administrative board thereunder for the express purpose of protecting and maintaining this discovery. It is necessary then to look to this particular state law in order to determine what may be authorized by way of depletion of the discovery on site or the removal of the discovery in whole or in part from the site. Moreover, if there be a conflict in this regard between the Ichthyosaur Park Act and that Act cited above, [NRS 381.200](#)-381.250, which authorizes the granting of permits by the directors of the Nevada State Museum, the Park Act will be of controlling force. Not only is the Park Act of later enactment but it is special in its nature bearing upon a special subject. Under elementary rules of statutory construction such statute is of controlling effect.

Under this Park Act the park board is charged with the duty and empowered to "take any action which is necessary for the preservation of the ichthyosaur site, and the permanent protection of the site and the objects of the site," [NRS 407.200](#). Nowhere in this Act is the board authorized to permit the removal of the discovery, or any portion of it, from the site. The park board being charged with the duty of preserving and protecting the site and the discovery thereon is also charged with the duty of preventing a depletion or removal of the discovery from the site.

This office is aware that the primary objective of these provisions in this Act is to prevent vandalism and depletion of the discovery by unscrupulous persons. Nevertheless, as the permit by the Federal Government to the State of Nevada and the Nevada Ichthyosaur Park Act are presently constituted, removal of the discovery from the site, even by such an institution as the University of California and its eminent scientists, is also enjoined if such removal may be contemplated.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Deputy Attorney General

OPINION NO. 58-390 UNIVERSITY OF NEVADA—Board of Regents of University of Nevada not empowered, except by authorization of the Legislature, to purchase property on behalf of the university from any university funds.

Carson City, June 26, 1958

Honorable P. W. Hayden, Comptroller, University of Nevada, Reno, Nevada

Dear Sir:

In your letter of June 18, 1958, you outline a plan now under consideration by the Board of Regents of the University of Nevada, designed to provide for the care of the widow of a former faculty member of the University whose death occurred prior to enactment of the Public Employees Retirement System. Under the proposed plan, the widow in question would convey, subject to a life estate in herself, her home having a valuation of \$15,000, in exchange for benefits in the amount of \$150 monthly to be paid her for the duration of her life by the University from unrestricted endowment funds. The opinion of this office is requested regarding the propriety of the Regents entering into a transaction of this nature.

OPINION

As we view it, a conveyance of property to the University in exchange for monthly payments of \$150 to the grantor for the duration of said grantor's life, or payments in any amount or over any other designated period, constitutes an outright purchase of property. The proposed transaction cannot be regarded or interpreted as making a gift to the University because the conveyance is for a consideration.

Authority to sell certain University-owned property on behalf of the University unless specifically authorized to do so by legislative act.

Under the provisions of [NRS 396.420](#), the Board of Regents of the University are empowered to accept and take in the name of the University, by grant, gift, devise or bequest, any property for the use of said institution and certain functions thereof. Although the courts of this State have never defined the specific transactions embraced within the methods of acquisition above mentioned, we do not interpret them as including acquisition by purchase. That this has been the accepted interpretation thereof in the past is evidenced by the fact that the Legislature has on several occasions enacted special acts authorizing the Regents of the University to purchase certain real property.

It is our opinion that the Board of Regents of the University of Nevada are not authorized to purchase or acquire the property in question except by express authorization of the Legislature.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: C. B. Tapscott
Deputy Attorney General

**OPINION NO. 58-391 LOAN ASSOCIATIONS AND LENDING INSTITUTIONS—
NEVADA SMALL LOAN ACT**—License to conduct small loan business once issued
remains valid until surrendered, revoked or suspended.

Carson City, June 27, 1958

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

Dear Mr. Robison:

This office is in receipt of your letter of June 24, 1958 requesting an opinion of this office. The facts and question are quoted from your letter as follows:

STATEMENT OF FACTS

X Loan company was licensed to do a small loan business in Nevada at the beginning of 1957 and a license issued for the period January 1, 1957 to December 31, 1957.

In May, 1957, the chief officer of X Loan Company advised the banking department that loans receivable were being taken outside the State to be collected by another company and that the Nevada office was being closed.

In March, 1958, a request for a renewal application was received from out-of-State. No money accompanied the request. This office advised X Loan company that because the Nevada office had been closed for a long period and no business transacted, and that the renewal fee had not been paid, as provided by [NRS 674.150](#), it was not considered eligible for a renewal license. The renewal fee was received March 31, 1958 and returned April 14, 1958. The company did not file an annual report, as provided by [NRS 674.290](#).

QUESTION

In view of the facts enumerated above, is X Loan company still presumed to be in business and is it mandatory that the banking department issue a license for 1958, without filing a revocation notice, as provided by [NRS 674.530](#)?

OPINION

Under the facts stated, we are not able to determine whether or not X Company is presently doing business; however, we are of the opinion that, under these facts, X Company is at present licensed to do business. That is to say, the license issued to X Company in 1957 from the commissioner to transact a small loan business is presently valid.

[NRS 674.460](#) provides:

Each license shall remain in full force and effect until surrendered, revoked or suspended as provided in this chapter.

[NRS 674.510](#) provides:

Any licensee may surrender any license by delivering it to the commissioner with written notice of its surrender * * *.

[NRS 674.500](#) provides:

If the commissioner finds that probable cause for revocation of any license exists and that enforcement of this chapter requires immediate suspension of such license pending investigation, he may, upon 3 days' written notice and a hearing, enter an order suspending such license for a period not exceeding 30 days.

Under the facts stated above, it does not appear that a suspension affecting present validity of the license of X Company has been effected.

Provision pertaining to the revocation of licenses is found in [NRS 674.530](#). Revocation of the license of X Company under the facts stated above has not occurred.

Thus, the license issued to X Company in 1957 is, under these facts, presently valid, and will remain valid until surrendered, revoked or suspended. This, in turn, answers your question as to the requirement of the commissioner to issue a license for 1958 without filing a revocation notice as provided in [NRS 674.530](#).

It may be added that the failure to pay the annual license fee in compliance with [NRS 674.150](#) does not in and of itself invalidate the license, but is rather a ground for revocation of the license under [NRS 674.530](#). Similarly, the failure to file a report as required under [NRS 674.290](#) may, in a proper case, be considered ground for revocation of a license. It may also be added for purpose of clarification that the requirement does not appear in the statute that a licensee must at all times engage in business. To be sure, there are certain requirements as, for example, that of conspicuously posting the license in the place of business under [NRS 674.200](#), but such requirements are certainly designed to cover the operator while he is conducting a business.

Respectfully submitted,

HARVEY DICKERSON
Attorney General

By: William N. Dunseath
Chief Deputy Attorney General

CASES IN COURT WHEREIN THE STATE OF NEVADA WAS A PARTY

In the First Judicial District Court, Ormsby County. *Perry G. Means v. State of Nevada*. Action to recover moneys for services and for recovery on the basis of quantum meruit. Trial without jury held. Judgment: Plaintiff to recover of defendant \$5,242.87, with costs, \$46.80. Motion for new trial denied. Appealed to Supreme Court. Judgment reversed with costs to Appellant. Cause remanded to lower court. Pending.

In the Second Judicial District Court, Washoe County. *The State of Nevada Ex Rel. State Department of Highways v. The Virginia & Truckee Railway, a Corporation*—Cases Nos. 141211 through 141255. To condemn certain lands comprising the V. & T. railroad right of way for highway purposes. Case involves 15 different parcels or sectors of such right of way. Case tried October 6, 1955, Judgment of condemnation entered in favor of plaintiff with compensation in the amount of \$12,019.20 to defendant V. & T. Railway Co. Satisfaction of Judgment and Final Order of Condemnation filed March 24, 1958. Case closed.

In the First Judicial District Court, Churchill county. Milton A. Bowler and Milton D. Bowler *v. Ralph James Vannoy*, individually and as Sheriff of Churchill County, Nevada, Stella B. Leonard, John S. Sinai, and State of Nevada. Suit for damages. Pending.

In the First Judicial District Court, Ormsby County. *Charles P. O'Keefe et al. v. Charles H. Russell et al.* Suit brought to enjoin Nevada Tax Commission from enforcing certain rules and regulations of the Commission regulating the race horse book gambling in the State of Nevada. Court denied preliminary injunctions as to regulations 1 and 2 of the Commission, and granted preliminary injunction as to regulation 3. Trial date of October 20, 1952, vacated. Stipulation, dismissing action with prejudice and making temporary restraining order as to Regulation 3 permanent, filed September 3, 1957. Case closed.

In the Second Judicial District Court, Washoe County. *H. B. R. Bushard v. The State of Nevada*, the Nevada Tax Commission, and Washoe county, Nevada. To recover taxes paid under protest. Matter dismissed by stipulation on January 25, 1957, for failure to prosecute for a period of over five years. Case closed.

In the Supreme Court of the State of Nevada. *State of Nevada v. Charles Dominic Polito*. Appeal from judgment of conviction of Eighth Judicial District Court, Clark County. Judgment of lower court affirmed. In the Supreme Court of the United States: Petition for Writ of Certiorari to the U. S. Court of Appeals for the Ninth Circuit. Two applications for Writ of Habeas Corpus filed in United States District Court, District of Nevada, both denied. Case closed.

In the Supreme Court of the State of Nevada. *Dale Eugene Sollars v. The State of Nevada*. Appeal from judgment of lower Court, wherein defendant was adjudged to be guilty of murder in the first degree with punishment fixed at life imprisonment, and from the order denying defendant's motion for a new trial. On August 6, 1957, defendant was recommitted to the State Hospital by order of the First Judicial District Court. In October, 1957, conviction was reversed by Supreme Court and case remanded for a new trial. At present time defendant is awaiting improved condition in order to be returned to Clark County for new trial. Pending.

In the Supreme Court of the State of Nevada. *Walter Horace Sefton v. The State of Nevada*. Appeal from judgment of lower court of murder in first degree, fixing punishment at death. Judgment of lower court of murder in first degree, fixing punishment at death. Judgment of lower court affirmed. Petition for rehearing denied. Application made for commutation of sentence to life imprisonment—denied. Application made to United States District Court, District of Nevada, for Writ of Habeas Corpus July 22, 1957, On August 10, 1957, Sefton hung himself at the State Prison, and the case was ordered dismissed on August 14, 1957. Case closed.

In the Supreme Court of the State of Nevada. The State of Nevada, upon the relation of *George D. Quimby and Clara Quimby, v. City of Reno, a Municipal Corporation, et al.* Appeal from judgment of District Court—Quo Warranto to set aside ordinance of City of Reno annexing certain adjacent territory Judgment reversed and case remanded. Amended Complaint in Quo Warranto filed in District Court. Case dismissed and judgment in favor of respondents. New trial denied. Appeal again taken to the Supreme Court, judgment reversed and case remanded.

In the First Judicial District Court of the State of Nevada, Ormsby County. *Peter J. Burfening v. Louis D. Ferrari*, as Surveyor General and Land Register of the State of Nevada; and Harvey Dickerson, as Attorney General of the State of Nevada. Complaint in nature of petition for writ of mandamus to direct Louis D. Ferrari to prepare and issue an oil lease on certain lands in Elko County. Attorney General dismissed as party defendant on June 20, 1955. Motion to dismiss Louis D. Ferrari as party defendant granted April 24, 1957. Case closed.

In the Supreme Court of the State of Nevada. *Patricia Ann Bryant v. The State of Nevada*. Appeal from judgment of involuntary manslaughter entered in lower court. Judgment of lower court reversed and case remanded for new trial.

In the First Judicial District Court of the State of Nevada. Ormsby County. *State of Nevada Ex Rel. Paul A. Hammel. Insurance Commissioner. State of Nevada v. United Mutual Fire Insurance Company*, a defunct corporation. Receiver appointed April 3, 1956. Decree settling First and Final Account, approving report of Receiver, and directing distribution filed November 26, 1956. Case closed.

In the First Judicial District Court of the State of Nevada. Ormsby County. The State of Nevada, on relation of its *Department of Highways, v. Alexander Lunan, et al.* To condemn certain lands for highway purposes. Order for immediate possession entered November 21, 1955. Final order of condemnation entered September 18, 1956. Case closed.

In the United States District Court, District of Nevada. *The State of Nevada Ex Rel. Hugh A. Shamberger, State Engineer, v. The United States of America*. Complaint for Declaratory Judgment (re Hawthorne Naval Ammunition Depot—application for water rights) filed in Fifth Judicial District Court of the State of Nevada, Mineral County, later removed to U. S. District Court. The California Department of Water Resources filed a brief as amicus curiae upholding Nevada's position in which the States of Nebraska, North Dakota, South Dakota, and Wyoming joined. The State of Washington joined in the briefs filed by Nevada. Judgment entered October 7, 1958 in favor of United States. Pending appeal to United States Circuit Court of Appeals, 9th District.

In the First Judicial District Court of the State of Nevada, Ormsby County. *Phyllis Bartels, per se, and as Administratrix of the Estate of George E. Miller. Deceased, Georgeann Bartels, and Patricia Imelli, v. Arthur E. Bernard, Warden, Nevada State Prison, Charles Righini, Herman T. Smoot, Frank Champion and The State of Nevada*. Suit for damages on account of the death of George E. Miller. Trial by jury was had in April, 1957, and plaintiffs were denied damages. Case closed.

In the First Judicial District Court of the State of Nevada, Ormsby County, *City of Sparks v. Public Service Commission of Nevada, et al., Bell Telephone company of Nevada and Sierra Pacific Power Company*. To vacate order of the Public Service Commission of Nevada. Case dismissed with prejudice by stipulation of counsel November 15, 1956.

In the Second Judicial District Court of the State of Nevada, Washoe County. *Raymond E. Taylor v. The State of Nevada, the University of Nevada, and Philip Ternan*. Action brought to recover damages (truck accident). Appeal taken to Supreme Court by plaintiff. Judgment of lower court affirmed May 27, 1957. Case closed

In the Eighth Judicial District court of the State of Nevada, Clark County. *Housing Authority of the City of Las Vegas, Nevada v. Hugh A. Shamberger, Nevada State Engineer*. Action brought to review on appeal an order of the State Engineer. Order and Judgment denying petition to set aside and reverse ruling of State Engineer entered July 11, 1956. Case closed.

In the Second Judicial District Court of the State of Nevada, Washoe County. *Dural E. Towne and Stanley L. Towne v. State of Nevada, Department of Highways, et al.* Action brought to quiet title. Judgment entered April 15, 1957, in favor of plaintiffs. Case closed.

In the Second Judicial District Court of the State of Nevada, Washoe County. *Herman Baker v. Isbell Construction Company and State of Nevada, Department of Highways*. Money claim on contract for removal of gravel. Action dismissed with prejudice on June 24, 1957, the same having been compromised and fully settled. Case closed.

In the First Judicial District Court of the State of Nevada, Ormsby County. *Pacific Fire Rating Bureau v. Paul A. Hammel, as Commissioner of Insurance of the State of Nevada; Insurance Company of North America; Indemnity Insurance Company of North America; and Others*. Petition to review order of Insurance Commissioner and that proposed rules relating to partial subscribership be approved as reasonable rules and regulations. Dismissed with prejudice by stipulation on April 28, 1958.

In the Third Judicial District Court of the State of Nevada, Eureka County. *The Board of County Commissioners of Eureka County, Nevada, acting as a Board of County Commissioners for the County of Eureka, State of Nevada, v. The Public Service Commission of the State of Nevada, and Robert A. Allen, Chairman of the Public Service Commission of Nevada*. In the matter of adequacy of supply of water furnished by Heller's Eureka Water Works for domestic and fire protection purposes. Petition for Writ of Mandate denied by Court. By stipulation a new hearing was held before the Public Service Commission, and on September 7, 1956, orders correcting the situation were issued by the Commission. Case closed.

In the Second Judicial District Court of the State of Nevada, Washoe County. *The State of Nevada, on relation of its Department of Highways, v. H. B. R. Bushard and L. V. Redfield*. Action brought to obtain a judgment condemning a fee title in real property. Final order of condemnation entered September 12, 1956. Case closed.

In the Second Judicial District Court of the State of Nevada, Washoe County. *The State of Nevada, on relation of its Department of Highways, v. George Shaddock and Sarah Shaddock,*

husband and wife, and Tahoe Investment Corp., a Nevada Corporation. To condemn certain lands for highway purposes. Pending.

In the Second Judicial District Court, Washoe County. *The State of Nevada, Ex Rel. The Board of Regents, v. William Schmitt and A. C. Schmitt, et al.* Action brought to obtain judgment in eminent domain against defendants and thereby obtain title to and possession of certain property for parking space. Pending.

In the Second Judicial District Court, Washoe County. The State of Nevada, Ex. Rel. *The Board of Regents, v. S. J. Nielsen and T. W. Nielsen, et al.* Action brought to obtain judgment in eminent domain against defendants and thereby obtain title to and possession of certain property for parking space. Pending.

In the First Judicial District Court, Ormsby County. *Cecil Dennis and Dortha Dennis v. E. N. Kitchen, Elton Parsons and State of Nevada.* Suit for damages. Case settled, release in full of all claims, Order of Dismissal issued June 4, 1957. Case closed.

In the Second Judicial District Court, Washoe County. *State of Nevada v. W. J. Ceresola.* Action brought for judgment in sum of \$714.00, balance due on purchase price of 280 tons of hay, contracted by defendant with plaintiff through its Department of Purchasing. Upon stipulation between parties, action dismissed with prejudice, each party to pay its and his own costs, February 13, 1957. Case closed.

In the Supreme Court of the State of Nevada. *State of Nevada, upon the relation of Betty Beebe, Petitioner, v. John Koontz, individually, and as Secretary of State of Nevada, et al.* Petition for Writ of Mandate. (Against placing question of Sales Tax on ballot for November 6, 1956 election). Hearing in Supreme Court, October 17, 1956. Opinion of Court: Judgment of lower court affirmed; Writ denied, October 18, 1956. Case closed.

In the Supreme Court of the State of Nevada. *Citizens Bank of Nevada v. Grant L. Robison, Superintendent of Banks, the State Board of Finance, et al.* Writ of Certiorari. Opinion of Court and order affirming action of State Board of Finance denying banking license filed March 28, 1958. Case closed.

In the Second Judicial District Court, Washoe County. *O'Brien-Rogers Burial Association v. Paul A. Hammel, Insurance Commissioner.* Petition for review of order of Insurance Commissioner. Decision and Judgment filed October 1, 1957, Notice of Motion to Vacate Judgment filed October 18, 1957. Withdrawal without prejudice of Notice of Motion to Vacate Judgment filed November 12, 1957. Case closed.

In the Supreme Court of the State of Nevada. *Aurelio Papa and David Dotta v. Thelma Vacchina and Thyra Savage.* Action brought on appeal from judgment of Fourth Judicial District Court, Elko County. Opinion of Court; judgment of lower court affirmed, February 6, 1958. Order denying Petition for Rehearing, March 5, 1958. Case closed.

In the Supreme Court of the State of Nevada. *Grant L. Robison, Petitioner. v. the First Judicial District Court, County of Ormsby, and Honorable Frank B. Gregory, Judge. Writ of Prohibition.* Petition for removal of Grant L. Robison as Superintendent of Banks filed in District Court by Don Crawford. February 13, 1957. Petition for Writ of Prohibition filed February 21, 1957. Briefs filed. Opinion of Court in favor of Petitioner filed June 25, 1957. Peremptory Writ issued. Case closed.

In the Eighth Judicial District Court of the State of Nevada, Clark County. *In the Matter of the Petition of the State of Nevada upon the relation of Grant L. Robison, Superintendent of Banks for Nevada, for appointment of a Receiver for Silver State Building and Loan Association, a Nevada Corporation.* Grant L. Robison appointed. Receivership terminated March 8, 1957, and assets restored to association. Case closed.

In the Eighth Judicial District Court of the State of Nevada, Clark County. *R. J. Kaltenborn v. State of Nevada, Huston Mills, Wells Cargo, Inc., a Nevada Corporation, et al.* Inverse Condemnation. Pending.

In the Supreme Court of the State of Nevada. *In the Matter of the Report of Ormsby County Grand Jury. William B. Byrne and William D. Embry v. First Judicial District Court of the State of Nevada,* Honorable Frank B. Gregory, Presiding. Appeal from lower court denying motion to expunge portions of grand jury report. Attorney General of Nevada amicus curiae. Supreme

Court reverse and remanded with instructions that offensive portion of report be expunged. Case closed.

In the Supreme Court of the State of Nevada. *Hugh A. Shamberger, Director of State Department of Conservation and Natural Resources v. Louis D. Ferrari*. Petition for Writ of Mandate, compelling Respondent Ferrari to transfer properties of office of Surveyor General to Petitioner as required by 1957 Statutes. Petition granted and Writ of Mandate issued September 16, 1957. Case closed.

In the Supreme Court of the State of Nevada. *Charles Calvin Robinson v. W. E. Leypoldt*. Appeal arising as a result of the action of the Eighth Judicial District Court of Nevada in dismissing a writ of habeas corpus and remanding appellant to officers of the State of Oregon. State's motion to dismiss appeal denied. Judgment affirmed. Case closed.

In the Supreme Court of the State of Nevada. *Virgle Geurin v. the State of Nevada*. Appeal from conviction of involuntary manslaughter, First Judicial District Court—appellant was charged with obtaining narcotic drug by use of false name. Supreme Court affirmed judgment of lower court. Case closed.

In the Supreme Court of the State of Nevada. *Elton Parsons v. State of Nevada*. Appeal from conviction of involuntary manslaughter, Fifth Judicial District Court, Esmeralda County. Judgment of lower court affirmed. Case closed.

In the Supreme Court of the State of Nevada. *Kenneth S. Garden v. the State of Nevada*. Appeal from judgment of Eighth Judicial District Court. Judgment of lower court affirmed and Petition for rehearing denied. Case closed.

In the Supreme Court of the State of Nevada. *Edward Bleeker Elias v. State of Nevada*. Appeal from judgment and death sentence of Eighth Judicial District Court. Judgment of lower court affirmed and Petition for rehearing denied. Board of Pardons commuted sentence to life. Case closed.

In the Supreme Court of the State of Nevada. *The State of Nevada v. Fred Edward Wissinger*. Appeal from Eighth Judicial District Court dismissing the action, charging Wissinger with the crime of possession of a cheating device, upon a demurrer filed by him. Appeal dismissed on written stipulation. Case closed.

In the Supreme Court of the State of Nevada. *Paul Cook v. The State of Nevada*. Appeal from judgment and conviction (possession of cheating device) of Fourth Judicial District Court, Elko County. Judgment of lower court affirmed. Case closed.

In the Supreme Court of the State of Nevada. *Troy Clifford Hess and Michael Steven Sterling v. the State of Nevada*. Appeal from conviction of kidnaping in first degree and sentence to life imprisonment, Fourth Judicial District Court, Elko County. Judgment of lower court affirmed and Petition for rehearing denied. Case closed.

In the Supreme Court of the State of Nevada. *The State of Nevada, upon the Complaint of Walter J. Richards v. the City of Las Vegas, a Municipal Corporation, and S. George Gilson*. Action in quo warranto to try title to the office of judge of the municipal court of the City of Las Vegas. Judgment of lower court ordering dismissal affirmed. Case closed.

In the Supreme Court of the State of Nevada. *Robert F. Fox v. the State of Nevada*. Appeal from judgment of conviction of the crime of first degree murder and sentence to death, Second Judicial District Court, Washoe County. Judgment of lower court affirmed and petition for rehearing denied. Case closed.

In the Second Judicial District Court of the State of Nevada, Washoe County. *State of Nevada v. Alphonso Sario*. To obtain a judgment against defendant for damages to plaintiff's automobile. At conclusion of trial Court entered order denying recovery to plaintiff. Case closed.

In the Supreme Court of the State of Nevada. *In the Matter of the Application of Arby Alper for Writ of Habeas Corpus, Arby Alper v. W. E. Leypoldt, Sheriff of Clark County*. Appeal from Eighth Judicial District Court, Clark County, dismissed. Case closed.

In the Supreme Court of the State of Nevada. *In the Matter of the Application of Henry Eugene Lynch for a Writ of Habeas Corpus, Henry Eugene Lynch v. W. E. Leypoldt, Sheriff of Clark County*. Appeal from Eighth Judicial District Court, Clark County, dismissed on written stipulation. Case closed.

In the Supreme Court of the State of Nevada. *Opaco Lumber & Realty Co., a Nevada corporation, v. Eighth Judicial District Court of the State of Nevada*, in and for the County of Clark, Department Three. Petition for Writ of Certiorari denied. Case closed.

In the Supreme Court of the State of Nevada. *Margaret Flick, et al., v. Nevada Fish and Game Commission, Washoe County Game Board*. Appeal from judgment of Second Judicial District Court, Washoe County, denying injunctive relief. Pending.

In the Eighth Judicial District Court of the State of Nevada, Clark County. *Paul Dickinson, Distributor for Wilshire Oil Company, D-X Stations, Inc.; and Redman Petroleum Copr. v. State of Nevada; E. L. Randall, State Sealer, etc., and A. M. Raphael, District Representative of State Sealer*. Motion for Preliminary Injunction denied. Pending.

In the Eighth Judicial District Court of the State of Nevada, Clark County. *County of Clark v. City of Los Angeles, California, etc., State of Nevada, Intervener*. Cases 84861 and 85901. Action to recover monetary judgments as and for occupation license tax arrears alleged to be due from defendants. Pending.

In the United States District Court, for the district of Utah, Central Division. *United States of America v. El Paso Natural Gas Company and Pacific Northwest Pipeline Corporation*. Proposed merger. State of Nevada joined in and adopted amicus curiae brief of State of New Mexico. Motion for order staying proceedings pending hearings before Federal Power Commission having been denied, a Petition for Writ of Certiorari was filed in the Supreme Court of the United States. Case now pending further hearings before the Federal Power Commission.

In the First Judicial District Court of the State of Nevada, Ormsby County. *Mary Borland v. Elmer Christman, Mark Dusky, John Bailey and the State of Nevada*. Suit for damages. Action dismissed as to the State of Nevada, by stipulation, without costs to either party. Case closed.

In the Supreme Court of the State of Nevada. *The State of Nevada v. Thomas P. Jernigan*. Appeal from order of First Judicial District Court of the State of Nevada, Lyon County, granting defendant's motion to quash and discharging defendant from custody. Pending.

In the Supreme Court of the State of Nevada. *The State of Nevada v. Harold Sorenson and Beauford Johnson*. Appeal by State from order of First Judicial District Court, Lyon County, granting respondents new trial after being found guilty by jury of grand larceny. Judgment of lower court affirmed. Case closed.

In the Supreme Court of the United States. *American Public Power Association et al. v. Power Authority of the State of New York*. Petition for Writ of Certiorari to United States Court of Appeals, District of Columbia Circuit. States of California, Colorado, Nevada, New Mexico, Texas, Utah and Wyoming, amici curiae. Petition for Writ of Certiorari granted. Judgment of United States Court of Appeals vacated and case remanded with directions to dismiss upon ground that cause is moot. Case closed.

In the Supreme Court of the State of Nevada. *Charles Edward Nester v. the State of Nevada*. Appeal from judgment and sentence of Eighth Judicial District Court of the State of Nevada, Clark County (rape). Pending.

In the First Judicial District Court of the State of Nevada, Ormsby County. *The State of Nevada, on relation of its Department of Highways, v. C. B. Lauch Construction Col., Fire Association of Philadelphia*. Breach of Contract. Action dismissed with prejudice. Case closed.

In the Supreme Court of the State of Nevada. *In the Matter of the Application by Harry Short for Writ of Habeas Corpus by and on behalf of Raymond Short. Harvey Dickerson, Attorney General of Nevada, v. Raymond Short, a child under the age of eighteen years*. Appeal from order of Second Judicial District Court, Washoe County, granting discharge under habeas corpus. Reversed and remanded. Case closed.

In the Fifth Judicial District Court of the State of Nevada, Mineral County. *In the Matter of the Guardianship of A. J. Linderman, An Insane Person*. Petition for order requiring Guardian to make payments to State Hospital for ward's care, medical treatment and maintenance. Pending.

In the United States District Court, District of Nevada. *Hubert Stenoish and Florence Stenoish v. State of Nevada and Ward Swain*. Suit for damages. State of Nevada dismissed as party defendant. By stipulation a substitution of attorneys was made and Attorney General is no longer an attorney of record. So far as office of Attorney General is concerned, case is closed.

In the Eighth Judicial District Court of the State of Nevada, Clark County. *In the Matter of the Estate of Lawrence Edwin Grubbs, aka L. E. Grubbs, Deceased.* Escheat. Pending.

In the Supreme Court of the State of Nevada. *Robert H. Goldblatt v. J. S. Harris. Sheriff of Elko County, Nevada.* Appeal from ruling of Fourth Judicial District Court, Elko county, on petitioner's application for Writ of Habeas Corpus. Ruling of lower court affirmed. Case closed.

In the Second Judicial District Court of the State of Nevada. Washoe County. *In the Matter of the Guardianship of the Estate of Alene Bath.* Incompetent. Petition for order requiring Guardian to make payments to State Hospital for ward's care, medical treatment, and maintenance. Pending.

In the First Judicial District Court of the State of Nevada, Ormsby County. *Fred H. Dressler, et al., v. John Koontz, as Secretary of the State of Nevada.* Permanent injunction issued restraining defendant from submitting petition (right to work) upon ballot at the general election. Case closed.

In the Sixth Judicial District Court of the State of Nevada, Humboldt County. *Golconda Light and Power Distribution, Inc., a corporation, v. Sierra Pacific Power Company, Howard Z. McMullen and Barbara B. McMullen, and Pacific Power Company* from supplying power to McMullens and to enjoin McMullens from purchasing from any other than plaintiff. Sierra Pacific Power Company acquired assets of plaintiff, which made trial of this case unnecessary. Dismissed with prejudice by stipulation. Case closed.

In the Eighth Judicial District Court of the State of Nevada, Clark County. *Nellis Housing Corporation and Nellis Gardens Co. v. Clark County, Nevada.* State of Nevada, and Nevada Tax Commission. To recover taxes paid under protest. Pending.

In the Eighth Judicial District Court of the State of Nevada, Clark County. *In the Matter of the Estate of Edward White, Deceased, (escheat).* Pending.

In the Second Judicial District Court of the State of Nevada, Washoe County. *In the Matter of the Parental Rights as to Floyd Decker and Lloyd Decker, Minors.* Action to terminate parental rights of mother and place children in custody and control of Nevada State Welfare Department, for adoption. Final order terminating parental rights issued August 1, 1958. Case closed.

In the First Judicial District Court of the State of Nevada, Ormsby County. *In the Matter of the Parental Rights as to Maybelle Decker and Angeline Decker, Minors.* Petition to terminate parental rights of mother and place children in custody and control of Nevada State Welfare Department for adoption. Final order terminating parental rights issued September 25, 1957. Case closed.

In the Second Judicial District Court of the State of Nevada, Washoe County. *Barry Brooks and Others v. Associated Nevada Dairymen, Inc., and Others.* Action: A milk hauling controversy in which the Public Service Commission was a party. Action was dismissed with prejudice on June 17, 1957, the parties having so stipulated. Case closed.

In the Supreme Court of the State of Nevada. *The State of Nevada, on Relation of the Attorney General, v. William Elwell, N. E. Broadbent, Grant Sawyer, Cyril O. Bastian.* Action in Quo Warranto to oust defendants as members of the Board of Regents of the University of Nevada. Judgment for the State, ousting defendants. Case closed.

In the First Judicial District Court of the State of Nevada, Churchill County. *The State of Nevada, Ex Rel. The University of Nevada v. Truckee-Carson Irrigation District.* Action brought to restrain TCID from preventing flow of water to, upon and across plaintiff's land. Preliminary Injunction granted April 16, 1957. Pending.

In the Supreme Court of the State of Nevada. *The State of Nevada v. Earl Lewis Steward.* Appeal by the State of Nevada from order of the Fourth Judicial District Court sustaining defendant's demurrer to information. Cross-appeal by defendant from portion of order sustaining defendant's demurrer. On State's appeal order of lower court sustaining demurrer reversed and case remanded for further proceedings, and on defendant's cross-appeal order of lower court sustaining sufficiency of the allegations affirmed. Case closed.

THE ARIZONA-CALIFORNIA CASE

In the Supreme Court of the United States. *The State of Arizona v. the State of California, et al.* Referring to and supplementing the report of this case set forth at pages 450-451. Report of the Attorney General for the period of July 1, 1954-June 30, 1956: It there appears that the trial of the case was recessed August 27, 1956 to reconvene February 6, 1957, in the Federal Building, San Francisco, California. On that date California began the presentation of its case in chief which required many weeks of trial, the sessions of Court generally being three weeks with recesses between sessions which were found to be necessary by reason of the complexity of the case and the great volume of evidence submitted. California's was then followed by the case of the United States, likewise requiring many days of trial. The United States rested May 5, 1958.

Nevada's case in chief followed the United States and was presented May 5-May 13, inclusive. New Mexico and Utah then presented their claims to rights to the use of the waters of the Little Colorado, the Gila River on the part of New Mexico, and the Virgin River claim by Utah.

Upon the resting of the cases of New Mexico and Utah, sessions of the trial were held wherein Arizona and California submitted voluminous evidence in rebuttal to the cases presented by each other and the United States, with short rebuttal of the Nevada, New Mexico and Utah cases, whereupon, the trial adjourned sine die. August 28, 1958.

The actual trial before Hon. Simon H. Rifkind, Special Master, required 130 days wherein 107 witnesses were examined and 4,019 Exhibits of highly technical character, together with many memoranda, were introduced in evidence. The transcript of the proceedings totaled 22,593 pages.

The major issue was and is the apportionment among the Lower Basin States of the beneficial consumptive use of 8,500,000 acre feet per annum of the waters of the Colorado River Stream System as allocated to such basin by Article III a and b of the Colorado River Compact of 1922, approved by Congress in the Boulder Canyon Project Act of 1928.

Briefly the claims to beneficial consumptive use of the aforesaid apportioned water and basis of such use by the respective parties were:

1. Arizona, 2,800,000 acre feet per annum of main stream water stored in Lake Mead under contract with the Secretary of the Interior, plus more than 1,000,000 acre feet per annum of Gila River water and claimed surplus water based upon the theory of the plenary control of the water of the stream system by the United States, notwithstanding the provisions of the Colorado River Compact which Arizona belatedly ratified in 1944. On August 28, 1958, Arizona asked leave to file an Amended Complaint, therein claiming 3,800,000 acre feet of main stream water plus all of the waters of the tributaries in Arizona upon the ground that the tributaries were excepted from the Colorado River Compact. Neither the Master nor the Court has to date ruled on this matter.

2. California, 5,362,000 acre feet per annum of stream system water under contracts with the Secretary of the Interior for storage in Lake Mead based upon the actual appropriation of such water to beneficial consumptive use.

3. The United States, in excess of 1,000,000 acre feet of water per annum for the beneficial consumptive use on Indian Reservations, Fish and Wildlife, Reclamation and other uses based upon the fact that the Colorado River had been declared a navigable stream with plenary control vested in the United States.

4. Nevada, not less than the beneficial consumptive use of 539,100 acre feet per annum of Compact Article III a, and not less than 100,000 acre feet per annum of III water, based upon its present appropriated rights to Colorado River System water and anticipatory rights thereto appropriated rights to Colorado River System water and anticipatory rights thereto projected to the year 2000. The pertinent theory of Nevada's case is the equitable apportionment of the beneficial use of the water between the Basin States based upon the equality of each sovereign State and the equal plan upon which each was admitted to the Union, together with the doctrine of the ownership of the waters within their respective boundaries. Also that while Nevada entered into a contract in 1944 with the Secretary of the Interior for storage in Lake Mead of 300,000 acre feet of water per annum, such contract does not constitute the measure of Nevada's right, nor the right of any of the States so contracting. Such rights must be established by judicial decree.

5. New Mexico claimed appropriate rights to some 275,000 acre feet per annum on the Virgin River, a tributary of the Colorado, but reduced its claim to 125,000 acre feet upon the trial.

The major issue is also complicated by the impact of the United States—Mexico Water Treaty of 1944, wherein the United States agreed and agrees to deliver at the Mexican boundary 1,500,000 acre feet of Colorado River water per annum. In short water years the treaty requirement will most materially affect the apportionment of water to the respective States.

On August 28, 1958, upon the adjournment of the trial, the Special Master advised as to the time of the filing with him of the briefs of the parties so necessary in this case. Each party to file its opening brief on or before March 1, 1959. Thereafter each party to file its opposing brief within 60 days, with a 30-day period thereafter to file such respective reply briefs deemed necessary. No target date for the submission of the Special Master's Report and Decision to the parties was definitely set. The magnitude of the case is such that the submission to the Supreme Court will not occur until at least 1960.

Under and upon the direction of the Attorney General, the trial of the case and the preparation of Nevada's case was conducted by W. T. Mathews, Special Assistant Attorney General, materially assisted up to the submission of Nevada's case by Homer Angelo and John Shaw Field of the Nevada Bar, as Assistant Attorneys General. There was and is now employed as special counsel, R. P. Parry and Clifford Fix, specialized water-right attorneys of Twin Falls, Idaho.

Nevada's case was ably presented through the following witnesses, each of whom was either an expert in the field covered by him, or was most fully conversant therewith by long association: Hugh A. Shamberger, Clyde E. Houston, George Hardman, A.J. Shaver, James M. Montgomery, Robert J. Moore, George B. Maxey, Vernon E. Scheid, Senator George W. Malone, Representatives of Tippetts-Abbot-McCarthy-Stratton, a New York firm of engineers employed to conduct an extensive study of the Nevada area in the Colorado River Basin. The witnesses were John Drisko and Gerald T. McCarthy.

Nevada was unable to get any response to the proposition of a compromise settlement of Nevada's claim it was authorized in 1956 by the Colorado River Commission to negotiate.

The following estates have been reported to the Attorney General during the biennium as being estates which might escheat to the State of Nevada:

Walter Harvey Lambert, White Pine County
Christian Nielsen, Washoe County
Joe Bush, Lincoln County
Frank Sorenson, Elko County
Fred Stocklein, Lander County
David Bulloch, Nye County
Willis V. Stewart, Nye County
William W. Porter, Washoe County
Frank McMullin, Nye County
Herman West, Esmeralda County
Gorrie Moore, Washoe County
John Etchart, White Pine County

Highway Condemnation Cases commenced:

In the First Judicial District Court of the State of Nevada, Lyon County. *State of Nevada, on relation of its Department of Highways, v. Southern Pacific Company, William Henry Scott, George P. Osborn, L. Besserman and Louise Besserman, Ola Green, et al.* Judgment of Dismissal, Notice of Entry of Judgment filed August 5, 1957. Case closed.

In the Second Judicial District Court, Washoe County. *The State of Nevada, on relation of its Department of Highways, v. Pietro Lombardo and Edith Lombardo.* Judgment of Dismissal entered December 10, 1957. Case closed.

In the Second Judicial District Court, Washoe County. *The State of Nevada, on relation of its Department of Highways, v. Madsen-Norris Supply Co., Inc.* Notice of Dismissal filed October 23, 1956. Case closed.

In the Second Judicial District Court, Washoe County. *The State of Nevada, on relation of its Department of Highways, v. Home Furniture, Inc.* Pending.

In the District Court of the United States for the District of Nevada. *The State of Nevada, on relation of its Department of Highways, v. the United States of America and Walter Voorhees.* Final Order of Condemnation issued; Notice of Entry of Judgment filed July 2, 1957. Case closed.

In the Fifth Judicial District Court, Churchill County. *The State of Nevada, on relation of its Department of Highways, v. Frank Warren and Fern Warren.* Pending.

In the First Judicial District Court, Lyon County. *The State of Nevada, on relation of its Department of Highways, v. Southern Pacific Company, William Henry Scott, George P. Osborn, L. Besserman and Louise Besserman, Ola Green, First Doe, Second Doe, and Doe Corporation.* Judgment of Dismissal and Notice of Entry of Judgment filed August 5, 1957. Case closed.

In the First Judicial District Court, Ormsby County. *The State of Nevada, on relation of its Department of Highways, v. John R. Ross, Margaret B. Ross, Myra R. Denison, Vance D. Lippincott, Agnes B. Lippincott, Forest C. Thayer, and Isabelle Thayer.* Pending.

In the First Judicial District Court, Ormsby County. *The State of Nevada, on relation of its Department of Highways, v. Melvin E. Jepson, Sam LoBue, Rose LoBue, Salvatore Trombatore and Ella Trombatore.* Stipulation as to Plaintiff's right of immediate possession filed November 7, 1957. Notice of Dismissal filed December 18, 1957. Case closed.

In the First Judicial District Court, Ormsby County. *The State of Nevada, on relation of its Department of Highways, v. Miles DeWitt and Dorothy DeWitt.* Pending.

In the Second Judicial District Court, Washoe County. *The State of Nevada, on relation of its Department of Highways, v. Ruth Garfinkle Olsen, Leslie C. Stencil, an individual, dba Ace Metal Fabricators, Pete Martin, an individual, dba Martin Decorators, Frank Capriotti and William Hadley.* Pending.

In the Eighth Judicial District Court, Clark County. *The State of Nevada, on relation of its Department of Highways, v. William J. Clough, Pricilla v. Clough, Trustors, First National Bank of Nevada, Trustee, and Arthur Henry Bainter, Beneficiary.* Pending.

In the Second Judicial District Court, Washoe County. *The State of Nevada, on relation of its Department of Highways, v. T. R. Everett and Vertie Mae Kerr.* Stipulation of Dismissal filed. Action dismissed with prejudice, matter having been settled out of Court. Case closed.

In the Second Judicial District Court, Washoe County. *The State of Nevada, on relation of its Department of Highways, v. Joseph Belli and Egidio Belli, a married man, Trustors, Washoe Title Insurance Company, a Nevada Corporation, Trustee, Union Federal Savings and Loan Association, a Federal Corporation, Beneficiary, Sierra Meat and Provision Company, a Nevada Corporation.* Pending.

In the Second Judicial District Court, Washoe County. *The State of Nevada, on relation of its Department of Highways, v. Guy L. Ferguson and Beulah C. Ferguson.* Pending.

In the Eighth Judicial District court, Clark County. *The State of Nevada, on relation of its Department of Highways, v. Don Ricketts, W. C. Scott, R. C. Harris, B. C. Johnson N. C. Johnson, M. R. Homer, N. E. Homer, and F. C. Homer.* Pending.

In the First Judicial District Court, Douglas County. *The State of Nevada, on relation of its Department of Highways, v. John Crosby, Jr., Washoe Title Guaranty Company and Henry W. Berrum.* Stipulation of Dismissal, matter settled out of court, filed July 28, 1958. Case closed.

In the Eighth Judicial District Court, Clark County. Inverse Condemnation. *Larry R. Johnson and Lottie E. Johnson v. State of Nevada.* Pending.

In the Second Judicial District Court, Washoe County. *The State of Nevada, on relation of its Department of Highways, v. Norman Crummett and Ermelin Crummett.* Pending.

In the Second Judicial District Court, Washoe County. *The State of Nevada, on relation of its Department of Highways, v. Angus Polk.* Pending.

In the Second Judicial District Court, Washoe County. *The State of Nevada, on relation of its Department of Highways, v. Joseph Hornstein*. Notice of Dismissal filed May 2, 1958. Case closed.

In the Second Judicial District Court, Washoe County. *The State of Nevada. On relation of its Department of Highways, v. August C. Rohwer and Celia M. Rohwer*. Pending.

In the Second Judicial District Court, Washoe County. *The State of Nevada, on relation of its Department of Highways, v. Fred Souza and Evangeline Azera Souza*. Pending.

In the Eighth Judicial District Court, Clark County. *The State of Nevada, on relation of its Department of Highways, v. Arlane S. McNally, George W. Swift, Pioneer Title Insurance Company, Mecham Construction Company, Inc., Roy Earl and Dick Jay Harrison*. Pending.

In the Seventh Judicial District Court, White Pine County. *The State of Nevada, on relation of its Department of Highways, v. Louise Yrazabal, Nich Yrazabal, and Farnsworth-Ely Combined Metal Mines, Inc.* Pending.

In the Second Judicial District Court, Washoe County. *The State of Nevada, on relation of its Department of Highways, v. Incline Lake Corporation, a Nevada corporation*. Pending.

In the Second Judicial District court, Washoe County. *The State of Nevada, on relation of its Department of Highways, v. James Lewis Lambert*. Case closed.

In the Second Judicial District Court, Washoe County. *The State of Nevada, on relation of its Department of Highways, v. Helene Goni, Raphael Goni, Fuhrman Goni and William Goni*. Pending.

In the Eighth Judicial District Court, Clark County. *The State of Nevada, on relation of its Department of Highways, v. P. A. Simon and Margaret F. Simon*. Pending.

The following actions were brought by the plaintiffs therein to review the orders of the State Engineer relative to the granting of permits to appropriate water.

E. W. Fallini, R. A. Fallini, Joe B. Fallini and Constant Venner and Florence R. Butler v. Floyd R. Lamb and Carlton B. Lamb, and Alfred Merritt Smith, State Engineer. Stipulation for Dismissal filed. Case closed.

Basil Brewer and George A. Riley v. E. L. Cord and Alfred Merritt Smith, State Engineer. Order dismissing action for want of prosecution filed. Case closed.

Roy Visbeek and Henrietta C. Visbeek v. Roy A. Brown, A. D. Drumm, Jr., Alfred Merritt Smith, State Engineer. Action dismissed pursuant to stipulation of counsel for respective parties. Case closed.

Locke and Titus v. Alfred Merritt Smith, State Engineer, A. G. McBride, et al. Case pending.

Horseshoe Cattle Company v. Alfred Merritt Smith, State Engineer. Order and Judgment Dismissing Action pursuant to stipulation of parties. Case closed.

Oscar Rudnick, X. Bozart, James M. Daniels and Robert E. Taylor, v. E. L. Cord and Alfred Merritt Smith, State Engineer. Order dismissing action for want of prosecution. Case closed.

B. H. Robison v. Richard Bate and Alfred Merritt Smith, State Engineer. Case pending.

Angelo C. Florio v. Alfred Merritt Smith, Eureka Land and Stock Company, etc. Case pending.

Emery Garrett v. Hugh Shamberger, State Engineer, Leroy Sharp, et al. Case pending.

James M. Daniels v. Hugh A. Shamberger, State Engineer. Case pending.

J. M. Daniels v. E. J. Shirley, et at., and Alfred Merritt Smith, State Engineer. Case pending.

Thomas O. Bath, Executor of the Estate of Angelo C. Florio, Deceased, v. Bartholamiae Oil Corporation, a California corporation, Oscar Rudnick, Sam Rudnick and Filbert Etcheverry, dba Eureka Livestock Company, and Hugh A. Shamberger, as State Engineer. Case pending.

Walker River Irrigation District v. G. S. Williams and Althea Williams and Hugh A. Shamberger, State Engineer. Judgment and Notice of Entry of Judgment filed. Case closed.

Constant Venner v. Hugh A. Shamberger, State Engineer. Case pending.

John Jay Casey v. Carl V. Haas, Jr., and Hugh A. Shamberger, State Engineer. Case pending.

Appeal of John F. and Bernice E. Kincaid from Order of State Engineer. Case pending.

Walker River Irrigation District and Norman D. Brown, on behalf of himself and all Water Users on the Walker River and the West Walker River of the State of Nevada similarly situated v. Freeman E. Fairfield and Alfred Merritt Smith, State Engineer. Order of Dismissal filed. Case closed.

A. E. Anderson v. Julius Redelius and Alfred Merritt Smith, State Engineer. Order of Dismissal filed. Case closed.

Salmon River Canal Co. Ltd. V. Walter M. Gilmer, et al. Order made dismissing without prejudice defendant Guy Gulley. Order of dismissal without prejudice as to H. S. Hale and wife. Judgment made and entered as to remaining defendants, pursuant to stipulation of counsel in said matter. Case closed.

Henry McCleary Timber Co. v. Fred B. Stewart, et al. Case closed.

Henry McCleary Timber Co. v. Alfred Merritt Smith, State Engineer. Case closed.

In the Matter of the Application of Harold William Merritt for Permission to Appropriate Waters of Martin Creek. Action dismissed for want of prosecution. Case closed.

John, Marshall, Clifford and Wayne Matley, dba M. C. Land and Livestock, v. Hugh Shamberger, State Engineer, and A. Steidlmayer & Sons. Case pending.

Charles C. Smith and Ruth V. Smith, Monroe F. Miller and Cleon E. Miller, v. Hugh A. Shamberger, as State Engineer. Case pending.

In the matter of the Application of Albert Romeo to Appropriate Waters of Robinson Canyon Channel and Tributaries, No. 15354; and In the Matter of the Application of James T. Elliott to Appropriate Waters of Robinson Canyon Channel and Tributaries, No. 15355.

Sierra Pacific Power Company, a corporation v. Edmund Muth, State Engineer of the State of Nevada, and John Arden and Oliver Armstrong. Case pending.

Ernest Becker, et al., v. Hugh A. Shamberger, State Engineer, and Edmund Muth, Assistant State Engineer. Case pending.

In the Eighth Judicial District Court, Clark County. Thomas D. de Bruyn, dba Nevada Pump and Supply Company v. State of Nevada, Hugh A. Shamberger, State Engineer. Action brought to stay order of revocation of license. Case closed.